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ORDERS

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Vol. 349

IN RE TIMOTHY B. ET AL.

The petition of the respondent mother for certification to appeal from the Appellate Court, 219 Conn. App. 823 (AC 46117), is denied.

Matthew C. Eagan, assigned counsel, in support of the petition.

Evan O'Roark, assistant attorney general, in opposition.

Decided July 13, 2023

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CONNECTICUT APPELLATE REPORTS

Vol. 227

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

CITY OF NEW LONDON *v.* SHERI SPEER
(AC 45742)

Bright, C. J., and Elgo and Sheldon, Js.

Syllabus

The plaintiff, the city of New London, sought to recover a balance due for water and sewer services provided to the defendant's property. The defendant filed a counterclaim alleging that she was a debtor in a pending bankruptcy action at the time the underlying action was commenced, and sought damages for the plaintiff's alleged violation of the automatic stay imposed by the United States Bankruptcy Code (11 U.S.C. § 362). The trial court granted the plaintiff's motion to dismiss the counterclaim, finding that it did not have subject matter jurisdiction to hear the action. On the defendant's appeal to this court, *held* that the trial court improperly dismissed the defendant's counterclaim for lack of subject matter jurisdiction: considering the express statutory language in 11 U.S.C. § 362 (k) creating a right to damages for individuals injured by violations of the automatic stay, and consistent with federal precedent construing the same, 11 U.S.C. § 362 (k) authorized an independent cause of action

for damages that survived the disposition of the underlying bankruptcy case; moreover, this court concluded, consistent with the majority of federal appellate courts, that the plain language of the federal statute (28 U.S.C. § 1334) governing bankruptcy cases and proceedings grants federal district courts original and exclusive jurisdiction over the bankruptcy petition only, and that a claim for damages pursuant to 11 U.S.C. § 362 (k) was not a bankruptcy petition and did not fall under the exclusive jurisdiction of the federal district courts; furthermore, the clear statutory language in 28 U.S.C. § 1334 (b) distinguishing between the exclusive and "not exclusive" jurisdiction of the federal district courts reinforced the presumption of concurrent state court jurisdiction over the federal claim for damages pursuant to 11 U.S.C. § 362 (k) and compelled the conclusion that an action for damages pursuant to 11 U.S.C. § 362 (k) is a civil proceeding arising under title 11 and, thus, is within the original but not exclusive jurisdiction of the federal district courts pursuant to 28 U.S.C. § 1334 (b).

Argued February 1—officially released August 13, 2024

Procedural History

Action to recover damages for failure to pay for water and sewer services, and for other relief, brought to the Superior Court in the judicial district of New London, where the defendant filed a counterclaim; thereafter, the court, *O'Hanlan, J.*, granted the plaintiff's motion to dismiss the counterclaim and rendered judgment thereon, from which the defendant appealed to this court. *Reversed*; *further proceedings*.

Sheri Speer, self-represented, the appellant (defendant).

Brian K. Estep, with whom was *Eric J. Garofano*, for the appellee (plaintiff).

Opinion

BRIGHT, C. J. The self-represented defendant, Sheri Speer, appeals from the judgment of the trial court dismissing for lack of subject matter jurisdiction her counterclaim against the plaintiff, the city of New London, in which the defendant sought damages for the plaintiff's alleged violation of the automatic stay imposed by the United States Bankruptcy Code. See 11

U.S.C. § 362 (a) (2012). On appeal, the defendant claims that the court improperly concluded that it lacked jurisdiction to adjudicate her counterclaim seeking damages pursuant to 11 U.S.C. § 362 (k). We agree with the defendant and, accordingly, reverse the judgment of the trial court.

The record reveals the following relevant facts and procedural history. In July, 2017, the plaintiff initiated the underlying action against the defendant to recover a balance due for water and sewer services for the defendant's property in New London. See General Statutes §§ 7-239 and 7-254. The plaintiff alleged that the defendant's outstanding debt was $1100.87 as of June 28, 2017, and sought interest and attorney's fees. The defendant filed her appearance on November 21, 2017, and a notice of bankruptcy on January 2, 2018, stating, in relevant part, that "the above named debtor filed a petition for relief on May 20, 2014, under 11 U.S.C. §§ 301, 302 or 303." Also on January 2, 2018, the trial court clerk granted the plaintiff's motion for default for failure to plead, as the defendant had failed to file a responsive pleading. The defendant filed a motion to open the default on January 19, 2018, which presently remains pending in the trial court.

The case remained dormant for several years until January, 2022, when the court notified the parties that the case would be dismissed for the plaintiff's failure to prosecute the action with reasonable diligence pursuant to Practice Book § 14-3 (a), unless the pleadings were closed on or before February 25, 2022. The plaintiff filed a certificate of closed pleadings and a claim for trial list on February 16, 2022, and the defendant filed an answer with a special defense and a counterclaim on March 8, 2022. In her counterclaim, the defendant alleged that she was a debtor in *In re Speer*, United States Bankruptcy Court, Docket No. 14-21007 (AMN)

(D. Conn.), which was pending at the time the underlying action was commenced. On July 16, 2021, the Bankruptcy Court issued a final decree closing the defendant's involuntary chapter 7 case. The defendant alleged that the plaintiff, "[k]nowing [that the defendant] was a debtor in a bankruptcy," initiated and litigated the underlying action in violation of the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362. The defendant sought actual damages, including costs and attorney's fees, as well as punitive damages for each of the plaintiff's alleged violations of the automatic stay pursuant to 11 U.S.C. § 362 (k) (1).

After obtaining extensions of time to plead as to the counterclaim,[1] the plaintiff filed a motion to dismiss the counterclaim on June 2, 2022. In support of its motion, the plaintiff argued that the trial court lacked subject matter jurisdiction over the defendant's counterclaim because her bankruptcy related claims are preempted by the Bankruptcy Code in accordance with our Supreme Court's decision in *Metcalf* v. *Fitzgerald*, 333 Conn. 1, 214 A.3d 361 (2019), cert. denied, U.S. , 140 S. Ct. 854, 205 L. Ed. 2d 460 (2020). The plaintiff contended that "[t]he proper jurisdiction for any claimed violation is in the Bankruptcy Court, [and] not the Superior Court . . . ." The defendant filed a memorandum of law in opposition to the motion to dismiss, arguing that *Metcalf* did not apply to her counterclaim because "*Metcalf* was a review of the applicability of

[1] The plaintiff filed a motion for extension of time to plead as to the counterclaim on April 7, 2022, asking for thirty days to respond to the defendant's counterclaim. The trial court granted that request on April 28, 2022, extending the deadline to May 9, 2022. On May 5, 2022, the plaintiff filed a second motion for extension of time to plead, asking for an additional thirty days, which was granted on May 23, 2022. On May 18, 2022, the defendant filed a motion for default for the plaintiff's failure to plead as to her counterclaim, arguing that the plaintiff's deadline passed on May 9, 2022. The trial court, *Jacobs*, *J.*, denied the defendant's motion for default on June 22, 2022.

state vexatious litigation and [Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq.] claims [arising from] violations of the Bankruptcy Code, not whether one can bring a purely bankruptcy based claim in the Superior Court." (Emphasis omitted.)

After hearing argument on the motion to dismiss on August 4, 2022,[2] the trial court, *O'Hanlan*, *J.*, issued a written order granting the motion to dismiss the following day. The court's order stated in relevant part: "This matter alleges that the [plaintiff] violated the stay imposed by law while [the defendant] was subject to the jurisdiction of the [United States] Bankruptcy Court; see 11 U.S.C. § 362 (2012); and seeks damages for such violation. [Our] Supreme Court has made clear that actions such as these are preempted by federal bankruptcy law, and that the Superior Court does not have jurisdiction to hear them. See *Metcalf* v. *Fitzgerald*, [supra, 333 Conn. 13]." This appeal followed.[3]

As a preliminary matter, we first note the applicable standard of review and legal principles regarding the automatic stay under the Bankruptcy Code. "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo." (Internal quotation marks omitted.) *Ahrens* v. *Hartford Florists' Supply, Inc.*, 198 Conn. App. 24, 29, 232 A.3d 1129 (2020).

[2] After filing this appeal, the defendant filed a statement that no transcript was deemed necessary to prosecute her appeal pursuant to Practice Book § 63-4 (a) (3).

[3] After filing this appeal, the defendant filed a motion for articulation in the trial court, asking the court to articulate the legal and factual basis for its decision. The court denied the motion, and the defendant filed a motion for review with this court. We granted the motion for review but denied the relief requested therein.

"Under the Bankruptcy Code, the filing of a bankruptcy petition has certain immediate consequences. For one thing, a petition creates an estate that, with some exceptions, comprises all legal or equitable interests of the debtor in property as of the commencement of the case. . . . A second automatic consequence of the filing of a bankruptcy petition is that, with certain exceptions, the petition operates as a stay, applicable to all entities, of efforts to collect from the debtor outside of the bankruptcy forum. [See 11 U.S.C.] § 362 (a). The automatic stay serves the debtor's interests by protecting the estate from dismemberment, and it also benefits creditors as a group by preventing individual creditors from pursuing their own interests to the detriment of the others. Under the [Bankruptcy] Code, an individual injured by any willful violation of the stay shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages. [11 U.S.C.] § 362 (k) (1)." (Citations omitted; internal quotation marks omitted.) *Chicago* v. *Fulton*, 592 U.S. 154, 156–57, 141 S. Ct. 585, 208 L. Ed. 2d 384 (2021).

"[A]lthough state courts have jurisdiction to interpret the provisions of the Bankruptcy Code and orders of the bankruptcy court to determine whether, under their plain terms, the automatic stay provision applies to a state court proceeding—which interpretations are subject to correction by the bankruptcy court—state courts do not have jurisdiction to change the status quo by modifying the reach of the automatic stay provision either by extending the stay to proceedings to which it does not automatically apply or by granting relief from the stay in proceedings to which it does automatically apply. Rather, any modification of the stay must be sought in bankruptcy court." *U.S. Bank National Assn.* v. *Crawford*, 333 Conn. 731, 756–57, 219 A.3d 744 (2019).

On appeal, the defendant claims that the court improperly concluded that it lacked jurisdiction to adjudicate her counterclaim seeking damages pursuant to 11 U.S.C. § 362 (k). She argues that *Metcalf* v. *Fitzgerald*, supra, 333 Conn. 13, does not require dismissal of her counterclaim because "[t]he logic behind *Metcalf* was not that the Superior Court could not hear federal claims. . . . *Metcalf* was a review of the applicability of state vexatious litigation and CUTPA claims *as a consequence of violations of the Bankruptcy Code*, *not whether one can bring a purely bankruptcy based claim in Superior Court*." (Emphasis in original.) Accordingly, she asserts that the Superior Court is in as good a position as a federal court to adjudicate her counterclaim based on the Bankruptcy Code itself. The plaintiff responds that, in *Metcalf*, our Supreme Court "established that causes of action in Connecticut state courts seeking damages under the . . . Bankruptcy Code are preempted by the United States Bankruptcy Court." The plaintiff maintains that "the penalties afforded by the Bankruptcy Code are solely the authority of the United States Bankruptcy Court, not the courts of individual states." We agree with the defendant that *Metcalf* does not control in the present case, and we conclude that the trial court has jurisdiction to adjudicate the defendant's counterclaim.

In *Metcalf* v. *Fitzgerald*, supra, 333 Conn. 3, our Supreme Court considered "whether the United States Bankruptcy Code provisions permitting bankruptcy courts to assess penalties and sanctions preempt state law claims for vexatious litigation and violation of [CUTPA]." The court held "that the Bankruptcy Code impliedly preempts . . . state law CUTPA and vexatious litigation claims for two main reasons: (1) Congress legislated so comprehensively as to occupy the entire field of penalties and sanctions for abuse of the bankruptcy process, leaving no room for state law to

supplement; and (2) the federal interest in uniformity is so dominant that we assume it precludes enforcement of state laws that threaten the uniformity and finality of the bankruptcy process for debtors and creditors alike." Id., 12–13. In the present case, however, the defendant has not asserted a state law cause of action in her counterclaim. Instead, she seeks relief pursuant to 11 U.S.C. § 362 (k) of the Bankruptcy Code. Thus, application of the holding in *Metcalf* that the Bankruptcy Code preempts state law causes of action does not resolve the question presented in this appeal—whether state courts have jurisdiction to adjudicate a claim expressly authorized by the United States Bankruptcy Code.

We note that the parties' appellate briefs focused primarily on the import of *Metcalf* rather than on the federal statutes relevant to the jurisdictional issue.[4] Accordingly, after oral argument before this court, we ordered the parties to file supplemental briefs concerning that issue. See *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 161, 84 A.3d 840 (2014) ("reviewing court not only can but must address an issue implicating subject matter jurisdiction whenever it arises, regardless of how the issue comes to the court's attention"). Specifically,

[4] In her reply brief, the defendant claimed that 28 U.S.C. § 1334 (c) authorizes the trial court to adjudicate her counterclaim "because the original proceeding brought by the [plaintiff] was to collect on water bills without it having sought removal of the automatic stay." Title 28 of the United States Code, § 1334 (c) (1), provides that, "[e]xcept with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." The defendant does not explain how 28 U.S.C. § 1334 (c) applies to her counterclaim, and, given that there is no indication that the Bankruptcy Court considered the defendant's 11 U.S.C. § 362 (k) claim and decided to abstain from hearing it pursuant to 28 U.S.C. § 1334 (c), we are not persuaded that it applies in the present case.

we ordered the parties to address two issues: "(1) whether 11 U.S.C. § 362 (k) provides an independent cause of action for damages that survives the disposition of the underlying bankruptcy case; see, e.g., *In re Healthcare Real Estate Partners, LLC*, 941 F.3d 64, 70–71 (3d Cir. 2019); *Houck* v. *Substitute Trustee Services, Inc.*, 791 F.3d 473, 480–81 (4th Cir. 2015); and (2) if such an action is viable, whether it is within the 'original and exclusive jurisdiction' of the federal courts under 28 U.S.C. § 1334 (a) or the 'original but not exclusive jurisdiction' of the federal courts under [28 U.S.C.] § 1334 (b). Compare *Powell* v. *Washington Land Co.*, 684 A.2d 769, 772–73 (D.C. App. 1996), with *Halas* v. *Platek*, 239 B.R. 784, 788–94 (N.D. Ill. 1999)." The parties thereafter filed supplemental briefs in accordance with this court's order.

I

As to the first issue, pursuant to 11 U.S.C. § 362 (k) (1), "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The United States Court of Appeals for the Fourth Circuit has explained that, "[b]efore 1984, when Congress enacted [11 U.S.C.] § 362 (k) (designated [11 U.S.C.] § 362 (h) when enacted),[5] the automatic stay appeared to be merely proscriptive. Section 362 (a) [of title 11 of the United States Code] provided that the filing of a bankruptcy petition operates as a stay, without prescribing any sanction for its violation. . . . The Bankruptcy Code simply gave the bankruptcy court authority to administer the proscription. . . . Thus,

[5] We note that the redesignation of what had been subsection (h) of 11 U.S.C. § 362 to subsection (k) occurred in 2005. See Pub. L. 109-8, § 305 (1) (B), 119 Stat. 23, 79 (2005). For convenience, we refer to subsection (k) when discussing case law that referred to 11 U.S.C. § 362 (h) prior to its redesignation.

courts had held that the [11 U.S.C.] § 362 (a) automatic stay provision did not provide a party with an independent right of action for damages but rather with a procedural mechanism to be regulated and enforced by the bankruptcy court. . . .

"In 1984, however, with the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98353, 98 Stat. 333 (codified in scattered sections of 11 and 28 U.S.C.), Congress created a private cause of action for the willful violation of a stay, authorizing an individual injured by any such violation to recover damages." (Citations omitted; internal quotation marks omitted.) *Houck* v. *Substitute Trustee Services, Inc.*, supra, 791 F.3d 481; see also *In re Healthcare Real Estate Partners, LLC*, supra, 941 F.3d 71 ("while the institution of a bankruptcy proceeding at some point is necessary for the institution of [an 11 U.S.C.] § 362 (k) action, the institution of a new or the continuation of an existing [11 U.S.C.] § 362 (k) action does not depend on the continued existence of that proceeding"); *Internal Revenue Service* v. *Murphy*, 892 F.3d 29, 36 (1st Cir. 2018) (noting that 11 U.S.C. § 362 (k) provides "a private cause of action to '[a]n individual injured by any willful violation of a stay' "); *Garfield* v. *Ocwen Loan Servicing, LLC*, 811 F.3d 86, 91–92 (2d Cir. 2016) (noting that "the Bankruptcy Code provision concerning the discharge injunction . . . does not explicitly create a cause of action for its violation, whereas the automatic stay provision provides such a remedy" (citation omitted)); *Price* v. *Rochford*, 947 F.2d 829, 830–31 (7th Cir. 1991) (holding that 11 U.S.C. § 362 (k) "creates a cause of action that can be enforced after bankruptcy proceedings have terminated").

Considering the express statutory language in 11 U.S.C. § 362 (k) creating a right to damages for individuals injured by violations of the automatic stay, and consistent with federal precedent construing the same, we

conclude, and the parties agree, that 11 U.S.C. § 362 (k) authorizes an independent cause of action for damages that survives the disposition of the underlying bankruptcy case.

II

The second issue we must address is whether federal courts have exclusive jurisdiction over an action for damages brought pursuant to 11 U.S.C. § 362 (k). Our analysis of that issue is guided by the following relevant legal principles.

"Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum—although both might well be true—but because the Constitution and laws passed pursuant to it are as much laws in the [s]tates as laws passed by the state legislature. The [s]upremacy [c]lause makes those laws 'the supreme Law of the Land,' and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett* v. *Rose*, 496 U.S. 356, 367, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990).

It is well settled that "the [s]tates possess sovereignty concurrent with that of the [f]ederal [g]overnment, subject only to limitations imposed by the [s]upremacy [c]lause. Under this system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States. . . .

"This deeply rooted presumption in favor of concurrent state court jurisdiction is, of course, rebutted if Congress affirmatively ousts the state courts of jurisdiction over a particular federal claim." (Citations omitted.) *Tafflin* v. *Levitt*, 493 U.S. 455, 458–59, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990).

"Only an explicit statutory directive, an unmistakable implication from legislative history, or a clear incompatibility between state-court jurisdiction and federal interests can displace this presumption." (Internal quotation marks omitted.) *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1, 15, 140 S. Ct. 1335, 206 L. Ed. 2d 516 (2020); accord *O'Toole* v. *Eyelets for Industry, Inc.*, 148 Conn. App. 367, 372–73, 86 A.3d 475 (2014); see also *Lewis* v. *Lewis*, 35 Conn. App. 622, 625–26, 646 A.2d 273 (1994) ("[s]tate courts of general jurisdiction have the power to decide cases involving federal . . . rights where . . . neither the [United States] [c]onstitution nor statute withdraws such jurisdiction" (internal quotation marks omitted)).

Accordingly, to determine whether Congress defeated this presumption of state court jurisdiction "by expressly or impliedly creating exclusive federal jurisdiction" of 11 U.S.C. § 362 (k) claims; *O'Toole* v. *Eyelets for Industry, Inc.*, supra, 148 Conn. App. 373; we consider the relevant federal statutes establishing jurisdiction of bankruptcy proceedings. See id.

In construing and applying federal statutes, "principles of comity and consistency require us to follow the plain meaning rule for the interpretation of federal statutes because that is the rule of construction utilized by the United States Court of Appeals for the Second Circuit. . . . If the meaning of the text is not plain, however, we must look to the statute as a whole and construct an interpretation that comports with its primary purpose and does not lead to anomalous or unreasonable results." (Internal quotation marks omitted.) *Highland Street Associates* v. *Commissioner of Transportation*, 213 Conn. App. 426, 432, 278 A.3d 30, cert. denied, 345 Conn. 917, 284 A.3d 628 (2022); see also *Soto* v. *Bushmaster Firearms International, LLC*, 331 Conn. 53, 117–18, 202 A.3d 262, cert. denied sub nom.

Remington Arms Co., LLC v. *Soto*, U.S. , 140 S. Ct. 513, 205 L. Ed. 2d 317 (2019).

The Bankruptcy Code provides that "[t]he ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. . . ." 11 U.S.C. § 105 (c) (2012). Title 28 of the United States Code, § 1334, "grants bankruptcy jurisdiction to the district courts in the first instance, and those courts may refe[r] such jurisdiction to bankruptcy courts under prescribed circumstances." (Internal quotation marks omitted.) *MOAC Mall Holdings LLC* v. *Transform Holdco, LLC*, 598 U.S. 288, 300 n.5, 143 S. Ct. 927, 215 L. Ed. 2d 262 (2023); see also 28 U.S.C. § 157 (a) and (b).[6]

Specifically, 28 U.S.C. § 1334 provides in relevant part: "(a) Except as provided in subsection (b) of this

[6] Title 28 of the United States Code, § 157, provides in relevant part: "(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

"(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title. . . ."

Section 157 of title 28 of the United States Code divides "all matters that may be referred to the bankruptcy court into two categories: core and non-core proceedings. . . . Put simply: If a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then, the district court must review the proceeding de novo and enter final judgment." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Executive Benefits Ins. Agency* v. *Arkison*, 573 U.S. 25, 33–34, 134 S. Ct. 2165, 189 L. Ed. 2d 83 (2014).

section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Except as provided in subsection (e) (2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. . . .

"(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327."

Accordingly, federal district courts have exclusive jurisdiction over "all cases under title 11"; 28 U.S.C. § 1334 (a) (2012); and the district court where the bankruptcy case is commenced or pending has exclusive jurisdiction over the property of the debtor and the estate; 28 U.S.C. § 1334 (e) (1) (2012); and over any claim involving the construction of 11 U.S.C. § 327. 28 U.S.C. § 1334 (e) (2) (2012). Significantly, however, as to "all civil proceedings" that merely arise under, arise in, or are otherwise related to a bankruptcy case, the district court has "original *but not exclusive jurisdiction* . . . ." (Emphasis added.) 28 U.S.C. § 1334 (b) (2012).

Subsection (a) grants federal district courts "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334 (a) (2012). A majority of federal appellate courts have held that the phrase "all cases under title

11" refers to the bankruptcy petition itself.[7] See *Matter of Chesapeake Energy Corp.*, 70 F.4th 273, 281 (5th Cir. 2023) ("[t]he first category refers to the bankruptcy petition itself" (internal quotation marks omitted)); *Rohe* v. *Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1262 n.8 (11th Cir. 2021) ("[28 U.S.C.] § 1334 only concerns jurisdiction over 'cases under title 11' "); *In re HNRC Dissolution Co.*, 761 Fed. Appx. 553, 559 (6th Cir. 2019) (district courts have original and exclusive jurisdiction " 'of all cases under title 11,' " which refers to the bankruptcy petition itself); *Gupta* v. *Quincy Medical Center*, 858 F.3d 657, 661–62 (1st Cir. 2017) (" '[c]ases under title 11' refers only to the bankruptcy petition itself, and it is the umbrella under which all of the proceedings that follow the filing of a bankruptcy petition take place" (footnote omitted)); *In re Skyline Woods Country Club*, 636 F.3d 467, 471 (8th Cir. 2011) ("[f]ederal district courts, and their bankruptcy courts by delegation, have exclusive jurisdiction of all cases under title 11 . . . but that provision is limited to the [d]ebtor's [bankruptcy] petition and the proceedings that follow the filing of a bankruptcy petition" (citation omitted; internal quotation marks omitted)); *Stoe* v. *Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006) ("The category of cases under title 11 refers merely to the bankruptcy petition itself. . . . A case arises under title 11 if it invokes a substantive right provided by title 11." (Citation omitted; internal quotation marks omitted.)); *Gonzales* v. *Parks*, 830 F.2d 1033, 1035 n.6 (9th Cir. 1987) (28 U.S.C. § 1334 distinguishes between " 'cases under title 11,' " which are under the exclusive jurisdiction of the federal courts, and " 'civil proceedings arising under title 11, or arising in or related to cases under title 11,' " which are within the original but not exclusive jurisdiction of

[7] In the absence of binding precedent on this issue, we consider cases from other jurisdictions in which courts have considered the application of 28 U.S.C. § 1334.

federal courts); but see *Eastern Equipment & Services Corp.* v. *Factory Point National Bank*, 236 F.3d 117, 121 (2d Cir. 2001) (claim for damages pursuant to 11 U.S.C. § 362 (k) "*must* be brought in the bankruptcy court, rather than in the district court, which only has appellate jurisdiction over bankruptcy cases" (emphasis in original)); *Martin-Trigona* v. *Champion Federal Savings & Loan Assn.*, 892 F.2d 575, 577 (7th Cir. 1989) ("[s]ection 1334 (a) of the Judicial Code vests original and exclusive jurisdiction over cases arising under [t]itle 11 (the Bankruptcy Code) in the federal district courts, and a case under [11 U.S. C. § 362 (k)] is such a case").

Although the United States Court of Appeals for the Second Circuit previously held that the Bankruptcy Court has exclusive jurisdiction over claims brought under 11 U.S.C. § 362 (k) for violations of the automatic stay; see *Eastern Equipment & Services Corp.* v. *Factory Point National Bank*, supra, 236 F.3d 121; it recently has cast doubt on that holding, explaining that the court had "failed to address the contradiction between [its] holding and the plain language of 28 U.S.C. § 1334 (a) . . . . Thus, [its] holding has been criticized by many of [its] sister circuits." (Footnote omitted.) *Inn World Report, Inc.* v. *MB Financial Bank NA*, Docket No. 21-2911-cv, 2022 WL 17841529, *2 (2d Cir. December 20, 2022); see also *Stern* v. *Marshall*, 564 U.S. 462, 480, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011) (noting that allocation of authority between bankruptcy court and district court "does not implicate questions of subject matter jurisdiction").

Further undermining the precedential value of *Eastern Equipment & Services Corp.* is the Second Circuit's decision of *MBNA America Bank, N.A.* v. *Hill*, 436 F.3d 104, 110 (2d Cir. 2006), in which the court stated that a claim under 11 U.S.C. § 362 (k) "is not a matter within the exclusive jurisdiction of the bankruptcy courts."

In that case, the former chapter 7 debtor initiated an adversary proceeding seeking damages for a creditor's violation of the automatic stay. Id., 106. The creditor "moved to dismiss or stay the proceeding in favor of arbitration under the Federal Arbitration Act, claiming that an account agreement . . . mandated arbitration of the claims." Id. The Bankruptcy Court denied the creditor's motion, and the creditor appealed to the United States District Court for the Northern District of New York, which held "that the bankruptcy court did not abuse its discretion by refusing to dismiss or stay the adversary proceeding in favor of arbitration of the [11 U.S.C. § 362 (k) claim because] permitting arbitration of the alleged automatic stay violation would seriously jeopardize the objectives of the Bankruptcy Code." (Internal quotation marks omitted.) Id., 107. The creditor appealed to the Second Circuit, which reversed the judgment of the District Court. Id., 110–11.

In reversing the judgment, the Second Circuit explained that arbitration of the 11 U.S.C. § 362 (k) claim "would not jeopardize the important purposes that the automatic stay serves: providing debtors with a fresh start, protecting the assets of the estate, and allowing the bankruptcy court to centralize disputes concerning the estate." Id., 109. It also was "not persuaded that a stay, which arises by operation of statutory law and not by any affirmative order of the bankruptcy court, is so closely related to an injunction that the bankruptcy court is uniquely able to interpret and enforce its provisions. An arbitrator of [an 11 U.S.C.] § 362 ([k]) claim would be asked to interpret and enforce a statute, not an order of the bankruptcy court. Arbitration is presumptively an appropriate and competent forum for federal statutory claims. . . . Congress has authorized the litigation of automatic stay claims in district courts as well as in the bankruptcy court presiding over the debtor's bankruptcy estate, so this

is not a matter within the exclusive jurisdiction of the bankruptcy courts. . . . While the automatic stay is surely an important provision of the Bankruptcy Code, there is no indication from the statute that any dispute relating to an automatic stay should categorically be exempt from resolution by arbitration." (Citations omitted.) Id., 110. Accordingly, although not stated expressly, it appears that the Second Circuit has overruled, sub silencio, its holding that the bankruptcy court has exclusive jurisdiction over an 11 U.S.C. § 362 (k) claim. See *In re Walker*, 551 B.R. 679, 691 n.23 (Bank. M.D. Ga. 2016) (noting that "[t]he Second Circuit's statement [in *MBNA America Bank, N.A.*, that an 11 U.S.C. § 362 (k) claim is not within the exclusive jurisdiction of the bankruptcy courts] appears inconsistent with its own precedent").[8]

We conclude, consistent with the majority of federal appellate courts, that the plain language of 28 U.S.C. § 1334 (a) grants federal district courts original and exclusive jurisdiction over the bankruptcy petition only.[9] The Bankruptcy Code's internal definition of petition is consistent with this construction. Specifically,

[8] We also do not find *Martin-Trigona* v. *Champion Federal Savings & Loan Assn.*, supra, 892 F.2d 577, persuasive as to the construction of 28 U.S.C. § 1334 (a), given that the court in that case incorrectly stated that 28 U.S.C. § 1334 (a) "vests original and exclusive jurisdiction over cases *arising* under [t]itle 11 . . . ." (Emphasis added.) As previously noted in this opinion, subsection (a) vests "original and exclusive jurisdiction of all cases under title 11" in the federal district courts; 28 U.S.C. § 1334 (a) (2012); whereas subsection (b) vests "original *but not exclusive jurisdiction* of all civil proceedings *arising under* title 11, or *arising in* or related to cases under title 11." (Emphasis added.) 28 U.S.C. § 1334 (b) (2012).

[9] We also note that several state appellate courts have reached the same conclusion. See, e.g., *Triem* v. *Kake Tribal Corp.*, 513 P.3d 994, 997 n.10 (Alaska 2022) ("Alaska's superior courts are trial courts of general jurisdiction and thus may exercise jurisdiction over cases 'arising in or related to' title 11 of the United States Code provided the issues are not within the exclusive jurisdiction of the federal courts"); *366-386 Geary Street, L.P.* v. *Superior Court*, 219 Cal. App. 3d 1186, 1196, 268 Cal. Rptr. 678 (1990) ("the federal district courts, and the bankruptcy courts to which they refer matters, have exclusive jurisdiction only over 'cases under title 11,' i.e., the bank-

11 U.S.C. § 101 (42) provides that "[t]he term 'petition' means petition filed under section 301, 302, 303 and 1504 of this title, as the case may be, commencing *a case under this title*." (Emphasis added.) Thus, because a "petition filed under section 301, 302, 303 and 1504 of [title 11]" commences "a case under [title 11]"; 11 U.S.C. § 101 (42) (2012); it follows that "cases under title 11" as used in 28 U.S.C. § 1334 (a) refers to the bankruptcy petition itself. A claim for damages pursuant to 11 U.S.C. § 362 (k), however, is not a bankruptcy petition and, therefore, does not fall under the exclusive jurisdiction of the federal district courts pursuant to 28 U.S.C. § 1334 (a).

Section 1334 (e) (1) of title 28 of the United States Code, which provides that the district court has exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate, also does not apply to the defendant's counterclaim in the present case. The defendant's 11 U.S.C. § 362 (k) claim arose after the commencement of her involuntary chapter 7 bankruptcy case, and that case was closed by the time she asserted her counterclaim in the present case. Accordingly, her counterclaim against the defendant is not "property of the estate," which includes "all legal or equitable interests of the debtor in property *as of the*

ruptcy proceeding itself"); *Calderin* v. *Quartz Hill Mining, LLC*, 317 So. 3d 243, 246 (Fla. App. 2021) (" '[c]ases under title 11,' as provided in subsection (a) [of 28 U.S.C. § 1334], 'refers merely to the bankruptcy petition itself, over which federal district courts (and their bankruptcy units) have original and exclusive jurisdiction' "); *Stevenson* v. *Prairie Power Co-operative, Inc.*, 118 Idaho 52, 57, 794 P.2d 641 (App. 1989) ("Idaho state courts enjoy concurrent jurisdiction with federal courts to adjudicate proceedings falling under 28 U.S.C. § 1334 (b)"), aff'd, 118 Idaho 31, 794 P.2d 620 (1990); *Pilkington* v. *Pilkington*, 71 N.E.3d 865, 868 (Ind. App.) ("The district courts and their bankruptcy units have exclusive jurisdiction only over 'the bankruptcy petition itself.' . . . In other matters 'arising in' or 'related to' title 11 cases, unless the [B]ankruptcy [C]ode provides otherwise, state courts have concurrent jurisdiction." (Citation omitted.)), aff'd, 80 N.E.3d 886 (Ind. 2017).

commencement of the case." (Emphasis added.) 11 U.S.C. § 541 (a) (1) (2012). See *MBNA America Bank, N.A.* v. *Hill*, supra, 436 F.3d 110 ("Because this was a liquidating [c]hapter 7 case, there was no reorganization and [the former debtor's] bankruptcy estate included only property in which she had an interest *as of the commencement of her bankruptcy case*. . . . Consequently, any damages that might be awarded on the [11 U.S.C.] § 362 ([k]) claim would be [the former debtor's] personal property and would not be part of her bankruptcy estate." (Citation omitted; emphasis added.)); see also *St. Paul Fire & Marine Ins. Co.* v. *Labuzan*, 579 F.3d 533, 545 (5th Cir. 2009) ("[The] plain language of [11 U.S.C.] § 541 (a) (1) implies that [an 11 U.S.C.] § 362 (k) claim can never be brought as of *commencement* of the case, because, by definition, an automatic-stay violation occurs post-filing. . . . Accordingly, we conclude that [11 U.S.C.] § 362 (k) automatic-stay-violation claims are not property of the estate as defined in [11 U.S.C.] § 541 . . . ." (Citation omitted; emphasis altered.)). Likewise, 28 U.S.C. § 1334 (e) (2) is inapplicable in the present case, as the defendant's 11 U.S.C. § 362 (k) claim does not involve construction of 11 U.S.C. § 327, which concerns a bankruptcy trustee's employment of professional persons to "assist the trustee in carrying out the trustee's duties under" the Bankruptcy Code.

Consequently, the defendant's claim for damages pursuant to 11 U.S.C. § 362 (k) is not within the exclusive jurisdiction of the federal district courts pursuant to either subsection (a) or subsection (e). It follows, therefore, that such a claim falls under the broad category of "all civil proceedings arising under or related to cases under title 11," over which the "the [federal] district courts . . . have original but not exclusive jurisdiction . . . ." 28 U.S.C. § 1334 (b) (2012). Indeed, 11 U.S.C. § 362 (k) authorizes an independent cause of action for

damages, which constitutes a civil proceeding "arising under title 11." 28 U.S.C. § 1334 (b) (2012). Thus, there is no "explicit statutory directive," and we discern no "clear incompatibility between state-court jurisdiction and federal interests," that would displace the presumption of state court jurisdiction over a claim pursuant to 11 U.S.C. § 362 (k).[10] (Internal quotation marks omitted.) *Atlantic Richfield Co.* v. *Christian*, supra, 590 U.S. 15. To the contrary, the express statutory language limits the exclusive jurisdiction of federal district courts to the narrow class of "cases under title 11"; 28 U.S.C. § 1334 (a) (2012); and establishes that federal courts have "original *but not exclusive jurisdiction*" over the broader class of "civil proceedings arising under title 11, or arising in or related to cases under title 11." (Emphasis added.) 28 U.S.C. § 1334 (b) (2012). Simply put, the clear statutory language in 28 U.S.C. § 1334 distinguishing between the exclusive and "not exclusive" jurisdiction of the federal district courts reinforces the presumption of concurrent state court jurisdiction over the federal claim.

Our research has revealed a handful of cases concerning whether, pursuant to 28 U.S.C. § 1334 (b), state courts have concurrent jurisdiction with the federal district courts to adjudicate a claim for damages pursuant to 11 U.S.C. § 362 (k). Although some courts have decided this jurisdictional issue in cursory fashion without considering the text of 28 U.S.C. § 1334,[11] in our

[10] Given our conclusion regarding the plain text of the relevant statutes, we do not search for "an unmistakable implication from legislative history . . . [to] displace [the] presumption" of concurrent state court jurisdiction over the federal claim. (Internal quotation marks omitted.) *Atlantic Richfield Co.* v. *Christian*, supra, 590 U.S. 15.

[11] For example, in an unpublished opinion, the Court of Appeals of Michigan stated, without any analysis, that "the determination of whether a party violated 11 U.S.C. [§] 362 is within the exclusive jurisdiction of the federal courts." *Society Bank, Michigan* v. *Rogers*, Docket No. 195078, 1997 WL 33330949, *1 (Mich. App. December 30, 1997). The Court of Appeals of Kansas also considered the jurisdictional issue in an unpublished opinion and resolved it without considering the plain text of 28 U.S.C. § 1334. See

supplemental briefing order, we directed the parties to consider two decisions in which the courts analyzed the relevant statutes and reached opposite conclusions regarding the jurisdictional issue. See *Halas* v. *Platek*, supra, 239 B.R. 792 (holding that bankruptcy court has exclusive jurisdiction over 11 U.S.C. § 362 (k) claim); *Powell* v. *Washington Land Co.*, supra, 684 A.2d 773 (holding that Superior Court in District of Columbia has concurrent jurisdiction with federal district courts to adjudicate 11 U.S.C. § 362 (k) claim).

In *Powell* v. *Washington Land Co.*, supra, 684 A.2d 769, the Superior Court of the District of Columbia entered a default judgment against the plaintiff-tenant (tenant) and granted the defendant-landlord (landlord) possession of the property. Shortly after the landlord filed a writ of execution to evict the tenant pursuant to the judgment, the tenant filed a chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Columbia. Id., 769–70. "[T]hree days after the bankruptcy filing, agents of the [landlord] . . . attempted to evict the [tenant]," although the record did not reveal "[t]he extent of the eviction . . . ." Id., 770. After her bankruptcy case was involuntarily dismissed, the tenant filed an action in the Superior Court of the District of Columbia in three counts sounding in

First National Bank v. *Cunningham*, Docket No. 108,380, 2013 WL 4730264, *7 (Kan. App. August 30, 2013). Specifically, the court explained that the "dispositive issue [was] whether [it] *should exercise jurisdiction* over an alleged violation of a bankruptcy stay." (Emphasis added.) Id., *6. Although the court noted that the parties in that case had cited various federal cases in support of their respective positions as to state court jurisdiction over an 11 U.S.C. § 362 (k) claim, it simply stated, without analysis, that "[w]e decline to accept jurisdiction to address a possible violation of the bankruptcy stay and dismiss this issue finding the best course of action is for that issue to be resolved by the bankruptcy court." Id., *7. Similarly, in *Hawthorne* v. *Hameed*, 836 P.2d 683, 685–86 (Okla. Civ. App. 1989), the Oklahoma Court of Appeals held, without considering the text of 28 U.S.C. § 1334, that a debtor's claim for damages arising from violations of the automatic stay "was the exclusive province of the bankruptcy court."

wrongful eviction (count I), violation of the automatic stay pursuant to 11 U.S.C. § 362 (k) (count II), and conversion (count III). Id. The Superior Court granted the landlord's motion to dismiss, concluding that, because all the counts were based on the landlord's alleged violation of the automatic stay under 11 U.S.C. § 362, "it was a case arising under the Bankruptcy Code, and, thus, that original and exclusive jurisdiction was vested in the [United States] District Court and the [United States] Bankruptcy Court." Id.

The tenant appealed, and the District of Columbia Court of Appeals considered whether the tenant's complaint was "a 'case under title 11' over which the [federal] District Court (or bankruptcy court) has exclusive jurisdiction." Id., 772. The court began its analysis by noting that "[a] case 'under title 11' is the bankruptcy case per se, 'the case upon which all of the proceedings which follow the filing of a petition are predicated.' . . . [Thus], the case that was 'under title 11,' and within exclusive federal court jurisdiction, was the bankruptcy petition filed by" the tenant, which case was dismissed before the tenant filed her action in the Superior Court. (Citation omitted.) Id. After concluding that counts I and III did not constitute a case under title 11 because they arose under the laws of the District of Columbia; id., 772–73;[12] the court addressed count II, observing that, "unlike counts I and III, [count II

[12] The court reasoned that, because the wrongful eviction and conversion counts arose under the laws of the District of Columbia, they "do not constitute a case 'under title 11' and therefore do not fall within the federal court's exclusive jurisdiction under [28 U.S.C.] § 1334 (a)." *Powell* v. *Washington Land Co.*, supra, 684 A.2d 772. The court further explained that it "need not decide whether [those claims] 'arise under' or 'in' title 11 or are 'related to' cases under title 11, placing them within the federal court's original (but not exclusive) jurisdiction under [28 U.S.C.] § 1334 (b). . . . [E]ven if the [tenant's] claims did fall within subsection (b), this would not deprive the Superior Court of jurisdiction, because subsection (b) provides that the district courts have jurisdiction, but do not preclude jurisdiction in local courts." Id., 773.

was] based on a violation of the [B]ankruptcy [Code] itself." Id., 773. The court reasoned that, although "[11 U.S.C.] § 362 ([k]) proceedings are not specifically defined as core proceedings in [28 U.S.C. § 157 (b) (2) (G)], they have been held to be core proceedings. . . . This conclusion is based, in part, on the notion that core proceedings involve matters concerning the administration of the bankruptcy estate, and bankruptcy estate matters traditionally fall within the jurisdiction of the bankruptcy court; that motions to punish creditors for violating automatic stays are similar to motions to be released from the stay, which are core proceedings, and that contempt proceedings claiming a violation of the automatic stay are also core proceedings. . . . In addition, the automatic stay provision of the Bankruptcy Code is a creature peculiar to federal bankruptcy law and plays a fundamental role in the administration of the Bankruptcy Code. . . .

"A core proceeding . . . is one arising under or arising in a case under title 11, but it is not a case under title 11. It is only the latter type of case over which the district court has exclusive jurisdiction under [28 U.S.C.] § 1334 (a). Thus, the trial court had jurisdiction to hear count II of [the tenant's] complaint" seeking damages pursuant to [11 U.S.C.] § 362 (k). (Citations omitted; footnote omitted; internal quotation marks omitted.) Id.

In a footnote at the end of the opinion, the court explained that "[t]here may be some concern that local courts are not the best fora to determine questions that so directly affect the operations of the Bankruptcy Code. In light of the clear statutory scheme that preserves and, indeed, appears to defer to state court jurisdiction except with regard to cases 'under' title 11 . . . we are not free to resolve that concern, however, by reference to exclusive federal jurisdiction. The fact that the trial court has jurisdiction over the complaint does

not preclude a party from seeking to remove the case to federal court under 28 U.S.C. § 1452 (1994). We note also that if the complaint had been filed during the pendency of the bankruptcy petition, it could be argued that the district court had exclusive jurisdiction to entertain these claims as involving the 'property of the estate.' . . . We need not address this argument because any 'property' interest that may have been created by the claims could not have been 'of the estate' once the bankruptcy case had been dismissed . . . ." (Citations omitted.) Id., 773 n.12.[13]

In *Halas* v. *Platek*, supra, 239 B.R. 784, however, the District Court for the Northern District of Illinois, exercising de novo review of the Bankruptcy Court's ruling; see footnote 6 of this opinion; reached the opposite conclusion regarding jurisdiction over an 11 U.S.C. § 362 (k) claim. In that case, eight days after Attorney

[13] In a concurring opinion in *Powell*, Judge Schwelb noted that "[t]he doctrine that a court order is to be enforced by the court which issued it, and only by that court, has been applied in cases very similar to [*Powell*]. In *Hawthorne* v. *Hameed*, 836 P.2d 683 (Okla. Civ. App. 1989), a debtor who had filed for bankruptcy protection sued his creditor in a local district court for wrongful garnishment, alleging that the garnishment was in violation of the bankruptcy court's automatic stay. The trial court entered judgment on a jury verdict in favor of the debtor, but the appellate court reversed, holding that the bankruptcy court had the sole responsibility to determine the effects of its own stay, and that in Oklahoma the power of a state court to punish for contempt lies exclusively in the court whose order is violated. . . . The court [in *Hawthorne*] went on to explain that claims for relief from the creditor's acts prohibited solely by the automatic stay should be brought only in bankruptcy court. . . . The decision in *Hawthorne* was followed in *Ramdharry* v. *Gurer*, [Docket No. CV-89-42620, 1995 WL 41353 (Conn. Super. January 25, 1995)]. The courts in *Hawthorne* and *Ramdharry*, however, did not address or even mention the relevant provisions of 28 U.S.C. § 1334 (a) and (b) . . . ." (Citations omitted; internal quotation marks omitted.) *Powell* v. *Washington Land Co.*, supra, 684 A.2d 774 (Schwelb, J., concurring). Judge Schwelb also emphasized in his concurring opinion that the "undisputed and unassailable determination that [the tenant's] case 'arises under' the Bankruptcy Code [compelled] the conclusion that, according to the terms of [28 U.S.C. §] 1334 (b), the bankruptcy court had original but not exclusive jurisdiction . . . ." Id., 775.

Regan D. Ebert filed a tort action against James Halas, Halas filed a chapter 13 bankruptcy petition. Id., 786. Ebert, unaware of the bankruptcy petition, obtained a default judgment against Halas, who then notified Ebert of his pending bankruptcy case. Id. Halas' bankruptcy case subsequently was dismissed, and Ebert transferred her file to a different attorney, David F. Platek, who enforced the judgment by garnishing Halas' wages. Id. In response, Halas filed a motion to vacate the state court judgment. In that motion, Halas argued that the judgment was void because it was entered in violation of the automatic stay and requested "a return of all monies collected pursuant to the default judgment, a stay of any further collection, and any other relief the state court might deem just and equitable." Id. The state court granted Halas' motion to vacate but denied his requests for additional relief. Id.

Halas then filed in the Bankruptcy Court a request for sanctions against Ebert and Platek for violating the automatic stay pursuant to 11 U.S.C. § 362 (k). Id., 786. The Bankruptcy Court, after reopening the bankruptcy case and holding a hearing on the request for sanctions, found that Platek wilfully violated the automatic stay but nonetheless concluded that res judicata precluded Halas' request for sanctions pursuant to 11 U.S.C. § 362 (k) because "the state court had concurrent jurisdiction to impose [11 U.S.C.] § 362 ([k]) sanctions" and declined to do so when it adjudicated Halas' motion to vacate. Id., 786–87. In a motion for rehearing, Halas argued that "violations of an automatic stay fall within the exclusive jurisdiction of the bankruptcy court." Id., 787. The Bankruptcy Court denied the motion, explaining "that under 28 U.S.C. § 1334 (b), the state court had concurrent jurisdiction to impose an [11 U.S.C.] § 362 ([k]) sanction and [finding] that Halas had litigated a similar motion for sanctions at the state level." (Footnote omitted; internal quotation marks omitted.) Id.

Halas appealed to the United States District Court for the Northern District of Illinois, claiming that the Bankruptcy Court improperly concluded that res judicata barred his 11 U.S.C. § 362 (k) claim. Id. The District Court restated the issue as "whether [an 11 U.S.C.] § 362 ([k]) motion for sanctions falls under the exclusive jurisdiction of the bankruptcy court pursuant to [28 U.S.C.] § 1334 (a) or under the non-exclusive jurisdictional provision of [28 U.S.C.] § 1334 (b)." Id., 788. In resolving that issue, the court noted that, although it had found no "federal case directly addressing the jurisdictional issue [of] whether a state court has jurisdiction to impose [11 U.S.C.] § 362 ([k]) sanctions"; id., 789; it had found "one state case, *Hawthorne* v. *Hameed*, 836 P.2d 683 [(Okla. Civ. App. 1989)],[14] and one case from the District of Columbia, *Powell* v. *Washington Land Co.*, [supra, 684 A.2d 769], that" had addressed the jurisdictional issue. (Footnote added.) Id., 790.

After reviewing the decisions in *Powell* and *Hawthorne*, the court concluded "that [an 11 U.S.C.] § 362 ([k]) request for sanctions is within the exclusive jurisdiction of the bankruptcy court under [28 U.S.C.] § 1334 (a)." *Halas* v. *Platek*, supra, 239 B.R. 792. The court reasoned that, although "the decision in *Powell* is well-reasoned, the court finds the holding in *Hawthorne* to be more consistent with the aims of the Bankruptcy Code. In short, allowing state courts to impose [11 U.S.C.] § 362 ([k]) sanctions, a penalty so closely intertwined with the bankruptcy case itself, would undermine Congress' intent to have one uniform bankruptcy system. . . . The court reaches this conclusion despite [28 U.S.C.] § 1334 (b)'s language, a fair reading of which does suggest that state courts have jurisdiction over [11 U.S.C.] § 362 ([k]) requests. That is, [11 U.S.C.] § 362 ([k]) has been construed as creating a cause of action . . . and when a cause of action is one which is created

[14] See footnotes 11 and 13 of this opinion.

by title 11, then that civil proceeding is one arising under title 11. . . . Further, that [an 11 U.S.C.] § 362 ([k]) action is considered a core proceeding . . . and hence, within the ambit of [28 U.S.C.] § 1334 (b), does not alter the court's conclusion. Section 1334 (b) [of title 11 of the United States Code]is primarily an expansion of bankruptcy courts' jurisdiction rather than an avenue for state courts to address issues traditionally within the realm of the bankruptcy courts. In other words, the focus of [28 U.S.C.] § 1334 (b) is on the scope of the bankruptcy court's jurisdiction rather than the state court's. . . .

"For these reasons, the court concludes that state courts do not have jurisdiction to impose sanctions under [11 U.S.C.] § 362 ([k]). . . . Because the state court did not have jurisdiction, Halas could not have sought [11 U.S.C.] § 362 ([k]) sanctions in that forum." (Citations omitted; internal quotation marks omitted.) Id., 792–93.

In their supplemental briefs in the present case, the parties' respective positions on *Powell* and *Halas* are unsurprising. The defendant endorses the reasoning set forth in *Powell* and reiterates that the trial court has jurisdiction to adjudicate her counterclaim for damages pursuant to 11 U.S.C. § 362 (k). The plaintiff, in turn, argues that "[t]his court should follow the reasoning in *Halas* [rather than] *Powell* when considering grounds of exclusive jurisdiction" because the defendant's 11 U.S.C. § 362 (k) claim is "under the exclusive jurisdiction of the federal courts under 28 U.S.C. § 1334 (a)." Given the express statutory language in 28 U.S.C. § 1334, we find the court's reasoning in *Powell*, which comports with our reading of federal statutes, more persuasive.

The court in *Halas* v. *Platek*, supra, 239 B.R. 792–93, acknowledged that "a fair reading of [28 U.S.C. § 1334

(b)] does suggest that state courts have jurisdiction" to award damages pursuant to [11 U.S.C.] § 362 (k) because the statute authorizes a cause of action for damages, which would constitute a civil proceeding "arising under title 11" for purposes of 28 U.S.C. § 1334 (b). (Internal quotation marks omitted.) The court in *Halas* nonetheless dismisses the significance of this plain reading of 28 U.S.C. § 1334 (b) because that subsection "is primarily an expansion of bankruptcy courts' jurisdiction rather than" the jurisdiction of state courts. Id., 793. This reasoning is particularly unpersuasive given the well settled presumption of concurrent state court jurisdiction over federal claims, which presumption the court neither acknowledged nor discussed in *Halas*. We decline to ignore the express statutory language distinguishing between federal jurisdiction of bankruptcy proceedings that is exclusive and that which is "*not exclusive*"; (emphasis added) 28 U.S.C. § 1334 (a) and (b) (2012); when such distinction reinforces the well settled presumption of concurrent state court jurisdiction over federal claims.

We also find unavailing the court's reasoning that "allowing state courts to impose [11 U.S.C.] § 362 ([k]) sanctions, a penalty so closely intertwined with the bankruptcy case itself, would undermine Congress' intent to have one uniform bankruptcy system." *Halas* v. *Platek*, supra, 239 B.R. 792. Much like the Second Circuit Court of Appeals, we are "not persuaded that a stay, which arises by operation of statutory law and *not by any affirmative order of the bankruptcy court*, is so closely related to an injunction that the bankruptcy court is uniquely able to interpret and enforce its provisions." (Emphasis added.) *MBNA America Bank, N.A.* v. *Hill*, supra, 436 F.3d 110. Indeed, the Second Circuit's reasoning with respect to the arbitrability of an 11 U.S.C. § 362 (k) claim in that case applies with equal force in the present case. That is, like arbitration, a state

court "is presumptively an appropriate and competent forum for federal statutory claims," and state court judges, much like arbitrators, "would be asked to interpret and enforce a statute, not an order of the bankruptcy court."[15] See id.; see also, e.g., *Sullins* v. *Rodriguez*, 281 Conn. 128, 133–34, 913 A.2d 415 (2007) ("State courts have concurrent jurisdiction over claims brought under [42 U.S.C.] § 1983. . . . The elements of, and the defenses to, a federal cause of action are defined by federal law." (Citations omitted; internal quotation marks omitted.)).[16] Accordingly, we decline to follow the court's reasoning in *Halas*, which ignores the plain text of 28 U.S.C. § 1334 and the presumption of concurrent jurisdiction.

Instead, much like the District of Columbia Court of Appeals, we find that the plain language of the relevant statutes compels our conclusion that an action for damages pursuant to 11 U.S.C. § 362 (k) is a civil proceeding arising under title 11 and, thus, is within the original but

[15] We note that the standard for determining damages pursuant to 11 U.S.C. § 362 (k) is neither complex nor unique to bankruptcy law. As the Second Circuit has explained: "any deliberate act taken in violation of a stay, which the violator knows to be in existence, justifies an award of actual damages. An additional finding of maliciousness or bad faith on the part of the offending creditor warrants the further imposition of punitive damages . . . . This standard encourages would-be violators to obtain declaratory judgments before seeking to vindicate their interests in violation of an automatic stay, and thereby protects debtors' estates from incurring potentially unnecessary legal expenses in prosecuting stay violations." *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1105 (2d Cir. 1990); see also *In re Parker*, 634 Fed. Appx. 770, 773 (11th Cir. 2015) ("Punitive sanctions are appropriate when a party acts with reckless or callous disregard for the law or rights of others. . . . [P]unitive damages [are] appropriate to serve the dual purposes of punishing [a violator's] indifference to the law . . . and to deter . . . future similar misconduct." (Citations omitted; internal quotation marks omitted.)).

[16] Like 11 U.S.C. § 362 (k), "[t]itle 42 of the United States Code, § 1983 permits an award of compensatory damages . . . and an award of punitive damages in a proper case." (Citation omitted; internal quotation marks omitted.) *West Haven* v. *Hartford Ins. Co.*, 221 Conn. 149, 160, 602 A.2d 988 (1992).

not exclusive jurisdiction of the federal district courts pursuant to 28 U.S.C. § 1334 (b). Consequently, the trial court improperly dismissed the defendant's counterclaim for lack of subject matter jurisdiction.[17]

The judgment is reversed and the case is remanded for further proceedings in accordance with this opinion.

In this opinion the other judges concurred.

ROBERT S. WALTON IV *v.* DEEPA B. WALTON
(AC 45791)

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

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving her marriage to the plaintiff and finding her in contempt for various violations of the court's automatic orders and pendente lite orders. During the pendency of the underlying action, the defendant executed a separation agreement with her employer and, approximately two weeks later, the parties signed a pendente lite agreement that provided, inter alia, that the defendant would pay the first mortgage on the marital residence and automobile insurance premiums. The defendant subsequently withdrew almost $80,000 from her retirement accounts, which was not fully accounted for at the time of trial, and received more than $70,000 from her parents, which she used to pay off her personal credit card debt. The defendant also removed the plaintiff as an insured from the parties' automobile insurance policies and an umbrella policy covering the parties' vehicles and the marital residence, which were in place at the time the dissolution action was commenced. The defendant stopped making the monthly mortgage payments, and she sought and obtained a deferral of the mortgage payments in the amount of $87,961.45 without the written consent of the plaintiff or an order of the court. Two days before the final day of trial, the trial court denied the defendant's request for production of an appraisal of the marital residence completed by an independent appraiser, C, retained by the plaintiff. *Held*:

[17] We nevertheless note, as the court in *Powell* did, that "[t]he fact that the trial court has jurisdiction over the [counterclaim] does not preclude a party from seeking to remove the case to federal court . . . ." *Powell* v. *Washington Land Co.*, supra, 684 A.2d 773 n.12.

1. The defendant could not prevail on her claim that the trial court improperly granted the plaintiff's motion for contempt alleging that the defendant violated the automatic orders when she removed the plaintiff as an insured under the parties' insurance policies: this court rejected the defendant's argument that the automatic orders did not clearly and unambiguously pertain to the umbrella policy, as the umbrella policy was, in substance, a policy that covered the parties' automobiles and marital residence; moreover, the trial court did not credit the defendant's testimony that she did not intend to remove the plaintiff from the automobile policies at issue but that she did so accidentally, nor was it required to do so.
2. This court could not conclude that the trial court abused its discretion in finding the defendant in contempt for failing to pay the mortgage on the marital residence: the defendant entered the pendente lite stipulation assuming the responsibility of the mortgage payment with knowledge of her employment situation, she clearly knew that deferring the payments would increase the amount of marital debt, and she impermissibly resorted to self-help to avoid paying the mortgage on the marital residence as ordered by the trial court; moreover, even if the defendant believed that the deferral excused her from paying the mortgage, a good faith dispute does not preclude a finding of wilfulness; furthermore, the funds that the defendant withdrew from her retirement accounts and that she received from her parents could have been used to pay the mortgage on the marital residence, but she chose not to do so.
3. The defendant could not prevail on her claim that the trial court improperly granted the plaintiff's motion for contempt alleging that she violated the automatic orders when she withdrew funds from her retirement accounts: although the defendant testified that she made the withdrawals from her retirement accounts in order to pay necessary bills, her claim of necessity was undermined by the availability of the funds that she received from her parents, which she could have put toward uses other than paying off individual credit card debt, and the defendant's argument that the court erred by not considering the exception to the automatic order prohibiting the disposition of marital funds during the pendency of the dissolution action for the payment of household expenses was therefore unavailing; moreover, because the trial court determined that the defendant's violation of the automatic orders was wilful, this court could not conclude that the trial court abused its discretion by finding the defendant in contempt for withdrawing funds from her retirement accounts.
4. The defendant could not prevail on her claim that the trial court improperly awarded the plaintiff his entire federal pension without assigning a value to it or recognizing that it had value and that it did not properly consider and weigh the pension's value when formulating its property distribution orders: neither party presented evidence as to the value of the plaintiff's pension in the form of expert testimony or otherwise, and it is not the

function of the court to make calculations of that sort to fill evidentiary gaps; moreover, the defendant's claim that the court failed to consider the pension was without merit, as the court clearly classified and weighed it as a marital asset when it expressly ordered that the plaintiff retain his entire federal pension, and there was nothing in the record to suggest that the court did not consider the value of the pension when it divided the parties' assets.

5. The defendant could not prevail on her claim that the trial court improperly denied her request for production of the appraisal prepared by C; on appeal, the defendant failed to challenge the basis of the trial court's ruling, namely, that the appraisal was not subject to disclosure under the rule of practice (§ 13-4 (f)) because the plaintiff had not disclosed C as an expert witness, he was not seeking to introduce the appraisal into evidence, and the defendant had not shown any exceptional circumstance indicating that it was impracticable for her to obtain the facts or opinions contained in the appraisal by other means.

6. The defendant could not prevail on her claim that the trial court improperly distributed the parties' property in a disproportionate and inequitable manner: because the court specified in its memorandum of decision that it considered the criteria set forth in the statute (§ 46b-81) governing property distribution in marital dissolution actions and the evidence before it, it was presumed to have properly performed its duty in distributing the marital estate, and, given the entire mosaic of the court's judgment, the court did not abuse its discretion with respect to the division of the marital estate; moreover, although the defendant argued that she did not receive any of the parties' retirement funds, the defendant ignored the fact that she did, in fact, receive a large portion of her retirement funds when she unilaterally withdrew funds from her retirement accounts, and it was not improper or inequitable for the court to strive to offset the defendant's earlier withdrawals; furthermore, the court reasonably exercised its discretion in ordering that the proceeds of the sale of the marital residence be split equally in light of the funds initially provided by the plaintiff for the purchase of the marital home and the defendant's unilateral decision to defer a significant amount of mortgage payments; additionally, the defendant's argument that the court inequitably ordered her to pay the remaining debt on the parties' two joint credit card accounts was unavailing, as the plaintiff's payments toward the accounts pursuant to the pendente lite orders significantly reduced the parties' joint debt.

Argued April 22—officially released August 13, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the plaintiff filed

motions for contempt; thereafter, the case was tried to the court, *Kowalski*, *J.*; judgment granting the plaintiff's motions for contempt and dissolving the marriage and granting certain other relief, from which the defendant appealed to this court. *Affirmed.*

Brandon B. Fontaine, with whom, on the brief, was *Meaghan E. Collins*, for the appellant (defendant).

Adam J. Teller, for the appellee (plaintiff).

Opinion

CRADLE, J. The defendant, Deepa B. Walton, appeals from the judgment of the trial court dissolving her marriage to the plaintiff, Robert S. Walton IV. On appeal, the defendant claims that the court improperly (1) found her in contempt for various alleged violations of the court's automatic and/or pendente lite orders, (2) awarded the plaintiff his entire federal pension without assigning a value to it, (3) denied her request for production of an appraisal completed by an appraiser retained by the plaintiff, and (4) distributed the parties' property in a disproportionate and inequitable manner. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our review of the claims on appeal. The parties were married in 2003 and three children were born of the marriage.[1] On October 9, 2019, the plaintiff filed the present dissolution action against the defendant. Along with the writ, summons and complaint, the defendant also was served with the automatic orders in accordance with Practice Book § 25-5 (service of automatic orders is "made with service of process of a complaint for dissolution of marriage").[2]

[1] The parties entered into a parenting plan governing the care and custody of the minor children. The care and custody of the minor children is not at issue on appeal.

[2] Practice Book § 25-5 provides in relevant part: "The following automatic orders shall apply to both parties, with service of the automatic orders to

On December 16, 2019, the parties signed a pendente lite agreement, which was entered as an order of the court, providing, inter alia, that the plaintiff would make the monthly payments due on six credit card accounts, two of which were joint accounts, and the defendant would pay the first and second mortgages on the marital residence, in addition to various other expenses associated with the marital residence, automobile insurance, taxes, registration and life insurance premiums.

During the pendency of the action, the parties filed various motions for contempt alleging violations of the automatic orders and/or pendente lite orders. Those

be made with service of process of a complaint for dissolution of marriage . . . . The automatic orders shall be effective with regard to the plaintiff . . . upon the signing of the complaint . . . and with regard to the defendant . . . upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

* * *

"(b) In all cases involving a marriage . . . whether or not there are children:

"(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

* * *

"(6) Neither party shall cause the other party to be removed from any medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

* * *

"(d) The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage . . . and shall set forth the following language in bold letters:

"Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable time.

"The clerk shall not accept for filing any complaint for dissolution of marriage . . . that does not comply with this subsection." (Emphasis in original.)

motions, as discussed more fully herein, were reserved until the time of trial. The action was tried to the court on December 1 and 2, 2021, and April 13, 2022. The court heard testimony from both parties and numerous exhibits were introduced into evidence. The parties both presented expert testimony as to the value of the marital residence. The parties also submitted evidence on five outstanding motions for contempt filed by both parties.[3]

On September 6, 2022, the court issued a memorandum of decision rendering judgment dissolving the parties' marriage. The court also granted three motions for contempt filed by the plaintiff that are at issue in this appeal, finding, inter alia, that the defendant wilfully violated the clear and unambiguous automatic orders and/or pendente lite orders by removing the plaintiff as an insured from automobile insurance policies and an umbrella policy covering the parties' vehicles and the marital residence, failing to pay the mortgages on the marital residence and withdrawing funds from her retirement accounts. The court indicated that it would take the defendant's contumacious actions into account when fashioning its financial orders. As to the distribution of marital property, the court ordered, inter alia, that the marital residence be listed for sale by October 1, 2022, and that the proceeds from that sale be split equally by the parties. The court ordered that the plaintiff retain 100 percent of his retirement accounts and awarded the plaintiff the funds remaining in the defendant's retirement accounts. The court further ordered that each party retain title and interest to his or her sole checking accounts, brokerage accounts and funds held in escrow, as reflected on their most recent financial affidavits. The court ordered that the parties would

[3] As indicated herein, this appeal involves only three of the motions for contempt filed by the plaintiff. Neither party challenges the court's rulings on the other two contempt motions.

be solely liable for the debts and liabilities listed on their respective financial affidavits, except that the defendant would be responsible for paying the balances on the parties' joint credit card accounts. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We begin with the defendant's claims concerning the trial court's granting of three motions for contempt filed by the plaintiff, alleging violations of the automatic orders and/or pendente lite orders.[4] The following legal principles are applicable to our consideration of the defendant's claims. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. . . . If we answer that question affirmatively, we then review the trial

[4] For ease of discussion, we address the defendant's claims in a different order than they are presented in her appellate brief.

court's determination that the violation was wilful under the abuse of discretion standard." (Internal quotation marks omitted.) *Wethington* v. *Wethington*, 223 Conn. App. 715, 723, 309 A.3d 356 (2024).

In considering the defendant's claims, we also are mindful that "[a] party to a court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in self-help by disobeying a court order to achieve the party's desired end. . . . The principle against self-help often applies in situations in which previously compliant parties stopped complying with court orders after changes in circumstances rendered the orders unclear without first seeking judicial clarification or modification. . . . [A]lthough contempt is particularly harsh, a good faith dispute or legitimate misunderstanding does not preclude a finding of wilfulness as a predicate to a judgment of contempt." (Citations omitted; internal quotation marks omitted.) *Birkhold* v. *Birkhold*, 343 Conn. 786, 813, 276 A.3d 414 (2022).

Here, the court found, as a preliminary matter, that the automatic orders and the pendente lite orders were clear and unambiguous and that the parties had notice of those orders. The court further found that both parties are attorneys, and the defendant testified that she read and understood the automatic orders after being served with them on October 4, 2019. With the foregoing in mind, we address the defendant's challenges to each of the court's contempt findings in turn.

A

On January 30, 2020, the plaintiff filed a motion for contempt alleging that the defendant violated the automatic orders when she removed the plaintiff as an insured under the parties' automobile insurance policies and an umbrella policy covering the parties' vehicles and the marital residence, which were in place at

the time this action was commenced. In addressing the plaintiff's motion, the court first noted that the automatic orders provide, in part, that "each party shall maintain the existing life insurance, automobile insurance, homeowners or renters insurance policies in full force and effect." The court found that "[t]he defendant testified that, on November 1, 2019, she called the parties' insurance carrier in an effort to reduce the cost of the insurance premiums. The defendant removed the plaintiff from those policies. Following that call, some coverage was terminated, including automobile coverage on the Land Rover then being driven by the plaintiff, the jointly owned Mercedes automobile, and the plaintiff's interest in an umbrella policy. After the filing of the present motion, the defendant reinstated the coverage. The plaintiff has established by clear and convincing evidence that the defendant wilfully violated the automatic orders by terminating the plaintiff's insurance coverage; however, the plaintiff failed to establish the amount of damages suffered as a result. Indeed, the defendant testified that the plaintiff withdrew $200 from a joint bank account and unilaterally withheld $600 in child support payments to make himself whole for the losses he may have suffered."

On appeal, the defendant argues that the automatic orders were not clear and unambiguous in that they do not specifically mention umbrella insurance. Although the policy at issue is titled an umbrella policy, it is, in substance, a policy that covers the parties' automobiles and marital residence. We therefore reject the defendant's argument that the automatic orders did not clearly and unambiguously pertain to the umbrella policy.

The defendant also argues that she did not intend to remove the plaintiff from the automobile policies at issue but that she did so accidentally when she tried

to reduce the umbrella coverage. The trial court apparently did not credit the defendant's testimony in this regard, nor was it required to do so. See *Delena* v. *Grachitorena*, 216 Conn. App. 225, 231, 283 A.3d 1090 (2022) ("[i]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony" (internal quotation marks omitted)). Accordingly, the defendant's challenge to the court's finding of contempt for removing the plaintiff from the insurance policies at issue fails.

B

On August 21, 2020, the plaintiff filed a motion for contempt alleging that the defendant failed to pay the mortgage on the marital residence as required by the December 16, 2019 pendente lite orders.[5] In addressing this motion, the trial court found that "[t]he defendant testified that she stopped making the monthly mortgage payments in May, 2020, and the evidence establishes that the defendant sought and obtained a deferral of the mortgage payments in the amount of $87,961.45 without the written consent of the plaintiff or an order of the court. The defendant filed no motion to modify [the pendente lite orders] but testified that she sought and obtained the deferral because she was unemployed and having a difficult time finding employment. Specifically, the defendant testified that she lost her job in December, 2019, which led to a period of unemployment.

"In reality, the defendant's last day at work was November 15, 2019, and she executed a separation

[5] As noted herein, the pendente lite orders required the defendant to pay the first and second mortgages on the marital residence. The record reflects that the motion for contempt pertained only to the first mortgage. Therefore, any reference to the mortgage in this context refers to the first mortgage on the marital residence.

agreement with her employer at the time on December 3, 2019.[6] This chronology is relevant because on December 16, 2019, when the parties presented their pendente lite stipulation . . . to the court for approval, the defendant did not disclose to the court or to the plaintiff the status of her employment, yet she made the decision to assume the financial obligations listed in the stipulation, which was made an order of the court . . . with full knowledge of her employment [situation]. There is no evidence before the court that the defendant has paid down any portion of the $87,961.45 deferral amount; rather, that deferral amount must be paid off as a balloon payment at the end of the mortgage term or earlier payoff.

"The court sympathizes with the difficult financial circumstances facing the defendant in the spring and summer of 2020. Nevertheless, the plaintiff has established by clear and convincing evidence that the defendant wilfully violated the order of the court . . . when she deferred the mortgage payments that she was required to make during the pendency of this action. The court will take this reduction into account when fashioning its financial orders in the judgment." (Footnote in original.)

On appeal, the defendant argues that she did not violate the order that she pay the mortgage on the marital residence because no payments were due in that she had them deferred. The defendant's argument is belied by the language of the order, which provides only that the defendant shall pay the mortgage on the marital residence, not that she could unilaterally enter into an agreement to defer those payments. To begin, we emphasize the court's finding that the defendant

[6] "The defendant also testified that part of the reason she lost her job in December, 2019, was due to 'impending COVID.' The court does not find this testimony credible."

entered the pendente lite stipulation assuming the responsibility of the mortgage payment with knowledge of her employment situation. Moreover, as the trial court found, the defendant clearly knew, as an attorney, the effect of deferring the payments, which was to increase the amount of marital debt. If she was having difficulty paying the mortgage, the proper recourse would have been to seek judicial clarification or modification. For instance, the defendant could have moved to modify the pendente lite order or could have sought approval of the deferral agreement, but she did not do so. Instead, she impermissibly resorted to self-help to avoid paying the mortgage on the marital residence as ordered by the court. Additionally, as stated herein, even if the defendant believed that the deferral excused her from paying the mortgage, a good faith dispute does not preclude a finding of wilfulness. See *Birkhold* v. *Birkhold*, supra, 343 Conn. 813.

The defendant further contends that "[the court's] findings seem to suggest that [she] has a justified inability to comply with the financial orders on income alone." The court's finding that the defendant wilfully violated the pendente lite orders belies the defendant's contention. As discussed subsequently, while this action was pending, the defendant withdrew almost $80,000 from her retirement accounts and she received more than $70,000 from her parents, which she could have used to pay the mortgage on the marital residence, but she chose not to do so.[7] Therefore, we cannot con-

[7] On August 21, 2020, the plaintiff also filed a motion for contempt, pendente lite, in which he alleged that the defendant violated the automatic orders when she paid off $86,142.39 of her personal credit card debt using funds given to her by her parents during the pendency of this action. Although the court did not find the defendant in contempt for using the funds from her parents to pay her personal credit card debt, and the plaintiff has not challenged that ruling on appeal, the court's findings that those funds were available to her to pay other expenses in accordance with the automatic orders and pendente lite orders give context to certain of its other rulings.

Specifically, in addressing this motion for contempt, the court found: "The defendant's November 22, 2019 financial affidavit (#104.00) lists a total of

clude that the court abused its discretion in finding the defendant in contempt for failing to pay the mortgage on the marital residence.

C

Also on August 21, 2020, the plaintiff filed a motion for contempt alleging that the defendant violated the automatic orders when she withdrew funds from her retirement accounts. In addressing this motion, the court first noted that "[t]he automatic orders provide, in part, that '[n]either party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.' " The court found that "[t]he defendant's financial affidavit . . . filed November 22, 2019, reflects a $42,619 value for the defendant's Roth IRA and a $44,812 value for the defendant's 401 (k). Both accounts had a combined total of $87,431. When the defendant filed her next financial affidavit . . . on August 6, 2020, however, the Roth IRA had a zero balance and the 401 (k) had a balance of $15,000. The

$55,376 in individual credit card and tax debt. The defendant's August 6, 2020 financial affidavit (#129.00) lists zero in individual credit card and tax debt. At trial, the defendant testified that, during the pendency of this action, her parents gave her funds in excess of $70,000 that she used [to pay] off certain personal credit card debt. The defendant testified that those funds were a gift from her parents, which she has no expectation of repaying and that she has communicated that to her parents. The court finds the defendant's testimony on this issue to be credible and further finds that the plaintiff has failed to establish, by clear and convincing evidence, a wilful violation of the automatic orders on the part of the defendant by using the funds gifted to her by her parents to pay off her individual credit card and other debt." (Footnote omitted.)

The court further found that "[t]he defendant testified as to six different credit card balances, totaling $70,144.63, that were paid using funds from her parents. The defendant also testified that between December, 2019, and January, 2021, her parents made her monthly credit card payments on her behalf."

defendant's most recent financial affidavit . . . reflects values of $1000 for the Roth IRA and $30,000 for the 401 (k). The defendant's federal tax returns indicate that she took early IRA withdrawals of $39,459 in 2019 and $39,000 in 2020.

"The defendant does not dispute that she made the foregoing withdrawals from her retirement accounts without the written consent of the plaintiff or an order of the court but testified that she had to do so in order to pay necessary bills. The court need not repeat its findings with respect to the chronology of the defendant's unemployment, or that the defendant's parents paid off more than $70,000 in the defendant's personal credit card debt during the pendency of this action, but suffice it to say that the availability of that $70,000, which the defendant could have put toward uses other than paying off individual credit card debt, undermines her claim of necessity.

"The plaintiff has established by clear and convincing evidence that the defendant wilfully violated the automatic orders by withdrawing $78,459 from her retirement accounts during the pendency of this action, which has also reduced the assets available for division between the parties. The court will take this reduction into account when fashioning its financial orders in the judgment."

On appeal, the defendant argues that the court failed to take into account the exception to the automatic order prohibiting the disposition of marital property during the pendency of the dissolution action, namely, that the order prohibits disposition "except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action." The defendant contends that the court erred in finding her in contempt because she used the funds that she withdrew for usual household

expenses and attorney's fees. Although the defendant testified that she needed to withdraw those funds from her retirement accounts, the court rejected "her claim of necessity" on the ground that she could have used the $70,000 that she received from her parents to pay those expenses instead of using that money to pay off her personal credit card debt. The defendant's argument that the court erred by not considering the exception to the disposition of marital funds for the payment of household expenses is unavailing.

The defendant also cursorily contends that "the plaintiff failed to prove wilfulness in light of the court's findings about the defendant's financial difficulties." As stated herein, this interpretation of the court's findings is unpersuasive considering the court's determination that the defendant's violation of the automatic orders was wilful. Accordingly, we cannot conclude that the court abused its discretion by finding the defendant in contempt for withdrawing funds from her retirement accounts.

II

As to the distribution of marital property, the defendant first claims that the court improperly awarded the plaintiff his entire federal pension without assigning a value to it. She further argues that, "[e]ven if the court could not specifically value the pension, it failed to recognize that it had value and did not properly consider and weigh the pension's value when formulating its property distribution orders." We are not persuaded.

"We review financial awards in dissolution actions under an abuse of discretion standard. . . . In order to conclude that the trial court abused its discretion, we must find that the court either incorrectly applied the law or could not reasonably conclude as it did. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we

allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *Ingles* v. *Ingles*, 216 Conn. App. 782, 794–95, 286 A.3d 908 (2022).

"It is well settled that pension benefits constitute property subject to equitable distribution under [General Statutes] § 46b-81.[8] . . . Pension benefits constitute a form of deferred compensation for services rendered. . . . Pension benefits are widely recognized as among the most valuable assets that parties have when a marriage ends. . . . Nevertheless, there is no set formula that a court must follow when dividing the parties' assets, including pension benefits." (Citations omitted; footnote added; footnote omitted; internal quotation marks omitted.) Id., 803–804.

Our Supreme Court has noted that, "although not expressly required by statute, a trial court, when utilizing a method to ascertain the value of a pension, should reach that value on the record." *Krafick* v. *Krafick*, 234 Conn. 783, 804, 663 A.2d 365 (1995). Our Supreme Court also has recognized that "[t]he court need not, however, assign specific values to the parties' assets." *Bornemann*

[8] General Statutes § 46b-81 provides in relevant part: "(a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either spouse all or any part of the estate of the other spouse. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either spouse, when in the judgment of the court it is the proper mode to carry the decree into effect. . . .

"(c) In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

v. *Bornemann*, 245 Conn. 508, 531, 752 A.2d 978 (1998). Moreover, the Supreme Court has held that, "when neither party in a dissolution proceeding chooses to introduce detailed information as to the value of a given asset, neither party may later complain that it is not satisfied with the court's valuation of that asset." Id., 535. "If the parties fail to [provide the court with the approximate value of each asset], the equitable nature of the proceedings precludes them from later seeking to have the financial orders overturned on the basis that the court had before it too little information as to the value of the assets distributed." Id., 536.

Here, the defendant cannot assert that the court improperly failed to assign a specific value to the plaintiff's federal pension given the scant evidence of valuation presented by the parties.[9] On the plaintiff's November 29, 2021 financial affidavit, the plaintiff did not list a value associated with his federal pension but noted a gross monthly benefit at age 58.7 of $2847.[10] Despite the defendant's contention in her brief to this court that the plaintiff's federal pension "is likely the most valuable asset of the marriage," the defendant made no inquiry into its value at trial, nor did she ask the court in her written proposed orders to award any portion of it to her. Indeed, neither party presented evidence

[9] The defendant's counsel conceded at oral argument before this court that the trial court was not required to assign a specific value to the plaintiff's pension.

[10] The plaintiff testified that "the pension is . . . an estimate of what I will get when I . . . retire. . . . [W]e attempted to have the agency extrapolate what that value may be as of the date listed on the affidavit, which was a very difficult number to get them to do actually . . . [because] they usually don't tell you what your pension will be if you're forty-three years old and if you retire at age fifty-five and what can we somehow extrapolate your pension would be per month and some date in the future. They really don't do that. There's no statement that they provide for you to do this. But I, after a lot of research, found a technician who is able to contact someone, who was able to do it, and it was a long process. . . . So, it's not a number that is, was easily obtainable."

as to the value of the plaintiff's pension, in the form of expert testimony or otherwise, and "[i]t is not the function of the court to make calculations of that sort to fill evidentiary gaps." *Mongillo* v. *Mongillo*, 69 Conn. App. 472, 481, 794 A.2d 1054, cert. denied, 261 Conn. 928, 806 A.2d 1065 (2002).

The defendant nevertheless argues that, "[e]ven if a precise valuation was not possible, the error came from the court not considering and weighing the pension's clear significance." She contends that "the court failed to sufficiently recognize that the pension had meaningful value and weigh that in its property distribution." At oral argument before this court, her counsel reiterated that the court erred by not stating that the plaintiff's pension had "significant value." We are not persuaded.

First, the defendant's claim that the court failed to consider the pension is without merit. In expressly ordering that the plaintiff retain his entire federal pension, the court classified and weighed it as a marital asset and then divided the marital assets in accordance with its broad discretion under § 46b-81.[11] Second, there is nothing in the record to suggest that the court did not consider the value of the pension. The plaintiff testified as to the current projection of the amount he would receive upon retirement and the record does not reflect that the court disregarded this evidence when it divided the parties' assets. In sum, the defendant has not demonstrated any error by the court, and we will not presume one. Consequently, the defendant's claim

[11] In support of her argument that the court improperly failed to weigh the plaintiff's pension in fashioning its financial orders, the defendant relies on *Dinunzio* v. *Dinunzio*, 180 Conn. App. 64, 182 A.3d 706, cert. denied, 328 Conn. 930, 182 A.3d 1193 (2018). The present case is easily distinguishable from *Dinunzio*, in which this court reversed the judgment of the trial court on the ground that it improperly classified the plaintiff's pension in that case only as a source of income and not as property subject to equitable distribution. Id., 75. Here, the trial court clearly treated the plaintiff's pension as property subject to distribution and expressly awarded it to the plaintiff.

that the court improperly awarded the plaintiff his entire federal pension without assigning a value to it is unavailing.

III

The defendant also challenges the court's finding as to the value of the marital residence. Specifically, the defendant argues that the court improperly denied her request for production of an appraisal of the marital residence, prepared by a certified appraiser at the behest of the plaintiff in the middle of trial, on the ground that it was protected from disclosure pursuant to Practice Book § 13-4 (f). We disagree.

The following additional procedural history is relevant to our consideration of this claim. On June 11, 2021, the plaintiff filed a disclosure of expert witness pursuant to Practice Book § 13-4[12] stating his intention to introduce at trial the testimony of James B. Hoffman, who would testify, on the basis of his "[k]nowledge of the neighborhood of the real property and analysis of

[12] Practice Book § 13-4, titled "Experts," provides in relevant part: "(a) A party shall disclose each person who may be called by that party to testify as an expert witness at trial . . . .

"(b) A party shall file with the court and serve upon counsel a disclosure of expert witnesses which identifies the name, address and employer of each person who may be called by that party to testify as an expert witness at trial, whether through live testimony or by deposition. In addition, the disclosure shall include the following information:

"(1) . . . [T]he field of expertise and the subject matter on which the witness is expected to offer expert testimony; the expert opinions to which the witness is expected to testify; [and] the substance of the grounds for each such expert opinion . . . .

"(3) . . . [T]he party disclosing an expert witness shall, upon the request of an opposing party, produce to all other parties all materials obtained, created and/or relied upon by the expert in connection with his or her opinions in the case within fourteen days prior to that expert's deposition . . . .

"(c) (1) Unless otherwise ordered by the judicial authority upon motion, a party may take the deposition of any expert witness disclosed pursuant to subsection (b) of this section . . . ."

the sales prices of comparable properties whose sales closed in the past year," that the fair market value of the marital residence as of June 9, 2021, was $1,500,000.

On June 18, 2021, the defendant filed a disclosure of expert witness pursuant to Practice Book § 13-4 stating her intention to introduce at trial the testimony of James J. Tooher, who would testify, on the basis of his expertise as a senior residential appraiser, that the fair market value of the marital residence as of June 9, 2021, was $1,160,000.

On November 30, 2021, the defendant filed a motion in limine seeking to preclude the testimony of Hoffman on the ground that "he is not an expert and [his testimony is] irrelevant for trial purposes and will not provide competent evidence on which the court can rely." The defendant argued, inter alia, that Hoffman was not a qualified expert because he is a real estate broker, not a licensed appraiser. The court heard argument of the parties on the first day of trial, after which it denied the defendant's motion, explaining that, although it was "not convinced that [Hoffman's testimony was] going to be that helpful," his qualifications would pertain to the weight that the court would afford his testimony, not its admissibility. Due to illness, Hoffman was not available to testify in December, but Tooher testified on the second day of trial, December 2, 2021.[13]

On January 24, 2022, the plaintiff filed a motion seeking access to the marital residence to permit an appraiser that he had retained to perform an appraisal of the property. In his motion, the plaintiff indicated that he had "engaged an independent real estate appraiser in lieu of the previously planned expert on the real estate value because the court's trial schedule created

[13] The third and final day of trial originally was scheduled for December 3, 2021, but was rescheduled for April 13, 2022.

the opportunity and the court expressed some skepticism about the weight to be given the witness." The plaintiff indicated that the independent appraiser, Stephen Correll, "would provide the written report within seven days [and] [t]his time frame would provide an opportunity for the defendant's counsel to depose [Correll] if she chooses to do so." The court granted the plaintiff's motion.

On April 11, 2022, the defendant filed with the court a notice of service upon the plaintiff of a request to produce at the next trial date the appraisal completed by Correll. On April 13, 2022, the parties and counsel appeared before the court for the third and final day of trial. At the beginning of the proceedings that day, counsel for the defendant indicated to the court that she had sent to counsel for the plaintiff a request for a copy of Correll's appraisal.[14] Counsel for the plaintiff

[14] Counsel for the defendant addressed the court as follows: "I have one preliminary discovery request, Your Honor, if I may. . . . I filed a request to produce on or about February 16th upon plaintiff's counsel, requesting an apprais[al] or any valuations reached predicated on Stephen Correll's inspection of the home. The court will remember in January of 2022, [the] plaintiff urgently requested from the court that [Correll] inspect the exterior and interior of the home. My client, of course, obliged the court order by two o'clock that day. . . . And we would like receipt of that—of Mr. Correll's valuation and have requested it."

After counsel for the plaintiff indicated his objection based upon Practice Book § 13-4 (f), counsel for the defendant responded: "Your Honor, if you will, I don't think it has been established that it is work product. And, in fact, I even requested any retainer agreements to ascertain who the contract was between, whether it was the plaintiff or plaintiff's counsel's firms. Additionally, Your Honor, in their urgent notice of January 23rd request to the court, for which no request came prior to that, they say that this man is going to be used in lieu of the previous planned expert. Additionally, Your Honor, it says that the appraiser would provide the written report within seven days. Whether it's ultimately—that did not occur. And whether it's ultimately entered as an exhibit is up to the safeguards of the court. The discovery phase for which I requested for is left up to my discretion at this time prior to introducing it, if at all."

The foregoing constitutes the entirety of the defendant's argument before the trial court in support of her request for the appraisal.

stated that he objected to the defendant's request for production in that the appraisal was not subject to disclosure under Practice Book § 13-4 (f)[15] because he had not disclosed Correll as an expert witness and was not seeking to introduce the appraisal into evidence, and the defendant had not shown any exceptional circumstance indicating that it was impracticable for her to obtain the facts or opinions contained in the appraisal by other means. After confirming with the plaintiff's counsel that it was not his intention to call Correll as an expert witness or introduce the appraisal into evidence, the court asked counsel for the defendant to respond to the argument asserted by counsel for the plaintiff. Counsel for the defendant argued, inter alia: "Your Honor, if you will, I don't think it has been established that it is work product. And, in fact, I even requested any retainer agreements to ascertain who the contract was between, whether it was the plaintiff or plaintiff's counsel's firms." After hearing argument from both attorneys, the court ruled: "I had an opportunity to take a look at the rules that apply and having listened to the argument of counsel, I'm persuaded by the plaintiff's position, so I'm not going to order the turnover of the information. So that request is denied." The plaintiff proceeded to present the testimony of Hoffman as his expert witness.[16]

In its memorandum of decision dissolving the parties' marriage, the court set forth the following facts pertaining to the marital residence. "After their marriage,

[15] Practice Book § 13-4 (f) provides: "A party may discover facts known or opinions held by an expert who had been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Section 13-11 or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means."

[16] Tooher prepared two appraisals of the marital residence, which were admitted into evidence. Hoffman prepared a home valuation report of the marital residence, which was admitted into evidence.

the parties purchased 9 Boyd Lane in Greenwich for $450,000, demolished an existing structure on the property and built what became the marital residence. The parties secured a construction loan and the plaintiff contributed approximately $350,000 in cash to the project, which amount was the total of an inheritance from his great grandmother and gifts from his parents. At trial, both parties introduced expert testimony as to the value of the marital residence, which is the main asset of the marriage. The plaintiff's expert, [Hoffman], is a real estate broker who prepared a market analysis and testified that the property's value as of April 11, 2022, was $1,659,367.50, an increase from the $1,580,350 value he found on February 15, 2022. Hoffman conceded that he is not an appraiser and did not perform an appraisal but based his opinion of value on factors including relevant sales and his intimate familiarity of the Riverside neighborhood in which the property is located. The defendant's expert, [Tooher], has been a licensed real estate appraiser for thirty-six years and obtained his [Senior Residential Appraiser] designation in 1994. Tooher concluded that the value of the property was $1,160,000 as of June 9, 2021. Tooher further testified that the real estate market in Greenwich had increased since that date, but he did not provide an updated opinion of value. The defendant also testified to the below average condition of the marital residence, including electrical and mold issues. Based on the credible evidence in the record, the court finds the fair market value of the marital residence to be $1,400,000, which is the approximate midpoint between the experts' opinions of value.[17] The property is encumbered by a first

[17] "Also in the record is the Greenwich Tax Assessor's card, which assigns the property a preliminary fair market value of $1,412,200 as of October 1, 2021. While the court assigns this value less weight than either of the experts who testified at trial, it does provide some indication of value."

mortgage and a home equity loan with a combined total outstanding balance of approximately $1,098,000."[18] (Footnote in original.)

On appeal, the defendant claims that the court improperly denied her request to obtain a copy of the appraisal performed by Correll, "despite the requirements of full disclosure in marital dissolution cases." Specifically, the defendant argues that, "even if the appraisal could be withheld in a civil action, marital dissolution cases have unique case law and rules of procedure that require 'full and frank disclosure' between the parties.[19] Most notably, Practice Book § 25-32[20] makes it mandatory for a husband and a wife in a dissolution action to exchange 'any written appraisal concerning any asset owned by either party,' and it

[18] Tooher performed an updated appraisal, which was admitted into evidence and valued the marital residence at $1,265,000 as of February 7, 2022. We agree with the defendant that the trial court's finding that Tooher did not provide an updated opinion of value was erroneous, but because that value was higher and closer to the value found by the trial court, the defendant was not harmed by this error.

[19] The defendant also argues that the plaintiff represented to the court in his motion for access to the marital home that he would disclose the appraisal within seven days and he should not have later been permitted to refuse to follow through with that representation. Presumably, the plaintiff made those representations because he was considering introducing into evidence at trial the appraisal and was seeking to assure the defendant that she would have access to the appraisal before trial resumed. Because the plaintiff did not seek to introduce the appraisal or the testimony of the appraiser into evidence, the defendant's argument is unavailing.

[20] Practice Book § 25-32, which is entitled "Mandatory Disclosure and Production," provides in relevant part: "(a) Unless otherwise ordered by the judicial authority for good cause shown, upon request by a party involved in an action for dissolution of marriage or civil union, legal separation, annulment or support, or a postjudgment motion for modification of alimony or support, opposing parties shall exchange the following documents within sixty days of such request: . . .

"(8) any written appraisal concerning any asset owned by either party.

"(b) Such duty to disclose shall continue during the pendency of the action should a party appear. This section shall not preclude discovery under any other provisions of these rules."

imposes a continuing duty of such disclosure throughout the case."[21] (Emphasis omitted; footnotes added.)

We first note that the defendant did not assert these arguments before the trial court in either her request for production or at trial. She argued only that the appraisal was not protected as the work product of the plaintiff's counsel but neither cited Practice Book § 25-32 nor argued that she was entitled to "full and frank disclosure." See *State* v. *Alvarez*, 209 Conn. App. 250, 252 n.2, 267 A.3d 303 (2021) (when party makes different argument on appeal than at trial, claim is unpreserved), aff'd, 346 Conn. 530, 292 A.3d 1 (2023).

Moreover, the defendant fails, in her appellate arguments, to address the basis upon which the court denied her request for production. In objecting to the defendant's request for production, the plaintiff unambiguously argued that the appraisal was protected from disclosure under Practice Book § 13-4 (f) because he had not disclosed Correll as an expert witness, was not intending to call him to testify as a witness and would not seek to introduce the appraisal into evidence, and the court expressly agreed with the plaintiff's argument. The defendant did not contest the applicability of Practice Book § 13-4 (f) before the trial court, nor has she done so in her brief to this court. Indeed, her brief to this court is devoid of any mention of Practice Book § 13-4 or any analysis as to why Practice Book § 25-32 would trump Practice Book § 13-4, particularly in light of the express application of Practice Book § 13-4 to family cases through Practice Book § 25-31.[22] In the

[21] The defendant also argues on appeal that the appraisal did not qualify as work product under Practice Book § 13-3. This argument misses the mark in that the plaintiff did not object to the disclosure of the appraisal on the basis of § 13-3, and the court's denial of the defendant's request for production was not based on § 13-3.

[22] Practice Book § 25-31 provides in relevant part that "the provisions of Sections 13-1 through 13-10 . . . shall apply to family matters as defined in Section 25-1." We do not reach the issue of whether Practice Book § 25-32 trumps Practice Book § 13-4 (f) or vice versa because the defendant did not raise it before the trial court and likewise failed to brief it to this court.

absence of a proper challenge to the basis of the court's ruling, namely, that the appraisal was protected from disclosure by Practice Book § 13-4 (f), the defendant cannot prevail on her claim that the court abused its discretion in so ruling.[23] See *OneWest Bank, N.A.* v. *Ceslik*, 202 Conn. App. 445, 456–57, 246 A.3d 18 ("[t]he defendant's claim is not persuasive because, even if it has merit, it does not undermine the ground on which the court based its decision"), cert. denied, 336 Conn. 936, 249 A.3d 39 (2021).

IV

The defendant finally claims that the court "erred in its property orders by inequitably favoring the [plaintiff] with an excessively high portion of assets, while assigning [the defendant] minimal assets and unreasonable amounts of debt and liabilities." We disagree.

The following legal principles guide our analysis of the defendant's claim. "In dissolution proceedings, the court must fashion its financial orders in accordance with the criteria set forth in . . . § 46b-81 (division of

[23] Although we need not reach the issue of whether the defendant was harmed by the court's denial of her request for the appraisal, we note that her reliance on our Supreme Court's decision in *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007), for the proposition that she need not prove harm is misplaced. Our Supreme Court has explained that, "even in the marital dissolution context, *Ramin* does not establish a general rule. Over the course of the proceedings in *Ramin*, the plaintiff filed five motions for contempt in response to which the court issued orders to comply, sanctions and attorney's fees against the defendant. . . . The defendant's persistent failure to produce specifically requested documents prompted this court to describe his conduct as egregious litigation misconduct . . . . We expressly recognized that the particular facts of *Ramin*, because of the defendant's egregious misconduct, required a departure from the ordinary rule. *Ramin*, therefore, represents a narrow exception to the general rule that the party claiming error bears the burden to demonstrate harm." (Citations omitted; internal quotation marks omitted.) *Duart* v. *Dept. of Correction*, 303 Conn. 479, 502, 34 A.3d 343 (2012). Because there was no misconduct by the plaintiff here, we cannot conclude that this case falls within the narrow exception carved out in *Ramin* relieving an appellant from proving harm.

marital property) . . . . Pursuant to § 46b-81 (c), the court shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. *The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.* . . .

"While the trial court must consider the delineated statutory criteria . . . no single criterion is preferred over others, and the court is accorded wide latitude in varying the weight placed upon each item under the peculiar circumstances of each case. . . . A trial court . . . need not give each factor equal weight . . . or recite the statutory criteria that it considered in making its decision or make express findings as to each statutory factor. . . .

"Importantly, § 46b-81 (a) permits the farthest reaches from an equal division as is possible, allowing the court to assign to either the husband or wife all or any part of the estate of the other. . . . On the basis of the plain language of § 46b-81, there is no presumption in Connecticut that marital property should be divided equally prior to applying the statutory criteria. . . . Additionally, [i]ndividual financial orders in a dissolution action are part of the carefully crafted mosaic that comprises the entire asset reallocation plan. . . . Under the mosaic doctrine, financial orders should not be viewed as a collection of single disconnected occurrences, but rather as a seamless collection of interdependent elements. . . . [W]e will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it

could not reasonably conclude as it did, based on the facts presented." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Pencheva-Hasse* v. *Hasse*, 221 Conn. App. 113, 129–30, 300 A.3d 1175 (2023).

"[W]hen a trial court states in its memorandum of decision that it has considered the factors listed in § 46b-81 (c) in fashioning an order distributing marital property, the judge is presumed to have performed [his or her] duty unless the contrary appears [from the record]." (Internal quotation marks omitted.) *Kammili* v. *Kammili*, 197 Conn. App. 656, 672, 232 A.3d 102, cert. denied, 335 Conn. 947, 238 A.3d 18 (2020). Thus, because the court in this case specified in its memorandum of decision that it considered the criteria set forth in § 46b-81 and the evidence before it, it is presumed at the outset to have properly performed its duty in distributing the marital estate.

We nevertheless address the defendant's specific arguments in support of her claim that the court's division of property was inequitable. The defendant argues that, "[m]ost notably, [the plaintiff] was given all of the parties' retirement assets" and that she "did not receive a single dollar of retirement funds." In so arguing, the defendant ignores the fact that she did, in fact, receive a large portion of her retirement funds when she unilaterally withdrew almost $80,000 from her retirement accounts, for which she never fully accounted. By ordering the defendant to transfer the remaining funds in her accounts to the plaintiff, the court likely was striving to offset the defendant's earlier withdrawal. It was not improper or inequitable for the court to do so.

The defendant also complains that, although the court ordered that the proceeds from the sale of the marital home be split equally, the amount of those proceeds was unpredictable in that "[i]t is quite possible

that selling the house could leave nothing for [her],'' depending on the sale price of the property. To some extent that unpredictability is unavoidable in that neither the parties, their expert witnesses, nor the court can control the actual sale price of the property. The defendant does not, however, suggest how an alternative division of the marital residence, short of simply awarding it to her in its entirety, might alleviate that unpredictability.

Moreover, as noted herein, the court found that the plaintiff contributed $350,000 to the purchase of the marital residence, which he had received as an inheritance from his great grandmother and a gift from his parents. The court also found that the defendant wilfully and unilaterally violated the court order that she pay the mortgages on the marital residence during the pendency of the action, and, because she did so, ''that deferral amount [of $87,961.45] must be paid off as a balloon payment at the end of the mortgage term or earlier payoff.'' Despite those findings, which would tend to favor a split more advantageous to the plaintiff, the court nevertheless reasonably exercised its discretion in ordering that the proceeds of the sale of the marital residence be split equally.[24] The court's order that the proceeds from the sale of the marital residence, which, on the basis of the record before the trial court,

[24] The court also found that ''[t]he parties also own a Marriott timeshare, which the plaintiff values at $5000 and to which the defendant ascribes two different values on her most recent financial affidavit, $45,000 and $20,527. The parties have tried to sell the timeshare in the past without success. Given these facts, the court finds the value of the timeshare to be $5000.'' Although the record does not support the court's finding that the plaintiff valued the timeshare at $5000, the defendant testified at trial that the annual fees for the timeshare were $3000 and that the parties had unsuccessfully tried to sell it and she was not sure they would get even $20,000 for it when they did sell it. That was the entirety of the evidence of the value of the timeshare presented by the parties. On the basis of the scant evidence of the timeshare's value presented by the parties, we cannot conclude that the court's valuation was erroneous.

was the most significant asset of the parties' marriage, be split equally belies the defendant's contention that the court awarded the "vast majority" or "virtually all" of the parties' assets to the plaintiff.

Finally, the defendant argues that the court inequitably ordered her to pay the remaining debt on the parties' two joint credit card accounts, which, pursuant to the December 16, 2019 pendente lite orders, the plaintiff had been paying. In making those payments, the plaintiff reduced the parties' joint debt by almost $16,000. Meanwhile, the defendant paid off approximately $70,000 of her sole debt while this action was pending. Considering its order that the proceeds from the sale of the marital residence would be shared equally, despite the defendant's failure to abide by her pendente lite obligations, the court again was striving to offset the financial ramifications of the defendant's unilateral reductions of the marital estate. Moreover, we note that the court found that the defendant has a higher earning capacity and higher income than the plaintiff, either or both of which would have justified an order that the defendant pay alimony to the plaintiff. Despite the plaintiff's request for alimony, the court did not issue such an order.

As noted herein, "[t]here is no set formula the court is obligated to apply when dividing the parties' assets and . . . the court is vested with broad discretion in fashioning financial orders." (Internal quotation marks omitted.) *Kent* v. *DiPaola*, 178 Conn. App. 424, 441–42, 175 A.3d 601 (2017); see also *Sapper* v. *Sapper*, 109 Conn. App. 99, 107–108, 951 A.2d 5 (2008) (courts are not bound to use specific formula and are not required to ritualistically recite statutory criteria considered in dividing marital assets). The court thoughtfully and carefully considered the testimony, exhibits and relevant statutory factors in dividing the marital property. Given the entire mosaic of the court's judgment, we are not persuaded by the defendant's argument that

the court's orders were inequitable. Accordingly, we disagree with the defendant that the court abused its discretion with respect to the division of the marital estate.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* ANTHONY V.* (AC 45621)

Clark, Seeley and Palmer, Js.

Syllabus

Convicted, following a jury trial, of the crime of manslaughter in the first degree with a firearm, the defendant appealed to this court. It was undisputed that the victim was killed by a gunshot wound to the head from the defendant's replica Civil War era revolver. When he was interviewed by the police, the defendant contended that the victim had been in the bathroom, using the toilet, while he was cleaning the revolver in the bedroom. He further contended that, when he was holding the revolver and walking into the bathroom for a napkin, he had tripped and fallen toward the victim. In falling, he lost control of the revolver, the barrel of which struck the victim's head, and it accidentally discharged. At trial, the state produced uncontested evidence that the fatal wound was inflicted by a single shot from the defendant's revolver, the revolver had an extremely light trigger pull, and the revolver had been pressed against the victim's head and behind her left ear when the gun discharged. *Held*:

1. The defendant could not prevail on his claim that there was insufficient evidence to support the judgment of conviction: the evidence and the inferences that the jury reasonably could have drawn therefrom were sufficient to support the state's theory that the defendant intentionally placed the loaded revolver against the victim's head, including testimony by the state medical examiner that the gunshot that killed the victim was discharged while the muzzle of the revolver was flush against the victim's head, and the jury reasonably could have found that the likelihood of that occurring randomly or haphazardly, as the defendant claimed, was slight; moreover, there was evidence that the defendant

* In accordance with our policy of protecting the privacy interests of the victims of family violence, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

and the victim had a volatile relationship, which was fueled by drug and alcohol use, and the defendant's actions with the revolver did not display sound judgment; furthermore, the jury could have doubted the veracity of the defendant's statements concerning his handling of the revolver the evening of the shooting, as the jury was not obligated to accept the defendant's version of the facts and reject the factual scenario advanced by the state.

2. The trial court committed plain error in failing to instruct the jury on the element of general intent, which was an essential element of the offense of manslaughter in the first degree with a firearm: because the statements the defendant made to the police, if credited by the jury, supported his contention that the revolver struck the victim's head accidentally, the defendant was entitled to a jury instruction that the state bore the burden of proving that he had placed the revolver to the victim's head intentionally; moreover, the consequences of the court's error were so grievous as to be fundamentally unfair or manifestly unjust under the circumstances of this case, as an instruction on general intent that fully explained the requirement of volitional or deliberate conduct as distinguished from conduct that was inadvertent or accidental was vital to a fair trial and a reliable verdict; accordingly, the defendant was entitled to a new trial.

Argued January 11—officially released August 13, 2024

Procedural History

Substitute information charging the defendant with the crime of manslaughter in the first degree with a firearm, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *Alander*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Reversed*; *new trial.*

Denis J. O'Malley III, assistant public defender, with whom was *Kevin Semataska*, deputy assistant public defender, for the appellant (defendant).

Danielle Koch, deputy assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Lisa D'Angelo* and *Adrienne Russo*, assistant state's attorneys, for the appellee (state).

Opinion

PALMER, J. The defendant, Anthony V., appeals from the judgment of conviction, rendered after a jury trial, of manslaughter in the first degree with a firearm in violation of General Statutes §§ 53a-55a[1] and 53a-55 (a) (3).[2] The defendant claims that (1) the evidence is insufficient to support his conviction and (2) the court's failure to instruct the jury on general intent constituted plain error. Although we disagree with the defendant's claim of evidentiary insufficiency, we agree with his claim of instructional error under the plain error doctrine. Accordingly, we reverse the judgment of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to our resolution of this appeal. Shortly before midnight on Saturday, October 17, 2020, New Haven police officers responded to a call reporting that an individual had been shot in a local apartment. When the police arrived at the apartment, they discovered the defendant, who resided there, in a small bathroom,[3] with blood all over the floor, performing cardiopulmonary resuscitation (CPR) on the victim. The victim, who resided with the defendant and planned to marry him, had suffered a

[1] General Statutes § 53a-55a provides in relevant part: "(a) A person is guilty of manslaughter in the first degree with a firearm when he commits manslaughter in the first degree as provided in section 53a-55, and in the commission of such offense he uses, or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, shotgun, machine gun, rifle or other firearm. . . ."

[2] General Statutes § 53a-55 provides in relevant part: "(a) A person is guilty of manslaughter in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person."

[3] Evidence adduced at trial reveals that the bathroom, which included a vanity, a toilet and a bathtub, was only about thirty-five square feet, measuring four feet, ten inches (the distance from the doorway to the wall behind the toilet) by seven feet, three inches.

gunshot wound to the head and was pronounced dead at the scene by medical personnel. A handgun belonging to the defendant was found on the bathroom floor and seized by the police.

The defendant consented to three police interviews, all of which were videotaped and, along with the interview transcripts, admitted as full exhibits at trial. In his interview statements,[4] the defendant consistently maintained that the victim's death was the result of a tragic accident. More specifically, the defendant stated that, just before bedtime, the victim was using the toilet in the bathroom adjacent to the couple's bedroom, with the door open, when the defendant decided to wipe down the loaded revolver that he kept in a box in the bedroom and cleaned off periodically to remove any accumulated dust and oil. Aware that there were napkins in the bathroom that he could use to do so—the couple had run out of toilet paper—the defendant, loaded revolver in hand, walked toward the bathroom to retrieve a napkin. While approaching the bathroom, his eyes were focused on the revolver, which he was trying, unsuccessfully, to render safe by disabling its discharge mechanism.[5] As he started to enter the bathroom, he tripped on the doorjamb and fell forward, toward the victim, who was seated on the toilet only a few feet away. Although still in possession of the revolver as he fell, the defendant could not control it, and the barrel of the gun inadvertently struck the side of the victim's head, and the gun accidentally discharged, killing the victim.

At trial, the state advanced a markedly different theory with respect to the events leading up to the victim's

[4] The interviews took place on October 18, 2020, the day after the victim's death, and on October 23, 2020, and January 29, 2021.

[5] For a further explication of the defendant's statement regarding his effort to render the revolver safe, see footnote 10 of this opinion and accompanying text.

death. Although the state did not claim that the defendant intended to shoot the victim, the prosecutor asserted in closing argument that the evidence established that the defendant entered the bathroom with the loaded revolver and intentionally pressed the muzzle of the revolver forcefully against the victim's head, just behind her left ear. According to the prosecutor, the defendant's conduct in placing the revolver to the victim's head likely was the result of "another one of [the] alcohol and drug fueled arguments" between the defendant and the victim. The prosecutor further argued that the defendant's reckless conduct evinced his extreme indifference to the victim's life by subjecting her to a grave risk of death and thereby causing her death when he unintentionally pulled the trigger and discharged the revolver.[6]

At the conclusion of the trial, the jury found the defendant guilty of manslaughter in the first degree with a firearm. The trial court rendered judgment in accordance with the jury verdict and sentenced the defendant to a term of imprisonment of twenty-five years, execution suspended after eighteen years, followed by three years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims that the state failed to prove beyond a reasonable doubt that he was guilty of manslaughter in the first degree with a firearm because the evidence does not support the state's theory that he intentionally placed the loaded revolver against the victim's head.[7] The defendant contends, instead, that

[6] The defendant did not testify at trial. His version of events was presented to the jury through the statements he gave to the police and by defense counsel in closing argument.

[7] With respect to the state's theory of the case, in his initial closing argument, the prosecutor told the jury that "the state's theory is that the defendant showed an extreme indifference to the life of [the victim] and created a

the evidence demonstrates that the "cause of the gun coming up against [the victim's] head was not a volitional act" by the defendant but, rather, "a tragic, calamitous accident." We are not persuaded.[8]

We first set forth the well established legal principles that govern our consideration of the defendant's challenge to the sufficiency of the evidence. "In reviewing

grave risk of her death when he pressed a loaded . . . revolver to the side of her head while aware that, in doing so, a substantial and unjustifiable risk existed of unintentional discharge." The prosecutor then stated, "I'll say it again," and repeated verbatim the state's theory of the case. In defense counsel's closing argument, he maintained that the evidence did not support the state's theory of the case and asserted that the shooting occurred in the manner described by the defendant in his interview statements to the police. Then, near the end of the prosecutor's rebuttal argument, he told the jury, without objection, that the defendant had committed manslaughter in the first degree with a firearm "regardless of which version you believe, whether he pressed the firearm up against [the victim's] head forcefully or he was handling it and tripped." The prosecutor then briefly summarized, without specific reference to the state's theory that the defendant had intentionally pressed the revolver against the victim's head, why the defendant "was extremely reckless [on the] night" the victim was killed. See footnote 17 of this opinion. On appeal, the defendant's claim of insufficient evidence is predicated on the state's theory of the case as stated by the prosecutor in his initial closing argument. Moreover, despite some language in the state's brief arguably suggesting that conduct by the defendant short of placing the revolver to the victim's head would suffice to prove the offense of manslaughter in the first degree with a firearm, we do not read the state's brief as relying on the claim that the jury could have found the defendant guilty of that offense under the defendant's own version of events. Rather, the state's brief repeatedly explains why the evidence supports the state's theory that the defendant intentionally placed the fully loaded revolver against the victim's head. In response to questions during oral argument before this court, however, the state did assert that the facts alleged by the defendant himself were sufficient to constitute the offense of manslaughter in the first degree with a firearm. Because both parties' briefs focus on the state's theory of the case as articulated repeatedly and unequivocally by the prosecutor in his initial closing argument, and because the parties seemingly agree that the jury verdict was based on that theory, our review of the defendant's claim of evidentiary insufficiency is also limited to that theory of the case.

[8] Because the defendant acknowledges that the evidence adduced at trial was sufficient to support a jury finding of the lesser included offense of criminally negligent homicide in violation of General Statutes § 53a-58 (a),

the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"In particular, before this court may overturn a jury verdict for insufficient evidence, it must conclude that no reasonable jury could arrive at the conclusion the jury did. . . . Although the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense . . . each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . .

"If it is reasonable and logical for the [jury] to conclude that a basic fact or an inferred fact is true, the [jury] is permitted to consider the fact proven and may consider it in combination with other proven facts in

a misdemeanor; see footnote 12 of this opinion; and because the trial court instructed the jury on that lesser included offense (as well as the lesser included offense of manslaughter in the second degree with a firearm in violation of General Statutes § 53a-56a (a)), the defendant contends that this court should reverse the judgment of conviction of manslaughter in the first degree with a firearm on the ground of evidentiary insufficiency and remand the case to the trial court with direction to render a judgment of conviction of criminally negligent homicide and for resentencing. See, e.g., *State* v. *Desimone*, 241 Conn. 439, 460 n.28, 696 A.2d 1235 (1997) (when trial evidence does not support defendant's conviction of offense charged, reviewing court may modify judgment to reflect conviction of lesser included offense if evidence was sufficient to support conviction of lesser included offense on which jury properly had been instructed and jury's verdict necessarily included finding that defendant was guilty of lesser offense). In light of our conclusion that the evidence was sufficient to support his conviction of manslaughter in the first degree with a firearm, and our conclusion in part II of this opinion that he is entitled to a new trial on that charge, we reject the defendant's proposed remand order.

determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt." (Citations omitted; internal quotation marks omitted.) *State* v. *Waters*, 214 Conn. App. 294, 301–302, 280 A.3d 601, cert denied, 345 Conn. 914, 284 A.3d 25 (2022).

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact . . . but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [jury] is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [jury] may draw whatever inferences from the evidence or facts established by the evidence [that] it deems to be reasonable and logical. . . .

"Additionally, given the nature of this appeal, it is important to underscore that there is a fine line between the making of reasonable inferences and engaging in speculation—the jury is allowed to do the former. . . . However, [t]he line between permissible inference and impermissible speculation is not always easy to discern. When we infer, we derive a conclusion from proven facts because such considerations as experience, or history, or science have demonstrated that there is a likely correlation between those facts and the conclusion. If that correlation is sufficiently compelling, the inference is reasonable. But if the correlation between the facts and the conclusion is slight, or if a different conclusion is more closely correlated with the facts than the chosen conclusion, the inference is less reasonable. At some point, the link between the facts and the conclusion becomes so tenuous that we call it speculation. When that point is reached is, frankly, a matter of judgment. . . .

"[P]roof of a material fact by inference from circumstantial evidence need not be so conclusive as to exclude every other hypothesis. It is sufficient if the evidence produces in the mind of the trier a reasonable belief in the probability of the existence of the material fact. . . . Thus, in determining whether the evidence supports a particular inference, we ask whether that inference is so unreasonable as to be unjustifiable. . . . In other words, an inference need not be compelled by the evidence; rather, the evidence need only be reasonably susceptible of such an inference." (Citations omitted; internal quotation marks omitted.) *State* v. *Richards*, 196 Conn. App. 387, 396–97, 229 A.3d 1157 (2020), aff'd, 339 Conn. 628, 261 A.3d 1165, cert. denied, U.S. , 142 S. Ct. 431, 211 L. Ed. 2d 255 (2021).

Finally, "proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [jury], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [jury's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Kenneth B.*, 223 Conn. App. 270, 274, 308 A.2d 82, cert. denied, 348 Conn. 952, 308 A.3d 1038 (2024).

Of course, the elements of the offense of which the defendant was convicted provide the context in which we apply the foregoing principles. "A person is guilty of manslaughter in the first degree with a firearm when he commits manslaughter in the first degree as provided in section 53a-55, and in the commission of such offense he uses . . . a pistol, revolver, shotgun, machine gun, rifle or other firearm. . . ." General Statutes § 53a-55a (a). General Statutes § 53a-55 (a) provides in relevant

part that: "A person is guilty of manslaughter in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person." Accordingly, for the defendant to be found guilty of manslaughter in the first degree with a firearm, "the state had to prove beyond a reasonable doubt the following: (1) that the defendant engaged in conduct that created a grave risk of death; (2) that in doing so the defendant acted recklessly; (3) under circumstances evincing an extreme indifference to human life; and (4) the defendant caused the death of the victim. . . . Additionally, the state had to prove that the defendant had the general intent to engage in conduct that created a grave risk of death to another person under circumstances evincing extreme indifference to human life." (Internal quotation marks omitted.) *Leon* v. *Commissioner of Correction*, 189 Conn. App. 512, 539, 208 A.3d 296, cert. denied, 332 Conn. 909, 209 A.3d 1232 (2019).

"A person acts 'recklessly' with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation . . . ." General Statutes § 53a-3 (13). "[T]he legislature has provided some guidance as to the level of indifference it intended in § 53a-55 (a) (3) by modifying the level of indifference with the adjective extreme. Extreme is defined as existing at the highest or greatest possible degree, and is synonymous with excessive. . . . The adjective grave is defined as very serious: dangerous to life. . . . Our Supreme Court has concluded that the

mental state required for a violation of § 53a-55 (a) (3) was clear. . . . Recklessness involves a subjective realization of a risk and a conscious decision to ignore that risk . . . .'' (Citation omitted; internal quotation marks omitted.) *State* v. *Wade*, 106 Conn. App. 467, 479, 942 A.2d 1085, cert. granted, 287 Conn. 908, 950 A.2d 1286 (2008) (appeal withdrawn June 12, 2008).

Finally, manslaughter in the first degree with a firearm is a general intent crime requiring only that the actor have the general intent to perform the acts that constitute the elements of the offense. See *Leon* v. *Commissioner of Correction*, supra, 189 Conn. App. 539. ''[G]eneral intent is the term used to define the requisite mens rea for a crime that has no stated mens rea; the term refers to whether a defendant intended deliberate, conscious or purposeful action, as opposed to causing a prohibited result through accident, mistake, carelessness, or absent-mindedness. [When] a particular crime requires only a showing of general intent, the prosecution need not establish that the accused intended the precise harm or precise result which resulted from his acts.''[9] (Emphasis omitted; internal quotation marks omitted.) *State* v. *Juan J.*, 344 Conn. 1, 21, 276 A.3d 935 (2022). With these principles in mind, we turn to the defendant's arguments and the state's counterarguments made in support of their opposing positions regarding the sufficiency of the evidence. In addressing those arguments, we also set forth certain additional facts that the state and the defendant contend substantiate their version of events.

We note, preliminarily, that three significant facts are not in dispute. First, the state and the defendant agree that the victim's fatal wound was inflicted by one shot

[9] General intent, which is ''an intent to engage in certain conduct,'' is to be distinguished from specific intent, which is ''an intent to bring about a certain result.'' *State* v. *Salamon*, 287 Conn. 509, 572, 949 A.2d 1092 (2008).

fired from the defendant's handgun, a fully operational .44 caliber Pietta replica of a Civil War era 1851 Colt Navy revolver. The revolver is more than twelve inches long and has six chambers for ammunition. Those chambers are arranged on a cylinder, which, with each pull of the trigger, rotates and brings a new chamber in line with the muzzle, thereby readying the revolver for the next shot. In contrast to modern day revolvers, the Pietta replica revolver does not use bullets in the form of metallic self-contained cartridges. Rather, each chamber is loaded separately with black powder, a lead ball projectile, and a percussion cap. When the shooter pulls the trigger, the revolver's hammer strikes the percussion cap, crushing it and igniting the sparking agent inside of it. That, in turn, ignites the powder, which propels the projectile out of the barrel.

Additionally, the shooter must cock the hammer fully back before pulling the trigger in order to discharge the revolver; when the hammer is in the half-cocked position, the revolver cannot be fired, unless, for example, the revolver is dropped or the hammer is otherwise struck and inadvertently placed in the fully cocked position. Thus, the only reason to have the hammer fully cocked back is to discharge the revolver. To clean, unload, and maintain the revolver, the hammer must be in the half-cocked position, which allows the user to rotate the cylinder, remove the percussion caps, and safely handle the revolver. Nevertheless, the best way to render an otherwise loaded Pietta replica revolver completely safe is to remove the percussion caps because the revolver cannot be discharged, even when the hammer is fully cocked, unless the percussion caps are in place.[10]

[10] In his statements to the police, the defendant explained that, as he was walking toward the bathroom seconds before the victim was killed, he was trying to remove the percussion caps from the revolver's cylinder so that the revolver could not be fired. According to the defendant, however, he tripped over the doorjamb before he was able to do so.

A second undisputed fact relates to the revolver's exceedingly light "trigger pull," which refers to the amount of rearward force that must be applied to the trigger to release the firing mechanism. Dennis Lyons, a firearms expert with the Rhode Island State Crime Laboratory, testified that a single action firearm, like the defendant's revolver, ordinarily requires three to six pounds of force on the trigger to release the hammer. The trigger pull test that Lyons performed on the revolver, however, revealed that only 0.98 pounds of force on the trigger will release the fully cocked hammer. Lyons described the revolver's trigger pull as "extremely light" and among the lightest he had ever seen, characterizing it as a "hair trigger." Sergeant John Cavanna, a firearms expert and the firearms training division supervisor of the Hartford Police Department, also testified about the trigger pull of the defendant's revolver, explaining that "something is different" with the revolver, and that its uniquely light trigger pull might be due to a manufacturer's defect or a modification of the revolver.

A third uncontested fact is the nature of the victim's fatal gunshot wound, which establishes that the muzzle of the revolver was pressed against the victim's head when the shot was discharged. James R. Gill, the state's chief medical examiner who performed an autopsy on the victim's body, testified that the entrance wound from the bullet, which was located behind the victim's left ear, was a blowback laceration. This type of laceration occurs only when the muzzle of a firearm is pressed against the body and the weapon is fired. As Gill explained, "where the muzzle is pressed against the skin, all of the gunshot wound residue goes into the wound, all of the gas goes into the wound, and that's when you're going to see that blowback laceration." Gill further explained that, although the muzzle need

not be completely flush with the skin to create a blowback laceration, but could possibly be at a "slight angle," he also opined that it would be "very unlikely" that even a small portion of the muzzle was not directly against the victim's head when the revolver was discharged.

As previously indicated, the state's theory of the case, as expressed by the prosecutor in closing argument, was that "this was no accident. This was a result of the defendant's extremely reckless and unjustifiable conduct on October 17, 2020," at which time he exhibited "an extreme indifference to the life of [the victim] and created a grave risk of her death when he pressed a loaded . . . revolver to the side of her head while aware that, in doing so, a substantial and unjustifiable risk existed of unintentional discharge." The defendant has not argued that intentionally placing a fully loaded revolver against another person's head under the circumstances presented here would not suffice to support a conviction of manslaughter in the first degree with a firearm if that conduct were proven beyond a reasonable doubt. Rather, the defendant claims that the state's evidence fell short of establishing that he engaged in such conduct. For the following reasons, we agree with the state that the evidence was sufficient to support its contention regarding the conduct of the defendant that resulted in the victim's death.

Because of the blowback laceration on the victim's head caused by the fatal shot, it is undisputed that the muzzle of the revolver was against her head and behind her left ear when the gun discharged. To decide the case, however, the jury was required to ascertain, on the basis of the evidence, what caused the revolver to be positioned in that manner. Although the state could not present direct evidence of what occurred leading up to the fatal shot, under the circumstances of the present case, Gill's unchallenged testimony that the

shot was discharged while the revolver was positioned directly against the side of the victim's head is evidence that the revolver was placed there intentionally. As the state points out, the defendant asserts in his brief to this court that the evidence adduced at trial "tells a clear story," namely, that the victim's death "was the result of a calamitous moment in which [the defendant] tripped" and, as he was falling, "the unwieldy revolver," which he "held in front of him," "move[d] with him, uncontrolled," and then, "haphazardly came into contact with the victim's head" before the trigger was accidentally "grazed and the gun fired, killing [the victim]." Although the jury certainly was free to credit this alleged confluence of events, the jury also was entitled to believe, in light of Gill's testimony, that it was considerably more likely that the revolver discharged only after the muzzle was firmly and intentionally pressed flush against the victim's head rather than by random happenstance.

The state also introduced evidence that permitted the jury to conclude that the defendant and the victim had a troubled and tumultuous relationship. For example, a neighbor who resided in the apartment adjacent to the defendant and the victim testified that their relationship was "volatile," and that she could hear yelling and banging through the wall separating her apartment from that of the defendant and the victim. According to the neighbor, she often heard such yelling and arguing, describing its frequency as "multiple times a week . . . at least four [occasions per week]." In addition, on one morning approximately one week prior to October 17, 2020, the neighbor observed a mark and swelling above the victim's eye after having heard the victim and the defendant arguing the night before. The neighbor also testified that the victim would text her or tap on the wall when "things [with the defendant] got too heated," and the neighbor would then call the victim and "make

up an excuse" why she needed the victim to come to her apartment. As a victim of domestic violence herself, the neighbor was very upset about the abusive nature of the victim's relationship with the defendant, and she spoke about it with the victim and members of the victim's family, including the victim's brother and the victim's daughter.

Evidence further revealed that, on October 15, 2020, two days before the victim's death, the defendant and the victim engaged in a text message conversation in which the victim stated, "I'm out. Never needed you and still don't in my life . . . . You gonna suffer . . . ." At one point during that text message conversation, the defendant stated, "I would stay away because someone going to jail tonight." The victim responded, "I don't ever wanna come back to 108 or 109," a reference to the defendant's apartment (108) and the adjacent apartment in which the victim had resided before moving in with the defendant (109). The defendant told the police that he and the victim were arguing on the night of October 17, 2022, although he also stated that "it was nothing" but a "disagreement." Nevertheless, the neighbor's testimony and the text messages exchanged by the victim and the defendant shortly before the victim was killed reflect a volatile and deteriorating relationship marked by ongoing, serious and apparently even violent conflict and discord.

The defendant also acknowledged to the police that he consumed a twenty-five ounce beer and a shot of brandy that night, but he further stated that he had stopped drinking at approximately 6 p.m. Although the defendant was not certain exactly how much the victim had to drink that night, he did know that she continued to drink throughout the evening, and a toxicology report revealed that she had an extremely high blood alcohol content of 0.236. In addition, the toxicology report revealed that the victim had cocaine in her system.

According to the defendant, the victim was a "recreational" cocaine user, which, the defendant further stated, explained the various drug paraphernalia found in their bedroom. The defendant also told the police that it had been "irresponsible" of him to enter the bathroom with the fully loaded revolver, without first disabling it by removing the percussion caps, while the victim was sitting on the toilet, and that doing so was a "dumb decision."

With respect to the revolver, the defendant told the police that he had shot the revolver once before, several months before the victim was killed, and fired one shot, just to make sure the gun was operable. He further stated that the "antique pistol" was "a very complicated thing," that it was "not really the safest thing," and that it "should've never been loaded. The caps should've never been on it." The defendant stated, as well, that he would not allow the victim to handle the revolver because "it's an older weapon that's not as safe as the modern weapons." In response to police questioning, the defendant stated that putting the percussion caps on the revolver made him a "nervous wreck," and that he was uncomfortable handling the revolver. He explained, in addition, that he kept the revolver loaded only because of the crime and violence in his neighborhood.[11]

The state's evidence also established, as explained previously, that a shot cannot be discharged from the revolver when the hammer is in the half-cocked position, which is the position used to clean, maintain, and

[11] The defendant told the police that it seemed that "people were getting shot every other day" in his neighborhood, and that, a few months prior to October 17, 2020, during the summer, he discovered "a big blood stain in [his apartment] parking spot" where someone had been shot. He further explained that, after discovering that blood stain so near his apartment, he began keeping the revolver, fully loaded, in his bedroom and occasionally took the gun out to wipe it free of dust and oil.

load the gun. A shot can be discharged from the revolver only when the hammer is fully cocked. In his statements to the police, however, the defendant claimed that he was not aware that the revolver had a half-cocked position even though he had loaded the gun in that position himself because, according to the undisputed testimony, that is the only position in which it can be loaded. The defendant also told the police that he had not fully cocked the revolver when the victim was shot even though the revolver could not have discharged unless it was in a fully cocked position. Finally, the defendant stated that the revolver was not pointed at anything when it went off, an assertion that is flatly contradicted by Gill's testimony that the muzzle of the revolver was flush against the victim's head when the shot was fired.

Regarding the defendant's statement to the police that he went into the bathroom to retrieve some napkins to wipe down the revolver, the evidence established that there also were napkins on the adjacent bed and on the bureau next to the bathroom doorway, just feet away from the defendant. As the prosecutor argued to the jury, it is difficult to understand why the defendant elected to go into the small, cramped bathroom while the victim was on the toilet to get napkins when there also were napkins more or less right in front of him in the bedroom.

According to the defendant, because of the nature of the Pietta replica revolver and his relative unfamiliarity with it, he had to consult the revolver's instructional manual to get directions on how to handle and use it. The manual, which was admitted into evidence as a full exhibit, contains warnings about the use of the revolver. For example, in the section of the manual entitled "Loading," the manual states, "Never carry the gun with the hammer resting on a percussion cap! A light accidental blow to the hammer can readily cause the gun to discharge." Under the heading, "Warning," the user is

cautioned to load only five of the revolver's six chambers to avoid an accidental discharge and to never carry the revolver with the hammer resting on a percussion cap. Under a similar heading, the manual underscores the importance of always handling and carrying the revolver with the hammer resting on the uncapped and unloaded chamber. The manual further warns the user to "[o]nly place a percussion cap on cylinder when you are ready to fire. Failure to do so can result in an accidental discharge causing injury, death or property damage." The jury reasonably could have found that the defendant was irresponsible insofar as he apparently knew of these warnings but essentially chose to disregard them.

We conclude that this evidence and the inferences that the jury reasonably could have drawn therefrom were sufficient to support the state's theory that the defendant intentionally placed the muzzle of the revolver to the victim's head. On the basis of Gill's testimony that the shot that killed the victim was discharged while the muzzle of the revolver was flush against the victim's head, the jury reasonably could have found that the likelihood of that occurring randomly or haphazardly, as the defendant claimed, was slight. The evidence also permitted the jury to find that there was substantial conflict between the defendant and the victim, that they argued frequently and loudly, and that the volatility of their relationship was exacerbated by drug and alcohol use. Furthermore, the jury reasonably could have questioned the soundness of the defendant's judgment because, by his own admission, he was entering the small, cramped bathroom while carrying his fully loaded and operable replica antique revolver without first disabling it by removing the percussion caps—even though he knew that his revolver was particularly dangerous and made him uncomfortable—while the victim was on the toilet. In addition, the jury could have

doubted the veracity of the defendant's statements concerning his handling of the revolver that evening, including his assertion that he did not know how the hammer became fully cocked and the shot fired. Moreover, because there were napkins readily within the defendant's reach, only feet away from him in the bedroom, the jury could have discredited the defendant's assertion that his reason for entering the bathroom was to retrieve a napkin.

The defendant claims that the jury reasonably could not have rejected his version of the events as set forth in his police interviews. Among other things, he argues: he would not have been distraught and attempting CPR on the victim if he was so angry or upset with her that he intentionally placed the revolver to her head; the evidence did not permit an inference that his relationship with the victim was so fraught and turbulent that he would have placed her in grave jeopardy the way the state postulated he did; because the evidence indicated that he was sober that night, the state's theory of an alcohol and drug fueled confrontation with the victim in the bathroom is unsupportable; and, because he had only discharged the revolver once, he was unaware that it had a hair trigger that could be pulled with only the slightest rearward pressure.

We do not find the defendant's arguments so compelling as to require the conclusion that the jury rationally could not have found as it did. With respect to his efforts to resuscitate the victim, it is entirely plausible that he never intended to harm the victim physically and, aghast by what had occurred, wanted to do everything possible to revive her. Whether the relationship between the victim and the defendant was sufficiently volatile and troubled to have prompted the defendant to place the loaded revolver against the victim's head—albeit without the intent to shoot her—was a determination for the jury, not this court, to make on the basis

of all of the evidence and the jury's assessment of the defendant's judgment. Although the defendant told the police that he had stopped drinking much earlier in the evening and the police indicated that the defendant was not noticeably impaired or intoxicated when they arrived at his apartment, his exact condition is unknown. Moreover, the victim was quite inebriated, and whatever encounter or disagreement the victim and the defendant had that evening might well have been exacerbated by what had occurred between the two of them earlier that day, when both were drinking, or by the heated text discussion they had two days earlier, or both. Although the defendant indicated that he did not know how easily the trigger of the revolver could be pulled and a shot fired, the state maintained, not unreasonably, that he likely was aware of the gun's hair trigger because he had shot the revolver only a few months earlier.

Finally, the defendant admitted to the police that it was irresponsible of him to carry his fully loaded revolver into the very small bathroom while the victim was seated on the toilet without first disabling the revolver completely by removing the percussion caps. Indeed, on appeal, the defendant has acknowledged that he was criminally negligent in causing the victim's death, that is, he "fail[ed] to perceive a substantial and unjustifiable risk" that his conduct would result in the victim's death, a risk that was of "such nature and degree that the failure to perceive it constitute[d] a gross deviation from the standard of care that a reasonable person would observe in the situation . . . ." See General Statutes §§ 53a-58 (a) and 53a-3 (14).[12] Of

[12] General Statutes § 53a-58 (a) provides in relevant part that "[a] person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person . . . ."

General Statutes § 53a-3 (14) provides that "[a] person acts with 'criminal negligence' with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists.

course, because manslaughter in the first degree with a firearm is a significantly greater offense than criminally negligent homicide and requires a significantly greater quantum of proof, the defendant's admission that he committed the lesser included offense of criminally negligent homicide; see footnote 8 of this opinion; is alone insufficient to support a finding that he committed the greater offense of manslaughter in the first degree with a firearm. In finding the defendant culpable of that greater offense, however, the jury may have been influenced by the defendant's concession that, even under his theory of the case, he exercised exceedingly poor judgment by engaging in dangerously irresponsible conduct under the circumstances presented.

We conclude, therefore, that the jury was not obligated to accept the defendant's version of the facts and to reject the factual scenario advanced by the state. "Nothing in our criminal jurisprudence mandates that a jury accept a defendant's version of events or the reasonable inferences that flow therefrom." (Internal quotation marks omitted.) *State* v. *Ortiz*, 252 Conn. 533, 572, 747 A.2d 487 (2000). Rather, "[t]he [jury] is free to juxtapose conflicting versions of events and to determine which is more credible." (Internal quotation marks omitted.) *State* v. *Brown*, 198 Conn. App. 630, 637, 233 A.3d 1258, cert. denied, 335 Conn. 942, 237 A.3d 730 (2020). Furthermore, "we are mindful that [w]e do not sit as a [seventh] juror who may cast a vote against the verdict based upon our feeling that some doubt of guilt is shown by the cold printed record. . . . The scope of our factual inquiry on appeal is limited. This court cannot substitute its own judgment for that of the jury if there is sufficient evidence to support the jury's verdict." (Internal quotation marks omitted.) *State* v.

The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation . . . ."

Leandry, 161 Conn. App. 379, 384, 127 A.3d 1115, cert. denied, 320 Conn. 912, 128 A.3d 955 (2015). Because the evidence, viewed in the light most favorable to sustaining the verdict, supports the jury's guilty finding, we reject the defendant's claim of evidentiary insufficiency.

II

The defendant also contends that the court improperly failed to instruct the jury on an essential element of the offense of manslaughter in the first degree with a firearm, namely, that the defendant acted with general intent, that is, volitionally, in allegedly placing the muzzle of the revolver firmly against the victim's head. Because the defendant did not raise this claim in the trial court, he seeks to prevail under the plain error doctrine.[13] We agree with the defendant's plain error

[13] The defendant's unpreserved claim of a constitutionally deficient jury instruction is deemed to have been implicitly waived, and therefore not subject to direct appeal under the bypass rule of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989) (holding that unpreserved claims of constitutional magnitude may be raised for first time on appeal if, inter alia, record is adequate for review), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015), because, as the defendant concedes, the trial court complied with the requirements of *State* v. *Kitchens*, 299 Conn. 447, 10 A.3d 942 (2011), in which our Supreme Court held that, "when the trial court provides [presumptively competent] counsel with a copy of the proposed jury instructions, allows a meaningful opportunity for their review, solicits comments from counsel regarding changes or modifications and counsel affirmatively accepts the instructions proposed or given, the defendant may be deemed to have knowledge of any potential flaws therein and to have waived implicitly the constitutional right to challenge the instructions on direct appeal." Id., 482–83. The defendant nevertheless maintains that, insofar as the *Kitchens* waiver rule is "based on the presumption that counsel was aware of, and rejected as a matter of trial strategy, every conceivable challenge to the jury instructions"; *State* v. *Bellamy*, 323 Conn. 400, 417, 147 A.3d 655 (2016); the rule should not apply to the present case because it would be "patently absurd" to presume that "defense counsel decided it would be a good idea to relieve the state of its burden of proof" on the important element of intent. Our Supreme Court, however, has not heretofore recognized such an exception to *Kitchens*. In contrast, in *State* v. *McClain*, 324 Conn. 802, 155 A.3d 209 (2017), our Supreme Court carved out an exception to *Kitchens* for purposes of plain error review, reasoning, in part, that "there simply is no reason why [presumptively] competent

claim and, accordingly, conclude that he is entitled to a new trial.

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

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

counsel would *intentionally* relinquish the right to review of an error dire enough to be contemplated by the plain error rule." (Emphasis in original.) Id., 815. Accordingly, although we conclude that the defendant's constitutional claim of instructional impropriety was waived pursuant to *Kitchens*, we consider the defendant's plain error claim.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. . . . [Thus, an appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice. . . . [Our] review . . . with respect to plain error is plenary." (Emphasis in original; internal quotation marks omitted.) *State* v. *Silva*, 339 Conn. 598, 605–606 n.6, 262 A.3d 113 (2021).

The following principles govern our consideration of the defendant's challenge to the trial court's jury instructions, which provides the basis for his claim of plain error. "When reviewing the challenged jury instruction . . . we must adhere to the well settled rule that a charge to the jury is to be considered in its entirety, read as a whole, and judged by its total effect rather than by its individual component parts. . . . [T]he test of a court's charge is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules of law. . . . As long as [the instructions] are correct in law, adapted to the issues and sufficient for the guidance of the jury . . . we will not view the instructions as improper. . . .

"It is . . . constitutionally axiomatic that the jury be instructed on the essential elements of a crime charged. . . . [Moreover, constitutional principles of due process protect] an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is

charged. . . . Consequently, the failure to instruct a jury on an element of a crime deprives a defendant of the right to have the jury told what crimes he is actually being tried for and what the essential elements of those crimes are. . . .

"A jury instruction is constitutionally adequate if it provides the jurors with a clear understanding of the elements of the crime charged, and affords them proper guidance for their determination of whether those elements were present. . . . An instruction that fails to satisfy these requirements would violate the defendant's right to due process of law as guaranteed by the fourteenth amendment to the United States constitution and article first, § 8, of the Connecticut constitution. . . . The test of a charge is whether it is correct in law, adapted to the issues and sufficient for the guidance of the jury." (Internal quotation marks omitted.) *State* v. *Hearl*, 182 Conn. App. 237, 259–60, 190 A.3d 42, cert. denied, 330 Conn. 903, 192 A.3d 425 (2018). Ultimately, the primary purpose of the jury charge is to assist the jurors, unfamiliar with the legal principles pertaining to the case, "in applying the law correctly to the facts which they might find to be established." (Internal quotation marks omitted.) Id., 260.

As we have explained, the mens rea element of the offense of manslaughter in the first degree with a firearm required proof that "the defendant had the general intent to engage in conduct that created a grave risk of death to another person under circumstances evincing extreme indifference to human life." (Internal quotation marks omitted.) *Leon* v. *Commissioner of Correction*, supra, 189 Conn. App. 539; see also General Statutes §§ 53a-55 (a) (3) and 53a-55a. Our Supreme Court has observed that the offense of manslaughter in the first degree with a firearm, "like any other crime of affirmative action . . . require[s] something in the way of a mental element-at least an intention to make the bodily

movement which constitutes the act which the crime requires. . . . Such an intent, to perform certain acts proscribed by a statute, we have referred to as the general intent ordinarily required for crimes of commission rather than omission." (Internal quotation marks omitted.) *State* v. *Gonzalez*, 300 Conn. 490, 502, 15 A.3d 1049 (2011); see also *State* v. *Pierson*, 201 Conn. 211, 216, 514 A.2d 724 (1986). As also noted previously, the requirement of general intent is satisfied by proof that the defendant's act or movement was deliberate, conscious or purposeful and not merely an accident or mistake. See *State* v. *Juan J.*, supra, 344 Conn. 21. In other words, "the state needed to prove . . . that the defendant intended to make the bodily movement [that] constitutes the act [that] the crime requires . . . ." (Internal quotation marks omitted.) Id., 22.

In the present case, therefore, the state was required to "prove . . . that the [defendant] acted volitionally to use . . . [the revolver] in the commission of the offense" by intentionally placing it against the victim's head. *State* v. *Gonzalez*, supra, 300 Conn. 503. Thus, "[t]hat the [defendant] intend[ed] to perform the physical acts that constitute the crime . . . in the manner proved by the [state's] evidence [was] implicitly a part of the state's burden of proof and, in that sense, an element of the crime." (Citation omitted; internal quotation marks omitted.) Id., 502 n.14; see also *State* v. *Pierson*, supra, 201 Conn. 216–17. Because the interview statements that the defendant gave to the police, if credited by the jury, support the defendant's contention that the revolver struck the victim's head accidentally, the defendant's right to a fair trial entitled him to a jury instruction that the state bore the burden of proving, contrary to his version of events, that he had intentionally placed the revolver against the victim's head.[14]

[14] We note that the defendant would not have been entitled to a jury instruction on general intent if his intent was not implicated by the defense theory of the case because "[a] trial court is not . . . required to instruct

Indeed, as the defendant correctly points out, his intent with respect to the positioning of the revolver—whether he intentionally placed it against the victim's head while she was sitting on the toilet or it happened to land there, tragically and by accident, when the defendant tripped and fell into the bathroom—"was not only in dispute but was the central dispute of the trial."

Defense counsel did not file a written request to charge, nor did he otherwise seek an instruction on general intent. Moreover, although the trial court's proposed jury instructions addressed all the other elements of the offense, those instructions contained no express reference to the general intent requirement. Indeed, the instructions made no mention of intent at all. Defense counsel expressed his approval of those instructions, however, and, thereafter, took no exception to the jury charge as given, which also contained no explicit reference to the intent requirement.

Nevertheless, although the jury was under no obligation to accept the defendant's assertion that the revolver accidentally struck the victim's head and discharged following his fall into the bathroom, the defendant correctly maintains that the jury reasonably could not have appreciated the significance of his version of events without an instruction advising the jury of the general intent requirement. In the absence of such an instruction, the jury could have found the defendant guilty on the basis of acts or movements by him that were not volitional or intentional but, rather, accidental or involuntary. As a constitutional matter, the omission of an

a jury about the principle that 'a criminal act must be volitional' or that the defendant must have the 'general intent to do a criminal act' unless there is evidence at trial that suggests that 'the defendant's conduct was involuntary. . . .' *State* v. *Pierson*, supra, [201 Conn.] 217–18." *State* v. *Gonzalez*, supra, 300 Conn. 502 n.14. In the present case, however, it is abundantly clear that such an instruction was required in view of his version of events and the evidence adduced at trial in support thereof.

instruction on an element of the offense requires a new trial unless the state can establish beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence. See, e.g., *State* v. *Newton*, 330 Conn. 344, 371–72, 194 A.3d 272 (2018). Here, the element of general intent was vigorously contested, and the state's evidence, although sufficient to prove the state's theory of the case, was entirely circumstantial and cannot fairly be characterized as overwhelming.

The state argues, however, that the defendant is not entitled to a new trial under the plain error doctrine despite the lack of an express instruction on general intent. According to the state, although the trial court did not explicitly instruct the jury on general intent, its charge on the element of recklessness was sufficient to inform the jury of that intent requirement. In support of its claim, the state relies on the following portion of the court's instruction: "The third essential element is that the defendant engaged . . . in such conduct recklessly.[15] Under our law, a person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense *when he . . . is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists*. The risk must be of such a nature or degree that disregarding it constituted a gross deviation from the standard of conduct that a reasonable person would have observed in the situation. You determine the standard of conduct of a reasonable person in the same situation as the defendant by determining what a reasonably prudent person would have done or

[15] Just prior to its instruction on recklessness, the court explained to the jury that the first essential element of the crime of manslaughter in the first degree with a firearm required the state to prove that "the defendant shot [the victim] with a firearm" and that the second such element required proof that "the defendant engaged in conduct which created a grave risk of death to" the victim.

not done in such a situation and under such circumstances. A gross deviation is a great or substantial deviation, not simply a slight or moderate deviation. There must be a great or substantial difference between, on the . . . one hand, *the defendant's conduct in consciously disregarding a substantial and unjustifiable risk* and, on the other hand, what a reasonable person would have done or not done under the circumstances.

"Here, *the risk which the state must prove beyond a reasonable doubt that the defendant was aware of but consciously disregarded when he engaged in his challenged conduct* is as follows: A risk that such conduct would cause the death of [the victim], which was not only substantial and unjustifiable, but grave or extremely serious. The state must further establish that disregarding that risk was a gross deviation from the standard of conduct that a reasonable person would have observed in the defendant's situation." (Emphasis added; footnote added.)

The state maintains that the foregoing instruction on recklessness "incorporated an instruction on general intent because one cannot be aware of and *disregard* a substantial and unjustifiable risk if they do not have the general intent to engage in such conduct in the first place. . . . This [instructional] language necessarily required the jury to find that the defendant had the general intent to engage in the conduct, the extreme risk of which he had to be aware of and affirmatively disregard." (Emphasis in original.)

Notwithstanding the trial court's instructions on recklessness, we disagree with the state that the court's jury charge adequately apprised the jury of the separate and distinct element of general intent. There has never been any dispute either that the victim's death was caused by the loaded revolver that the defendant carried with him into the bathroom or that the defendant was in

possession of the revolver when it accidentally discharged, killing the victim. The critical issue for the jury, rather, was whether the defendant intentionally pressed the muzzle of the revolver against the victim's head just before the shot was fired, or whether the revolver inadvertently struck the defendant's head and accidentally discharged when the defendant tripped over the doorjamb and fell into the victim. In such circumstances, the absence of an express reference in the court's instructions to the state's burden of establishing that the victim's death resulted from the defendant's volitional conduct left the jury without the guidance necessary to resolve the primary question it was required to answer. When, as here, there is evidence to support the defendant's contention that the conduct resulting in the victim's death was accidental, an instruction on general intent that fully explains the requirement of volitional or deliberate conduct as distinguished from conduct that is inadvertent or accidental is vital to a fair trial lest the jury find the defendant guilty on the basis of such unintentional conduct. See *State* v. *Martin*, 189 Conn. 1, 13, 454 A.2d 256 (defendant's claim that he accidently engaged in conduct that provided basis for charge of risk of injury to minor, which was general intent crime, "clearly presented the issue of whether his act, which may have caused the child to be injured, was an intended bodily movement likely to injure him," and trial court's failure "even to allude to [that] defense as one which the state had to disprove was a serious deficiency in the charge" that required new trial), cert. denied, 461 U.S. 933, 103 S. Ct. 2098, 77 L. Ed. 2d 306 (1983).

Indeed, under the facts and circumstances of the present case, the court's explanation to the jury that a person acts recklessly when he is "aware of and consciously disregards a substantial and unjustifiable risk" clearly was not an adequate substitute for an instruction

on general intent because, without such an instruction, the jury could have found the defendant guilty of manslaughter in the first degree with a firearm based on the defendant's own version of events. That is, the jury could have returned a guilty verdict upon finding that the defendant was aware of and consciously disregarded the danger posed to the victim from an *accidental discharge* of the revolver-a weapon so relatively unsafe and challenging to handle that it made the defendant nervous-occurring from a trip and fall or other mishap when the defendant, carrying the loaded revolver, entered the small, cramped bathroom while the victim was seated on the toilet.[16] Given the state's theory of the case, this eventuality would have been foreclosed by a jury instruction on general intent explaining that the defendant could not be found guilty if the revolver came into contact with the victim's head haphazardly or inadvertently, as the defendant claimed, but, rather, only if the defendant intentionally placed the gun to the victim's head. The court's charge on recklessness afforded the jury no such guidance and the defendant no such protection.

The real possibility of jury confusion because of the lack of an instruction on general intent was compounded by the prosecutor's statement, in his rebuttal closing argument, that the defendant could be found guilty whether he intentionally pressed the revolver against the victim's head "or [whether] he was handling it and tripped," as the defendant himself claimed.[17] See

[16] In his rebuttal closing argument, the prosecutor summarized and underscored why it was so dangerous for the defendant to enter the bathroom carrying the loaded revolver. See footnote 17 of this opinion.

[17] The entirety of the relevant portion of the prosecutor's rebuttal closing argument is as follows: "The state submits that the evidence supports no other verdict than manslaughter in the first degree with a firearm, no other conclusion [than] that he was extremely reckless that night. And that is true, frankly, regardless of which version you believe, whether he pressed the firearm up against her head forcefully or he was handling it and tripped. He was extremely reckless that night. He was evincing an extreme indifference to her life. He knew handling that gun loaded with firing caps on was

footnote 7 of this opinion. Although the state's theory of the case had always been that the defendant intentionally pressed the revolver against the victim's head, the prosecutor's assertion for the first time in his rebuttal argument that the *accidental* positioning of the revolver against the victim's head also supported a guilty finding blurred the important distinction between the volitional conduct required for a guilty finding and the unintentional conduct insufficient for such a verdict. The court's instructions offered the jury no assistance in understanding or addressing this distinction, and, therefore, those instructions were inadequate to guide the jury in determining whether the elements of the offense were proven by the credible evidence adduced at trial.

"It is well established that a defendant is entitled to have the jury correctly and adequately instructed on the pertinent principles of substantive law. . . . Moreover, [i]f justice is to be done . . . it is of paramount importance that the court's instructions be clear, accurate, complete and comprehensible, particularly with respect to the essential elements of the alleged crime." (Internal quotation marks omitted.) *State* v. *Blaine*, 334

very dangerous. He knew if the gun were dropped with those firing caps on, it could discharge. He knew it was a hair trigger and, yet, he's still fiddling with the firing caps, not looking where he's going, blind as a bat as he called himself, in forward motion towards the incredibly small space where [the victim] was seated when she was killed. And what happened as a result of the confluence of that extreme recklessness was the product of this defendant's disregard for [the victim's] life at that moment.

"Ladies and gentlemen, this was no accident. Accidents are unavoidable. They're born out of circumstances that you simply cannot foresee. But the death of [the victim], that was entirely foreseeable. It was entirely avoidable. It could have been avoided if the defendant exercised reasonable judgment that night, but that is not what happened. And, sadly, [the victim] is no longer with us.

"It was the defendant's extremely reckless behavior that caused her death, and for that he should be found guilty of manslaughter in the first degree with a firearm and nothing less.

"Thank you."

Conn. 298, 308, 221 A.3d 798 (2019). These fundamental requirements were not met in the present case because of the omission of a jury instruction on the element of general intent. As a consequence, the defendant was deprived of a fair trial and a reliable verdict. To avoid manifest injustice, a new trial is required.

The judgment is reversed and the case is remanded for a new trial.

In this opinion the other judges concurred.

THE GROTTO, INC. *v.* LIBERTY MUTUAL INSURANCE COMPANY
(AC 46589)

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

Syllabus

The plaintiff sought to recover damages for, inter alia, alleged negligent misrepresentation by the defendant insurance company related to a workers' compensation insurance policy. The defendant issued the plaintiff a policy in September, 2015. In October, 2015, the defendant issued a cancellation notice of the policy with an effective cancellation date of November 3, 2015. After the November 3 date had passed, the defendant sent multiple letters to the plaintiff, some of which indicated that the policy may be cancelled and others of which indicated that the policy had been cancelled. An employee of the plaintiff, L, suffered a compensable injury in May, 2016, and filed a workers' compensation claim, and the defendant denied coverage on the basis that the policy had been cancelled on November 3, 2015. In 2019, following a formal hearing, a workers' compensation commissioner concluded that the policy was still in effect on the date of L's injury. The defendant appealed to the Compensation Review Board, which reversed the commissioner's decision. The plaintiff appealed the board's decision to this court, which affirmed the decision. Thereafter, the plaintiff brought the present case relating to the defendant's conduct after the cancellation of the policy. The trial court granted the defendant's motion for summary judgment, concluding that the plaintiff's action was barred by the doctrine of res judicata. On the plaintiff's appeal to this court, *held* that the trial court improperly rendered summary judgment for the defendant: the doctrine of res judicata did not bar the plaintiff's claims, which related to the defendant's conduct following the cancellation of the policy and, thus,

did not fall within the scope of the Workers' Compensation Act (§ 31-275 et seq.) and could not have been litigated before the commissioner, whose limited jurisdiction did not extend to those claims; accordingly, this court reversed the judgment of the trial court and remanded the case for further proceedings.

Argued May 22—officially released August 13, 2024

Procedural History

Action to recover damages for, inter alia, the defendant's alleged negligent misrepresentation, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *D'Andrea*, *J.*, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *judgment directed*; *further proceedings*.

James P. Brennan, for the appellant (plaintiff).

Philip T. Newbury, Jr., for the appellee (defendant).

Opinion

DiPENTIMA, J. The plaintiff employer, The Grotto, Inc. (Grotto), appeals from the summary judgment rendered by the trial court in favor of the defendant insurer, Liberty Mutual Insurance Company (Liberty Mutual). On appeal, Grotto claims that the court improperly concluded that the doctrine of res judicata barred the present action. We agree and, accordingly, reverse the judgment of the trial court.

We rely on the following undisputed facts in our analysis and resolution of the claims on appeal. In September, 2015, Grotto and Liberty Mutual entered into a contract for workers' compensation insurance and Liberty Mutual issued a workers' compensation insurance policy (policy) to Grotto that was scheduled to expire on August 20, 2016. On October 13, 2015, Liberty Mutual issued a cancellation notice with an effective

date of November 3, 2015, as required by General Statutes § 31-348,[1] for Grotto's failure to provide certain self-audit materials. Liberty Mutual filed the cancellation notice electronically with the National Council on Compensation Insurance (NCCI). After the November 3, 2015 cancellation date had passed, Liberty Mutual sent letters to Grotto, some of which indicated that the policy "may" be cancelled if audit materials were not promptly received and others that indicated that the policy had been cancelled effective November 3, 2015.

On March 1, 2016, Laurel B. Bellerive, an employee of Grotto, suffered a traumatic injury to her right hand, which injury arose out of and in the course of her employment with Grotto. Bellerive filed a workers' compensation claim against Grotto, and Liberty Mutual denied coverage on the basis that the policy had been cancelled on November 3, 2015.

On May 24, 2019, following a formal hearing, the Workers' Compensation Commissioner for the Fifth District (commissioner)[2] found that the cancellation

[1] General Statutes § 31-348 provides in relevant part: "Every insurance company writing compensation insurance or its duly appointed agent shall report in writing or by other means to the chairperson of the Workers' Compensation Commission, in accordance with rules prescribed by the chairperson, the name of the person or corporation insured, including the state, the day on which the policy becomes effective and the date of its expiration, which report shall be made within fifteen days from the date of the policy. The cancellation of any policy so written and reported shall not become effective until fifteen days after notice of such cancellation has been filed with the chairman. . . ."

[2] General Statutes § 31-275d (a) (1), effective as of October 1, 2021, provides in relevant part that, "[w]henever the words 'workers' compensation commissioner,' 'compensation commissioner,' or 'commissioner' are used to denote a workers' compensation commissioner in [several enumerated] sections of the general statutes, [including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq.] the words 'administrative law judge' shall be substituted in lieu thereof . . . ."

As all events underlying this appeal occurred prior to October 1, 2021, we will refer to the workers' compensation commissioner who found that the policy was in effect at the time of Bellerive's injury as the commissioner.

notice was ineffective and that the policy was in effect at the time of Bellerive's injury. Liberty Mutual appealed to the Compensation Review Board (board) and, on June 10, 2020, the board reversed the commissioner's decision. The board determined that, although there was sufficient evidence to support the commissioner's conclusion that Grotto reasonably believed the policy was still in effect as late as March, 2016, the commissioner had erred in determining that the policy was still in effect on March 1, 2016. The board noted that the commissioner wrongly concluded that (1) the cancellation was ineffective because it was not served by certified mail and, therefore, it did not comply with the relevant statutory requirements and (2) the commissioner was free to look beyond the NCCI filings to evidence that showed that the policy remained in force because Liberty Mutual had sent inconsistent communications to Grotto, which caused it to believe the policy was still in place. In addressing these erroneous conclusions, the board first determined that reporting insurance cancellation to the electronic reporting system of the NCCI was sufficient to satisfy the requirements of General Statutes (Rev. to 2015) § 31-321.[3] The board further noted that "§ 31-348 provides that the insurer must give written notice to the commission (in this case through NCCI), and that cancellation will be effective fifteen days after it is filed with the chair[person] of the commission" and further stated that, "beyond filing such a notice, there are no other requirements to effectuate cancellation" and that the employer's subjective

[3] General Statutes (Rev. to 2015) § 31-321 provides in relevant part: "Unless otherwise specifically provided, or unless the circumstances of the case or the rules of the commission direct otherwise, any notice required under this chapter to be served upon an employer, employee or commissioner shall be by written or printed notice, service personally or by registered or certified mail addressed to the person upon whom it is to be served at the person's last-known residence or place of business. . . ."

All references herein to § 31-321 are to the 2015 revision of the statute.

belief regarding cancellation is immaterial. The board stated that the only proper time period for the commissioner to consider the communications between Liberty Mutual and Grotto following the notice of cancellation was within fifteen days of the notice. Because Liberty Mutual did not rescind the cancellation nor were there any communications between Liberty Mutual and Grotto during that time frame, the policy was cancelled effective November 3, 2015.

Grotto appealed the board's decision to the Appellate Court. *Bellerive* v. *Grotto, Inc.*, 206 Conn. App. 702, 260 A.3d 1228, cert. denied, 339 Conn. 908, 260 A.3d 483 (2021). In affirming the decision of the board, this court reasoned that, "[b]ecause Liberty [Mutual] was not required to notify Grotto before cancelling its workers' compensation policy, the only pertinent issue with respect to the effectiveness of Liberty [Mutual's] cancellation is whether Liberty [Mutual's] electronic notice to the NCCI pursuant to § 31-348 was sufficient in light of the requirements of § 31-321. We conclude that Liberty [Mutual's] electronic notice to the NCCI was sufficient." Id., 708. This court rejected Grotto's argument that the commissioner had authority to decide the common-law issues including negligence and misrepresentation that Grotto claimed supported the commissioner's finding that the policy was in effect on March 1, 2016. Id., 709. In rejecting Grotto's argument, this court reasoned that, because the policy "was cancelled effectively prior to the date of loss, and because an employer's understanding as to when coverage terminated is largely irrelevant . . . common-law theories cannot support a finding that coverage was in place on the date of loss under the facts of this case. . . . [W]e are not persuaded that the allegedly inconsistent letters sent by Liberty [Mutual] in the months following the notice of cancellation could support a conclusion that the coverage under the policy actually did continue,

notwithstanding the November cancellation notice." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 709–11. This court noted that it was not necessary to determine whether the commissioner had jurisdiction to determine common-law issues. Id., 709 n.7.

In October, 2017, Grotto commenced the present action. In its four count complaint, Grotto alleged negligent misrepresentation, negligence, violation of the Connecticut Unfair Insurance Practices Act (CUIPA), General Statutes § 38a-815 et seq., and violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq. Liberty Mutual filed a motion for summary judgment, arguing that the doctrine of res judicata bars relitigation of whether the policy was effectively cancelled prior to the date of Bellerive's injury. Grotto filed an opposition arguing that the cancellation of the policy was not at issue in the complaint, but, rather, at issue was Liberty Mutual's conduct after the cancellation of the policy.

In rendering summary judgment in favor of the defendant, the court concluded that the present action was barred by the doctrine of res judicata. This appeal followed.

We begin with the relevant law and standard of review. "Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary

judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 535, 51 A.3d 367 (2012). "[S]ummary judgment [is an] appropriate method for resolving a claim of res judicata." *Jackson* v. *R. G. Whipple, Inc.*, 225 Conn. 705, 712, 627 A.2d 374 (1993).

"[T]he doctrine of res judicata, or claim preclusion, [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action [between the same parties or those in privity with them] on the same claim. A judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose. . . . The rule of claim preclusion prevents reassertion of the same claim regardless of what additional or different evidence or legal theories might be advanced in support of it. . . . In order for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." (Emphasis omitted; internal quotation marks omitted.) *Girolametti* v. *Michael Horton Associates, Inc.*, 332 Conn. 67, 75, 208 A.3d 1223 (2019).

Grotto argues on appeal that the third and fourth elements of res judicata were not satisfied, but we need only focus on the third element—that is, an adequate opportunity to litigate the matter fully. The narrow issue before the commissioner and the board was whether the policy had been cancelled pursuant to the relevant

statutes prior to the date of Bellerive's injury.[4] The board noted that, although the conflicting letters from Liberty Mutual to Grotto following the effective date of the cancellation may have led Grotto to believe that the coverage was still in place, those letters could not support a conclusion that the coverage continued because, pursuant to *Yelunin* v. *Royal Ride Transportation*, 121 Conn. App. 144, 994 A.2d 305 (2010), Grotto's subjective belief is immaterial.[5] The board further stated that "[t]he sole question before the commissioner was whether the policy's coverage remained in force after the November, 2015 cancellation" and that, in deciding that question, the board looked to whether there was evidence, within the statutory fifteen day period following the notice of cancellation, that Liberty Mutual intended to continue coverage. The board further noted that "[w]hether Liberty [Mutual] was justified in cancelling its policy, or whether it breached its contract with Grotto by doing so, are questions that must be determined in another forum. If the cancellation was legally completed and there had not been a reinstatement of this policy (be it documented with NCCI or not), our commission lacks the ability to adjudicate these disputes." Accordingly, the board made clear that the narrow issue before it was whether the policy was cancelled effectively pursuant to §§ 31-321 and 31-348. It

[4] In determining that res judicata applied to bar Grotto's claims, the court noted that "Grotto points to the case before the commissioner and the [board]. The proper comparison should be to this second action and the previous matter before the Appellate Court as action one, and the issues that were raised and decided in that forum." We disagree with this approach and note that the appeal to this court from the board's ruling was restricted to the issues and record before the board.

[5] In *Yelunin* v. *Royal Ride Transportation*, supra, 121 Conn. App. 144, this court stated that the "[c]ancellation of a workers' compensation insurance policy occurs in accordance with § 31-348" and held that "[t]he only precondition to effective cancellation contained in § 31-348 is that an insurer provide notification to the chair[person] of the workers' compensation commission. . . . Indeed, § 31-348 has been interpreted as protecting employees or anyone examining coverage records in the commissioner's office. In that regard, an employer's understanding as to when coverage terminated is

did not consider any causes of action related to Liberty Mutual's conduct following the effective date of the cancellation.

Although the board did not consider the claims raised by Grotto in its complaint in the present action, that does not end our analysis. "Res judicata bars the relitigation of claims actually made in the prior action as well as any claims that might have been made there. . . . Public policy supports the principle that a party should not be allowed to relitigate a matter which it already has had an opportunity to litigate." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Wheeler* v. *Beachcroft, LLC*, 320 Conn. 146, 157, 129 A.3d 677 (2016).

Grotto could not have litigated its claims of negligent misrepresentation, negligence, and violations of CUTPA and CUIPA because the commissioner's limited jurisdiction does not extend to those claims. "The primary statutory provision establishing the subject matter jurisdiction of the commissioner is General Statutes . . . § 31-278. [That statute] provides in relevant part that each commissioner shall have all powers necessary to enable him to perform the duties imposed upon him by the provisions of [the Workers' Compensation Act (act), General Statutes § 31-275 et seq.]. . . . [Each commissioner] shall have jurisdiction of all claims and questions arising . . . under [the act] . . . . Administrative agencies are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the validity of the statutes vesting them with power and they cannot confer jurisdiction upon themselves. . . . Long ago, we said that the jurisdiction of the [workers' compensation] commissioners is confined by the [a]ct and limited by its provisions. Unless the [a]ct gives the [c]ommissioner the right to take jurisdiction over a claim, it

largely irrelevant . . . ." (Emphasis omitted; internal quotation marks omitted.) Id., 149.

cannot be conferred upon [the commissioner] by the parties either by agreement, waiver or conduct. . . . The authority given by the legislature is carefully circumscribed and jurisdiction under the act is clearly defined and limited to what are clearly the legislative concerns in this remedial statute. . . . A commissioner may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . . Because of the statutory nature of our workers' compensation system, policy determinations as to what injuries are compensable and what jurisdictional limitations apply thereto are for the legislature, not the judiciary or the board, to make." (Citations omitted; footnote omitted; internal quotation marks omitted.) *Del Toro* v. *Stamford*, 270 Conn. 532, 540–42, 853 A.2d 95 (2004).

"[C]ompensability, in terms of whether a type of injury falls within the scope of the act, is a jurisdictional fact . . . . Consequently, if a claimed injury does not fall within one of the compensable personal injury categories under the act, then the commissioner does not have jurisdiction over the claim." Id., 547. "Because of the statutory nature of our workers' compensation system, policy determinations as to what injuries are compensable and what jurisdictional limitations apply thereto are for the legislature, not the judiciary or the board, to make." (Internal quotation marks omitted.) *Stickney* v. *Sunlight Construction, Inc.*, 248 Conn. 754, 761, 730 A.2d 630 (1999).

In the present action, Grotto claims: (1) Liberty Mutual knew or should have known that the letters sent to Grotto following the notice of cancellation were false and that those false representations induced Grotto to believe the policy was still in effect on the date of Bellerive's injury (negligent misrepresentation); (2) Liberty Mutual negligently sent conflicting notices following the notice of cancellation that resulted in Grotto

being liable for Bellerive's workers' compensation claim (negligence); (3) Liberty Mutual misrepresented the condition and/or terms of the policy thereby inducing Grotto to take no further action so that the policy would lapse (CUIPA); and (4) Liberty Mutual's aforementioned conduct violated CUTPA.

None of the claims raised by Grotto in its complaint falls within the scope of the act. "The act authorizes the commissioner to award workers' compensation benefits only for personal injuries. . . . Section 31-275 (16) defines the term personal injury as follows: (A) Personal injury or injury includes, in addition to accidental injury which may be definitely located as to the time when and the place where the accident occurred, an injury to an employee which is causally connected with [the employee's] employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease. . . . Accordingly, an injury that does not fall within the definition of personal injury, as defined by § 31-275 (16), is not compensable under the act." (Citation omitted; internal quotation marks omitted.) *Del Toro* v. *Stamford*, supra, 270 Conn. 545.

The injuries claimed in this action relate to Liberty Mutual's conduct following the cancellation of the policy. Those claims do not allege a personal injury compensable under the act and they differ from traditional claims adjudicated under the act because they involve questions of misrepresentations and negligence by an insurance provider as to the employer, the resolution of which requires the application of laws that are not part of the act. See *Stickney* v. *Sunlight Construction, Inc.*, supra, 248 Conn. 762 (act did not establish jurisdiction over contract claim concerning insurance coverage, or, "[p]ut more generally, resolving the central issue in the motion requires application of laws other

than the provisions of the act"). Accordingly, the commissioner had no jurisdiction to address Grotto's common-law claims.

The trial court stated that *Powell* v. *Infinity Ins. Co.*, 282 Conn. 594, 922 A.2d 1073 (2007), provided it with "clear guidance" as to the "proper outcome" of Liberty Mutual's motion for summary judgment. In *Powell*, our Supreme Court held that res judicata barred the insured/plaintiffs' claims of bad faith, breach of contract and violations of CUTPA/CUIPA because those claims grew out of the same transaction or nucleus of facts implicated in the prior contract action for uninsured motorist benefits. *Powell* v. *Infinity Ins. Co.*, supra, 596. The present case is strikingly dissimilar to *Powell*, however, in that *Powell* involved two actions brought in the Superior Court, whereas the present case concerns an action brought in the Superior Court and an action brought before the Workers' Compensation Commission. Our Supreme Court in *Powell* stated that "[t]he doctrines of preclusion . . . should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies. . . . Accordingly, on occasion, we have recognized exceptions to the general policy favoring application of the doctrines of res judicata and collateral estoppel. In establishing exceptions to the general application of the preclusion doctrines, we have identified several factors to consider, including . . . whether the opportunity to litigate the claim or issue differs as between the two forums . . . ." (Citations omitted; internal quotation marks omitted.) Id., 602–603. Here, Grotto was unable to litigate its claims of negligent misrepresentation, negligence and CUTPA/CUIPA violations before the commission and the board. As such, res judicata does not apply to bar those claims in the Superior Court. See id.; see also *Connecticut*

Natural Gas Corp. v. *Miller*, 239 Conn. 313, 323, 684 A.2d 1173 (1996) (doctrine of res judicata does not apply to preclude defendants' counterclaims in second action when prior statutory hearing severely limited opportunity to present evidence in support of counterclaims, rendering defendants unable to fully litigate them in that forum without violating statute). For the foregoing reasons, the court incorrectly concluded that res judicata bars the present action. Accordingly, it improperly rendered summary judgment in favor of Liberty Mutual.

The judgment is reversed and the case is remanded with direction to render judgment denying the defendant's motion for summary judgment and for further proceedings according to law.

In this opinion the other judges concurred.

S. C. *v.* J. C.*
(AC 46049)

Moll, Clark and Westbrook, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed to this court from the trial court's judgment granting certain postdissolution motions filed by the defendant. *Held*:

1. The record was inadequate to review the plaintiff's claim that the trial court erred in granting the defendant's motion to continue an emergency order of temporary custody regarding the parties' minor children, E and A; the trial court's order failed to include the factual or legal bases for its decision as required by the rule of practice (§ 64-1 (a)) and the plaintiff failed to file a notice pursuant to Practice Book § 64-1 (b) with the Office of the Appellate Clerk indicating that the trial court had failed to comply with § 64-1.

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* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

2. The plaintiff's claim challenging the dispositional portion of the order granting temporary custody of E and A to the defendant was moot because the defendant no longer had custody over the children; while the plaintiff's appeal was pending, E had reached the age of majority and the trial court had granted a motion filed by A's attorney seeking an order awarding the plaintiff sole legal custody and primary physical custody of A; accordingly, this court dismissed that portion of the appeal for lack of subject matter jurisdiction.

3. The trial court abused its discretion in granting the defendant's motion for contempt in connection with the plaintiff's failure to comply with a court order requiring the plaintiff to transfer physical custody of A to the defendant: there was insufficient evidence to support the trial court's finding that the plaintiff had wilfully violated the court order, as neither party presented any evidence that the plaintiff refused to transfer custody of A to the defendant, that she encouraged A not to go to the defendant, or that she wilfully prevented A from going to the defendant, and there was evidence that the plaintiff had attempted to facilitate the transfer of physical custody of A to the defendant and that A had resisted her efforts.

Argued January 17—officially released August 13, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Fairfield and tried to the court, *Stewart*, *J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Truglia*, *J.*, granted the defendant's application for an emergency ex parte order of custody; subsequently, the court, *Truglia*, *J.*, continued its emergency order granting the defendant temporary custody of the parties' children; thereafter, the court, *Truglia*, *J.*, granted the defendant's motion for contempt, and the plaintiff appealed to this court. *Appeal dismissed in part*; *reversed in part*; *judgment directed.*

Dante R. Gallucci, for the appellant (plaintiff).

Opinion

CLARK, J. In this custody dispute, the plaintiff mother, S. C., appeals from the judgment of the trial court granting certain postdissolution motions of the

defendant father, J. C.[1] On appeal, the plaintiff claims that the court erred in (1) continuing a previously issued emergency order of temporary custody that gave the defendant sole legal custody of the parties' two children and primary physical custody of the parties' youngest child, A, pursuant to General Statutes § 46b-56f because (a) the defendant did not prove by a preponderance of the evidence that there was an immediate and present risk of physical danger or psychological harm to the children sufficient to support his application and, therefore, the granting of his application was based on a clearly erroneous factual finding, and (b) the court's award of temporary custody to the defendant, who had been "found . . . to be a domestic abuser" was an abuse of discretion, not in the best interests of the children, and against federal and state public policy; and (2) granting the defendant's motion for contempt for failure to comply with a court order requiring the plaintiff to transfer physical custody of A to the defendant. We conclude that the record is inadequate to review the plaintiff's claim that the defendant failed to prove by a preponderance of the evidence that there was an immediate and present risk of physical danger or psychological harm to the children and, therefore, affirm the judgment as to that portion of the plaintiff's first claim. We dismiss the appeal as to the plaintiff's claim challenging the dispositional portion of the temporary custody order granting temporary custody to the defendant because we conclude that it is moot in light of events that have occurred since this appeal was filed. We agree, however, with the plaintiff on her claim challenging the court's order finding her in contempt and, accordingly, reverse the judgment of contempt.

[1] Because the defendant did not file an appellee's brief on or before October 27, 2023, this court ordered "that the appeal shall be considered on the basis of the [plaintiff's] brief and, if applicable, the appendix, the record, as defined by Practice Book § 60-4, and oral argument, if not waived by the [plaintiff] or the court. Pursuant to Practice Book § 70-4, oral argument by the [defendant] will not be permitted."

We begin by setting forth the relevant facts, as found by the trial court, and procedural history of this case. The parties married on July 19, 2002, and have two children, E and A. On March 9, 2022, the court, *Stewart, J.*, dissolved the parties' marriage on the ground that the marriage had broken down irretrievably. The parties were granted joint legal custody of their two minor children, with primary physical custody granted to the plaintiff.

The court granted the defendant in-person visitation with the minor children to be increased gradually over time. Due to a history of domestic violence and conflict throughout the marriage, the court also ordered that the children engage in individual therapy with a provider agreed upon by both parties and that the defendant and both children engage in family therapy with a specific provider. The court further provided that neither the individual therapy nor the family therapy would cease until the children's individual psychologists released them from treatment.

On June 14, 2022, the defendant filed an application for an emergency ex parte order of custody (application) pursuant to § 46b-56f.[2] In support of his application, the defendant filed an affidavit averring that there

[2] General Statutes § 46b-56f provides: "(a) Any person seeking custody of a minor child pursuant to section 46b-56 or pursuant to an action brought under section 46b-40 may make an application to the Superior Court for an emergency ex parte order of custody when such person believes an immediate and present risk of physical danger or psychological harm to the child exists.

"(b) The application shall be accompanied by an affidavit made under oath which includes a statement (1) of the conditions requiring an emergency ex parte order, (2) that an emergency ex parte order is in the best interests of the child, and (3) of the actions taken by the applicant or any other person to inform the respondent of the request or, if no such actions to inform the respondent were taken, the reasons why the court should consider such application on an ex parte basis absent such actions.

"(c) The court shall order a hearing on any application made pursuant to this section. If, prior to or after such hearing, the court finds that an immediate and present risk of physical danger or psychological harm to the

was an immediate and present risk of physical danger and psychological harm to the parties' two children due to the plaintiff's inability to "facilitate the court's orders regarding parenting and therapy" and to "control" the minor children. Specifically, the defendant averred that "[t]he minor children are declining emotionally and educationally because of the conflict and lack of access to me. The plaintiff admittedly is unable to control our minor children, in particular [A], and this poses a direct risk to the emotional and physical safety and well-being of the children. If the plaintiff's conduct continues, it is very likely that our children will continue to decline and I will not see my children ever again." The court, *Truglia*, *J.*, declined to award ex parte relief but ordered that an evidentiary hearing be held on the application.

On September 22, 2022, after a three day evidentiary hearing that took place on July 19, August 16 and September 22, 2022, the court granted the defendant's application. At that time, E was seventeen years old and A was fourteen years old. In its order granting the defendant's application, the court stated in relevant part:

child exists, the court may, in its discretion, issue an emergency order for the protection of the child and may inform the Department of Children and Families of relevant information in the affidavit for investigation purposes. The emergency order may provide temporary child custody or visitation rights and may enjoin the respondent from: (1) Removing the child from the state; (2) interfering with the applicant's custody of the child; (3) interfering with the child's educational program; or (4) taking any other specific action if the court determines that prohibiting such action is in the best interests of the child. If relief on the application is ordered ex parte, the court shall schedule a hearing not later than fourteen days after the date of such ex parte order. If a postponement of a hearing on the application is requested by either party and granted, no ex parte order shall be granted or continued except upon agreement of the parties or by order of the court for good cause shown.

"(d) The applicant shall cause notice of the hearing and a copy of the application, the applicant's affidavit, and the ex parte order, if issued, to be served on the respondent not less than five days before the hearing on the application."

"The court finds that neither of the parties' children have had any contact whatsoever with the defendant since this court entered judgment on March 9, 2022. The court finds that there is a danger of imminent psychological harm to the parties' children due to the complete lack of contact between the children and the defendant. The court further finds that the plaintiff is unable to implement the court's orders of March 9, 2022, regarding the children's psychotherapy and visitation, especially with respect to [A].

"The court therefore finds good cause to grant the application. The court grants the defendant's request that he have temporary sole legal and physical custody of [A]. Commencing Saturday, October 1, 2022, and thereafter until further order of the court, the defendant will have primary physical custody of [A] and will provide him with his primary residence.

"The plaintiff will have reasonable and flexible parenting time with [A], including telephone access, which will be at the defendant's reasonable discretion until further order of the court.

"The court also grants the defendant sole legal custody of [E], but does not believe that changing the order of physical custody of [E] at this time would be in her best interest.

"The court vacates all orders regarding therapy set forth in the March 9, 2022 judgment. Henceforth, until further order of the court, the defendant will determine the choice of psychotherapist for each child, and the course of therapy for each child." The court continued the matter to November 9, 2022, to "receive additional evidence and make such further and additional orders as may be in the children's best interests." The plaintiff did not appeal from the September 22, 2022 order granting the defendant's application.

On October 6, 2022, the defendant filed a motion for contempt claiming that the plaintiff failed to comply with the court's September 22, 2022 order requiring the transfer of physical custody of A to the defendant by October 1, 2022. On November 9, 2022, the court held an evidentiary hearing on both the defendant's June 14, 2022 emergency application for temporary custody, which it had previously granted on September 22, 2022, but continued until November 9, 2022, as well as the defendant's October 6, 2022 motion for contempt.

At the hearing on November 9, 2022, the court heard testimony from the plaintiff and the defendant, as well as from the principal and the counselor from the children's high school. The defendant testified that the parties had failed, after multiple attempts, to make the custody exchange of A by October 1, 2022, and that the plaintiff told him that she was trying to facilitate the custody exchange, but A did not want to go. The parties also testified about a failed attempt by the defendant to pick up A from school in order to facilitate the custody exchange, which resulted in a physical altercation between A and the defendant in the school parking lot.

The same day, the court issued an order that continued its September 22, 2022 order. The order stated: "After hearing the evidence presented, the court finds cause to continue the orders issued on September 22, 2022." The court also issued a separate order granting the defendant's motion for contempt, finding "that the defendant ha[d] carried his burden of proof by clear and convincing evidence that the plaintiff ha[d] wilfully violated a clear order of this court." Specifically, the court found "that the plaintiff ha[d] not made every effort to comply with the court's order of September 22, 2022, transferring custody of [A] to the defendant on or before October 1, 2022." The court warned "the plaintiff that she face[d] the risk of incarceration at the next hearing if she continue[d] to refuse to comply." The

court stated that "the plaintiff [would] be in violation of [the] court's order if [A was] not residing full-time with the defendant (including overnight) on or before November 30, 2022." The court continued the defendant's motion for contempt to November 30, 2022, to "monitor further the plaintiff's compliance with the court's orders." During the hearing on November 30, 2022, counsel for the defendant informed the court that A had begun residing with the defendant. This appeal followed. Additional facts will be set forth as necessary.

I

The plaintiff first claims that the court's November 9, 2022 order continuing the September 22, 2022 temporary custody order that granted the defendant sole legal custody of the parties' two children and primary physical custody of A should be reversed because (a) the defendant did not prove by a preponderance of the evidence that there was an immediate and present risk of physical danger or psychological harm to the children sufficient to support his application and, therefore, the granting of his application was based on a clearly erroneous finding of fact, and (b) the court's award of custody to the defendant, who had been "found . . . to be a domestic abuser," was an abuse of its discretion, not in the best interests of the children, and against federal and state public policy. We address each claim in turn.

A

We first review the plaintiff's claim that the court's November 9, 2022 order continuing the September 22, 2022 temporary custody order that granted the defendant sole legal custody of the parties' two children and sole physical custody of A should be reversed because it was based on a clearly erroneous finding that the

children were in an immediate and present risk of physical danger or psychological harm.[3] We conclude that the record is inadequate for us to review this claim.[4]

"It is the responsibility of the appellant to provide an adequate record for review. The appellant shall determine whether the entire record is complete, correct and otherwise perfected for presentation on appeal." Practice Book § 61-10 (a). "This court does not presume error on the part of the trial court; error must be demonstrated by an appellant on the basis of an adequate record. . . . The general purpose of [the relevant] rules of practice . . . [requiring the appellant to provide a sufficient record] is to ensure that there is a trial court record that is adequate for an informed appellate review of the various claims presented by the parties. . . . [A]n appellate tribunal cannot render a decision without first fully understanding the disposition being appealed. . . . Our role is not to guess at possibilities, but to review claims based on a complete

[3] We note that the parties' oldest child, E, reached the age of majority while this appeal was pending. See General Statutes § 1-1d (" 'age of majority' shall be deemed to be eighteen years"). Although, ordinarily, any claims related to a child who has reached the age of majority would be moot; see *Kennedy* v. *Kennedy*, 109 Conn. App. 591, 592 n.2, 952 A.2d 115 (2008) (because parties' son reached age of majority, "[a]ny claims related to the plaintiff's rights to custody and visitation with his son are moot"); this court has held that an order of temporary custody is not subject to dismissal pursuant to the mootness doctrine due to the collateral consequences of such orders. See *R. H.* v. *M. H.*, 219 Conn. App. 716, 728 n.7, 296 A.3d 243 (2023) ("we conclude that, although the November 18, 2021 orders superseded the October 30, 2019 order, the defendant's challenge to the ex parte order is not moot because . . . a § 46b-56f order is not subject to dismissal pursuant to the mootness doctrine" (citation omitted; internal quotation marks omitted)); *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 365, 190 A.3d 68 (2018) ("[a]s with an order pursuant to [General Statutes] § 46b-15, a § 46b-56f order is not subject to dismissal pursuant to the mootness doctrine").

[4] As noted, the plaintiff did not appeal from the September 22, 2022 order. Instead, she appealed only from the court's November 9, 2022 order continuing the September 22, 2022 temporary custody order.

factual record . . . . Without the necessary factual and legal conclusions . . . any decision made by us respecting [the claims raised on appeal] would be entirely speculative. . . . If an appellant fails to provide an adequate record, this court may decline to review the appellant's claim." (Internal quotation marks omitted.) *Pishal* v. *Pishal*, 212 Conn. App. 607, 615, 276 A.3d 434 (2022).

Pursuant to Practice Book § 64-1 (a),[5] the court was required to state, either orally or in writing, a decision that encompassed "its conclusion as to each claim of law raised by the parties and the factual basis therefor." In the present case, the court neither filed a memorandum of decision explaining its ruling nor prepared and signed a transcript of an oral ruling. With respect to its order continuing the temporary custody order, the court

[5] Practice Book § 64-1 provides: "(a) The trial court shall state its decision either orally or in writing, in all of the following: (1) in rendering judgments in trials to the court in civil and criminal matters, including rulings regarding motions for stay of executions, (2) in ruling on aggravating and mitigating factors in capital penalty hearings conducted to the court, (3) in ruling on motions to dismiss under Section 41-8, (4) in ruling on motions to suppress under Section 41-12, (5) in granting a motion to set aside a verdict under Section 16-35, and (6) in making any other rulings that constitute a final judgment for purposes of appeal under Section 61-1, including those that do not terminate the proceedings. The court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor. If oral, the decision shall be recorded by an official court reporter or court recording monitor, and, if there is an appeal, the trial court shall create a memorandum of decision for use in the appeal by ordering a transcript of the portion of the proceedings in which it stated its oral decision. The transcript of the decision shall be signed by the trial judge and filed with the clerk of the trial court. This section does not apply in small claims actions and to matters listed in Section 64-2.

"(b) If the trial judge fails to file a memorandum of decision or sign a transcript of the oral decision in any case covered by subsection (a), the appellant may file with the appellate clerk a notice that the decision has not been filed in compliance with subsection (a). The notice shall specify the trial judge involved and the date of the ruling for which no memorandum of decision was filed. The appellate clerk shall promptly notify the trial judge of the filing of the appeal and the notice. The trial court shall thereafter comply with subsection (a)."

merely stated: "After hearing the evidence presented, the court finds cause to continue the orders issued on September 22, 2022."

Where, as here, a court has failed to comply with Practice Book § 64-1, "the appellant, who has the duty to provide an adequate record for appellate review; see Practice Book § 61-10; must file a notice to that effect with the appellate clerk in accordance with Practice Book § 64-1 (b)." *Gordon* v. *Gordon*, 148 Conn. App. 59, 67, 84 A.3d 923 (2014). "In cases in which the requirements of Practice Book § 64-1 have not been followed, this court has declined to review the claims raised on appeal due to the lack of an adequate record." (Internal quotation marks omitted.) *Pishal* v. *Pishal*, supra, 212 Conn. App. 616.

In the present case, the plaintiff claims that the court erred in continuing the emergency custody order because the evidence was insufficient to conclude that there was an immediate and present risk of physical danger or psychological harm to the children for purposes of § 46b-56f. Because the court's order does not include the factual or legal bases for its decision, and the plaintiff did not file a notice pursuant to Practice Book § 64-1 (b) with the Office of the Appellate Clerk, we are left to speculate as to the court's reasons for continuing the order and, therefore, have no basis on which to conclude that the court erred. See *White* v. *Latimer Point Condominium Assn., Inc.*, 191 Conn. App. 767, 778–79, 216 A.3d 830 (2019) ("[w]here an appellant has failed to avail himself of the full panoply of articulation and review procedures, and absent some indication to the contrary, we ordinarily read a record to support, rather than to contradict, a trial court's judgment" (internal quotation marks omitted)); *Rose B.* v. *Dawson*, 175 Conn. App. 800, 805, 169 A.3d 346 (2017) ("[t]his court will neither speculate with regard to the rationale underlying the court's decision nor, in the

absence of a record that demonstrates that error exists, presume that the court acted erroneously"); *Ellen S.* v. *Katlyn F.*, 175 Conn. App. 559, 565, 167 A.3d 1182 (2017) ("It is well settled that [w]e do not presume error; the trial court's ruling is entitled to the reasonable presumption that it is correct unless the party challenging the ruling has satisfied its burden demonstrating the contrary. . . . Our role is not to guess at possibilities . . . but to review claims based on a complete factual record developed by a trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the defendant's] claims would be entirely speculative." (Citation omitted; internal quotation marks omitted.)).[6] Accordingly, the court's November 9, 2022 order continuing the emergency custody order is affirmed.

B

We next address the plaintiff's claim that the dispositional portion of the court's order vesting in the defendant, who had been "found . . . to be a domestic abuser," temporary legal custody of the minor children

[6] We note that, on March 13, 2023, the plaintiff filed with the trial court a motion for articulation of its November 9, 2022 decision. On March 17, 2023, the court denied that motion, stating that "[a] motion for articulation filed while an appeal is pending is properly filed with the Appellate Court, Practice Book § 66-5." On April 26, 2023, the plaintiff filed a motion for articulation with this court. Specifically, the plaintiff requested that the trial court articulate, inter alia, (1) "[u]pon what factual and legal basis . . . the trial court decide[d] to extend its order granting emergency [custody] . . . to the defendant"; (2) "[w]hat . . . the trial court determine[d] to be the 'emergency' conditions supporting [the temporary custody order]"; and (3) "[w]hat change of circumstances existed to reverse the orders of the trial court . . . regarding custody, dated March 9, 2022." On June 6, 2023, the trial court denied the plaintiff's motion for articulation, stating: "No articulation is necessary." The plaintiff did not file with this court a motion for review of the denial of its motion for articulation. Thus, the plaintiff's attempt to obtain an articulation did nothing to rectify her failure to file a notice pursuant to Practice Book § 64-1 (b) with the Office of the Appellate Clerk in this case, particularly because the motion for articulation was denied and the plaintiff did not move this court to review that denial.

and sole physical custody of A was an abuse of its discretion, not in the best interests of the children, and against federal and state public policy. We conclude that this claim is moot and therefore dismiss it for lack of subject matter jurisdiction.[7]

"It is a [well settled] general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot." (Internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 20, 312 A.3d 1040 (2024). Although an order of temporary custody ordinarily is not subject to dismissal pursuant to the mootness doctrine due to the collateral consequences of such order; see *R. H.* v. *M. H.*, 219 Conn. App. 716, 728 n.7, 296 A.3d 243 (2023); this principle

[7] On June 18, 2024, this court, sua sponte, ordered the parties to file supplemental memoranda on the issue of mootness. The order provided: "The plaintiff claims on appeal, inter alia, that the dispositional portion of the court's order vesting in the defendant temporary legal custody of the minor children and sole physical custody of [A] should be reversed on the ground that a court previously had found that the defendant had engaged in domestic abuse. The parties are hereby ordered, sua sponte, to file supplemental memoranda of no more than 2000 words on or before July 2, 2024, addressing whether this claim should be dismissed as moot because: (a) the defendant no longer has legal custody of [E] by virtue of the fact that she is now over the age of eighteen; *Kennedy* v. *Kennedy*, 109 Conn. App. 591, 592 n.2, 952 A.2d 115 (2008); and (b) no longer has legal or physical custody of [A] in light of the trial court's subsequent June 4, 2024 order in this case awarding sole legal and primary physical custody of [A] to the plaintiff. See *R. H.* v. *M. H.*, 219 Conn. App. 716, 735 n.10, 296 A.3d 243 (2023)." Neither party filed a supplemental memorandum in response to the court's order.

generally does not apply to the dispositional portion of such an order because any collateral consequences arise from the findings of cause giving rise to the dispositional order and not from the dispositional order itself. See id., 735 n.10.

The plaintiff first challenges the court's decision to award full legal custody of E to the defendant. As stated in footnote 3 of this opinion, E has reached the age of eighteen, and, therefore, the defendant no longer has legal custody of E. Although, as we also state in footnote 3 of this opinion, the plaintiff's claim challenging that portion of the court's order granting the application for temporary custody on the ground that there was an immediate and present risk of physical danger or psychological harm to E while she was in the plaintiff's custody may not be moot due to the collateral consequences of that order, the plaintiff's claim challenging just the dispositional portion of that order awarding to the defendant legal custody of E is moot because E reached the age of the majority while this appeal was pending and the defendant, therefore, no longer has legal custody over her. As a result, we cannot afford any practical relief to the plaintiff with respect to this particular claim. Accordingly, we dismiss as moot the plaintiff's claim challenging the dispositional portion of the temporary custody order awarding sole legal custody of E to the defendant. See *A. A.-M.* v. *M. Z.*, 225 Conn. App. 46, 54, 313 A.3d 1288 (2024); *Kennedy* v. *Kennedy*, 109 Conn. App. 591, 592 n.2, 952 A.2d 115 (2008).

The plaintiff also challenges the dispositional portion of the court's order awarding sole legal and primary physical custody of A to the defendant. On February 14, 2024, while this appeal was pending, A, through an attorney who had been appointed to appear on his behalf in the trial court, filed with that court a motion seeking an order awarding to the plaintiff sole legal

custody and primary physical custody over him. The record reflects that, on June 4, 2024, the trial court, upon agreement of the parties, granted A's motion. Because the defendant no longer has sole legal or primary physical custody of A, this court is incapable of granting any practical relief to the plaintiff with respect to her claim challenging the portion of the temporary custody order granting sole legal and primary physical custody of A to the defendant. As a result, we dismiss as moot the plaintiff's claim challenging the dispositional portion of the temporary custody order that awarded the defendant sole legal and primary physical custody of A. See *R. H.* v. *M. H.*, supra, 219 Conn. App. 735 n.10.

II

The plaintiff next claims that the court erred when it granted the defendant's October 6, 2022 motion for contempt on the ground that she wilfully violated the court's September 22, 2022 temporary custody order transferring sole physical custody of A to the defendant beginning on October 1, 2022. Specifically, the plaintiff argues that the court abused its discretion because there was insufficient evidence to support the court's finding that she wilfully violated a court order. We agree with the plaintiff.

We begin by setting forth our standard of review and the relevant legal principles governing the plaintiff's claim. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense." (Internal quotation marks omitted.) *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 68, 290 A.3d 825 (2023). "[C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and]

the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . .

"To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . The inability of a party to obey an order of the court, without fault on his [or her] part, is a good defense to the charge of contempt. . . .

"It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . [W]e then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Citations omitted; internal quotation marks omitted.) *Puff* v. *Puff*, 334 Conn. 341, 364–66, 222 A.3d 493 (2020).

In his motion for contempt, the defendant alleged that the plaintiff had wilfully violated the court's September 22, 2022 order transferring sole physical custody of A to the defendant beginning on October 1, 2022, because the custody exchange never occurred and the plaintiff was "unable to facilitate the court's order for parenting time." On November 9, 2022, following an evidentiary hearing, the court granted the defendant's motion for contempt. The court's decision states in relevant part that "[t]he court finds that the defendant has carried his burden of proof by clear and convincing evidence that the plaintiff has wilfully violated a clear order of this court.

"The court finds that the plaintiff has not made every effort to comply with the court's order of September 22, 2022, transferring custody of [A] to the defendant on or before October 1, 2022.

"The court understands that this is a very difficult situation. The court understands that [A] continues to refuse to obey the court's order that he reside henceforth with the defendant. The court believes, however, that the plaintiff could have taken stronger measures to enforce the court's most recent orders and has wilfully elected not to do so.

"The court finds the plaintiff in contempt. . . .

"The court advises the plaintiff that she faces the risk of incarceration at the next hearing if she continues to refuse to comply. Specifically, the plaintiff will be in violation of this court's order if [A] is not residing full-time with the defendant (including overnight) on or before November 30, 2022.

"In other words, if the plaintiff continues to allow [A] to reside at her residence after November 30, 2022, she will be in violation of this court's orders regarding custody."

At the November 9, 2022 hearing on the defendant's motion for contempt, the defendant testified that he had not had any parenting time with A since September 22, 2022. When asked why there had been no custody exchange, the defendant testified that A did not show up to the attempted custody exchanges because he "didn't want to come." The defendant further testified that the plaintiff had messaged him regarding the custody exchange that the parties had arranged to take place on October 1, 2022, at the Stratford Police Department, telling him that she was trying to facilitate the custody exchange but that A would not cooperate.

After multiple failed attempts to exchange A at the Stratford and Monroe Police Departments, the plaintiff suggested to the defendant that he pick up A at A's school. The school principal testified that, when the defendant went to A's school to pick him up, "[the

defendant] specifically asked [him] not to tell [A] which parent was there . . . [and to notify A] only that he was being dismissed early . . . .'' After A was informed that he was being dismissed early, he asked the principal which parent was there to pick him up. When the principal did not answer, A went back to class, and the principal informed the defendant of what had occurred. The defendant testified that he then proceeded to the school parking lot where E's car was parked to wait for school to finish so he could meet A and bring him home with him. When A approached the car, he got into E's car and told the defendant, who was waiting there, ''I don't know you.'' E then said to the defendant that ''[A] doesn't want to go with you, he doesn't have to go with you.'' The defendant responded that A ''has no choice.'' The defendant testified that A then got out of the passenger seat of the car and started pushing the defendant, at which point the defendant walked away. The principal testified that, after he found out about this incident, he made the decision to call the Department of Children and Families to report that he had ''[become] aware of a physical aggression between a student and his physical and legal guardian in [the school] parking lot.''[8]

The plaintiff testified that she was physically incapable of forcing the minor children to visit the defendant or engage in family therapy with him because both of them remained traumatized by the domestic violence the defendant inflicted on the family during the course of the marriage and because both children were afraid of the defendant. In reference to the initial attempted custody transfer at the local police station on October 1, 2022, the plaintiff explained A's overall reluctance to comply with the court order, stating: ''I told [A] it was time to go. He—you know, I had brought suitcases for

[8] It is unclear from the record what involvement, if any, the Department of Children and Families has had with the family since this report was made.

him earlier in the week, which he threw. And I had asked him, okay, well, let's just go, let's not worry about your belongings. You know, in his mind that was his room and things were staying and he wasn't taking anything. I begged and pleaded for him to just go with me to the police station, and he said, not going to happen. He was, I mean, threatening to run away." The plaintiff further testified that, after arguing back and forth with A for hours, she eventually emailed the defendant to notify him that the exchange was not going to work out that day and suggested that the defendant call A to help convince him to go. Subsequently, the plaintiff continued her efforts to comply with the court order by, inter alia, suggesting that the defendant pick A up from school as an alternative to the multiple unsuccessful planned exchanges at the local police stations.

At the conclusion of the evidentiary portion of the hearing and before ruling on the motion, the court asked both parties' attorneys for suggestions about how to accomplish the transfer of physical custody of A to the defendant. The court then suggested that the plaintiff should stop providing A with a place to live. The following colloquy between the court and the plaintiff's counsel occurred:

"[The Plaintiff's Counsel]: Well, the reason—the reason I filed the motion for clarification[9] is . . . because

[9] On October 6, 2022, the plaintiff filed a motion for clarification regarding the court orders issued on March 9 and September 22, 2022. Specifically, the plaintiff requested that the court clarify "which method of transfer [of custody of A] should be employed . . . ." The plaintiff explained that, pursuant to the court's March 9, 2022 memorandum of decision, " '[p]arenting exchanges shall occur at school or other activities. If the exchanges occur between the parents, they shall be at the Monroe Police Department.' " The plaintiff further claimed that, "[o]n Saturday, October 4, 2022, the defendant requested that the plaintiff transfer [A] to his custody at noon at the Stratford Police Department," and that, because she "was unable to secure [A's] agreement and cooperation to effectuate the transfer," she "suggested that the defendant accomplish the transfer by picking [A] up at school . . . ." The plaintiff stated that, "[a]s the [custody] transfer [of A, ordered by the court on September 22, 2022] was ordered for a Saturday, it was reasonable

the problems were starting to occur. And this is—it's clear [the plaintiff] cannot physically or mentally compel [A] to go see [the defendant]. She just can't accomplish it.

"The Court: She's providing him with a place to stay.

"[The Plaintiff's Counsel]: I understand.

"The Court: She can stop doing that.

"[The Plaintiff's Counsel]: Throw him out of the house?

"The Court: She can stop doing that.

"[The Plaintiff's Counsel]: Throw [A] out of the house? I mean, stop providing him with a place to live?

"The Court: Stop providing him with a place to live. He's supposed to be with the [defendant]. There's a clear court order. He's supposed to be with the [defendant]. Yes or no?

"[The Plaintiff's Counsel]: Yes, I agree, but I'm saying how do we physically accomplish that? How do we—she agrees. I agree. How do we get him there? I mean, do we get marshals to bring him there? That's why we thought the school thing—he might go along, but he didn't. We don't know what to do. I'm being honest about that.

"The Court: Okay. Very simple. [The] [c]ourt finds that the defendant has carried his burden of proof by clear and convincing evidence that the plaintiff has

. . . to suggest that the transfer take place at the Monroe police station, but based upon the reality of the . . . circumstances, the plaintiff believes that perhaps . . . the defendant can pick up [A] from school . . . without the plaintiff's physical participation . . . . The plaintiff files the motion out of concern for complying with the court's orders before the next scheduled court date of November 9, 2022." On the basis of our review of the record, it does not appear that the court ruled on the motion or that any further action was taken on the motion.

wilfully violated a clear order of this court. . . . [T]he plaintiff will be in violation of this court's order if [A] is not residing full-time with the defendant, including overnight, on or before November 30, 2022. In other words, if the plaintiff continues to allow [A] to reside at her residence after November 30, 2022, she will be in violation of this court's orders regarding custody." (Footnote added.)

On the basis of our review of the record, we agree with the plaintiff that the evidence in the record does not support the court's finding that the defendant proved by clear and convincing evidence that the plaintiff wilfully violated the court's September 22, 2022 temporary custody order transferring physical custody of A to the defendant. Neither party presented any evidence, much less clear and convincing evidence, that the plaintiff refused to transfer custody of A to the defendant, that she encouraged A not to go to the defendant, or that she wilfully prevented A from going to the defendant. On the contrary, there was evidence that the plaintiff attempted to facilitate the transfer of physical custody of A to the defendant and that A resisted those efforts. Indeed, both parties testified that A resisted all efforts to accomplish a transfer of physical custody to the defendant.

Our case law is clear that "[a] contempt judgment cannot stand when . . . the contemnor, through no fault of his [or her] own, was unable to obey the court's order." (Internal quotation marks omitted.) *Hirschfeld* v. *Machinist*, 181 Conn. App. 309, 318, 186 A.3d 771, cert. denied, 329 Conn. 913, 186 A.3d 1170 (2018). In the present case, the record does not support the court's finding that the defendant proved by clear and convincing evidence that the plaintiff wilfully violated the September 22, 2022 order transferring to the defendant physical custody of A. Accordingly, we conclude that it was an abuse of its discretion for the court to find

the plaintiff in contempt. See *Puff* v. *Puff*, supra, 334 Conn. 365 ("[t]o constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful").

The appeal is dismissed with respect to the plaintiff's claim challenging the dispositional portion of the temporary custody order awarding sole legal custody of the minor children and primary physical custody of A to the defendant; the judgment of contempt is reversed and the case is remanded with direction to deny the defendant's October 6, 2022 motion for contempt; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

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RULES OF APPELLATE PROCEDURE

NOTICE

Notice is hereby given that the following amendments to the Rules of Appellate Procedure were adopted to take effect January 1, 2025, except the amendments to Sections 63-4 (b) (1) and 63-10, which were adopted to take effect for all appeals filed on or after October 1, 2024. The amendments were approved by the Supreme Court on July 23, 2024, and, with respect to Sections 84-9 and 84-11, July 30, 2024, and by the Appellate Court on June 20, 2024. With respect to Sections 63-4 (b) (1) and 63-10, the courts have waived the provision of Section 86-1 requiring publication of rules sixty days prior to their effective date.

Attest:

Carl D. Cicchetti

Chief Clerk Appellate

INTRODUCTION

Contained herein are amendments to the Rules of Appellate Procedure. These amendments are indicated by brackets for deletions and underlined text for added language. The designation ‘‘NEW’’ is printed with the title of each new rule. This material should be used as a supplement to the Connecticut Practice Book until the 2025 edition of the Practice Book becomes available.

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AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

CHAPTER 60
GENERAL PROVISIONS RELATING TO APPELLATE RULES AND APPELLATE REVIEW

Sec. 60-7. Electronic Filing; Payment of Fees

(a) Counsel of record must file all appellate papers electronically unless the court grants a request for exemption. Papers may be filed, signed, or verified by electronic means that comply with procedures and standards established by the chief clerk of the appellate system under the direction of the administrative judge of the appellate system. A paper filed by electronic means in compliance with such procedures and standards constitutes a written paper for the purpose of applying these rules.

(b) At the time of filing, the appellant must (1) pay all required fees; or (2) upload a signed application for waiver of fees and the order of the trial court granting the fee waiver; or (3) certify that no fees are required. Any document that requires payment of a fee as a condition of filing may be returned or rejected for noncompliance with the Rules of Appellate Procedure.

(c) **[**All s**]**Self-represented parties **[**must**]** are required to have an account with E-Services unless exempt from electronic filing pursuant to Section 60-8. All nonexempt self-represented parties in **[**family matters, child protection matters, matters involving protected information and in all other**]** any matter**[**s**]** in which the self-represented party**[**'s E-Services user identification**]** has not already been **[**provided**]** granted electronic access to their case in the Superior Court must have their E-Services user identification verified within ten days of the filing of

the appeal. To verify a self-represented party's user identification, follow the instructions provided on the Appellate E-Filing homepage in E-Services **[**submit an appellate electronic access form (JD-AC-015). This form must be filed within ten days of the filing of the appeal**]**. Failure to comply with this rule may result in the dismissal of the appeal or the imposition of sanctions pursuant to Section 85-1.

(d) The requirements of this section do not apply to documents filed by incarcerated self-represented parties, the clerk of the trial court, the official court reporter, or the clerk of the court for any other state, federal or tribal court. This section also does not apply to any state board or commission filing documents with the appellate clerk pursuant to Section 68-1, 74-2A, 74-3A, 75-4, 76-3 or 76-5.

COMMENTARY: The purpose of these amendments is to simplify appellate e-filing for self-represented litigants.

CHAPTER 61
REMEDY BY APPEAL

Sec. 61-4. Appeal of Judgment that Disposes of at Least One Cause of Action while Not Disposing of Either (1) An Entire Complaint, Counterclaim or Cross Complaint, or (2) All the Causes of Action in a Pleading Brought by or against a Party

(a) **Judgment not final unless trial court makes written determination and chief justice or chief judge concurs**

This section applies to a trial court judgment that disposes of at least one cause of action where the judgment does not dispose of either of the following: (1) an entire complaint, counterclaim or cross complaint, or (2) all the causes of action in a complaint, counterclaim or cross complaint brought by or against a party. If the order sought

to be appealed does not meet these exact criteria, the trial court is without authority to make the determination necessary to the order's being immediately appealed.

This section does not apply to a judgment that disposes of an entire complaint, counterclaim or cross complaint (see Section 61-2); and it does not apply to a trial court judgment that partially disposes of a complaint, counterclaim or cross complaint, if the order disposes of all the causes of action in that pleading brought by or against one or more parties (see Section 61-3).

When the trial court renders a judgment to which this section applies, such judgment shall not ordinarily constitute an appealable final judgment. Such a judgment shall be considered an appealable final judgment only if the trial court makes a written determination that the issues resolved by the judgment are of such significance to the determination of the outcome of the case that the delay incident to the appeal would be justified, and the chief justice or chief judge of the court having appellate jurisdiction concurs.

If the procedure outlined in this section is followed, such judgment shall be an appealable final judgment, regardless of whether judgment was rendered on the granting of a motion to strike pursuant to Section 10-44, by dismissal pursuant to Section 10-30, by summary judgment pursuant to Section 17-44 or otherwise.

A party entitled to appeal under this section may appeal regardless of which party moved for the judgment to be made final.

(b) **Procedure for obtaining written determination and chief justice's or chief judge's concurrence; when to file appeal**

If the trial court renders a judgment described in this section without making a written determination, any party may file a motion in the trial court for such a determination within the statutory appeal period, or, if there is no applicable statutory appeal period, within twenty days after notice of the partial judgment has been sent to counsel. Papers opposing the motion may be filed within ten days after the filing of the motion.

Within twenty days after notice of such a determination in favor of appealability has been sent to counsel, any party intending to appeal shall file a motion, in accordance with the provisions of Sections 66-2 and 66-3, for permission to file an appeal with the clerk of the court having appellate jurisdiction. The motion shall state the reasons why an appeal should be permitted. Papers opposing the motion may be filed within ten days after the filing of the motion. The motion and any opposition papers shall be referred to the chief justice or chief judge to rule on the motion. If the chief justice or chief judge is unavailable or disqualified, the most senior justice or judge who is available and is not disqualified shall rule on the motion.

The appellate clerk shall send notice to the parties of the decision of the chief justice or chief judge on the motion for permission to file an appeal. For purposes of counting the time within which the appeal must be filed, the date of the issuance of notice of the decision on this motion shall be considered the date of issuance of notice of the rendition of the judgment or decision from which the appeal is filed.

COMMENTARY: This rule was amended for consistency purposes. See Sections 66-2 and 66-3.

Sec. 61-7. Joint and Consolidated Appeals

(a) (1) Two or more **[**plaintiffs or defendants**]** parties in the same case may appeal jointly or severally. Separate cases heard together

and involving at least one common party may as of right be appealed jointly, provided all the trial court docket numbers are shown on the appeal form (JD-SC-033).

(2) Prior to the filing of an appeal, the trial court, on motion of any party or on its own motion, may order that a joint appeal be filed in any situation not covered by the preceding paragraph.

(3) In the case of a joint appeal, only one entry fee is required. The appellant filing the appeal shall pay the entry fee. If using a fee waiver for a joint appeal, a granted waiver is required for each trial court docket number being appealed.

(4) When **[**additional**]** joint appellants are represented by **[**other**]** different counsel or are self-represented, a single joint appeal consent form (JD-SC-035) signed by all joint appellants or their counsel shall be filed on the same business day the appeal is filed.

(b) (1) The Supreme Court or Appellate Court, on motion of any party or on its own motion, may order **[**that**]** to consolidate appeals pending **[**in the Supreme Court be consolidated] before it.

(2) When an appeal pending in the Supreme Court involves the same cause of action, transaction or occurrence as an appeal pending in the Appellate Court, the Supreme Court may, on motion of any party or on its own motion, order that the appeals be consolidated in the Supreme Court. The court may order consolidation at any time before the assignment of the appeals for hearing.

[(3) The Appellate Court, on motion of any party or on its own motion, may order that appeals pending in the Appellate Court be consolidated.**]**

(**[**4**]** 3) There shall be no refund of fees if appeals are consolidated.

(c) Whenever appeals are jointly filed or are consolidated, all appellants shall file a single, consolidated brief and party appendix, if any,

and a single, consolidated reply brief, if any. **[**All appellees shall file a single, consolidated brief or, if applicable, a single, consolidated brief and party appendix.**]** If the **[**parties**]** appellants cannot agree upon the contents of the brief, reply brief or party appendix, or if the issues to be briefed are not common to the joint **[**parties**]** appellants, any **[**party**]** appellant may file a motion for permission to file a separate brief, reply brief or party appendix. Multiple appellees may file a joint or separate brief. Briefing shall otherwise be in accordance with the requirements of Section 67-2 et seq.

COMMENTARY: The purpose of these amendments is to clarify that, in a joint appeal, the appellees may jointly or separately file their brief and that, if an appellant is using a fee waiver for a joint appeal, a granted waiver is required for each trial court docket number being appealed.

Sec. 61-9. Decisions Subsequent to Filing of Appeal; Amended Appeals

[Should**]** If the trial court issues an additional decision after an appeal has been filed**[**, subsequent to the filing of a pending appeal, make a decision**]** that the appellant **[**desires**]** wants to **[**have reviewed**]** appeal, the appellant shall file an amended appeal within twenty days from the issuance of notice of the decision as provided for in Section 63-1.

The amended appeal shall be filed in the pending appeal using form JD-SC-033, along with a certification pursuant to Section 62-7. No additional fee is required to be paid upon the filing of an amended appeal.

Within ten days of filing the amended appeal, the appellant shall file with the appellate clerk **[**either a certificate stating that there are no changes to the Section 63-4 papers filed with the original appeal or any amendments to those papers**]** (1) a preliminary statement of issues (JD-SC-038) intended for presentation in the amended appeal, (2) a certificate stating that no transcript is necessary (JD-SC-040) for

the amended appeal or a transcript order confirmation from the official court reporter pursuant to Section 63-8, and, if applicable, (3) a preargument conference statement. Amendments to the designation of the proposed contents of the clerk appendix and docketing statement are permitted for an amended appeal but not required. Any other party may file responsive **[**Section 63-4**]** papers **[**within twenty days of the filing of the certificate or the amendments**]** in accordance with the provisions of Section 63-4 (a).

If the original appeal is dismissed for lack of jurisdiction, any amended appeal shall remain pending if it was filed from a judgment or order from which an original appeal properly could have been filed.

[After disposition of an appeal where no amended appeals related to that appeal are pending, a subsequent appeal shall be filed as a new appeal.**]**

If an amended appeal is filed after the filing of the appellant's brief but before the filing of the appellee's brief, the appellant may move for leave to file a supplemental brief. If an amended appeal is filed after the filing of the appellee's brief, either party may move for such leave. In any event, the court may order that an amended appeal be briefed or heard separately from the original appeal.

Once an appeal is ready pursuant to Section 69-2, absent permission of the court to file an amended appeal, any appeal from a subsequent decision in the trial court shall be filed as a new appeal in accordance with the provisions of Section 63-3. After disposition of an appeal where no amended appeals related to that appeal are pending, a subsequent appeal shall be filed as a new appeal.

If the appellant files a subsequent appeal from a trial court decision in a case where there is a pending appeal, the subsequent appeal

may be treated as an amended appeal, and, if it is treated as an amended appeal, there will be no refund of the fees paid.

COMMENTARY: These amendments provide a cutoff for when an amended appeal may be filed, clarify that a party can file a motion to amend a ready appeal, and clarify the documents that need to be filed upon the filing of an amended appeal.

Sec. 61-11. Stay of Execution in Noncriminal Cases

(a) **Automatic stay of execution**

Except where otherwise provided by statute or other law, proceedings to enforce or carry out the judgment or order shall be automatically stayed until the time to file an appeal has expired. If an appeal is filed before the appeal period has expired, such proceedings shall be stayed until the final determination of the cause. If the case goes to judgment on appeal, any stay thereafter shall be in accordance with Section 71-6 (motions for reconsideration), Section 84-3 (petitions for certification by the Connecticut Supreme Court), and Section 71-7 (petitions for certiorari by the United States Supreme Court).

(b) **Matters in which no automatic stay is available under this rule**

Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to Chapter 2 of these rules, in juvenile matters brought pursuant to Chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection.

Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal to the Appellate Court or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal to the Appellate Court is filed, any further stay shall be sought pursuant to Section 61-12.

For purposes of this rule, ''administrative appeal'' means an appeal filed from a final judgment of the Compensation Review Board or filed

from a final judgment of the trial court **[**or the Compensation Review Board**]** rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals filed pursuant to the Uniform Administrative Procedure Act, ''administrative appeal'' includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals.

(c) **Stays in family matters and cases involving orders of civil protection, and appeals from decisions of the Superior Court in family support magistrate matters**

Unless otherwise ordered, no automatic stay shall apply to orders of relief from physical abuse pursuant to General Statutes § 46b-15, to orders of civil protection pursuant to General Statutes § 46b-16a, to orders for exclusive possession of a residence pursuant to General Statutes § 46b-81 or § 46b-83 or to orders of periodic alimony, support, custody or visitation in family matters brought pursuant to Chapter 25, or to any decision of the Superior Court in an appeal of a final determination of a support order by a family support magistrate brought pursuant to Chapter 25a, or to any later modification of such orders. The automatic orders set forth in Section 25-5 (b) (1), (2), (3), (5) and (7) shall remain in effect during any appeal period and, if an appeal is filed, until the final determination of the cause unless terminated, modified or amended further by order of a judicial authority upon motion of either party.

Any party may file a motion to terminate or impose a stay in matters covered by this subsection, either before or after judgment is rendered, based upon the existence or expectation of an appeal. Such a motion shall be filed in accordance with the procedures in subsection (e) of this

rule or Section 61-12. The judge hearing such motion may terminate or impose a stay of any order, pending appeal, as appropriate, after considering (1) the needs and interests of the parties, their children and any other persons affected by such order; (2) the potential prejudice that may be caused to the parties, their children and any other persons affected, if a stay is entered, not entered or is terminated; (3) if the appeal is from a judgment of dissolution, the need to preserve, pending appeal, the mosaic of orders established in the judgment; (4) the need to preserve the rights of the party taking the appeal to obtain effective relief if the appeal is successful; (5) the effect, if any, of the automatic orders under Section 25-5 on any of the foregoing considerations; and (6) any other factors affecting the equities of the parties. The judge who entered the order in a family matter from which an appeal lies may terminate any stay in that matter upon motion of a party as provided in this subsection or sua sponte, after considering the factors set forth in this subsection or if the judge is of the opinion that an extension of time to appeal is sought or the appeal is filed only for delay. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(d) **Termination of stay**

In all cases not governed by subsection (c), termination of a stay may be sought in accordance with subsection (e) of this rule. If the judge who tried the case is of the opinion that (1) an extension to appeal is sought, or the appeal is filed, only for delay or (2) the due administration of justice so requires, the judge may at any time, upon motion or sua sponte, order that the stay be terminated. Whether acting on a motion of a party or sua sponte, the judge shall hold a hearing prior to terminating the stay.

(e) **Motions to terminate stay**

(1) A motion to terminate a stay of execution filed before judgment is entered shall be filed with the trial court, and the judge who tried or presided over the matter may rule upon the motion when judgment is entered. If such a motion is filed after judgment but before an appeal is filed, the motion shall be filed with the clerk of the trial court and may be ruled upon by the trial judge thereafter.

(2) After an appeal is filed, such a motion shall be filed with the appellate clerk and shall be forwarded by the appellate clerk to the trial judge for a decision. If the judge who tried or presided over the case is unavailable, the motion shall be forwarded to the clerk of the trial court in which the case was tried, who shall assign the motion for a hearing and decision to any judge of the Superior Court.

(3) Upon hearing and consideration of the motion, the trial court shall file with the clerk of the trial court its written or oral memorandum of decision that shall include the factual and legal basis therefor. If oral, the decision shall be transcribed by an official court reporter or court recording monitor and signed by the trial court. If an appeal has not been filed, the clerk shall enter the decision on the trial court docket and shall send notice of the decision to counsel of record. If an appeal has been filed, the clerk of the trial court shall enter the decision on the trial court docket and send notice of the decision to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

(f) **Motions to request stay**

Requests for a stay pending appeal where there is no automatic stay shall be governed by Section 61-12.

(For stays of execution in criminal cases, see Section 61-13.)

(g) **Strict foreclosure—motion rendering ineffective a judgment of strict foreclosure**

In any action for foreclosure in which the owner of the equity has filed, and the court has denied, at least two prior motions to open or other similar motion, no automatic stay shall arise upon the court's denial of any subsequent contested motion by that party, unless the party certifies under oath, in an affidavit accompanying the motion, that the motion was filed for good cause arising after the court's ruling on the party's most recent motion. Such affidavit shall recite the specific facts relied on in support of the moving party's claim of good cause. If, notwithstanding the submission of such an affidavit of good cause, the plaintiff contends that there is no good cause to stay the court's judgment of strict foreclosure pending resolution of the appeal, the plaintiff may seek termination of the automatic stay by filing a motion requesting such relief accompanied by an affidavit stating the basis for the plaintiff's claim. In the event such a motion to terminate stay is filed, it shall be set down for argument and the taking of evidence, if necessary, on the second short calendar next following the filing of the motion. There shall be no automatic appellate stay in the event that the court grants the motion to terminate the stay and, if necessary, sets new law dates. There shall be no automatic stay pending a motion for review of an order terminating a stay under this subsection.

(h) **Foreclosure by sale—motion rendering ineffective a judgment of foreclosure by sale**

In any action for foreclosure in which the owner of the equity has filed a motion to open the judgment or extend the scheduled sale date or other similar motion, or a motion for reargument or reconsideration of the denial of such a motion, which motion was denied fewer than

twenty days prior to the scheduled **[**auction**]** sale date, the **[**auction**]** sale shall proceed as scheduled notwithstanding the court's denial of the motion, but no motion for approval of the sale shall be **[**filed**]** considered until the expiration of the appeal period following the denial of the motion without an appeal having been filed. The trial court shall not vacate the automatic stay following its denial of the motion during such appeal period.

COMMENTARY: These amendments simplify and clarify the procedures regarding stays. The amendment to subsection (a) makes explicit in the rule what has been decided in cases. See, e.g., *Deutsche Bank National Trust Co.* v. *Fraboni*, 182 Conn. App. 811, 191 A.3d 247 (2018). The amendments to subsection (h) clarify that a foreclosure auction can still go forward when the trial court has denied a motion to open the judgment and to extend the sale date, or has denied a motion to reargue the same.

Sec. 61-12. Discretionary Stays

In noncriminal matters in which the automatic stay provisions of Section 61-11 are not applicable and in which there are no statutory stay provisions, any motion for a stay of the judgment or order of the Superior Court pending appeal shall be filed in the trial court. If the judge who tried the case is unavailable, the motion may be decided by any judge of the Superior Court. Such a motion may also be filed before judgment and may be ruled upon at the time judgment is rendered unless the court concludes that a further hearing or consideration of such motion is necessary. A temporary stay may be ordered sua sponte or on written or oral motion, ex parte or otherwise, pending the filing or consideration of a motion for stay pending appeal. The motion shall be considered on an expedited basis and the granting of a stay of an order for the payment of money may be conditioned**[**al**]** on the posting of suitable security.

In the absence of a motion filed under this section, the trial court may order, sua sponte, that proceedings to enforce or carry out the judgment or order be stayed until the time to file an appeal has expired or, if an appeal has been filed, until the final determination of the

cause. A party may file a motion to terminate such a stay pursuant to Section 61-11.

In determining whether to impose a stay in a family matter, the court shall consider the factors set forth in Section 61-11 (c).

COMMENTARY: This amendment simplifies and clarifies the procedures regarding stays.

Sec. 61-14. Review of Order concerning Stay; When Stay May Be Requested from Court Having Appellate Jurisdiction

(a) The sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Execution of an order of the court terminating a stay of execution shall be stayed for ten days from the issuance of notice of the order, and if a motion for review is filed within that period, the order shall be stayed pending decision of the motion, unless the court having appellate jurisdiction rules otherwise.

A motion for extension of time to file a motion for review of a ruling concerning a stay of execution must be filed in the trial court but shall not automatically stay the execution after the ten days has expired, except that the trial judge may order a stay pending a ruling on the motion for extension of time.

(b) In any case in which there is no automatic stay of execution and in which the trial court denies, or refuses to rule on, a motion for stay, an aggrieved party may file a motion requesting a stay of execution of the judgment from the court having appellate jurisdiction pending the filing of and ruling upon a motion for review. The motion must be filed with the appellate clerk. The motion must clearly state on the first page that it seeks a temporary stay of execution of the judgment pursuant to Section 61-14 (b).

(c) Any stay of proceedings that was in effect during the pendency of the motion for review shall continue, unless the court having appellate jurisdiction rules otherwise, until the time for filing a motion for reconsideration under Section 71-5 has expired. If such a timely motion for reconsideration is filed, any stay that was in effect shall continue until its disposition and, if it is granted, until the matter is finally determined.

[A motion for extension of time to file a motion for review of a ruling concerning a stay of execution must be filed in the trial court but shall not automatically stay the execution after the ten days has expired, except that the trial judge may order a stay pending a ruling on the motion for extension of time.**]**

(d) A ruling concerning a stay is a judgment in a trial to the court for purposes of Section 64-1, and the trial court making such a ruling shall state its decision, either orally or in writing, in accordance with the requirements of that section.

[In any case in which there is no automatic stay of execution and in which the trial court denies, or refuses to rule on, a motion for stay, an aggrieved party may file a motion requesting a stay of execution of the judgment from the court having appellate jurisdiction pending the filing of and ruling upon a motion for review. The motion must be filed with the appellate clerk.**]**

COMMENTARY: These amendments simplify and clarify the procedures regarding stays by reordering the rule and adding new language designed to assist the appellate clerk's office in screening for emergency stay matters that must be sent to the Appellate Court immediately.

CHAPTER 62
CHIEF JUDGE, APPELLATE CLERK AND DOCKET: GENERAL ADMINISTRATIVE MATTERS

Sec. 62-7. Matters of Form; Filings; Delivery and Certification to Counsel of Record

(a) **[**It is the responsibility of counsel of record to**]** Counsel of record must file papers in a timely manner and in **[**the proper form**]** compliance

with the appellate rules. The appellate clerk may return any [papers filed in a form not in compliance with these rules; in returning, the appellate clerk] noncomplying papers and shall indicate on the return how the papers have failed to comply with the appellate rules. If a party is exempt from the requirements of electronic filing pursuant to Section 60-8, [T]the clerk shall [note the date on which they were received] upload copies of the noncomplying papers into the file before returning them[, and shall retain an electronic copy thereof]. When a timely, noncomplying document is returned, a complying document will be deemed timely filed if it is refiled with the appellate clerk within seven days of the notice date indicated on the return. If a party is exempt from the requirements of electronic filing pursuant to Section 60-8, and a timely, noncomplying document is returned, a complying document will be deemed timely filed if it is refiled with the appellate clerk within fifteen days of the notice date indicated on the return. [Any papers correcting a timely, noncomplying filing shall be deemed to be timely filed if a complying document is refiled with the appellate clerk within fifteen days of the official notice date, which is the notice date indicated on the return form. The official notice date is not the date the return form is received.] Subsequent returns for the same filing will not initiate a new [fifteen day] refiling period. The refiling period shall not be extended. The time for responding to any [such] paper shall not start to run until a complying paper is filed.

(b) All papers [except the transcript and regulations filed pursuant to Section 81-6] shall contain[: (1)] a certification that a copy has been delivered to each other counsel of record, except as provided in Section 63-4 (a) (4), which certification shall include [names, addresses, email addresses, and telephone numbers;] the names and email addresses

for counsel of record that were sent the document electronically, or the names and physical addresses for counsel of record that were sent or delivered a paper copy of the document. **[**(2) certification that**]** Papers filed by a party exempt from the requirements of electronic filing pursuant to Section 60-8, must also include certifications that (1) the document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and (**[**3**]** 2) **[**certification that**]** the document complies with all applicable Rules of Appellate Procedure.

[Electronic papers shall contain a certification as set forth in subsection (b) (1), but filers can comply with the certification requirements set forth in subsections (b) (2) and (b) (3) during the electronic filing process.**]** Parties that electronically file documents comply with (b) (1) and (b) (2) during the electronic filing transaction. Any request to deviate from the requirement regarding personal identifying information shall be filed with the appellate clerk pursuant to Section 67-2 (i) or 67-2A (i). Briefs and appendices require additional certifications pursuant to Section 67-2 or 67-2A. Other certifications may be required by the rules under which specific documents are filed.

(c) Any counsel of record who files a document electronically with the court must deliver it electronically to all other counsel of record, except as provided in Section 63-4 (a) (4), unless the intended recipient has notified the appellate clerk and all other counsel of record in writing that the recipient declines to accept electronic delivery of documents or the intended recipient is exempt from the requirements of electronic filing pursuant to Section 60-8. Any counsel of record who has signed an electronically filed document shall be deemed to have consented

to electronic delivery under this section. Delivery by email is complete upon sending the electronic notice unless the party sending notice learns that the attempted delivery did not reach the email address of the intended recipient.

If the intended recipient has declined to accept electronic delivery or is exempt from the requirements of electronic filing, a document **[**may**]** shall be delivered to counsel of record by hand or by first class or express mail delivered by the United States Postal Service or an equivalent commercial service, postage prepaid, to the last known address of the intended recipient.

COMMENTARY: The purpose of these amendments is to shorten the period to refile a document that was returned for noncompliance to seven days for electronic filers; the fifteen day period remains in effect for parties exempt from electronic filing.

Sec. 62-8A. Attorneys of Other Jurisdictions Participating Pro Hac Vice on Appeal

(a) An attorney, who upon written application pursuant to Section 2-16 has been permitted by a judge of the Superior Court to participate in the presentation of a cause or appeal pending in this state, shall be allowed to participate in any appeal of said cause without filing a written application to the court having jurisdiction over the appeal and without paying the filing fee. All terms, conditions and obligations set forth in Section 2-16 shall remain in full effect. The chief clerk of the Superior Court for the judicial district in which the cause originated shall continue to serve as the agent upon whom process and notice of service may be served.

(b) Any attorney who is in good standing at the bar of another state and who **[**has**]** does not **[**appeared**]** already have a pro hac vice

appearance in the underlying matter, may apply to participate in the presentation of an appeal. Such application shall be filed by a member of the bar of this state using form JD-CL-141, Application for Permission for Attorney to Appear Pro Hac Vice in a Court Case. [in the Superior Court to participate in the cause now pending on appeal, may for good cause shown, upon written application, on form JD-CL-141, Application for Permission for Attorney to Appear Pro Hac Vice in a Court Case, presented by a member of the bar of this state, be permitted in the discretion of the court having jurisdiction over the appeal to participate in the presentation of the appeal, provided, however, that:]

[(1) s]Such application shall be accompanied by a[n] completed affidavit on form JD-CL-143, Affidavit of Attorney Seeking Permission to Appear Pro Hac Vice, and the filing fee shall be paid with the court for the application submitted pursuant to General Statutes § 52-259 (i).

[(A) providing the full legal name of the applicant with contact information, including firm name, business mailing address, telephone number and email address, as applicable;

(B) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred or otherwise disciplined, or has resigned from the practice of law and, if so, setting forth the circumstances concerning such action;

(C) certifying that the applicant has paid the client security fund fee due for the calendar year in which the application is made;

(D) designating the chief clerk of the Superior Court for the judicial district in which the cause originated as his or her agent upon whom process and notice of service may be served;

(E) certifying that the applicant agrees to register with the Statewide Grievance Committee in accordance with the provisions of Chapter 2 of the rules of practice while appearing in the appeal and for two years after the completion of the matter in which the attorney appeared and to notify the Statewide Grievance Committee of the expiration of the two year period;

(F) identifying the number of cases in which the attorney has appeared pro hac vice in any court of this state since the attorney first appeared pro hac vice in this state as well as any previously assigned juris number;

(G) stating the number of applications previously filed in the Superior Court pursuant to Section 2-16 and whether any of those applications were denied and the reason for that denial;

(H) identifying the number of attorneys in his or her firm who are appearing pro hac vice in the cause now on appeal or who have filed or intend to file an application to appear pro hac vice in this appeal; and

(2) the filing fee shall be paid with the court for the application submitted pursuant to General Statutes § 52-259 (i); and**]**

[(3) a**]** A member of the bar of this state must be present at all proceedings and arguments and must sign all motions, briefs and other papers filed with the court having jurisdiction over the appeal and assume full responsibility for them and for the conduct of the appeal and of the attorney to whom such privilege is accorded. **[**Good cause for according such privilege may include a showing that by reason of a long-standing attorney-client relationship, predating the cause of action or subject matter of the appeal, the attorney has acquired a specialized skill or knowledge with respect to issues on appeal or to the client's affairs that are important to the appeal, or

that the litigant is unable to secure the services of Connecticut counsel.**]**

(c) Upon the granting of an application to appear pro hac vice, the clerk of the court in which the application is granted shall immediately notify the Statewide Grievance Committee of such action.

[(c) No application to appear pro hac vice shall be permitted after the due date of the final reply brief as set forth in Section 67-3 or 67-5A without leave of the court.**]**

COMMENTARY: The purpose of these amendments is to conform the rule to the practice of using the pro hac vice form, making the use of the form mandatory.

CHAPTER 63
FILING THE APPEAL; WITHDRAWALS

Sec. 63-1. Time To Appeal

(a) **General provisions**

Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. The appeal period may be extended if permitted by Section 66-1 (a). If circumstances give rise to a new appeal period as provided in subsection (c) of this rule, such new period may be similarly extended as long as no extension of the original appeal period was obtained.

If a motion is filed within the appeal period that might give rise to a new appeal period as provided in subsection (c) of this rule, the appeal may be filed either in the original appeal period, which continues to run, or in the new appeal period.

As used in this rule, ''appeal period'' includes any extension of such period obtained pursuant to Section 66-1 (a).

(b) **When appeal period begins**

If notice of the judgment or decision is given in open court, the appeal period shall begin on that day. If notice is given only by mail

or by electronic delivery, the appeal period shall begin on the day that notice was sent to counsel of record by the clerk of the trial court. The failure to give notice of judgment to a nonappearing party shall not affect the running of the appeal period.

In criminal cases where the appeal is from a judgment of conviction, the appeal period shall begin when sentence is pronounced in open court.

In civil jury cases, the appeal period shall begin when the verdict is accepted.

(c) **New appeal period**

(1) **How new appeal period is created**

If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion, except as provided for additur or remittitur in the next paragraph.

If a motion for additur or remittitur is filed within the appeal period and granted, a new twenty day appeal period shall begin upon the earlier of (A) acceptance of the additur or remittitur or (B) expiration of the time set for the acceptance. If the motion is denied, the new appeal period shall begin on the day that notice of the ruling is given.

Motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; the setting aside of the verdict; judgment notwithstanding the verdict; reargument of the judgment or decision; collateral source reduction;

additur; remittitur; or any alteration of the terms of the judgment. Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court's decision; or reargument of a motion listed in the previous paragraph.

If, within the appeal period, any motion is filed, pursuant to Section 63-6 or 63-7, seeking waiver of fees, costs and security or appointment of counsel, a new twenty day appeal period or statutory period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion. If a party files, pursuant to Section 66-6, a motion for review of any such motion, the new appeal period shall begin on the day that notice of the ruling is given on the motion for review.

(2) **Who may appeal during new appeal period**

If a new appeal period arises due to the filing of a motion that, if granted, would render a judgment, decision or acceptance of the verdict ineffective, any party may file an appeal during the new appeal period regardless of who filed or prevailed upon such motion. If, however, a new appeal period arises due to the filing of a motion for waiver of fees, costs and security or a motion for appointment of counsel, only the party who filed such motion may file an appeal during the new appeal period.

(3) **What may be appealed during new appeal period**

The new appeal period may be used for appealing the original judgment or decision and/or for appealing any order that gave rise to the new appeal period. Such period may also be used for amending

an existing appeal pursuant to Section 61-9 to challenge the ruling that gave rise to the new appeal period. Rulings on motions for waiver of fees, costs and security or motions for appointment of counsel may not be appealed during the new appeal period but may be challenged by motion for review in accordance with Section 66-6.

[(d) **When motion to stay briefing obligations may be filed**

If, after an appeal has been filed but before the appeal period has expired, any motion is filed that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, any party may move to stay the briefing obligations of the parties in accordance with Section 67-12.**]**

(**[**e**]** d) **Simultaneous filing of motions**

Any party filing more than one motion that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, shall file such motions simultaneously insofar as simultaneous filing is possible.

COMMENTARY: The purpose of these amendments is to delete subsection (d) as unnecessary due to the use of a motion for extension of time if a brief is due and to redesignate subsection (e) as subsection (d).

Sec. 63-4. Additional Papers To Be Filed by Appellant and Appellee Subsequent to the Filing of the Appeal

(a) Within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

(1) A preliminary statement of the issues (JD-SC-038) intended for presentation on appeal. If any appellee wishes to: (A) present for review alternative grounds upon which the judgment may be affirmed; (B) present for review adverse rulings or decisions of the court which should be considered on appeal in the event the appellant is awarded a new trial; or (C) claim that a new trial rather than a directed judgment

should be ordered if the appellant is successful on the appeal, that appellee shall file a preliminary statement of issues within twenty days from the filing of the appellant's preliminary statement of the issues. Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed.

Whenever the failure to identify an issue in a preliminary statement of issues prejudices an opposing party, the court may refuse to consider such issue.

(2) A designation of the proposed contents of the clerk appendix (JD-SC-039) that is to be prepared by the appellate clerk under Section 68-2A listing the specific documents docketed in the case file that the appellant deems are necessary to include in the clerk appendix for purposes of presenting the issues on appeal, including their dates of filing in the proceedings below, and, if applicable, their number as listed on the docket sheet. The appellant shall limit the designation to the documents referenced in Section 68-3A for inclusion in the clerk appendix. If any other party disagrees with the inclusion of any documents designated by the appellant, or deems it necessary to include other documents docketed in the case file in the clerk appendix, that party may, within seven days from the filing of the appellant's designation of the proposed contents of the clerk appendix, file its own designation of the proposed contents of the clerk appendix.

(3) A certificate stating that no transcript is deemed necessary (JD-SC-040) or a transcript order confirmation from the official court reporter pursuant to Section 63-8. If the appellant is to rely on any transcript delivered prior to the filing of the appeal, the transcript order

confirmation shall indicate that an electronic version of a previously delivered transcript has been ordered.

If any other party deems any other parts of the transcript necessary that were not ordered by the appellant, that party shall, within twenty days of the filing of the appellant's transcript papers, file a transcript order confirmation for an order placed in compliance with Section 63-8. If the order is for any transcript delivered prior to the filing of the appeal, the transcript order confirmation shall indicate that an electronic version of a previously delivered transcript has been ordered.

Amendments to the transcript statement may be made only upon the granting of a motion.

(4) A docketing statement containing the following information to the extent known or reasonably ascertainable by the appellant: (A) the names and addresses of all parties to the appeal, and the names, addresses, and email addresses of trial and appellate counsel of record; (B) the case names and docket numbers of all pending cases, including appeals to the Supreme Court or Appellate Court, that arise from substantially the same controversy as the cause on appeal or involve issues closely related to those presented by the appeal; (C) the case name and docket number with respect to any active criminal protective order, civil protective order, or civil restraining order that governs any of the parties to the appeal as well as the case name and docket number with respect to any such order that has expired or previously was requested but not issued; and (D) in criminal and habeas cases, the defendant's or petitioner's conviction(s) and sentence(s) that are the subject of the direct criminal or habeas appeal

and whether the defendant or petitioner is incarcerated. If additional information is or becomes known to, or is reasonably ascertainable by the appellee, the appellee shall file a docketing statement supplementing the information required to be provided by the appellant. Amendments to the docketing statement may be filed at any time.

When an appellant or an appellee is aware that one or more appellees have no interest in participating in the appeal, the appellant and any other appellees may be relieved of the requirement of certifying copies of filings to those appellees by designating the nonparticipating appellee(s) in a section of the docketing statement named ''Nonparticipating Appellee(s).'' This designation shall indicate that if no docketing statement in disagreement is filed, subsequent filings will not be certified to those appellees.

If an appellee disagrees with the nonparticipating designation, that appellee shall file a docketing statement indicating such disagreement within twenty days of the filing of that designation. All documents filed on or before the expiration of the time for an appellee to file a docketing statement in disagreement as stated above shall be delivered pursuant to Section 62-7 (b) to all counsel of record. If no docketing statement in disagreement is filed, subsequent filings need not be certified to nonparticipating appellees.

(b) If applicable, within ten days of filing an appeal, the appellant shall also file with the appellate clerk the following:

([5] 1) A preargument conference statement (JD-SC-028A) [I]in [all noncriminal] matters[, except for matters exempt from] that are eligible for a preargument conference pursuant to Section 63-10, if all parties

participating in the appeal are interested in attending a preargument conference [statement (JD-SC-028)].

([6] 2) A constitutionality notice, in all noncriminal cases where the constitutionality of a state statute, rule, regulation, or executive action is called into question [has been challenged]. Said notice shall identify the statute, rule, regulation, or executive action; the name and address of the party [challenging] questioning it[,]; and whether the [statute's] constitutionality of the questioned item was upheld by the trial court. The appellate clerk shall deliver a copy of such notice to the attorney general. If a question becomes apparent to a party or to the court at any time after preliminary papers are filed, the party shall immediately file or amend the notice mandated by this section, and the court, even absent a party filing a notice, shall issue such notice. This section does not apply to habeas corpus matters based on criminal convictions, or to any case in which the attorney general is a party, has appeared on behalf of a party, or has filed an amicus brief in proceedings prior to the appeal.

([7] 3) In matters in which documents are under seal, conditionally or otherwise, or limited as to disclosure, a notice identifying the time, date, scope and duration of the sealing order with a copy of the order. (See Section 77-2.)

([8] 4) If an entity as defined in Section 60-4 is an appellant, counsel of record for that entity shall file a certificate of interested entities or individuals as defined in Section 60-4 in any civil appeal to assist the appellate jurists in making an informed decision regarding possible disqualification from the appeal. If an entity in a civil appeal is an

appellee, counsel of record for the entity shall file a certificate of interested entities or individuals within twenty days of the filing of the appellant's preliminary statement of the issues. Counsel of record has a continuing duty to amend the certificate of interested entities or individuals during the pendency of the appeal if any changes occur.

[(b) Except as otherwise provided, a party may as of right file amendments to the preliminary statement of issues at any time until that party's brief is filed. Amendments to the docketing statement may be filed at any time. Amendments to the transcript statement may be made only with leave of the court. Amendments to the preargument conference statement shall not be presented in writing but may be presented orally at the preargument conference, if one is held.**]**(c) Failure to comply with this rule shall be deemed as sufficient reason to schedule a case for sanctions under Section 85-3 or for dismissal under Section 85-1.

(d) The use of the forms indicated in subdivisions (1), (2) and (3) of subsection (a) is optional. The party may instead draft documents in compliance with the rules.

COMMENTARY: This rule was amended to reorder language in subsection (b) as to how and when different papers can be amended and to add that information to subsection (a) following the requirements for filing each paper. Amendments were also made to update the preargument conference procedure.

Sec. 63-10. Preargument Conferences

The chief justice or the chief judge or a designee may, in cases deemed appropriate, direct that conferences of the parties be scheduled in advance of oral argument. All **[**civil**]** noncriminal cases are eligible for preargument conferences except habeas corpus appeals, appeals involving juvenile matters, including child protection appeals

as defined in Section 79a-1, summary process appeals, foreclosure appeals, and appeals from the suspension of a motor vehicle license due to operating under the influence of liquor or drugs. In order for an eligible case to receive a preargument conference, the appellant shall file a preargument conference statement pursuant to Section 63-4 (b) (1) certifying that all parties who are participating in the appeal are interested in attending a preargument conference.

In any exempt case, all parties appearing and participating in the appeal may file a joint request for a preargument conference. In a foreclosure case, the request for a preargument conference is sufficient if jointly submitted by the owner of the equity and the foreclosing party. In any exempt case, however, the chief justice or the chief judge or a designee may, if deemed appropriate, order a preargument conference.

The chief justice may designate a judge of the Superior Court, a senior judge or a judge trial referee to preside at a preargument conference. The scheduling of or attendance at a preargument conference shall not affect the duty of the parties to adhere to the times set for the filing of briefs. Failure of counsel of record to attend a preargument conference may result in the imposition of sanctions under Section 85-2. Unless other arrangements have been approved in advance by the presiding judge, parties shall be present at the preargument conference site and available for consultation. When a party against whom a claim is made is insured, an insurance adjuster for such insurance company shall be available by telephone at the time of such preargument conference unless the presiding judge, in his or her

discretion, requires the attendance of the adjuster at the preargument conference. The preargument conference proceedings shall not be brought to the attention of the court by the presiding judge or any of the parties unless the preargument conference results in a final disposition of the appeal.

The following matters may be considered:

(1) Possibility of settlement;

(2) Simplification of issues;

(3) Amendments to the preliminary statement of issues;

(4) Transfer to the Supreme Court;

(5) Timetable for the filing of briefs;

(6) En banc review; and

(7) Such other matters as the presiding judge shall consider appropriate.

All matters scheduled for a preargument conference before a judge trial referee are referred to that official by the chief court administrator pursuant to General Statutes § 52-434a, which vests judge trial referees with the same powers and jurisdiction as Superior Court judges and senior judges, including the power to implement settlements by opening and modifying judgments.

COMMENTARY: This rule was amended to update the preargument conference procedure.

CHAPTER 66
MOTIONS AND OTHER PROCEDURES

Sec. 66-1. Extension of Time

(a) Motions to extend the time limit for filing an appeal shall be filed with the clerk of the trial court. Except as otherwise provided in these

rules, the judge who tried the case may**[**, for good cause shown,**]** extend the time limit provided for filing the appeal, except that such extension shall be of no effect if the time within which the appeal must be filed is set by statute and is a time limit that the legislature intended as a limit on the subject matter jurisdiction of the court in which the appeal is filed. **[**In no event shall t**]**The trial judge shall not extend the time for filing the appeal **[**to a date which is**]** more than twenty days from the expiration date of the appeal period. Where a motion for extension of the period of time within which to appeal has been filed at least ten days before expiration of the time limit sought to be extended, the party seeking to appeal shall have no less than ten days from issuance of notice of denial of the motion to file the appeal.

(b) Motions to extend the time limit for filing any appellate document, other than the appeal or a motion for review of a ruling concerning a stay of execution pursuant to Section 61-14, shall be filed with the appellate clerk. An extension of time may be requested by filing form (JD-SC-0XX) or by filing a motion not to exceed 2000 words, and in compliance with the provisions of Section 66-3. Requests to extend multiple deadlines cannot be filed together on a single form or in a single motion. If filing a motion, **[**T**]**the motion shall **[**set forth**]** include the following: (1) the reason for the requested extension, (2) a statement as to whether the other parties consent or object to the requested extension, **[**and shall be accompanied by**]** (3) a certification that complies with Section 62-7; and, if an attorney is filing the motion on the client's behalf, (4)**[**. An attorney filing such a motion on a client's behalf shall also indicate**]** a statement that a copy of the motion has been

delivered to each of his or her clients who are parties to the appeal. **[**The moving party shall also include a statement as to whether the other parties consent or object to the motion.**]** A motion for extension of time to file a brief must specify the current status of the brief or preparations therefor, indicate the estimated date of completion, and, in criminal cases, state whether the defendant is incarcerated as a result of the proceeding in which the appeal has been filed.

(c) The appellate clerk is authorized to grant or to deny motions for extension of time **[**promptly upon their filing. Motions for extension of time to complete any step necessary to prosecute or to defend the appeal, to move for or to oppose a motion for reconsideration, or to petition for or to oppose a petition for certification will not be granted except for good cause. Claims of good cause shall be raised promptly after the cause arises**]**.

(d) An opposing party who objects to a motion for extension of time filed pursuant to subsection (b) of this section shall file an objection with reasons in support thereof with the appellate clerk within five days from the filing of the motion. Parties that are exempt from electronic filing pursuant to Section 60-8 shall file the objection within ten days from the filing of the motion.

[(e) No motion under this rule shall be granted unless it is filed before the time limit sought to be extended by such motion has expired.**]**

(**[**f**]**e) Any action by the trial judge pursuant to subsection (a) of this section or the appellate clerk pursuant to subsection (c) of this section is reviewable pursuant to Section 66-6.

COMMENTARY: The purpose of these amendments is to add an option to use a form instead of a drafted motion seeking an extension of time, to streamline the requirements for a drafted motion by removing the brief history and legal grounds requirements, and to remove the prohibi-

tion on late motions for extension of time, allowing the clerk the flexibility to grant extensions for good cause even if the motion is filed late.

Sec. 66-5. Motion for Rectification; Motion for Articulation

A motion seeking corrections in the transcript or the trial court record shall be called a motion for rectification. A motion **[**or**]** seeking an articulation **[**or further articulation**]** of the decision of the trial court shall be called **[**a motion for rectification or**]** a motion for articulation**[**, whichever is applicable**]**. Any motion filed pursuant to this section shall state with particularity the relief sought and shall be filed with the appellate clerk. Any other party may oppose the motion by filing an opposition with the appellate clerk within ten days of the filing of the motion for rectification or articulation. The trial court may**[**, in its discretion,**]** require assistance from the parties **[**in providing**]** to rectify the record or provide an articulation. Such assistance may include, but is not limited to, provision of copies of transcripts and exhibits.

The appellate clerk shall forward the motion **[**for rectification or articulation**]** and the opposition, if any, to the trial judge who decided, or presided over, the subject matter of the motion **[**for rectification or articulation**]** for a decision **[**on the motion**]**. If any party requests it and it is deemed necessary by the trial court, the trial court shall hold a hearing at which arguments may be heard, evidence taken or a stipulation of counsel received and approved. The trial court may make such corrections or additions as are necessary for the proper presentation of the issues. The clerk of the trial court shall list the decision on the trial court docket and shall send notice of the court's decision on the motion to the appellate clerk, and the appellate clerk shall issue notice of the decision to all counsel of record.

Nothing herein is intended to affect the existing practice with respect to opening and correcting judgments and the records on which they are

based. The trial court shall file any such order changing the judgment or the record with the appellate clerk.

Corrections or articulations made before the clerk appendix is prepared shall be included in the clerk appendix. Corrections or articulations made after the clerk appendix is prepared but before the appellant's brief is prepared shall be included in the appellant's party appendix. Corrections or articulations made after the appellant's brief has been filed, but before the appellee's brief has been filed, shall be included in the appellee's party appendix.

The sole remedy of any party **[**desiring**]** wanting the court having appellate jurisdiction to review the trial court's decision on the motion filed pursuant to this section or any other correction or addition ordered by the trial court during the pendency of the appeal shall be by motion for review under Section 66-7.

Upon the filing of a **[**timely**]** motion for extension of time pursuant to Section 66-1, the appellate clerk may extend the time for filing briefs until after the trial court has ruled on a motion made pursuant to this section or until a motion for review under Section 66-7 is decided.

Any motion for rectification or articulation shall be filed at least ten days prior to the deadline for filing the appellant's brief, unless otherwise ordered by the court. If a final order has been issued for the appellant's brief, or if the appellant's brief has been filed, no motion for rectification or articulation shall be filed without permission of the court. **[**No motion for rectification or articulation shall be filed after the filing of the appellant's brief except for good cause shown.**]**

[A motion for further articulation may be filed by any party within twenty days after issuance of notice of the filing of an articulation by

the trial judge. A motion for extension of time to file a motion for articulation shall be filed in accordance with Section 66-1.**]**

COMMENTARY: The purpose of these amendments is to add clarity to the rule regarding motions for articulation and rectification, including deleting as unnecessary the provision regarding motions for further articulation.

CHAPTER 67
BRIEFS

Sec. 67-3. Page Limitations; Time for Filing Paper Briefs and Appendices

Except as otherwise ordered, the brief of the appellant shall not exceed thirty-five pages and shall be filed with the party appendix, if any, within forty-five days after the delivery date of the transcript ordered by the appellant or forty-five days after the clerk appendix is sent to the parties, whichever is later. In cases where no transcript is required or the transcript has been received by the appellant prior to the filing of the appeal, the appellant's brief and party appendix, if any, shall be filed within forty-five days of the filing of the appeal or forty-five days after the clerk appendix is sent to the parties, whichever is later.

The delivery date of the paper—not electronic— transcript shall be used, where applicable, in determining the filing date of briefs.

Any party whose interest in the judgment will not be affected by the appeal and who intends not to file a brief shall inform the appellate clerk of this intent prior to the deadline for the filing of the appellee's brief. In the case of multiple appellees, an appellee who supports the position of the appellant shall meet the appellant's time schedule for filing a brief.

Except as otherwise ordered, the brief of the appellee shall not exceed thirty-five pages, and shall be filed with any party appendix within thirty days after the filing of the appellant's brief or the delivery date of the portions of the transcript ordered only by that appellee, whichever is later.

The appellant may file a reply brief in accordance with Section 67-5A.

Where there is a cross appeal, the brief and party appendix, if any, of the cross appellant shall be combined with the brief and party appendix, if any, of the appellee. The brief shall not exceed fifty pages and shall be filed with any party appendix at the time the appellee's brief is due. The brief and party appendix, if any, of the cross appellee shall be combined with the appellant's reply brief, if any. This brief shall not exceed forty pages and shall be filed within thirty days after the filing of the original appellee's brief. The cross appellant may file a cross appellant's reply brief in accordance with Section 67-5A.

Where cases are consolidated or a joint appeal has been filed, the brief of the appellants and that of the appellees shall not exceed the page limitations specified above.

All page limitations shall be exclusive of party appendices, if any, the cover page, the table of contents, the table of authorities, the statement of issues, the signature block of counsel of record, certifications and, in the case of an amicus brief, the statement of the interest of the amicus curiae required by Section 67-7.

Briefs shall not exceed the page limitations set forth herein except by permission of the chief justice or chief judge. Requests for permis-

sion to exceed the page limitations shall be filed with the appellate clerk, stating both the compelling reason for the request and the number of additional pages sought.

Where a claim relies on the state constitution as an independent ground for relief, the clerk shall, upon request, grant an additional five pages for the appellant and appellee briefs, which pages are to be used for the state constitutional argument only.

COMMENTARY: These amendments were adopted on an interim basis to take effect October 1, 2021, and are before the Supreme and Appellate Courts to adopt them on a permanent basis.

Sec. 67-10. Citation of Supplemental Authorities after Brief Is Filed

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly file with the appellate clerk a **[**notice**]** letter listing such supplemental authorities, including citations, with a copy certified to all counsel of record in accordance with Section 62-7. If the authority is an unreported decision, a copy of the text of the decision must accompany the filing, unless the authority is an advance release opinion of the Supreme or Appellate Court that is available on the Judicial Branch website or a slip opinion of the United States Supreme Court available on that court's website. The **[**filing**]** letter shall concisely and without argument state the relevance of the supplemental citations and shall include, where applicable, reference to the pertinent page(s) of the brief. The body of the letter must not exceed 350 words. Any response shall be made promptly and shall be similarly limited. Replies to responses are not permitted.

This section may not be used after oral argument to elaborate on points made or to address points not made.

COMMENTARY: This rule was amended for consistency purposes, to place a word limit on supplemental authority letters, and to make it clear that replies to responses are not permitted.

Sec. 67-12. Stay of Briefing Obligations upon Filing of Certain Motions after Appeal Is Filed

[Repealed as of Jan. 1, 2025.]

HISTORY—2025: Prior to 2025, this section read:

"As provided in Section 63-1, if, after an appeal has been filed but before the appeal period has expired, a motion is filed that would render the judgment, decision or acceptance of the verdict ineffective, any party may move to stay the briefing obligations of the parties. The appellate clerk may grant such motions for up to sixty days. Any further request for stay must be made by motion to the appellate court having jurisdiction prior to the expiration of the stay granted by the appellate clerk. Such request must describe the status of the motion in the trial court and must demonstrate that a resolution of the motion is being actively pursued. After all such motions have been decided by the trial court, the appellant shall, within ten days of notice of the ruling on the last such outstanding motion, file a notice with the appellate clerk that such motions have been decided, together with a copy of the decisions on any such motions. The filing of such notice shall reinstate the appellate obligations of the parties, and the date of notice of the ruling on the last outstanding motion shall be treated as the date of the filing of the appeal for the purpose of briefing pursuant to Section 67-3 or 67-3A."

COMMENTARY: The purpose of this rule can be accomplished by filing a motion for an extension of time if a brief is due; therefore, the rule is unnecessary.

NEW Sec. 67-14. Joint Briefs; Statements Adopting Briefs

(a) If one or more parties want to join in the brief of another party, those parties may file a joint brief. A joint brief must conform to the requirements of Sections 67-2 et seq., and must be signed by all counsel of record joining in the brief.

(b) If a party agrees with the contents of another party's brief, a statement adopting the brief of the other party may be filed. Any statement adopting a brief must be filed before the case is ready for assignment.

COMMENTARY: This new rule clarifies the difference between the joining of a brief and the filing of a statement adopting the brief of another party.

CHAPTER 70

ARGUMENTS AND MEDIA COVERAGE OF COURT PROCEEDINGS

Sec. 70-4. Time Allowed for Oral Argument; Who May Argue]

[Unless the court grants a request for additional time made before oral argument begins, a**]**Argument of any case shall not exceed thirty minutes on each side in the Supreme Court and twenty minutes on

each side in the Appellate Court unless the court grants a request for additional time made prior to argument. **[**The time allowed may be apportioned among counsel on the same side of a case as they may choose.**]** The court may terminate the argument whenever in its judgment further argument is unnecessary.

When a case has multiple parties on the same side, the parties may apportion time for argument as they choose, but counsel of record must provide notice to the court prior to argument.

When a party has more than one counsel of record, counsel may file a request by letter with the appellate clerk to allow more than one counsel to present argument for that party. The request must be approved by the court prior to argument.

When a party has more than one counsel of record, and counsel not identified as arguing counsel on the brief wishes to argue, the attorney who will be arguing shall file a letter notifying the court of the change prior to argument. **[**Prior to the date assigned for hearing, counsel of record may file a request with the appellate clerk to allow more than one counsel to present oral argument for one party to the appeal.**]**

When counsel of record has a firm appearance, and an attorney from the appearing firm wishes to argue the appeal but is not identified as the arguing attorney on the brief, the attorney who will be arguing the appeal shall file a letter notifying the court of the change prior to argument. **[**In cases in which there is a firm appearance, or in which there are multiple appearances for the same party, if an attorney from the appearing firm or who already has an appearance wishes to argue the appeal but is not identified as the arguing attorney on the brief,

the attorney who will be arguing the appeal shall file a letter notifying the court of the change as soon as possible prior to argument.**]**

No argument shall be allowed by any party who has not filed a brief or who has not joined in the brief of another party in accordance with Section 67-14 (a).

COMMENTARY: The purpose of these amendments is to clarify when permission of the court or simply notice to the court is required to allow more than one counsel to present argument for one party to the appeal and that only those who have joined a brief are entitled to oral argument.

CHAPTER 71

APPELLATE JUDGEMENTS AND OPINIONS

Sec. 71-4. Opinions; Rescripts; Official Release Date

(a) After the court releases an opinion in any case other than a case involving a question certified from a federal court, the **[**r**]**Reporter of **[**j**]**Judicial **[**d**]**Decisions shall provide a hyperlink to an electronic version of the opinion and send a copy of the rescript to the clerk of the trial court**[**,**]** and shall make the rescript available to the appellate clerk. Notice of the decision of the court shall be deemed to have been given, for all purposes, on the official release date that appears in the court's opinion or memorandum decision.

(b) The official opinion of the court is the version published in the bound or electronic volumes of the Connecticut Reports and the Connecticut Appellate Reports, or, if not published in a bound or electronic volume, the most recent version published in the Connecticut Law Journal.

COMMENTARY: The purpose of these amendments is to conform the rule to the publication of electronic volumes of the Connecticut Reports and Connecticut Appellate Reports.

Sec. 71-6. Stay of Proceedings

(a) Unless the chief justice or chief judge shall otherwise direct, any stay of proceedings which was in effect during the pendency of the

appeal shall continue until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until **[**twenty days after**]** its disposition, and, if it is granted, until the appeal is finally determined. For appeals in the Appellate Court, any stay in effect shall continue until the time to file a petition for certification to the Supreme Court has expired, and if such a petition is timely filed, any stay shall be governed by Section 84-3.

(b) If no stay of proceedings was in effect during the pendency of the appeal and the decision of the court having appellate jurisdiction would change the position of any party from its position during the pendency of the appeal, all proceedings to enforce or carry out the decision of the court having appellate jurisdiction shall be stayed until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until **[**twenty days after**]** its disposition, and, if it is granted, until the appeal is finally determined. For appeals in the Appellate Court, any stay in effect shall continue until the time to file a petition for certification to the Supreme Court has expired, and if such a petition is timely filed, any stay shall be governed by Section 84-3. (See also Section 61-11.)

COMMENTARY: These amendments simplify and clarify the procedures regarding stays by clarifying whether there is a stay after disposition of an appeal and how long it remains in effect.

CHAPTER 72

WRITS OF ERROR

Sec. 72-3. Applicable Procedure

(a) The writ of error, if in proper form, shall be allowed and signed by a judge or clerk of the court in which the judgment or decree was rendered. The writ of error shall be presented for signature within

twenty days of the date notice of the judgment or decision complained of is given but shall be signed by the judge or clerk even if not presented in a timely manner. Failure without cause to present the writ of error in a timely manner may be a ground for dismissal of the writ of error by the court having appellate jurisdiction.

(b) The writ of error shall be served and returned as other civil process, except that the writ of error shall be served at least ten days before the return day and shall be returned to the appellate clerk at least one day before the return day. The return days are any Tuesday not less than twelve nor more than thirty days after the writ of error is signed by a judge or clerk of the court.

(c) The writ of error shall be deemed filed the day it is properly returned to the appellate clerk. The plaintiff in error shall return the writ of error to the appellate clerk by (1) complying with Section 60-7 or 60-8 by paying the required fee, submitting a signed application for waiver of fees and the order of the trial court granting the fee waiver, or certifying that no fees are required; (2) submitting the matter in accordance with the provisions of Section 63-3; and (3) submitting the allowed and signed writ of error and the signed marshal's return to the appellate clerk.

(d) An electronically filed writ of error will be docketed upon the submission of the matter in accordance with Section 63-3 but will be rejected upon review by the appellate clerk if the plaintiff in error fails to comply with Section 60-7 or to submit an allowed and signed writ of error and the signed marshal's return on the same business day the matter is submitted in accordance with the provisions of Section 63-3. The writ of error may also be returned upon review by the appellate clerk for noncompliance with the Rules of Appellate Procedure. The appellate clerk shall forthwith give notice to all parties of the filing of the writ of error.

(e) If the writ of error is brought against a judge of the Superior Court to contest a summary decision of criminal contempt by that judge, the defendant in error shall be the Superior Court. In all other writs of error, the writ of error shall bear the caption of the underlying action in which the judgment or decision was rendered. All parties to the underlying action shall be served in accordance with Chapter 8 of these rules.

(f) Within ten days of filing a writ of error, the plaintiff in error shall file with the appellate clerk:

(1) A certificate stating that no transcript is deemed necessary or a transcript order confirmation from the official court reporter in compliance with Section 63-4 (a) (3). If any other party deems any other parts of the transcript necessary that were not ordered by the plaintiff in error, that party shall, within twenty days of the filing of the plaintiff in error's transcript papers, file a transcript order confirmation for an order placed in compliance with Section 63-8.

(2) A docketing statement in compliance with Section 63-4 (a) (4). If additional information is or becomes known to, or is reasonably ascertainable by the defendant in error, the defendant in error shall file a docketing statement supplementing the information required to be provided by the plaintiff in error.

(g) Within twenty days of filing a writ of error, the plaintiff in error shall file with the appellate clerk such documents as are necessary to present the claims of error made in the writ of error, including pertinent pleadings, memoranda of decision and judgment file, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section 62-7.

(h) Within ten days of the filing by the plaintiff in error of the documents referred to in subsection (g) of this rule, the defendant in error

may file such additional documents as are necessary to defend the action, accompanied by a certification that a copy thereof has been served on each counsel of record in accordance with Section 62-7.

(i) Answers or other pleas shall not be filed in response to any writ of error. No amended writ of error may be filed without leave of the court having appellate jurisdiction.

(j) Briefing is in accordance with Section 67-1 et seq. in which the rules applicable to appellants shall apply to plaintiffs in error, and the rules applicable to appellees shall apply to defendants in error.

COMMENTARY: The purpose of this amendment is to clarify that permission is needed to file an amended writ of error.

CHAPTER 77

PROCEDURES CONCERNING COURT CLOSURE AND SEALING ORDERS OR ORDERS LIMITING THE DISCLOSURE OF FILES, AFFIDAVITS, DOCUMENTS OR OTHER MATERIAL

Sec. 77-1. Petition for Review Seeking Expedited Review of an Order concerning Court Closure, or an Order That Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

(a) Except as provided in subsection (d), any person affected by a court order which prohibits the public or any person from attending any session of court, or any order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding, may seek review of such order by filing a petition for review with the Appellate Court within seventy-two hours after the issuance of the order.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. An appendix containing the information or complaint, the answer, all motions pertaining to the matter, the opinion or orders of the trial court sought to be reviewed, a list of all parties with the names, addresses, telephone numbers, email addresses, and, if applicable, the juris number of their counsel, the names of all judges who participated in the case, and an expedited transcript order confirmation, shall be filed with the petition for review. Any opposition to the petition shall be filed within ninety-six hours after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining. Responses to oppositions are not permitted.

(c) Any person filing a petition for review pursuant to this rule shall deliver a copy of the petition and appendix to (1) all parties to the

case and (2) any nonparty who sought the closure order or order sealing or limiting disclosure in compliance with the provisions of Section 62-7 on the same day as the petition is filed. Within one business day of the receipt of the transcript and the certificate of completion provided for by Section 63-8 (c), the person filing the petition for review shall file the transcript and the certificate of completion with the Appellate Court.

The filing of any petition for review of a court order which prohibits the public or any person from attending any session of court shall stay the order until the final determination of the review. The filing of any petition for review of an order that seals or limits the disclosure of files, affidavits, documents or other material on file with the court shall not stay the order during the review.

After the receipt of the transcript and the response to the petition, if any, the Appellate Court shall hold an expedited hearing on any petition for review. The appellate clerk will notify the petitioner, the parties and any nonparties who sought the closure order or order sealing or limiting disclosure of files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding of the date and time of the hearing. Failure to file a response shall not preclude the party or nonparty who sought the order under review from participating in the hearing on the petition. After such hearing the Appellate Court may affirm, modify or vacate the order reviewed.

(d) This section shall not apply to court orders concerning any session of court conducted pursuant to General Statutes § 46b-11, § 46b-49, § 46b-122, § 54-76h or any other provision of the General Statutes under which the court is authorized to close proceedings. This section also shall not apply to any order issued pursuant to General Statutes

§ 46b-11 or § 54-33c or any other provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or materials and any order issued pursuant to a court rule that seals or limits the disclosure of any affidavit in support of an arrest warrant.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

CHAPTER 78

REVIEW OF GRAND JURY RECORD OR FINDING ORDER

Sec. 78-1. Review of an Order concerning Disclosure of Grand Jury Record or Finding

(a) Any person aggrieved by an order of a panel or an investigatory grand jury pursuant to General Statutes § 54-47g may seek review of such order by filing a petition for review with the Appellate Court within seventy-two hours after the issuance of the order. The filing of any such petition for review shall stay the order until the final determination of the petition. The Appellate Court shall hold an expedited hearing on such petition. After such hearing, the Appellate Court may affirm, modify or vacate the order reviewed.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions

and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining. Responses to oppositions are not permitted.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

CHAPTER 78a

REVIEW OF ORDERS CONCERNING RELEASE ON BAIL

Sec. 78a-1. Petition for Review of Order concerning Release on Bail

(a) Any accused person or the state, aggrieved by an order of the Superior Court concerning release, may petition the Appellate Court for review of such order. Any such petition shall have precedence over any other matter before the Appellate Court and any hearing ordered by the court shall be held expeditiously with reasonable notice.

Petitions for review of bail must conform to the requirements for motions for review set forth in Section 66-6 and are subject to transfer to the Supreme Court pursuant to Section 65-3.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which

the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining. Responses to oppositions are not permitted.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

CHAPTER 78b

REVIEW OF ORDERS DENYING APPLICATION FOR WAIVER OF FEES TO COMMENCE A CIVIL ACTION OR A WRIT OF HABEAS CORPUS

Sec. 78b-1. Petition for Review of Order Denying Application for Waiver of Fees to Commence a Civil Action or a Writ of Habeas Corpus

(a) Any person aggrieved by an order of the Superior Court denying an application for waiver of the payment of a fee for filing an action

or the cost of service of process to commence a civil action or a writ of habeas corpus in the Superior Court may petition the Appellate Court for review of such an order after a hearing pursuant to the provisions of Section 8-2 (d) and a decision thereon.

Petitions for review of the denial of an application for waiver of the payment of a fee for filing an action or the cost of service of process to commence a civil action or writ of habeas corpus are subject to transfer to the Supreme Court pursuant to Section 65-3, and must conform to the requirements for motions for review set forth in Section 66-6, except that the moving party shall not be required to provide a transcript or transcript order confirmation.

(b) The petition shall set forth in separate paragraphs appropriately captioned: (1) a brief history of the case, (2) the specific facts upon which the petitioning party relies and (3) the legal grounds upon which the petitioning party relies. Any opposition to the petition shall be filed within ten days after the filing of the petition and shall set forth in separate paragraphs appropriately captioned: (1) the specific facts upon which the opposing party relies, and (2) the legal grounds upon which the opposing party relies. Except as otherwise ordered, petitions and oppositions shall not exceed 3500 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications, and appendix, if any.

Petitions and oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the

document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining. Responses to oppositions are not permitted.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

CHAPTER 81

APPEALS TO APPELLATE COURT BY CERTIFICATION FOR REVIEW IN ACCORDANCE WITH GENERAL STATUTES CHAPTERS 124 AND 440

Sec. 81-3. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition with the appellate clerk stating the reasons why certification should not be granted. The statement shall be presented in a manner which is responsive, in form and content, to the petition it opposes. Except as otherwise ordered, oppositions shall not exceed 4000 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix, if any. Oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining. No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party in a civil matter filing the opposition is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

(e) Responses to oppositions are not permitted.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

CHAPTER 84

APPEALS TO SUPREME COURT BY CERTIFICATION FOR REVIEW

Sec. 84-1. Certification by Supreme Court

[An**]** No appeal may be taken from a final decision of the Appellate Court to **[**filed with**]** the Supreme Court unless the Supreme Court grants certification. When an appeal is decided by **[**upon the final determination of an appeal in**]** the Appellate Court, **[**where the Supreme Court, upon petition of**]** an aggrieved party may petition the Supreme Court for certification to appeal.**[**,**]** If certification is granted, the petitioner may file an appeal to the Supreme Court. Failure to obtain an order from the Supreme Court granting certification will result in the rejection of the appeal to the Supreme Court. **[**certifies the case for review.**]**

COMMENTARY: The purpose of these amendments is to add language permitting the appellate clerk's office to reject an appeal filed in the Supreme Court when the party aggrieved by the decision of the Appellate Court has not sought or obtained certification.

Sec. 84-3. Stay of Execution

(a) In any action in which a stay of proceedings was in effect during the pendency of the appeal, **[**or, if no stay of proceedings was in effect,

in which the decision of the Appellate Court would change the position of any party from its position during the pendency of the appeal,**]** proceedings to enforce or carry out the judgment shall be stayed until the time to file the petition has expired. If no stay of proceedings was in effect, but the decision of the Appellate Court would change the position of any party from its position during the pendency of the appeal, proceedings to enforce or carry out the judgment shall be stayed until the time to file the petition has expired. If a petition by a party is timely filed, the proceedings shall be stayed until the Supreme Court acts on the petition and, if the petition is granted, until the final determination of the cause**[;]**.

(b) Any party may file a motion in the Appellate Court to terminate the stay provided for in subsection (a). Such motion shall comply with Sections 66-2 and 66-3 and state, in the first paragraph, the panel of Appellate Court judges that heard the case. **[**but if t**]**The presiding judge, or if such presiding judge is unavailable, the most senior judge on such panel who is available, may act upon such a motion for termination of the stay up to the time the Supreme Court acts upon the petition. If the judge **[**of an appellate panel which heard the case**]** is of the opinion that the certification proceedings have been filed only for delay or that the due administration of justice so requires, such **[**presiding**]** judge may**[**, up to the time the Supreme Court acts upon the petition, upon motion**]** order that the stay be terminated. **[**If such presiding judge is unavailable, the most senior judge on such panel who is available may act upon such a motion for termination of the stay.**]**

COMMENTARY: These amendments simplify and clarify the procedures regarding stays by clarifying how stays work when a petition is filed and where a party would file a motion for stay when a petition for certification is pending.

Sec. 84-6. Statement in Opposition to Petition

(a) Within ten days of the filing of the petition, any party may file a statement in opposition to the petition with the appellate clerk. The statement in opposition shall disclose any reasons why certification should not be granted by the Supreme Court and shall be presented in a manner which is responsive, in form and content, to the petition it opposes. Except as otherwise ordered, oppositions shall not exceed 4000 words. The word count is exclusive of the case caption, signature block of counsel of record, certifications and appendix, if any.

Oppositions, including footnotes, shall be typed in a 12 point serif font. Section captions shall be typed in a 14 point serif font. A list of serif fonts can be found in the guidelines published on the Judicial Branch website. Margins shall be 1 and 1/2 inches on all sides. All text must be left aligned. Line spacing can be between 1.3x and 1.5x and must be uniform throughout, including the body of the document, footnotes and block quotes. Bold face or italic emphasis tools shall be used, not underlining.

No separate memorandum of law in support of the statement in opposition will be accepted by the appellate clerk.

(b) The statement in opposition shall be delivered in the manner set forth in Section 62-7.

(c) No motion to dismiss a petition for certification will be accepted by the appellate clerk. Any objection to the jurisdiction of the court to entertain the petition shall be included in the statement in opposition.

(d) If the party filing the opposition in a civil action is an entity as defined in Section 60-4, a certificate of interested entities or individuals shall be attached to the opposition.

(e) Responses to oppositions are not permitted.

COMMENTARY: The purpose of this amendment is to add language to the petition rules providing that responses to oppositions are not allowed.

Sec. 84-9. Proceedings after Certification

(a) Within twenty days from the issuance of notice that certification to appeal has been granted, the petitioner, who shall be considered the appellant, shall file the appeal in accordance with the procedure set forth in Section 63-3 and shall pay all required fees in accordance with the provisions of Section 60-7 or 60-8.

(b) The issues which the appellant may present are limited to those set forth in **[**the petition for certification, except where the issues are further limited by**]** the order granting certification or where other issues are presented for review pursuant to Section 84-11.

COMMENTARY: The purpose of these amendments is to clarify the procedure to ask the Supreme Court, following the granting of certification, to also consider issues that were briefed in the Appellate Court but were not reached by the Appellate Court in its disposition of the appeal.

Sec. 84-11. Papers To Be Filed by Appellant and Appellee in an Appeal After Certification

(a) Within ten days of filing the appeal, the appellant shall also file a docketing statement pursuant to Section 63-4 (a) (4) and a designation of the proposed contents of the clerk appendix pursuant to Section 63-4 (a) (2). The parties shall not file other Section 63-4 papers on a certified appeal without permission of the Supreme Court.

(b) Within ten days of the filing of the appeal, the appellee may file a statement of alternative grounds for affirmance **[**or adverse rulings or decisions to be considered in the event of a new trial**]**, provided that **[**such party has raised**]** the appellee briefed such **[**claims**]** alternative grounds in the Appellate Court. If such alternative grounds for affirmance **[**or adverse rulings or decisions to be considered in the event of a new trial**]** were not raised in the Appellate Court, the **[**party**]** appellee seeking to raise them in the Supreme Court must move for

[special] permission to do so prior to the filing of [that party's] the appellee's brief. [Such permission will be granted only in exceptional cases where the interests of justice so require.]

(c) Within thirty days of the filing of the appeal, any party to the appeal may seek permission to present for review: (1) adverse rulings or decisions which, in the interest of judicial economy, should be considered in the event of a remand for further proceedings, provided that such party briefed such issues in the Appellate Court and (2) [Any party may also present for review] any claim that the relief afforded by the Appellate Court in its judgment should be modified, provided the arguments underlying such claim [was raised] were briefed in the Appellate Court [either in such party's brief] or [upon] raised in a motion for reconsideration.

COMMENTARY: The purpose of these amendments is to clarify the procedure to ask the Supreme Court, following the granting of certification, to also consider issues that were briefed in the Appellate Court but were not reached by the Appellate Court in its disposition of the appeal.