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CONNECTICUT APPELLATE REPORTS

Vol. 227

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

N. R. *v.* M. P.*
(AC 45960)

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

Syllabus

The plaintiff father appealed to this court from the judgment of the trial court awarding the defendant mother sole legal and physical custody of their two minor children. *Held*:

1. The plaintiff could not prevail on his claim that the trial court improperly awarded the defendant sole legal and physical custody of the children because it failed to consider the test set forth in the statute (§ 46b-56d) governing a parent's postjudgment relocation with a child: § 46b-56d was inapplicable to the facts of the case because it did not involve a postjudgment relocation, as the plaintiff filed an application seeking joint legal custody with a shared parenting plan, the defendant filed a cross complaint seeking sole legal custody, and, before a trial was held and a custody determination was made, the defendant relocated to South Carolina with the children, and, thus, the court was not required to perform the relocation analysis set forth in § 46b-56d; moreover, it was

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

Moreover, 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.

undisputed that the court applied the standard of the best interest of the child as set forth in the statute (§ 46b-56) governing the custody of minor children, the standard that governs a relocation issue that arises prior to the time a judgment is rendered awarding custody; furthermore, it was clear on the basis of the record and the court's factual findings, which were not challenged on appeal, that the court considered the impact of the children's relocation in its best interest analysis.

2. The plaintiff could not prevail on his claim that the trial court improperly issued orders that required him to be current with his child support obligation and to pay one half of the travel expenses for the minor children in order to receive parenting time with the children in Connecticut: this court concluded that the plaintiff's claim is an inaccurate recitation of the substance of the trial court's parenting time orders, as this court construed the parenting time orders as providing that, if the plaintiff is not current on child support, then he would bear the entire cost of the children's travel to Connecticut and, if he was current on child support, he and the defendant would share the costs equally, and the only circumstance in which the defendant was allowed to cancel a visit was if the plaintiff had not provided her with payment for his portion of the travel expenses, not if the plaintiff was not current on child support payments.

3. The plaintiff could not prevail on his claim that the trial court improperly relied on the testimony of the guardian ad litem in its analysis of the best interests of the minor children: the fact that the guardian ad litem was unable to observe a visit between the plaintiff and his children, despite clear efforts made to do so, did not render the guardian ad litem unable to issue recommendations to the court, nor did it make it improper for the court to rely on those recommendations; moreover, the guardian ad litem investigated the facts necessary to make recommendations to the court related to custody and parenting time and received updates from a third-party supervisor who had observed the plaintiff's visits with the children; furthermore, given that the guardian ad litem testified at a hearing and was subject to cross-examination by the parties, the court was able to consider the basis for the guardian ad litem's observations and recommendations and to afford them whatever weight it deemed appropriate.

Argued May 16—officially released September 3, 2024

Procedural History

Application for custody of the parties' minor children, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the defendant filed a cross complaint; thereafter, the matter was tried to the court, *Parkinson*, *J.*; judgment granting, inter

alia, sole legal and physical custody of the parties' minor children to the defendant, from which the plaintiff appealed to this court. *Affirmed.*

David V. DeRosa, for the appellant (plaintiff).

Justine Rakich-Kelly, guardian ad litem, for the minor children.

Opinion

SEELEY, J. The plaintiff, N. R.,[1] appeals from the judgment of the trial court awarding the defendant, M. P.,[2] sole legal and physical custody of their two minor children. On appeal, N. R. claims that the court improperly (1) awarded M. P. sole legal and physical custody of the children, (2) issued an order that, if N. R. is not current on child support, he must share one half of the travel expenses for the minor children to visit him in Connecticut, and (3) relied on the testimony of the guardian ad litem in its analysis of the best interests of the minor children. We disagree and, therefore, affirm the judgment of the court.

The following facts and procedural history are relevant to our resolution of the present appeal. N. R. and M. P. began a romantic relationship in June, 2016. They

[1] Although N. R. is the plaintiff in the underlying matter in this appeal, this opinion also discusses a previous custody application filed by M. P., in which she was the plaintiff and N. R. was the defendant. For ease of discussion, we refer to each of the parties by their initials, instead of as the plaintiff or the defendant.

[2] M. P. did not file a brief in this appeal. Consequently, on January 19, 2024, this court issued an order stating that "the appeal shall be considered on the basis of [N. R.'s] brief, the record, as defined by Practice Book [§] 60-4, and oral argument . . . ." On April 1, 2024, The Children's Law Center of Connecticut, Inc., the guardian ad litem in this case, filed a motion seeking permission to file a late brief. The guardian ad litem stated that, "[u]pon review, it appeared the best interest of the child standard as well as the role of the guardian ad litem were implicated in the arguments put forth by [N. R.]." On April 11, 2024, this court granted the guardian ad litem permission to file a late brief by May 3, 2024. The guardian ad litem timely filed its brief on that date and participated in oral argument before this court.

have two minor children, born in May, 2017, who are twins. N. R. was incarcerated from the end of 2017 through March, 2020. The parties continued their relationship throughout the period during which N. R. was incarcerated. After N. R. was released from prison, he lived with M. P. and the children. The relationship, however, became increasingly volatile, leading N. R. and M. P. to end their relationship in September, 2020, with the children continuing to reside with M. P.

On September 21, 2020, M. P. filed an application for custody, seeking sole legal custody of the children. M. P. also filed an application for an emergency ex parte order of custody of the children pursuant to General Statutes § 46b-56f.[3] M. P. requested that N. R. have no

[3] General Statutes § 46b-56f provides in relevant part: "(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 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. . . ."

contact or visitation with the children.[4] That same day, the court, *Ficeto*, *J.*, granted M. P.'s application for an emergency ex parte order of custody and awarded temporary custody of the children to M. P. The court also scheduled a hearing on its ex parte order for October 1, 2020. Following the October 1, 2020 evidentiary hearing, the court, *Coleman*, *J.*, granted M. P.'s application for an emergency ex parte order of custody. The court, in addition to awarding temporary custody of the children to M. P., ordered that N. R. "have supervised visitation with the minor children every Sunday from 3 p.m. to 5 p.m." The court also ordered that N. R. have phone contact and nightly FaceTime calls with the children.

On December 3, 2020, M. P. filed an application for an ex parte restraining order pursuant to General Statutes (Rev. to 2019) § 46b-15.[5] Specifically, M. P. first detailed a history of physical and verbal altercations with N. R. dating back to 2017, and then alleged that in the summer of 2020, N. R. had driven by her house on a regular basis and had parked outside on multiple occasions and that, in September, 2020, "after breaking up, our Google accounts were linked and he was searching for 'Waterbury's most gruesome murders.' " M. P. further alleged that, in November, 2020, while she was dropping the children off for their visit with N. R., "he smacked me, pushed me to [the] ground . . . and was screaming about how I do not respect him." The court, *Ficeto*, *J.*,

[4] The application for an emergency ex parte order of custody alleged that N. R. had no stable place to live, was on parole, and was mentally and verbally abusive to M. P. and to the children. It further alleged that he had referred to M. P. with degrading and profane language and that he had screamed at her in front of the children.

[5] General Statutes (Rev. to 2019) § 46b-15 (a) provides in relevant part: "Any family or household member . . . who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section. . . ."

granted the ex parte restraining order that same day and ordered, inter alia, that N. R. "not assault, threaten, abuse, harass, follow, interfere with, or stalk [M. P.]," and that he "[s]tay away from the home of [M. P.] and wherever [she] shall reside." The court also scheduled a hearing for December 15, 2020. Following the December 15, 2020 hearing, the court, *Coleman*, *J.*, granted the application for a restraining order and continued the ex parte orders. The restraining order had an expiration date of June 15, 2021.

In February, 2021, the court appointed The Children's Law Center of Connecticut, Inc. (Children's Law Center), as the guardian ad litem for the minor children.[6] On June 9, 2021, following a case date[7] with the parties, the court ordered that the "[p]arties shall share joint legal custody . . . ." On September 21, 2021, following another case date, the court issued a new order, which updated child support orders and provided that N. R. was to schedule a meeting with the guardian ad litem and "participate in the family program." On November 3, 2021, M. P. filed another application for an emergency ex parte order of custody,[8] seeking temporary custody

[6] Children's Law Center filed an appearance on February 16, 2021.

[7] "Case Dates are scheduled as interim hearing dates in new dissolution of marriage, legal separation, custody, and visitation cases, for the court to consider issues that should be addressed before a final trial date. A Case Date is a hearing before a judge to address matters like motions for temporary orders on custody, child support, or other subjects, to be in effect while [a] case is pending. The judge may also hear reports on the progress of services that have been ordered in [a] case and may schedule additional future court dates. . . . Case Dates are not for the final trial of [a] case. They are intended as checkpoints along the way to final resolution, to keep [a] case on track and to conduct brief hearings on issues that need orders in place before there is a final agreement or trial." State of Connecticut, Judicial Branch, The Pathways Process in Your Divorce, Custody or Visitation Case, What Are Case Dates, available at https://jud.ct.gov/family/pathwaysprocess.htm (last visited on August 16, 2024).

[8] The application alleged in relevant part: "This past Sunday, [October 31, 2021] at drop-off for his visit [with the children, N. R.] started to yell at me and told [the children] that I am 'nothing but a whore and all I do is smoke crack and suck d**k' in front of the girls. When I threatened to withhold

and supervised visitation. On that same date, the court, *Ficeto*, *J.*, granted the ex parte application, ordered that N. R. have no visitation with the children, and scheduled a hearing on its ex parte order for November 16, 2021. After the November 16, 2021 hearing, the court ordered that M. P. "shall have sole legal custody" of the children and that N. R. "shall have supervised visitation through the Family Stokes Program until further court order." The trial on M. P.'s custody application was scheduled for November 30, 2021. That day, M. P., her counsel, and the guardian ad litem appeared for the scheduled trial, but the trial did not proceed because N. R. was unavailable. The court ordered that the November 16, 2021 orders remain in full force and effect and that the trial be rescheduled. The trial was rescheduled to January 11. 2022.

On December 2, 2021, N. R. filed a motion for contempt, alleging that he had not been able to see or communicate with the children. No action was taken on this motion until December 16, 2021, when the court, *Ficeto*, *J.*, scheduled a contempt hearing also for January 11, 2022. Also on December 16, 2021, N. R. filed his own application for an emergency ex parte order of custody, requesting that "all parties . . . obey court orders to allow my court-ordered supervised visits [and] phone calls. Stokes Program [refuses] to do visits with me . . . ." That application was denied that same day

his visit he threatened to break my jaw if I did that. This all happened in front of the [children]. He took [the children] and I contacted the Waterbury Police and reported the threat. When the [children] came home they started asking questions about what crack was and what sucking d**k means.

"The family therapist, Dasha Spells, was at my home on [November 1, 2021] and observed [the children's] behavior after the nightly phone call with [N. R.]. He never contacted the family program as [previously ordered] and the therapist is recommending the unsupervised contact cease until he engages with the children in a therapeutic environment. She believes that the children lack a connection to [N. R.] and wants to engage with him [about] proper parenting methods."

and was scheduled to be heard on January 11, 2022, as well.[9] The court, however, did not hold the combined trial and hearing on January 11, 2022, and, instead, the matter was continued to January 25, 2022, at which the court heard testimony. Thereafter, the matter was continued to March 2, 2022. Also on January 25, 2022, the court, *Nieves*, *J.*, issued an order providing that the "[g]uardian ad litem is to look into a family therapeutic setting for [N. R.] to engage in weekly supervised visits with [the children] via Wellmore and/or Behavioral Health Consultants or equivalent. [N. R.] is to provide the court upon completion proof he attended anger management classes. Both parties [are] to engage in individual support counseling. Neither party shall discourage contact between the other party and the minor child[ren] or use vulgar language while in the presence of the minor child[ren]." Subsequently, on February 24, 2022, M. P. withdrew her application for custody prior to the completion of the trial on her application for custody and the hearing on N. R.'s motion and application.

On March 2, 2022, N. R. filed a custody application, commencing the underlying matter in the current appeal, seeking joint legal custody of the children and a parenting responsibility plan.[10] When M. P. was served

[9] N. R. also alleged in his application: "I was to have [a] court-order[ed] visit [with] Dasha (Stokes Agency) and my children, but was arrested and [the] visit never happened. I called Dasha after [the] arrest and she told me she refuses to do court-ordered visit[s]. I filed a contempt and tried to go through another agency, but they cannot supervise the visit [without a] court order in their name. I also have not been able to communicate [with] my children over [the] phone due to [the] protective order against the mother of my children. [The] [l]ast contact I [had] is [a] phone call [the week of] Thanksgiving and [the] children [were] being mean and vengeful due to mother [and] grandmother's teachings. I have video evidence of proof of interactions of phone calls. I believe my children are in 'great danger' of psychological harm, due to parental [alienation]."

[10] In his application, N. R. also checked the box to request visitation, underneath which he wrote: "Allowed to see my children." At subsequent hearings on his application, N. R. clarified that he was seeking joint legal

with the custody application, she also was served with automatic orders, which provided in relevant part: "In all cases involving a child or children, whether or not the parties are married or in a civil union: (1) Neither party shall permanently remove the minor child or children from the state of Connecticut, without written consent of the other or order of a judicial authority." On March 31, 2022, the court again appointed Children's Law Center as the guardian ad litem and issued a list of duties for the guardian ad litem.[11]

On April 25, 2022, M. P. filed a cross complaint seeking sole legal custody, after which she moved to South Carolina with the children. On May 18, 2022, N. R. filed an application for an emergency ex parte order of custody seeking orders of temporary legal and physical custody of the children and that M. P. may not remove the children from the state of Connecticut or interfere with his custody of the children. In his application, N. R. wrote: "[M. P.] has taken [the children] out of state during custody battle. [The guardian ad litem] has not informed me where my children are. At times I've witnessed my children telling me that I will never find them and that they are moving far away from daddy. I've informed the [guardian ad litem] with no help. I've informed the court that [M. P.] was planning on moving and still nothing." The ex parte application was denied that same day by the court, *Ficeto*, *J.*, and a hearing

custody of the minor children and a shared parenting plan in which he had regular overnight parenting time.

[11] On the form for the list of duties for the guardian ad litem, the court checked the box next to "All duties listed in this section," which included the following: "[i]nvestigate facts necessary to make recommendations to the court regarding the . . . children's best interests"; "[c]ommunicate with parties"; "[c]ommunicate with the . . . children"; "[c]onduct home visits"; "[c]onfer with family services"; "[r]eview all files and records . . ."; "[c]onfer with teachers and other school authorities"; "[c]onfer with professionals"; "[p]articipate in the creation of a parenting plan"; "[r]eport to the court as requested or as deemed necessary"; and "[f]acilitate settlement of disputes."

date was set for June 28, 2022. Following the June 28 hearing, the court entered an order concerning, inter alia, visitation between N. R. and the children.[12]

On October 4, 2022, the court, *Parkinson*, *J.*, held a trial on N. R.'s custody application. During that trial, N. R., M. P., and the guardian ad litem all testified. On October 17, 2022, the court issued its memorandum of decision in which it made the following factual findings. "[N. R.] is forty-three years old and in good health. He is currently employed as [a] landscaper and has a flexible work schedule. . . . [M. P.] is thirty-two years old and in good health. She is currently employed . . . as a salesperson in South Carolina. The minor children

[12] Specifically, the order provided: "[M. P.] currently resides in South Carolina with the minor children. [N. R.] resides in Connecticut. [M. P.] shall make every effort to arrange for an in person visitation of the minor children with [N. R.] by a third-party person within . . . six weeks from the date of this order. In addition, commencing next week, [N. R.] shall have phone call visits with the minor children by a third-party person on Monday, Wednesday and Fridays at 7 p.m. for a minimum of . . . five minutes with each phone call visit. [M. P.] is not to be involved in the phone call visits with [N. R.] and the minor children. . . . [N. R.] shall have at least . . . one in person visit with the guardian ad litem and the Behavior Health Center both involving [N. R.] with the minor children within [six] weeks from the date of this order."

On August 29, 2022, the court entered a subsequent order, which provides: "[N. R.] shall provide an updated financial affidavit to the court, forthwith. Upon completion of anger management classes, [N. R.] shall provide to the court a copy of the certification of completion. [M. P.] shall provide both to the court and to the [guardian ad litem] a copy of the itinerary of travel [arrangements] showing costs to travel from South Carolina to Connecticut. In addition, [M. P.] shall provide a letter from [her] employer with regard to employment status of the probationary period and work schedule to both the court and the [guardian ad litem]. Based on the child support guidelines, the presumptive weekly amount of child support payable by [N. R.] is $0. [N. R.] has not filed an updated financial affidavit to date and states he is unemployed at this time. [N. R.] reports to the court he is making money performing side jobs such as landscaping. The court finds under all the facts and circumstances of the case that the strict application of the child support guidelines would be inappropriate and order[s] [N. R.] to pay to [M. P.] weekly child support payments in the amount of $154 for the two . . . minor children."

are five years old and currently enrolled in kindergarten in South Carolina. . . .

"[T]here were allegations of domestic violence and stalking by [N. R.] against [M. P.]. In one such incident [N. R.] did say, in front of his children, that [M. P.], their mother, was a 'whore,' and used other profanities to describe [M. P.] and her personal activities. The minor children were four . . . years old at the time of this incident. As a result of the alleged domestic violence and verbal altercations between the parties, criminal charges were filed against [N. R.] and orders of protection issued where [M. P.] was the protected party. As a result of the protective order(s) and filings in this and [the prior custody action initiated by M. P.], [N. R.] was permitted to have weekly Sunday supervised visits. [M. P.] called the Department of Children and Families [department] . . . after one of the minor children reported to her that [N. R.] bit the minor child during one of his visits with the minor children. [The department] investigated and concluded that the allegation was 'unfounded.'

"In April, 2022, after the initiation of the instant matter, [M. P.] moved to South Carolina with the minor children. [M. P.'s] mother, with whom she had been residing, sold her home in Connecticut and moved to South Carolina. [M. P.] could not afford to find accommodations for herself and the minor children and thus moved with her mother to South Carolina, where she and the children currently reside.

"[N. R.] currently resides in Waterbury alone in a studio apartment.

"[M. P.] testified that she is working full-time on a rotating schedule but her mother, with whom she and the minor children reside, supports and helps care for the children whilst [M. P.] is at work. [N. R.] believes that the minor children should never have been moved

to South Carolina and that as a result he should not have to travel to South Carolina to see them. Instead, he insists, they should come to live with him for six months every year.

"[N. R.] has not seen the minor children since February, 2022. Behavior Health Consulting, Inc., hosted supervised visitation between [N. R.] and the minor children in Connecticut between May, 2021, and February, 2022. The supervised visits were largely a success, and the interactions between [N. R.] and the minor children were found to be appropriate. The court believes that the visits would have been switched to unsupervised visitation should the minor children have remained in Connecticut. Nevertheless, the children did move to South Carolina and video chats/phone calls ensued. [N. R.] complains that [M.P.] interferes with these calls with the minor children and that, at times, there are other men around his daughters, which is distracting and interfering with his phone calls.

"[N. R.] testified at length that he has been wronged by the legal system. Specifically, he feels that because he is not the mother but, instead, the father, he is being treated differently. He shared that he believes that if he had taken the children out of state without a court order that there would have been Amber Alerts and he would be incarcerated as a result. He is upset that he was forced to have supervised visits with his children, yet he takes no ownership for any of his own possible wrongdoings. The court is concerned that [N. R.'s] foul language and angry outbursts[13] are the cause of his strained relationship with [M. P.] and, by extension, his minor children. The court notes that [N. R.] recently underwent a course on anger management in relation to a criminal order for him to undergo such training. The

[13] "Some angry outbursts were displayed during the hearing."

court believes he would benefit from both individual therapy and the parenting education course as well.

"[N. R.] testified that [M. P.] has no support in South Carolina, has random men around his children, and has guns. The court does not find [his] testimony in this regard particularly compelling due to [M. P.'s] credible testimony to the contrary. Specifically, [M. P.] testified that [N. R.] began stalking her while she was in Connecticut, and she was informed that he was looking at or inquiring about serial killers in Waterbury. This made [M. P.] understandably afraid and she began taking steps toward gun ownership. She does not currently possess any firearms despite this. Further, [M. P.] testified that her mother is her support system, and even [N. R.] admitted that the grandmother facilitates the evening phone calls between him and the minor children. . . .

"[N. R.] is seeking an order of joint legal custody. [M. P.] objects to this and seeks an order of sole legal custody. The court accepts the parties' uncontroverted testimony that they have had a tumultuous, volatile, and at times violent relationship. The court is disturbed by the vulgar language [N. R.] used in front of the minor children to describe [M. P.], for which he appeared unapologetic. The court is also concerned that the children have not seen [N. R.] in person since February, 2022, and have not spent an overnight with him since the couple split in 2020. [N. R.] has thus never had the children overnight without the presence of [M. P.] The court also notes that [N. R.] has a studio apartment that could temporarily accommodate an overnight visit but notes [N. R.] has no immediate family or support system in the area. . . .

"[N. R.] admits that he has not complied with [the August 29, 2022] order that he pay weekly child support to [M. P.]. He went further to testify that he should not be paying to see his children in South Carolina. What

[N. R.] is overlooking is that his own disappointment in the situation is not what is of the utmost importance to the court. Instead, the court is guided by what is in the best interests of the minor children. [M. P.] has been the caregiver of the children their entire [lives] consistently. The stability of the home provided with [M. P.] has never been credibly called into question. [N. R.] on the other hand has shown that his anger and hurt can, and does at times, direct his actions toward [M. P.], which in turn affects his relationship with his children. The court is convinced that, at the present time, the best interests of the children will be served by [M. P.] having sole legal and physical custody of the children with generous visitation rights given to [N. R.]." (Citations omitted; footnote in original; footnote omitted.)

After the court made these factual findings, it stated that it had "carefully considered all of the factors listed in General Statutes § 46b-56" and issued its ruling. The court ordered that M. P. "shall have sole legal and physical custody of the minor children" and that their primary residence would be in South Carolina; however, both parents would "have unrestricted access to the children's providers and the children's records." With respect to parenting time, the court ordered that there shall be video calls between N. R. and the children on Mondays, Wednesdays, and Fridays after school but before bedtime. The court also issued orders regarding visitation in both South Carolina and Connecticut. Specifically, the court ordered that M. P. shall bring the children to Connecticut to see N. R. at least twice per year, with visits lasting at least four days each. The court provided the following instructions relevant to visitation in Connecticut: "[M. P.] shall inform [N. R.] of the travel dates at least forty-five . . . days in advance and shall provide him with the itinerary itemizing the costs for the trip. . . . If [N. R.] is up to date

in child support payments, then the parents shall equally share the costs for the children's travel. . . . [N. R.] shall provide [M. P.] with payment for his portion of the children's expenses at least twenty-one . . . days prior to the scheduled trip, so that [M. P.] may purchase tickets and make appropriate reservations. . . . If funds are not provided at least twenty-one . . . days prior to the scheduled trip, then the trip may be cancelled by [M. P.] without penalty in court. . . . When the children are in Connecticut, they shall enjoy time with [N. R.] each day from 10 a.m. until 6 p.m. . . . The transitions shall take place at the Waterbury Police Department."

The court provided the following instructions relevant to visitation in South Carolina. "[N. R.] may enjoy parenting time with the children in South Carolina as [often as] he is able to make the trip, but no more than once per month. . . . [N. R.] shall inform [M. P.] (or her designee if the protective order is still in place) of the dates and times of his travel to see the children in South Carolina at least thirty . . . days in advance. . . . When [N. R.] is in South Carolina, he may see the children daily from 10 a.m. until 6 p.m. if they are not in school, or from after school until 6 p.m. if they are in school, not to exceed five consecutive days."

Finally, the court ordered that both N. R. and M. P. engage in individual therapy, that the minor children engage in therapy, and that both parents complete the required parenting education program as prescribed by General Statutes § 46b-69b within six months from the date of the order, refrain from threatening, harassing, or stalking each other, and "encourage and foster the maximum relations of love, affection, and respect between the children and the other parent." This appeal followed. Additional facts shall be set forth as necessary.

We first set forth our well established standard of review applicable to child custody and family matters. "An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *Coleman* v. *Bembridge*, 207 Conn. App. 28, 33–34, 263 A.3d 403 (2021). "As has often been explained, the foundation for [our deferential] standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Internal quotation marks omitted.) *F. S.* v. *J. S.*, 223 Conn. App. 763, 785, 310 A.3d 961 (2024).

I

N. R.'s first claim on appeal is that the court improperly awarded sole legal and physical custody of the minor children to M. P. Specifically, N. R. argues that the court should have taken into account M. P.'s relocation to South Carolina, in violation of the automatic orders, and included a relocation analysis in making its

best interests determination as to custody.[14] We disagree.

We first set forth the legal principles regarding a trial court's custody determination. "Orders regarding the custody and care of minor children . . . are governed by . . . § 46b-56, which grants the court broad discretion in crafting such orders." Id., 785–86. "[Section] 46b-56 (a) provides in relevant part: 'In any controversy before the Superior Court as to the custody or care of minor children . . . the court may make . . . any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction . . . . Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. . . . (b) In making . . . any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include . . . (3) the award of sole custody

[14] N. R. also argues, in support of this claim, that M. P. should not have been allowed to withdraw her previous custody application. We note, however, that N. R. appealed only from the judgment of the court awarding M. P. sole legal and physical custody, not from the withdrawal of the previous action. Furthermore, in response to N. R.'s application for custody, M. P. filed a cross complaint seeking sole legal custody, which effectively negated her prior withdrawal. Moreover, to the extent that N. R. is attempting to assert a separate claim that the court erred in awarding M. P. sole legal and physical custody because she improperly was permitted to withdraw her previous action, we conclude that the claim is "superficial and conclusory" and is inadequately briefed. See *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 793 n.9, 256 A.3d 655 (2021). We, therefore, decline to review it.

to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child . . . .' " *Collins* v. *Collins*, 117 Conn. App. 380, 395, 979 A.2d 543 (2009). "[Section] 46b-56 (c) directs the court, when making any order regarding the custody, care, education, visitation and support of children, to consider the best interests of the child, and in doing so [the court] may consider, but shall not be limited to, one or more of [seventeen enumerated] factors[15]. . . . The court is not required to assign any weight to any of the factors that it considers."

[15] In determining the best interests of the child, the court looks to the factors enumerated in § 46b-56 (c): "(1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; (3) the capacity and the disposition of the parents to understand and meet the needs of the child; (4) any relevant and material information obtained from the child, including the informed preferences of the child; (5) the wishes of the child's parents as to custody; (6) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (7) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (8) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (9) the ability of each parent to be actively involved in the life of the child; (10) the child's adjustment to his or her home, school and community environments; (11) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (12) the stability of the child's existing or proposed residences, or both; (13) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (14) the child's cultural background; (15) the effect on the child of the actions of an abuser, if any domestic violence, as defined in section 46b-1, has occurred between the parents or between a parent and another individual or the child; (16) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (17) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b." General Statutes § 46b-56 (c).

(Footnote added; internal quotation marks omitted.) *Anketell* v. *Kulldorff*, 207 Conn. App. 807, 847, 263 A.3d 972, cert. denied, 340 Conn. 905, 263 A.3d 821 (2021).

"In reaching a decision as to what is in the best interests of a child, the court is vested with broad discretion and its ruling will be reversed only upon a showing that some legal principle or right has been violated or that the discretion has been abused. . . . As our Supreme Court recently reiterated, [t]he authority to exercise the judicial discretion [authorized by § 46b-56] . . . is not conferred [on] [the state's appellate courts], but [on] the trial court, and . . . we are not privileged to usurp that authority or to substitute ourselves for the trial court. . . . A mere difference of opinion or judgment cannot justify our intervention. Nothing short of a conviction that the action of the trial court is one [that] discloses a clear abuse of discretion can warrant our interference. . . . *Zhou* v. *Zhang*, 334 Conn. 601, 632–33, 223 A.3d 775 (2020); see also *Yontef* v. *Yontef*, 185 Conn. 275, 279, 440 A.2d 899 (1981) ([i]t is a rare case in which a disappointed litigant will be able to demonstrate abuse of a trial court's broad discretion in [child custody] matters)." (Citation omitted; internal quotation marks omitted.) *F. S.* v. *J. S.*, supra, 223 Conn. App. 786–88.

The primary basis of N. R.'s claim on appeal is that the court, in considering the best interests of the children in making its custody determination, erred in failing to consider the test set forth in General Statutes § 46b-56d, which relates to a parent's postjudgment relocation with a child.[16] N. R. acknowledges that § 46b-56d applies

[16] General Statutes § 46b-56d provides: "(a) In any proceeding before the Superior Court arising *after the entry of a judgment awarding custody of a minor child* and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child.

to postjudgment relocation matters but argues, nonetheless, that the test set forth in § 46b-56d "should be considered in determining the children's best interests in the context of establishing custody orders." Thus, according to N. R., the court "abused its discretion in this case by not considering at all the impact relocation would have on N. R. as a father . . . [and] the benefit N. R. would add for the children's lives by being present every week [with] them." We do not agree that the test set forth in § 46b-56d is applicable to the present case. Furthermore, N. R.'s claim that the court did not consider M. P.'s relocation with the children to South Carolina when conducting its best interest analysis is without merit.

We now set forth the case law relevant to N. R.'s claim relating to M. P.'s relocation with the children. In *Ireland* v. *Ireland*, 246 Conn. 413, 414–15, 717 A.2d 676 (1998), our Supreme Court addressed the issue of a *custodial parent* seeking permission to relocate out of state with a minor child. In its decision, our Supreme Court held "that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of that purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove, by a preponderance of the evidence, that the

"(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to: (1) Each parent's reasons for seeking or opposing the relocation; (2) the quality of the relationships between the child and each parent; (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent; (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements." (Emphasis added.)

relocation would not be in the best interests of the child." Id., 428. The court also set forth factors that must be considered in determining the best interests of the child in future relocation cases. Id., 431–32.[17] Our legislature adopted the factors set forth by our Supreme Court in *Ireland* and enacted No. 06-168 of the 2006 Public Acts, codified at § 46b-56d, which is limited to "any proceeding before the Superior Court arising *after the entry of a judgment awarding custody of a minor child* . . . ." (Emphasis added.) General Statutes § 46b-56d; see also *Taylor* v. *Taylor*, 119 Conn. App. 817, 821–22, 990 A.2d 882 (2010). In the present case, by contrast, M. P.'s relocation with the children occurred before the court rendered judgment awarding her custody.

In *Ford* v. *Ford*, 68 Conn. App. 173, 176, 789 A.2d 1104, cert. denied, 260 Conn. 910, 796 A.2d 556 (2002), this court addressed the question of "whether *Ireland* applies to relocation issues that arise when the initial custody determination is made . . . ." In concluding that *Ireland* does not extend to such situations, we held "that *Ireland* is limited to postjudgment relocation cases. We conclude[d] that because the *Ireland* court did not expand its holding to affect all relocation matters, relocation issues that arise at the initial judgment

[17] Those factors include: "[E]ach parent's reasons for seeking or opposing the move, the quality of the relationships between the child and the custodial and noncustodial parents, the impact of the move on the quantity and quality of the child's future contact with the noncustodial parent, the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move, and the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements. . . . [Also relevant is] . . . the negative impact, if any, from continued or exacerbated hostility between the custodial and noncustodial parents, and the effect that the move may have on any extended family relationships." (Citation omitted; internal quotation marks omitted.) *Ireland* v. *Ireland*, supra, 246 Conn. 431–32; see also *Brennan* v. *Brennan*, 85 Conn. App. 172, 180–81, 857 A.2d 927, cert. denied, 271 Conn. 944, 861 A.2d 1177 (2004).

for the dissolution of marriage continue to be governed by the standard of the best interest of the child as set forth in § 46b-56. While the *Ireland* factors *may be considered* as 'best interest factors' and give guidance to the trial court, *they are not mandatory or exclusive in the judgment context.*" (Emphasis added.) Id., 184. Accordingly, pursuant to *Ford*, it is within a trial court's discretion whether to consider the *Ireland* factors, now set forth in § 46b-56d, in making its determination of the best interests of a child for purposes of a custody decision made after a parent already has relocated with a child. See also *O'Neill* v. *O'Neill*, 209 Conn. App. 165, 183, 268 A.3d 79 (2021) ("By its plain language, § 46b-56d applies when the relocation issue arises after the entry of a judgment awarding custody of a minor child. Accordingly, § 46b-56d does not apply in the present case because the relocation issue was decided in the initial judgment dissolving the parties' marriage at the same time that the court was establishing the parenting plan. See, e.g., *Lederle* v. *Spivey*, 113 Conn. App. 177, 187 n.11, 965 A.2d 621 ([t]he enactment of . . . § 46b-56d clearly changed the analysis and the burden allocation in *postjudgment* relocation cases, but there is no indication that the legislature intended it to apply to relocation matters resolved at the time of the initial judgment for the dissolution of a marriage . . .), cert. denied, 291 Conn. 916, 970 A.2d 728 (2009). Indeed, this court has held that relocation issues that arise at the initial judgment for the dissolution of marriage continue to be governed by the standard of the best interest of the child as set forth in . . . § 46b-56. Id., 187." (Emphasis in original; footnote omitted; internal quotation marks omitted.)).

In the present case, the court noted that it was guided by § 46b-56 (a) and (c) in making its determination regarding custody, and that its focus must be "the best

interests of the minor children." The court made specific findings relating to the parties, the nature of their relationship and their behaviors with each other and in front of the children, including "that they have had a tumultuous, volatile, and at times violent relationship." N. R. has not challenged those findings on appeal.

Furthermore, the present case does not involve a postjudgment relocation; N. R. filed an application seeking joint legal custody with a shared parenting plan, and M. P. filed a cross complaint seeking sole legal custody. Before a custody determination was made and a trial was held on the matter, M. P. relocated to South Carolina. Pursuant to *Ford* and § 46b-56d, the court was not required to perform the relocation analysis set forth in the statute. Instead, the court was required to determine whether granting joint custody to N. R. and M. P., or sole custody to M. P., was in the best interests of the children in accordance with § 46b-56. The court concluded, on the basis of its factual findings which are not challenged on appeal, that it was in the best interests of the children for M. P. to have sole legal and physical custody.

In addition, although the court did not apply the test set forth in § 46b-56d, it is clear that the court considered the impact of the children's relocation in its best interests analysis. The court found that M. P. relocated with the children to South Carolina because her mother, with whom M. P. and the children lived in Connecticut, sold her home and moved to South Carolina. The court found that M. P. "could not afford to find accommodations for herself and the minor children and thus moved with her mother to South Carolina where she and the children currently reside." In rejecting N. R.'s assertion that M. P. has no support in South Carolina, the court noted M. P.'s testimony that "her mother is her support system" and that N. R. admitted that M. P.'s mother "facilitates the evening phone calls between him and

the minor children." With respect to N. R.'s complaint that he should not have to pay to see his children in South Carolina, the court specifically stated that, what N. R. "is overlooking is that his own disappointment in the situation is not what is of the utmost importance to the court. Instead, the court is guided by what is in the best interests of the minor children. [M. P.] has been the caregiver of their children for their entire life consistently. The stability of the home provided with [M. P.] has never been credibly called into question. [N. R.], on the other hand, has shown that his anger and hurt can, and does at times, direct his actions toward [M. P.], which in turn affects his relationship with his children. The court is convinced that at the present time, the best interests of the children will be served by [M. P.] having sole legal and physical custody of the children with generous visitation rights given to [N. R.]."[18] The court then crafted a detailed parenting plan

[18] We note that N. R.'s argument—that the court failed to consider M. P.'s relocation in violation of the automatic orders in analyzing what would be in the best interests of the children—does not challenge any of the factual findings underlying the court's best interest analysis. Whether M. P. should have been sanctioned for violating the automatic orders is a separate question from what was in the best interests of the children. The court was tasked with resolving the latter issue. N. R. never filed a motion for contempt seeking sanctions against M. P. for violating the automatic orders. See footnote 19 of this opinion. The court having concluded that it is in the best interests of the children that they live with M. P. in South Carolina, ordering their return to Connecticut because M. P. violated the automatic orders would effectively sanction the children for the violation. We see no basis in our law for such a result.

Furthermore, to the extent that N. R. challenges the court's conclusion that sole custody in one of the parents was in the best interests of the children in the present case, we note that our courts have consistently recognized ongoing acrimony and conflict between parents, which was well established in the present case, as a basis for awarding one party sole custody. See, e.g., *Daddio* v. *O'Bara*, 97 Conn. App. 286, 297, 904 A.2d 259 ("ample evidence before the court pertaining to the parties' inability to cooperate and communicate with respect to the decisions regarding the minor child . . . supported the court's conclusion that joint legal custody, which requires a level of cooperation between parents, was not in the child's best interest"), cert. denied, 280 Conn. 932, 909 A.2d 957 (2006); see also *Lugo* v. *Lugo*, 176 Conn. App. 149, 153, 168 A.3d 592 (2017) (in affirming trial court decision to award sole custody, this court noted that trial court

that gives N. R. significant unsupervised in person visitation in both South Carolina and Connecticut. Thus, the court's findings and orders show that the court considered the impact of M. P.'s relocation to South Carolina when it constructed a custody and visitation order that it believed was in the best interests of the children. On the basis of this record and allowing "every reasonable presumption in favor of the correctness of its action"; (internal quotation marks omitted) *Pencheva-Hasse* v. *Hasse*, 221 Conn. App. 113, 122, 300 A.3d 1175 (2023); we cannot conclude that the court abused its wide discretion in making its custody determination and, in doing so, not applying the statutory test of § 46b-56d.

Finally, to the extent that N. R., in claiming that the court improperly failed to apply the test set forth in § 46b-56d, is essentially asserting that the court applied an improper legal standard in making its custody determination, that issue involves a question of law over which we exercise plenary review. See *Ford* v. *Ford*, supra, 68 Conn. App. 176–77; see also *Nationwide Mutual Ins. Co.* v. *Pasiak*, 346 Conn. 216, 227, 288 A.3d 615 (2023) (analysis of whether trial court applied correct legal standard involves question of law subject to plenary review); *Crews* v. *Crews*, 295 Conn. 153, 164,

had found "it was abundantly clear that the parties were unable to coparent" (internal quotation marks omitted)); *Ge* v. *Liu*, Superior Court, judicial district of New Britain, Docket No. FA-20-5027193-S (October 23, 2023) (award of sole custody was appropriate given "that the parents have an inability to cooperate and communicate with respect to the decisions regarding the minor child, and . . . that requiring a level of cooperation between the parents would not be in the child's best interest"); *Adams* v. *Adams*, Superior Court, judicial district of Tolland, Docket No. FA-15-6009117-S (September 7, 2018) (award of sole custody to mother was due to "unhealthy and acrimonious" communication between parents, which was "severely damag[ing]" to children); *Mondello* v. *Mondello*, Superior Court, judicial district of New London, Docket No. FA-97-0542932-S (March 10, 2009) (joint custody was no longer appropriate due to "friction between the parents [that] led to at least three referrals to the Department of Children and Families"). The well-documented and persistent conflict between N. R. and M. P., therefore, supported the court's conclusion that joint legal custody would not be in the children's best interests.

989 A.2d 1060 (2010) (even in family matters, "the abuse of discretion standard applies only to decisions based solely on factual determinations made by the trial court"); *Princess Q. H.* v. *Robert H.*, 150 Conn. App. 105, 112, 89 A.3d 896 (2014) (plenary review, not abuse of discretion, is correct standard for question of law in family matter).

Our resolution of this issue requires little discussion. As we stated previously, relocation issues that arise before a judgment is rendered awarding custody and before a court establishes a parenting plan "continue to be governed by the standard of the best interest of the child as set forth in . . . § 46b-56." (Internal quotation marks omitted.) *O'Neill* v. *O'Neill*, supra, 209 Conn. App. 183. It is not disputed that the court applied that standard in making its custody determination in the present case. The court was not required to apply the test set forth in § 46b-56d, which applies to postjudgment relocation matters, and, thus, its failure to do so does not provide a legal basis for challenging its custody determination. See *Ford* v. *Ford*, supra, 68 Conn. App. 184 (factors in *Ireland*, now codified at § 46b-56d, are limited to postjudgment relocation cases). Because the court's failure to apply that test was not improper and the court appropriately made its custody orders pursuant to the best interests of the children standard set forth in § 46b-56, N. R.'s claim is unavailing.[19]

[19] N. R. also asserts in his appellate brief that his "primary problem throughout the litigation in this case was that [M. P.] would blatantly violate court orders and there would be no consequences to [M. P.] . . . ." N. R. concedes, however, that he did not file a motion for contempt regarding the plaintiff's relocation to South Carolina, which is the proper vehicle to challenge a violation of the automatic orders. Practice Book § 25-5 (d) provides in relevant part: "The automatic orders of a judicial authority . . . shall be set forth immediately following the party's requested relief . . . in any application for custody or visitation, and shall set forth the following language in bold letters: **Failure to obey these orders may be punishable by contempt of court**. . . ." (Emphasis in original.); see also *Belluci* v. *Dunn*, Superior Court, judicial district of New Haven, Docket No. CV-21-6117238-S (October 30, 2023) ("[i]f, hypothetically, the defendant violated the pen-

II

N. R.'s next claim is that the court improperly issued orders that require N. R. to be current with his child support obligation and to pay one half of the travel expenses in order to receive parenting time with the children in Connecticut. We reject this claim and conclude that it is an inaccurate recitation of the substance of the court's parenting time orders.

"As we previously set forth in this opinion, [o]ur deferential standard of review [in domestic relations cases] . . . does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal. . . . Moreover, [t]he construction of [an order or] judgment is a question of law for the court . . . [and] our review . . . is plenary. As a general rule, [orders and] judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the [order or] judgment." (Internal

dente lite orders, the appropriate approach would be to notify the court issuing the orders of the alleged violation and seek an enforcement of such orders"). After N. R. learned that M. P. had moved to South Carolina, he could have filed a motion for contempt, but he chose not to do so, and, therefore, he cannot now complain that the court never imposed any consequences on M. P.

To the extent that N. R., who was self-represented in the underlying action but is represented by counsel in this appeal, is arguing that, as a self-represented litigant, he should have been granted leeway in not following the proper procedure and filing a motion for contempt, we note that he filed multiple motions for contempt while self-represented in the previous custody action initiated by M. P. Therefore, any argument that he lacked the knowledge or ability to do so is unpersuasive. Moreover, this court consistently has held that, "[a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law." (Internal quotation marks omitted.) *Deutsche Bank National Trust Co.* v. *Pollard*, 182 Conn. App. 483, 488, 189 A.3d 1232 (2018). We cannot afford N. R. relief on appeal, however, given his failure to properly pursue the issue in the trial court by filing a motion for contempt.

quotation marks omitted.) *Coleman* v. *Bembridge*, supra, 207 Conn. App. 34–35. Furthermore, "[e]ffect must be given to that which is clearly implied as well as that which is expressed. . . . [W]e are mindful that an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding." (Internal quotation marks omitted.) *In re November H.*, 202 Conn. App. 106, 118, 243 A.3d 839 (2020). In the present case, because N. R.'s claim requires us to construe the visitation order, our review is plenary.

The court's parenting time order in its memorandum of decision provides for a parenting schedule in which M. P. is required to bring the children to Connecticut at least twice per year. She is required to inform N. R. of the dates for travel at least forty-five days in advance and to provide him with an itinerary itemizing the costs of the trip. The order specifically provides that, "[i]f [N. R.] is up to date [on] child support payments, then the parents shall equally share the costs for the children's travel." Further, if N. R. fails to pay for his portion of the children's expenses for travel at least twenty-one days prior to a scheduled trip, the trip may be cancelled by M. P.

We note that N. R. is correct that the right to visitation cannot be conditioned on whether a party is current with his or her child support obligation. See *Raymond* v. *Raymond*, 165 Conn. 735, 742, 345 A.2d 48 (1974) ("It has never been our law that support payments were conditioned on the ability to exercise rights of visitation or vice versa. The duty to support is wholly independent of the right of visitation." (Footnote omitted.)); see also *D'Amato* v. *Hart-D'Amato*, 169 Conn. App. 669, 685 n.12, 152 A.3d 546 (2016).

In the present case, the court did not require N. R. to be current on child support to receive parenting time

in Connecticut; rather, the order provides that "[*i*]*f* [N. R.] is up to date in child support payments, *then* the parents shall equally share the costs for the children's travel." (Emphasis added.) Although N. R. argues that the order allows the trip to be cancelled if he is not current on child support, the order does not condition N. R.'s visitation on whether he is current on child support. Instead, we construe the order as providing that, if N. R. is not current on child support, then he will bear the entire cost of the children's travel to Connecticut. If he is current on child support, he and M. P. will share the costs equally. The only circumstance in which M. P. is allowed to cancel a visit is if N. R. has not provided her with payment for his portion of the travel expenses, whether that payment is one half of the shared expenses or the entire portion, by twenty-one days before the visitation date. The order does not allow the cancellation of a visit because N. R. is not current on child support payments. Accordingly, N. R.'s claim necessarily fails.[20]

III

N. R.'s final claim is that the court improperly relied on the testimony of the guardian ad litem in conducting

[20] N. R. also argues that it was an abuse of the court's discretion to order N. R. to pay one half of the travel expenses for parenting time in Connecticut when it was M. P. who removed the children to South Carolina in violation of the automatic orders. N. R. cites no authority to support his argument that it is an abuse of a court's discretion to order a parent to pay part of the travel expenses for parenting time. Moreover, "[i]n 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.) *Smith* v. *Smith*, 249 Conn. 265, 282–83, 752 A.2d 1023 (1999); see id., 283–84 (not only is "the matter of travel expenses incurred in order to see one's children . . . listed explicitly as a factor for a trial court properly to consider when awarding child support" but "it can also be a consideration in determining alimony"). Given the wide discretion afforded to courts relating to child support, parenting time, and other custodial considerations, and that travel expenses are a proper consideration in an award of child support, N. R. has failed to demonstrate that the order requiring him to share in the travel costs related to his parenting time with the children in Connecticut was an abuse of the court's discretion.

its assessment of the best interests of the children. Specifically, N. R. argues that M. P. prevented the guardian ad litem from observing him interact with the children and that, therefore, the guardian ad litem was "never in a position to give recommendations on custody . . . ." The guardian ad litem in the present case argues that a guardian ad litem "is not required to perform all conceivable actions to make a credible recommendation, nor should [it] be," and that the recommendations of the guardian ad litem are just one factor for the court to consider in issuing its orders. We agree with the guardian ad litem.

The following additional facts are relevant to our resolution of this claim. In appointing Children's Law Center as the guardian ad litem for the children, the court ordered[21] that its duties included the following: investigate facts necessary to make recommendations to the court regarding the children's best interests, communicate with the parties and the children, conduct home visits, confer with family services, review all files and records, confer with school authorities and relevant professionals, participate in the creation of a parenting plan, report to the court as requested, and facilitate settlement of disputes. Consistent with those duties, the guardian ad litem reviewed reports from a third-party supervisor about N. R.'s visitation with the children, conducted a home visit with N. R., made recommendations regarding visitation and custody to the court, attempted to facilitate disputes between N. R. and M. P., and attempted to observe N. R. interacting

[21] The duties, as ordered by the court, are set forth on form 227, a Judicial Branch form, and the court's order was issued pursuant to General Statutes § 46b-12 (c), which provides in relevant part that, "[n]ot later than twenty-one days following the date on which the court enters an initial order appointing counsel or a guardian ad litem for any minor child pursuant to this section, the court shall enter a subsequent order that includes the following information: (1) The specific nature of the work that is to be undertaken by such counsel or guardian ad litem . . . ."

with the children but was unable to do so. The guardian ad litem testified,[22] and N. R. did not dispute, that on two occasions the guardian ad litem had scheduled a visit to observe N. R. and the children. The first visit was cancelled due to an ex parte order that was issued, which ordered that visitation between N. R. and the children cease at that time. Once visitation was subsequently restored, the guardian ad litem scheduled another visit to observe N. R. with the children at the library, but N. R. was arrested before the visit and the visit did not take place.

We begin with the legal principles relevant to the role of a guardian ad litem. "As a general rule, the role of a guardian ad litem is to represent the best interest of the child." *In re William H.*, 88 Conn. App. 511, 520, 870 A.2d 1102 (2005); see also *V. V.* v. *V. V.*, 218 Conn. App. 157, 169, 291 A.3d 109 (2023) ("[i]t is well established that the role of the guardian ad litem is to speak on behalf of the best interest of the child" (internal quotation marks omitted)). "Although the term best interest is elusive to precise definition, one commission study aptly observed that [t]he best interests of the child has been generally defined as a measure of a child's well-being, which includes [the child's] physical (and material) needs, [the child's] emotional (and psychological) needs, [and the child's] intellectual and . . . moral needs. . . .

"Further illumination of the role of the guardian ad litem can be found in a publication of the American Academy of Matrimonial Lawyers (Academy) regarding standards for the representation of children in family proceedings. Although those standards focus primarily on the role of counsel for a minor child, in its discussion of guardians ad litem, the Academy espouses the view

[22] Attorney Randa Hojaiban appeared and testified at the hearing on behalf of Children's Law Center.

that the primary task for the guardian ad litem, at trial, is to make the decision maker aware of all the facts and to offer evidence as a sworn witness, subject to cross-examination. Those standards also recommend that the guardian ad litem engage in frequent communication with the child, and generally help to expedite the process and to encourage settlement of disputes. American Academy of Matrimonial Lawyers, Representing Children (1995) p. 4." (Citation omitted; footnotes omitted; internal quotation marks omitted.) *In re Tayquon H.*, 76 Conn. App. 693, 704–706, 821 A.2d 796 (2003).

Our Supreme Court "has consistently held in matters involving child custody . . . that while the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child [that] must control the decision of the court. . . . In making this determination, the trial court is vested with broad discretion which can . . . be interfered with [only] upon a clear showing that that discretion was abused." (Internal quotation marks omitted.) *Zhou* v. *Zhang*, supra, 334 Conn. 632. A trial court properly may rely on testimony from a guardian ad litem in determining the best interests of the children regarding custody. See id., 628–30; see also *In re Paulo T.*, 213 Conn. App. 858, 887 n.18, 279 A.3d 766 (2022) (same), aff'd, 347 Conn. 311, 297 A.3d 194 (2023); *Zilkha v. Zilkha*, 180 Conn. App. 143, 177, 183 A.3d 64 (in making custody determination, court may seek advice and accept recommendations from guardian ad litem, who must act as representative of children's best interests), cert. denied, 328 Conn. 937, 183 A.3d 1175 (2018). A trial court is "well within its discretion to credit the testimony of the guardian ad litem because a guardian ad litem, who is not a parent, is appointed specifically for the reason that [the guardian ad litem] is disinterested, so that [the guardian ad litem] may make recommendations to the court

regarding the best interests of the children. The fact that the guardian ad litem is a disinterested or neutral witness does not require the court to adopt the guardian ad litem's recommendation." *Brown* v. *Brown*, 132 Conn. App. 30, 40, 31 A.3d 55 (2011). "In pursuit of its fact-finding function, [i]t is within the province of the trial court . . . to weigh the evidence presented and determine the credibility and effect to be given the evidence. . . . Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude. . . . An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom." (Internal quotation marks omitted.) Id.; see also *Blum* v. *Blum*, 109 Conn. App. 316, 329, 951 A.2d 587, cert. denied, 289 Conn. 929, 958 A.2d 157 (2008). As our Supreme Court has explained, any issue pertaining to the basis for the guardian ad litem's testimony regarding the best interests of the children "affects the weight of [the] testimony rather than its admissibility." (Internal quotation marks omitted.) *Zhou* v. *Zhang*, supra, 634.

In the present case, the fact that the guardian ad litem was unable to observe a visit between N. R. and his children, despite the clear efforts made by the guardian ad litem to do so, did not render the guardian ad litem unable to issue recommendations to the court, nor did it make it improper for the court to rely on those recommendations. First, we note that the order delineating the duties of the guardian ad litem did not mandate that the guardian ad litem personally observe the children interacting with each parent. Although it required that the guardian ad litem investigate the facts necessary to make recommendations to the court

related to custody and parenting time, the guardian ad litem in the present case received updates from the third-party supervisor who had observed N. R.'s visits with the children. The record shows that the guardian ad litem considered and relied in part on those reports in making recommendations to the court regarding N. R.'s ability to have parenting time with his children.[23] Second, it is unclear from the court's memorandum of decision to what extent, if indeed at all, the court relied on or credited the observations and recommendations of the guardian ad litem. Additionally, as the guardian ad litem succinctly stated in its appellate brief, "[w]hile personally observing the children with the father would have been a useful piece of the mosaic, it would have been just that, one piece; a piece that was fulfilled by the professional visitation supervisors who did, indeed, observe interactions between N. R. and the children and [reported their findings] back to the guardian ad litem." Furthermore, given that the guardian ad litem testified at the hearing and was subject to cross-examination[24] by both N. R. and M. P., the court was able to consider the basis for the guardian ad litem's observations and recommendations, and to afford them whatever weight it deemed appropriate.[25] It was for the trial

[23] The guardian ad litem testified that "all of the positive reports of the interactions between the father and the children are part of my recommendation. . . . [Y]ou know, my recommendation doesn't ask for supervised contact. It's saying that he can have the children during the day."

[24] Furthermore, we note that the guardian ad litem testified that the visits between N. R. and the children had gone well, and had previously recommended to the court that, based on the reports received from the third-party visitation supervisor, N. R. receive more, and unsupervised, visitation time with the children.

[25] We note that N. R. cross-examined the guardian ad litem about the fact that the guardian ad litem had not personally observed him interacting with the children. The following exchange ensued:

"Q. Um, have you ever seen me in those [eighteen] months [of the guardian ad litem's involvement] with my kids?

"A. No.

"Q. Okay. So, why do you even take the supervised visits if your recommendations . . . are going against what the supervised visits say?

court to make that determination, which this court cannot second-guess on appeal. Under these circumstances, N. R. has failed to demonstrate any abuse of discretion by the court in relying, to whatever extent it may have, on the testimony of the guardian ad litem in making its determination of the best interests of the children.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* ANTHONY RANDOLPH (AC 46385)

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

Syllabus

The defendant appealed to this court from the judgment of the trial court finding him in violation of his probation and revoking his probation. The defendant claimed that the trial court improperly denied his counsel's motion to withdraw her appearance and failed to conduct an adequate hearing into his competency to stand trial and, thus, improperly denied his motion for a competency evaluation pursuant to statute (§ 54-56d). *Held*:

1. The trial court did not abuse its discretion in denying the motion to withdraw filed by the defendant's counsel: the court's ruling made clear that the timing of the motion was central to its determination because, although the court stated at a hearing more than one month before the scheduled violation of probation trial that it had no objection to counsel's proposed motion to withdraw, counsel indicated she would file that motion within one or two days of the hearing, and, at the time she ultimately filed the motion, it was only nine days before the trial date; moreover, the court properly concluded that exceptional circumstances did not exist to justify granting the motion so close to trial, as the record

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"A. My—actually my recommendations are supported by what the supervised visits say, which is that the interaction between you and the children is appropriate. . . .

"Q. Do you find it strange that I was arrested at a supervised visit? Do you find that . . . startling?

"A. I think it could've probably happened any time. There was a warrant out for your arrest."

reflected that the defendant had the capacity to communicate with the court and that it was the defendant's choice to refuse to communicate with his counsel.

2. The trial court properly evaluated the defendant's motion for a competency evaluation and, thus, did not abuse its discretion in denying the motion: although the defendant's counsel disagreed with the defendant's decisions not to accept a plea offer and not to attend the trial, it was the defendant's right to do so and did not reasonably suggest that he lacked an understanding of the facts of the case or the nature of the proceeding and there was no indication that he could not assist with his defense; moreover, the court observed the defendant's demeanor and conversed with him over the course of a lengthy colloquy regarding the defendant's participation in the hearing, and it reasonably could have determined that his statements did not reflect an inability to grasp the nature of the proceeding or the facts related to the case.

Argued March 4—officially released September 3, 2024

Procedural History

Information charging the defendant with violation of probation, brought to the Superior Court in the judicial district of New Haven, geographical area number twenty-three, where the court, *Iannotti*, *J.*, denied the motion to withdraw filed by the defendant's counsel; thereafter, the case was tried to the court, *Fischer*, *J.*; judgment revoking the defendant's probation, from which he appealed to this court. *Affirmed.*

J. Christopher Llinas, assigned counsel, for the appellant (defendant).

Raynald A. Carre, deputy assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Thomas Funnican* and *Sarah Jones*, assistant state's attorneys, for the appellee (state).

Opinion

SUAREZ, J. The defendant, Anthony Randolph, appeals from the judgment of the trial court finding him in violation of his probation and revoking his probation pursuant to General Statutes § 53a-32. The defendant claims that the court improperly (1) denied his counsel's

motion to withdraw her appearance and (2) failed to conduct an adequate inquiry into his competency to stand trial and, consequently, erred in denying his motion for a competency evaluation pursuant to General Statutes § 54-56d. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the claims raised in this appeal. On November 20, 2020, the defendant pleaded guilty to assault of a public safety officer in violation of General Statutes § 53a-167c. The court, *Vitale*, *J.*, sentenced the defendant to a ten year term of incarceration, execution suspended after four years, and a three year term of probation. Among the special conditions of probation imposed by the court at the time of sentencing in accordance with General Statutes § 53a-30 were that the defendant submit to (1) substance abuse evaluation and treatment as deemed appropriate and (2) mental health evaluation and treatment as deemed appropriate.

On April 13, 2022, the defendant was released from prison and began serving his term of probation. Under the direction of adult probation services, the defendant entered Alternative in the Community (AIC) in Waterbury, a halfway housing facility. The defendant was also assigned to complete outpatient services offered by Wellmore Behavioral Health (Wellmore), an organization that provides both substance abuse and mental health services.

On May 26, 2022, the defendant's probation officer, Allison Chance, filed an application for an arrest warrant for the defendant based on his having violated one or more conditions of his probation. In support of the warrant, Chance averred that, on May 11, 2022, the defendant was unsuccessfully discharged from AIC and that the discharge report stated that "[the defendant] was discharged due to his inability to abide by [the

program's] rules and regulations. It was reported that [the defendant] had committed sexually inviting acts towards female staff during female visual pat searches. When . . . he was addressed by supervision he became hostile. In the midst of [the defendant's] anger he broke several more of this program's rules. The police were contacted later that night due to [his] not following the direction of staff when he was asked to leave the program's premises. He has been told he is not allowed back on the premises again." Chance also averred that, on May 25, 2022, the defendant was unsuccessfully discharged from Wellmore. Chance stated that "[a] staff member [of Wellmore] reported that [the defendant] was escorted out of the building after saying racial and homophobic slurs to one of their clinicians. [The defendant] is not allowed back on the premises." On the basis of these facts, Chance averred that there was probable cause to believe that the petitioner had violated the standard condition of his probation that he "[s]ubmit to any medical and/or psychological examination, urinalysis, alcohol and/or drug testing, and/or counseling sessions as required by the [c]ourt or the [p]robation [o]fficer." Chance also averred that there was probable cause to believe that the defendant had violated the special conditions of his probation obligating him to submit to "substance abuse evaluation and treatment as deemed appropriate" and "mental health evaluation and treatment as deemed appropriate."

On June 30, 2022, the court, *Zagaja*, *J.*, issued the warrant. On July 8, 2022, police executed the warrant and arrested the defendant. Following the defendant's arrest, he was represented by the Office of the Chief Public Defender. Thereafter, the defendant was represented by Attorney Kimberly Coleman, who was appointed by the Office of the Chief Public Defender as assigned counsel.

The court, *Fischer*, *J.*, held a trial on the violation of probation charge on January 19, 2023. The court heard testimony from Joseph Murolo, an assistant clerk, as well as Chance. The court also received documentary evidence. Following the evidentiary phase of the trial, the court found that the petitioner had violated the terms of his probation.[1] The court based this finding on its subordinate finding that the defendant had been discharged for disciplinary reasons from AIC as a result of his having acted in a sexually inappropriate and hostile manner toward staff. The court also found that the defendant had not successfully completed the program offered by Wellmore as a result of his having uttered inappropriate racial slurs to clinicians. The court further found that, following his discharge from these programs, the defendant had "several new arrests." In the dispositional phase of the trial, the court found, in light of the defendant's inability to comply with the conditions of his probation and his extensive criminal record, that the beneficial aspects of probation were no longer being served. The court, finding that the defendant was "not a good candidate for probation," revoked the defendant's probationary status and committed him to the care and custody of the Commissioner of Correction

[1] "[R]evocation of probation hearings, pursuant to § 53a-32, are comprised of two distinct phases, each with a distinct purpose. . . . In the evidentiary phase, [a] factual determination by a trial court as to whether a probationer has violated a condition of probation must first be made. . . . In the dispositional phase, [i]f a violation is found, a court must next determine whether probation should be revoked because the beneficial aspects of probation are no longer being served." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Preston*, 286 Conn. 367, 375–76, 944 A.3d 276 (2008). A court's findings in the evidentiary phase are governed by the preponderance of the evidence standard. See *State* v. *Davis*, 229 Conn. 285, 302, 641 A.2d 370 (1994) ("a trial court may not find a violation of probation unless it finds that the predicate facts underlying the violation have been established by a preponderance of the evidence at the hearing—that is, the evidence must induce a reasonable belief that it is more probable than not that the defendant has violated a condition of his or her probation").

to serve the remainder of his six year term of incarceration. This appeal followed.

I

First, the defendant claims that the court improperly denied his counsel's motion to withdraw her appearance. We are not persuaded.

The following additional procedural history is relevant to this claim. The court, *Iannotti*, *J.*, held a pretrial hearing on November 28, 2022, at which time the defendant was represented by Attorney Coleman not only in the violation of probation case but in connection with additional criminal charges that arose subsequent to the violation of probation charge. At the hearing, the defendant entered a not guilty plea to a pending assault charge. Thereafter, the defendant personally addressed the court to request that Attorney Coleman be "removed from [his] case" on the ground of ineffective representation. During a lengthy colloquy with the court, the defendant represented that Attorney Coleman did not immediately recognize him earlier that day when she visited with him, "did not explain anything" to him, did not communicate whether there was a pending offer from the state, and did not take steps to have the case moved "to another jurisdiction." The court informed the defendant that Attorney Coleman was appointed to represent him as a special public defender and that he did not have the right to decide who his appointed counsel was. The court informed the defendant that he had the right to hire private counsel of his choice and that he would afford him time to do so. The court, however, cautioned the defendant not to "waste [its] time" in that respect if the defendant did not sincerely intend to hire private counsel.

After the defendant complained that he did not know what was happening, the court discussed the violation of probation charge. The court also discussed a pending

plea offer for two and one-half years of incarceration on the violation of probation charge. Attorney Coleman then addressed the court with respect to her efforts on behalf of the defendant, including the circumstances of her interactions with the defendant earlier that day in the courthouse. Attorney Coleman stated that since she was assigned to work on the case, she had filed a court appearance on behalf of the defendant on October 31, 2022, she received police reports, she talked to the prosecutor, and she obtained a background check on the defendant. Attorney Coleman stated that she spent forty minutes with the defendant in a private room earlier that day and explained "how the court works . . . ." Attorney Coleman also stated that she recognized the defendant and that, following her private meeting with him, she believed that he understood the matters that they had discussed.

Thereafter, the court passed the matter to permit the defendant and Attorney Coleman an opportunity to pursue having the Office of the Chief Public Defender reassign the case to another special counsel. When the court took up the matter later that day, Attorney Coleman informed the court that the violation of probation trial had been scheduled for January 19, 2023, and that Attorney Bevin Salmon, the supervising attorney for the Office of the Chief Public Defender in the judicial district of New Haven, geographical area number twenty-three, had spoken with the defendant but that there was "just no meeting of the mind[s] . . . ." Then, Attorney Coleman stated, "after twenty-five years, I think I know what I'm talking about and he's asking me to do something that I can't do for him. And maybe there is a lawyer out there that can get him what he wants, but it's not me. So, I'm going to be filing a motion to withdraw." Attorney Coleman informed the court that she intended to file the motion in "the next day or two." The defendant once more interjected, expressing

his belief that Attorney Coleman was not "communicating properly" with him, that Attorney Coleman was making misrepresentations to him, and that he was not receiving due process. The court stated that it had "no objection" to the proposed motion provided that the Office of the Chief Public Defender was able to substitute another attorney to represent the defendant.

On January 10, 2023, Attorney Coleman filed a motion to withdraw. In her motion, Attorney Coleman stated that (1) the defendant has expressed his desire that she not represent him, (2) she had discussed the meetings that she had had with the defendant with the director of assigned counsel for the Office of the Chief Public Defender, (3) the Office of the Chief Public Defender had expressed its willingness to reassign the matter to another attorney if the court granted the motion, (4) there was a complete breakdown of the attorney-client relationship, and (5), in the absence of a change in representation, holding the upcoming hearing on the violation of probation charge, which was scheduled for January 19, 2023, would amount to "a waste of the court's time . . . ."

On January 12, 2023, the court, *Iannotti*, *J.*, held a hearing on the motion to withdraw. Attorney Coleman expressed her belief, based on discussions with the Office of the Chief Public Defender that, if the court granted the motion, another attorney would be assigned to represent the defendant. In ruling on the motion, the court stated that it was mindful of the fact that the violation of probation hearing was scheduled for January 19, 2023, which was merely a week away. The court stated that it was inclined to deny the motion in light of the fact that that the presiding judge had communicated to him that the hearing on January 19, 2023, before Judge Fischer, "must go forward . . . ." The court noted that the state had made an offer to the defendant and that it was still available to him. Attorney Coleman

stated that the defendant was aware of the offer but that she was not comfortable meeting alone with the defendant because, earlier that morning, she met with the defendant and that, during their discussion, "he put his hands in his pants and started fondling himself . . . ." Attorney Coleman stated that she feared for her safety.

The defendant repeatedly addressed the court to express his belief that he did not want Attorney Coleman to represent him. He stated that she was disrespectful to him, had lied to him, was lying to the court, and was upset with him for his comments at the pretrial hearing. The court responded: "Lawyers, as [Attorney] Coleman knows, [who have been] doing this for quite some time and quite successfully for some time, realize regardless of her making the motion [to withdraw] that there sometimes [are] individuals that they have to represent for a variety of reasons if they are less than comfortable representing them. Regardless of that, that does not mean . . . in this particular situation that she will not zealously represent you even [though] she may not wish to do so. But she will.

"Now, she is your court-appointed lawyer. As the law states, and [Attorney] Coleman's aware of this and that's why she understands, that . . . you don't get to choose your court-appointed lawyer in this case." When the defendant stated that he wished to hire private counsel, the court told him that he had the right to do so by the hearing on January 19, 2023. The court denied the motion to withdraw, and Attorney Coleman stated on the record that she intended to zealously represent the defendant at the violation of probation trial.[2]

[2] As the defendant was leaving the courtroom, the court overheard the defendant state that he had not been afforded an opportunity to enter guilty pleas to resolve his pending criminal cases. The court asked Attorney Coleman to speak with the defendant concerning his willingness to enter guilty pleas. The court recalled the matter later that day. Attorney Coleman represented to the court that the defendant had not expressed a willingness

The defendant claims that the court's denial of Attorney Coleman's motion to withdraw her appearance amounted to an abuse of its discretion because (1) the court was presented with evidence of a complete breakdown in communication between him and Attorney Coleman, (2) the court suggested at the hearing on November 28, 2022, that it would be inclined to grant a motion to withdraw if the Office of the Chief Public Defender could reassign the case to another attorney, and (3) Attorney Coleman informed the court at the January 12, 2023 hearing on the motion to withdraw that the Office of the Chief Public Defender would assign the case to another attorney if the court granted the motion.

The following legal principles are relevant to our resolution of the defendant's claim. A motion to withdraw appearance is governed by Practice Book § 3-10 which provides in subsection (a) that "[n]o motion for withdrawal of appearance shall be granted unless good cause is shown and until the judicial authority is satisfied that reasonable notice has been given to other attorneys of record and that the party represented by the attorney was served with the motion and the notice required by this section . . . ." "The standard of review regarding a motion to withdraw as counsel is abuse of discretion. The standard of reviewing both a motion by a defendant to discharge counsel and a motion by counsel to withdraw is the same. . . . It is within the trial court's discretion to determine whether a factual basis exists for appointing new counsel and, absent a factual record revealing an abuse of that discretion, the court's refusal to appoint new counsel is not improper. . . . Such a request must be supported by a substantial reason and, [i]n order to work a delay by a last minute

to attempt to resolve any pending matter but that he was "irate" and had refused to talk to her.

discharge of counsel there must exist exceptional circumstances. . . .

"In evaluating whether the trial court abused its discretion in denying [a] defendant's motion for substitution of counsel, [an appellate court] should consider the following factors: [t]he timeliness of the motion; adequacy of the court's inquiry into the defendant's complaint; and whether the attorney/client conflict was so great that it had resulted in total lack of communication preventing an adequate defense." (Citation omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Gamer*, 152 Conn. App. 1, 33–34, 95 A.3d 1223 (2014). "Discretion means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice. . . . It goes without saying that the term abuse of discretion . . . means that the ruling appears to have been made on untenable grounds. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *State* v. *Olah*, 60 Conn. App. 350, 354, 759 A.2d 548 (2000).

We first address the defendant's reliance on the fact that, at the November 28, 2022 hearing, the court stated that it would not object to the motion to withdraw that Attorney Coleman intended to file if the Office of the Chief Public Defender agreed to appoint replacement counsel. As stated previously, Attorney Coleman informed the court at the pretrial hearing on November 28, 2022, that she intended to file a motion to withdraw within one or two days. The court's statements concerning how it might rule on the motion must be viewed in light of that representation. Attorney Coleman, however, did not file the motion to withdraw within one or two days but waited until January 10, 2023, just nine days prior to the scheduled violation of probation trial.

Attorney Coleman did not provide an explanation for the timing of the motion. Instead, in connection with her motion, Attorney Coleman indicated that the Office of the Chief Public Defender was willing to appoint replacement counsel for the defendant if, in fact, the court granted the motion. The defendant's reliance on the court's statements concerning the motion at the hearing on November 28, 2022, is misplaced. We interpret the court's statements to be based on Attorney Coleman's representation that she would file a motion to withdraw within one or two days of the hearing. That timely motion was not forthcoming.

At the time that the court considered the motion to withdraw on January 12, 2023, the violation of probation trial was scheduled to take place in just seven days. Attorney Coleman did not set forth a reason for the timing of her motion, but it is undeniable that the delay in filing the motion meant that the court was faced with a motion to withdraw that was being made effectively on the eve of trial. There is little question that granting the motion to withdraw at that late date would have required that the violation of probation trial be rescheduled and significantly delayed while new counsel was brought up to speed. As the court's ruling makes clear, the timing of the motion was central to the court's exercise of its discretion. This is because "[t]he trial court has the responsibility to avoid unnecessary interruptions, to maintain the orderly procedure of the court docket, and to prevent any interference with the fair administration of justice." (Internal quotation marks omitted.) *State* v. *Stevenson*, 53 Conn. App. 551, 562, 733 A.2d 253, cert. denied, 250 Conn. 917, 734 A.2d 990 (1999).

Thus, we turn to whether the court properly concluded that exceptional circumstances did not exist to justify granting the motion filed so close to trial. The court inquired into the defendant's complaints about

Attorney Coleman, and it considered the information that Attorney Coleman conveyed to the court about her representation of the defendant. The defendant addressed the court to express the reasons for his dissatisfaction with Attorney Coleman. The court was in the best position to evaluate the reasons underlying the motion to withdraw. The record of proceedings amply reflects that the defendant had the capacity to communicate with the court, and he repeatedly stated that he did not want Attorney Coleman to continue to represent him. The defendant, however, merely articulated his belief that she was not providing him with adequate representation and was not providing him with information about his case. Attorney Coleman, however, refuted these representations. She believed that she had conveyed adequate guidance to him and, moreover, that he understood the matters that they had discussed. Furthermore, to the extent that Attorney Coleman stated as a ground for her motion that a breakdown in communication existed, it is clear from a review of the record that the cause of this breakdown was the defendant's disruptive behavior toward her and his unwillingness to converse with her. Even after Attorney Coleman alerted the court to the defendant's suggestive behavior during her morning meeting with him on January 12, 2023, she stated that she would zealously represent him. Indeed, the record reflects that Attorney Coleman attempted to meet privately with the defendant on January 12, 2023, to discuss pleas, only to later alert the court that the defendant was irate and had refused to speak with her. See footnote 2 of this opinion. The record thus reflects that, although Attorney Coleman felt uncomfortable being in the defendant's presence, she continued to attempt to discuss matters of trial strategy with him. It was the defendant's choice, not Attorney Coleman's, to refuse to communicate.

In *State* v. *Gonzalez*, 205 Conn. 673, 535 A.2d 345 (1987), our Supreme Court rejected a defendant's claim

that a complete breakdown in communication between himself and trial counsel warranted the appointment of new counsel. In addressing the claim raised in *Gonzalez*, our Supreme Court reasoned as follows: "While we have recognized that in some circumstances a complete breakdown in communication may require a new appointment . . . we agree with the state that this case does not present circumstances of this sort. A defendant is not entitled to demand a reassignment of counsel simply on the basis of a breakdown in communication which he himself induced. . . . The record before us indicates that the defendant was entirely responsible for whatever breakdown in communication occurred between himself and his attorney. . . . We therefore conclude that the trial court did not abuse its discretion in not permitting the defendant to discharge his lawyer." (Citations omitted; internal quotation marks omitted.) Id., 684; see also *State* v. *Robinson*, 227 Conn. 711, 727, 631 A.2d 288 (1993) (reassignment of counsel was not warranted based on breakdown in communication induced by defendant); *State* v. *Kerlyn T.*, 191 Conn. App. 476, 493–94, 215 A.3d 1248 (2019) (same), aff'd, 337 Conn. 382, 253 A.3d 963 (2020). This same reasoning applies in the present case to the court's denial of the motion to withdraw. Moreover, a change in counsel is not warranted based solely on the defendant's preference, for, "[a]lthough the constitution guarantees a defendant counsel that is effective, it does not guarantee counsel whom a defendant will like." *State* v. *Arroyo*, 284 Conn. 597, 645, 935 A.2d 975 (2007).

For the reasons we have discussed, we conclude that the court's denial of the motion to withdraw was not an abuse of its discretion.

II

Next, the defendant claims that the court improperly failed to conduct an adequate inquiry into his competency to stand trial and, consequently, erred in denying

his motion for a competency evaluation pursuant to § 54-56d. We are not persuaded.

The following additional procedural history is relevant to this claim. In part I of this opinion, we discussed some of the events that took place at pretrial proceedings before the court, *Iannotti*, *J.*, on November 28, 2022, and January 12, 2023. On January 19, 2023, the violation of probation trial was scheduled to proceed before the court, *Fischer*, *J.* Prior to the start of the proceeding, the court learned from the marshal and representatives of the Department of Correction that the defendant, who was incarcerated, refused to be transported to the courthouse and that court personnel had established a video connection to the correctional facility where the defendant was incarcerated so that he could participate virtually in the trial. At the beginning of the proceeding, a correction officer informed the court that the defendant had left the room in which he could have participated virtually in the trial. Attorney Coleman informed the court that, that morning, the defendant, via video, observed her presence and asked what she was doing in the courtroom. When Attorney Coleman informed him that she was there to represent him at the trial on the violation of probation charge, he stated that he was there to attend a hearing on a motion to dismiss and that she was not his attorney. The defendant then walked out of the room.

Ultimately, the defendant returned and addressed the court. The defendant stated that he had just been made aware that a hearing was to take place and that he believed that the case had been continued because Attorney Coleman had filed a motion to withdraw. The defendant stated that he did not see "eye to eye" with Attorney Coleman and that she failed to file motions pertaining to his case. He stated that she did not convey any plea offer to him and that she failed to show him a video related to one of the criminal charges pending

against him. The defendant stated that he was dissatisfied with Attorney Coleman, who, in his view, was not acting in his best interest. The defendant also stated that he did not feel safe being transported to the courthouse because he had been assaulted by a marshal who claimed that the defendant had assaulted him first.

The court addressed the defendant, noting that Judge Iannotti had denied Attorney Coleman's motion to withdraw and that the violation of probation trial had been scheduled for quite some time. The court informed the defendant that the trial would take place that day, the state was ready to proceed, Attorney Coleman was going to represent him, and the defendant had the option of participating virtually. After the defendant continued to protest that Attorney Coleman was not his attorney, the court reiterated that the issue had been resolved by Judge Iannotti and that Judge Iannotti had made it clear on the record that the violation of probation trial was scheduled for January 19, 2023. Thereafter, the defendant left the room from which he was able to participate virtually in the trial and returned to his jail cell. Correction officers notified the court that the defendant stated to them that the hearing would continue without him and that he was aware that he was not going to be part of the trial. The court asked the correction officers, in the event that the defendant had a change of heart with respect to exercising his right to participate in the proceeding virtually, to notify the court immediately.

At that juncture, the following colloquy between Attorney Coleman and the court occurred:

"Attorney Coleman: Your Honor, if I could just address the court. I've been representing [the defendant] since last October and I'm assigned counsel on this matter. He had some previous counsel, public defenders, and [the Office of the Chief Public Defender

had to assign the case to a special public defender]. And based on my interactions with him . . . he has said we don't get along. That's not the issue, Judge. I'm concerned about some of his mental health issues. I truly believe he understands the charges, but if we ever went to trial, I don't think that he could aid in his defense, so I'm requesting a [competency evaluation under § 54-56d] at this point especially based on [the fact that] he told me today that we're here for my motion to dismiss.

"The Court: Has any other—have you ever made this request before, Attorney Coleman?

"Attorney Coleman: No, Your Honor. In looking back at his records, I don't know if there's ever been one.

"The Court: All right.

"Attorney Coleman: And . . . I . . . .

"The Court: So, you have no evidence of any other counsel or in any other proceedings, my understanding is he has other files—

"Attorney Coleman: And I have all of his files, Judge.

"The Court: —that there's never been a request for a [competency evaluation under § 54-56d]?

"Attorney Coleman: Your Honor, I always use § [54-56d] judiciously and . . . since I started representing him back in October, I see a decompensation in him, Judge. And, I mean, I've met with him two times already. Forty-five minutes the first time on [October 31, 2022], and forty minutes on [November 28, 2022], and had extensive discussions with him. And there was a very good offer for him and actually Attorney Salmon, [the supervising attorney with the Office of the Chief Public Defender], went down and talked to him to help him to understand and I just don't know if he's getting the second part of the equation, Judge. I just don't know

if he can aid in his defense especially [with] him walking off.

"The Court: Well, he wouldn't be the first disruptive defendant in a criminal proceeding and he won't be the last, but disruptive behavior is . . . not correlating to a direct § [54-56d] and . . . I would assume there's been many good offers made by the State of Connecticut and judicial offers made to the defendant that have been rejected by defendants which is their perfect constitutional right. And . . . I don't want to hear anything about an offer made in this case . . . .

"Attorney Coleman: I—

"The Court: No. I understand that and you haven't [divulged such information to the court]. I just wanted to underline that. [It's] that he declined to accept an offer to resolve the case. That's his perfect right. But I'm going to deny your request for a hearing. Disruptive behavior . . . is not tantamount to a § [54-56d]. You put on the record what you felt are the specific issues that . . . entitled you to that. I respectfully disagree, you know, especially with the timing of this. Again, disruptive behavior, yelling at people, does not entitle him to that hearing.

"So, with that, I think the [record is] protected . . . the defendant was aware that this hearing was going to proceed without him on it. He has the perfect right to participate. If he changes his mind, we'll hear from [the Department of Correction]."

The defendant argues that the court failed to conduct an adequate inquiry into the motion for a competency evaluation. The defendant relies on the information that was known to the court at the time it considered the motion, including the statements that he made to the court about the hearing and Attorney Coleman, the fact that he was a probationer who was subject to mental

health evaluation, his refusal to be transported to court on January 19, 2023, his refusal to participate virtually in the trial, and, most importantly, Attorney Coleman's representations to the court in support of the motion. He argues that this information "suggested [his] lack of ability to communicate rationally with Attorney Coleman and assist in his own defense." The defendant argues that this information sufficiently called into doubt his competence and necessitated further investigation by the court. Instead, the defendant argues, the court "engaged in no inquiry in response to Attorney Coleman's representations but instead jumped to the conclusion that [he] was being disruptive and obstinate." On the basis of these facts, the defendant argues that the court improperly denied the motion for a competency evaluation.

The following legal principles guide our analysis. "We review the court's ruling on a motion for a competency evaluation under the abuse of discretion standard. . . . In determining whether the trial court [has] abused its discretion, this court must make every reasonable presumption in favor of [the correctness of] its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did. . . .

"[T]he conviction of an accused person who is not legally competent to stand trial violates the due process of law guaranteed by the state and federal constitutions. . . . This rule imposes a constitutional obligation, [on the trial court], to undertake an independent judicial inquiry, in appropriate circumstances, into a defendant's competency to stand trial . . . . [Section] 54-56d (a) codified this constitutional mandate, providing

in relevant part: A defendant shall not be tried, convicted or sentenced while the defendant is not competent. [A] defendant is not competent if the defendant is unable to understand the proceedings against him or her or to assist in his or her own defense.

"This statutory definition mirrors the federal competency standard enunciated in *Dusky* v. *United States*, 362 U.S. 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (per curiam). According to *Dusky*, the test for competency must be whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him. . . .

"Although § 54-56d (b) presumes the competency of defendants, when a reasonable doubt concerning the defendant's competency is raised, the trial court must order a competency examination. . . . Thus, [a]s a matter of due process, the trial court is required to conduct an independent inquiry into the defendant's competence whenever he makes specific factual allegations that, if true, would constitute substantial evidence of mental impairment. . . . Substantial evidence is a term of art. Evidence encompasses all information properly before the court, whether it is in the form of testimony or exhibits formally admitted or it is in the form of medical reports or other kinds of reports that have been filed with the court. Evidence is substantial if it raises a reasonable doubt about the defendant's competency . . . . The trial court should carefully weigh the need for a hearing in each case, but this is not to say that a hearing should be available on demand." (Citation omitted; internal quotation marks omitted.) *State* v. *Norris*, 213 Conn. App. 253, 268–69, 277 A.3d 839, cert. denied, 345 Conn. 910, 283 A.3d 980 (2022).

The defendant argues that the present case is factually analogous to *State* v. *Dort*, 315 Conn. 151, 106 A.3d

277 (2014), in which our Supreme Court affirmed this court's judgment, albeit on different grounds, reversing a defendant's judgment of conviction on the ground that the trial court improperly denied his request for a competency hearing. Id., 153–55. Our Supreme Court concluded that the trial court in *Dort* abused its discretion in denying the motion for a competency evaluation because it did not afford due weight to defense counsel's statements in support of the motion and, instead, relied heavily on a prior competency report concerning the defendant. Id., 178. The court also reasoned that, under the facts present, the trial court could not properly have relied on its own observations of the defendant over the representations made by defense counsel. Id., 182.

We are not persuaded by the defendant's reliance on *Dort*. Unlike in *Dort*, the factual representations made by defense counsel in support of the motion for a competency evaluation were less specific or detailed than those made by defense counsel in *Dort*. In *Dort*, defense counsel made detailed allegations, including that the defendant had a fundamental misunderstanding as to " 'what can be put forward as a defense in this case' " and that the defendant did not comprehend " 'the seriousness of the charges in light of the defense.' " Id., 158. Defense counsel also stated that " 'attempting to extrapolate the relevant information from [the defendant] in order for [counsel] to go forward with his defense is virtually impossible.' " Id. Defense counsel informed the court that the defendant did not comprehend the facts that were relevant to the state's case. Id., 159. Defense counsel stated that, " 'I cannot for the life of me extrapolate much more in the way of facts from him at this juncture.' " Id., 174–75.

In the present case, Attorney Coleman stated that she had observed a "decompensation" in the defendant since she began representing him in October, 2022.

Attorney Coleman's opinion of the defendant's mental health appears from her statements to have been based solely on just two discussions that she had with him, one lasting forty-five minutes in October, 2022, and another lasting forty minutes in November, 2022. In terms of specific facts on which her opinion was based, Attorney Coleman stated that there had been "a very good offer" that the defendant refused to accept and that he chose not to attend the trial that day.

These specific factual allegations are vastly different than the type of representations made by the defense counsel in *Dort*. In *Dort*, counsel's representations were related to the core concerns enunciated in *Dusky*, namely, whether the defendant had a rational and factual understanding of the proceedings against him. *State* v. *Dort*, supra, 315 Conn. 170–71, 182–83; *Dusky* v. *United States*, supra, 362 U.S. 402. Here, counsel related that the defendant chose not to accept a plea offer, as was his right. She also noted that he chose not to attend the trial, which was also his right. Although she disagreed with both of these decisions made by the defendant, they, viewed in isolation or in conjunction with the other facts known to the court, do not reasonably suggest that the defendant lacked an understanding of the facts of the case or the nature of the proceeding. It is also significant to note that, although Attorney Coleman questioned whether the defendant could aid in his defense, such belief appears to have been primarily based on the fact that he chose not to attend the proceeding that day. Moreover, before raising the motion for a competency evaluation, Attorney Coleman stated her belief that the defendant understood the charges against him.

Turning to other information known to the court, we note that, unlike in *Dort*, in the present case there was no evidence of a prior mental health evaluation on which Judge Fischer relied. Instead, although Judge

Fischer did not canvass the defendant, he did engage in a lengthy colloquy with the defendant with respect to whether the defendant would participate remotely in the hearing that day. Although, as the court aptly stated, the defendant had engaged in disruptive behavior and repeatedly expressed both his dissatisfaction with Attorney Coleman and his belief that she should not be his attorney, such conduct and beliefs did not necessarily reflect incompetency. See, e.g., *State* v. *Glen S.*, 207 Conn. App. 56, 77, 261 A.3d 805 ("defendant's obstreperous, uncooperative or belligerent behavior . . . and hostility toward [his] attorney [does] not necessarily indicate defendant's incompetency" (internal quotation marks omitted)), cert. denied, 340 Conn. 909, 264 A.3d 577 (2021), cert. denied, U.S. , 142 S. Ct. 2685, 212 L. Ed. 2d 768 (2022); *State* v. *Johnson*, 22 Conn. App. 477, 489, 578 A.2d 1085 (defendant's uncooperative behavior at trial, including refusal to return to court, did not require competency evaluation), cert. denied, 216 Conn. 817, 580 A.2d 63 (1990). Unlike in *Dort*, the record reflects that the court made reference to its own observations of the defendant's behavior when ruling on the motion for a competency evaluation. In contrast with this court, the trial court was able to observe his demeanor and converse with the defendant. From our examination of the record, the trial court reasonably could have determined that the defendant's statements to the court did not reflect an inability to grasp the nature of the proceeding or the facts related to the state's case. There also is no indication that he could not assist with his defense, only that he chose not to do so because he and Attorney Coleman did not "see eye to eye" and he believed that she was "working with the prosecution." Furthermore, the record reflects that the defendant made his decision not to cooperate with and assist Attorney Coleman as early as his November 28, 2022 appearance before Judge Iannotti, long

before when Attorney Coleman became concerned about his "decompensation."

In sum, the reasons underlying the court's denial of the motion for a competency evaluation in the present case are distinguishable from those present in *Dort*. Here, the court was not presented with specific facts that pertained to the issue of his competency to stand trial. Moreover, the court based its decision, in part, on its observations of the defendant's conduct that day. Although Attorney Coleman questioned whether the defendant could aid in his defense, our Supreme Court has observed that "a trial court need not automatically defer to the opinion of defense counsel on the matter of the defendant's competence . . . ." *State* v. *Dort*, supra, 315 Conn. 182.

For the foregoing reasons, we conclude that the court properly evaluated the motion for a competency evaluation and did not abuse its discretion in denying the motion.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* DAYVID J.*
(AC 46382)

Alvord, Suarez and Westbrook, Js.

Syllabus

Convicted, on a plea of guilty, of the crime of strangulation in the second degree, the petitioner appealed to this court from the judgment of the

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

Moreover, 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 party's identity may be ascertained.

trial court dismissing his petition for a writ of error coram nobis because it lacked subject matter jurisdiction. In his petition, the petitioner sought permission to withdraw his guilty plea, claiming, inter alia, that his trial counsel had rendered ineffective assistance. *Held* that the trial court properly determined that it lacked subject matter jurisdiction over the petition for a writ of error coram nobis; because the petitioner could have raised his ineffective assistance of counsel claim in a petition for a writ of habeas corpus during his period of probation, he failed to avail himself of an alternative legal remedy available to him; moreover, this court declined the petitioner's request that this court overrule *State* v. *Stephenson* (154 Conn. App. 587), which clearly held that the prior availability of a writ of habeas corpus defeats the jurisdiction of the trial court to entertain a petition for a writ of error coram nobis, the petitioner having failed to file a motion requesting that this court hear his appeal en banc.

Argued May 29—officially released September 3, 2024

Procedural History

Information charging the petitioner with the crimes of strangulation in the second degree and disorderly conduct, brought to the Superior Court in the judicial district of Windham, geographical area number eleven, where the petitioner was presented to the court, *Newson, J.*, on a plea of guilty to strangulation in the second degree; judgment of guilty in accordance with the plea; thereafter, the court, *K. Shay, J.*, rendered judgment dismissing the petitioner's petition for a writ of error coram nobis, and the petitioner appealed to this court. *Affirmed.*

Vishal K. Garg, assigned counsel, for the appellant (petitioner).

James A. Killen, senior assistant state's attorney, with whom, on the brief, was *Anne F. Mahoney*, state's attorney, for the appellee (state).

Opinion

PER CURIAM. The petitioner, Dayvid J., appeals from the judgment of the trial court dismissing his petition for a writ of error coram nobis. On appeal, the petitioner

claims that the court improperly determined that it lacked jurisdiction to consider the merits of his petition and, therefore, erred in dismissing his petition. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to our disposition of this appeal. On or about September 21, 2017, the petitioner was arrested in connection with a domestic dispute. The petitioner was subsequently charged with strangulation in the second degree in violation of General Statutes § 53a-64bb and disorderly conduct in violation of General Statutes § 53a-182. On March 6, 2018, the petitioner pleaded guilty to strangulation in the second degree in violation of § 53a-64bb and was sentenced to a term of three years of incarceration, execution fully suspended, with three years of probation.

On January 23, 2023, the self-represented petitioner filed a petition for a writ of error coram nobis, alleging that he had "exhausted all [his] remedies" with respect to his conviction and requesting that the court allow him to withdraw his 2018 guilty plea. He alleged, inter alia, that he had received ineffective assistance from his trial counsel, in that he was not informed that he was pleading guilty to an aggravated felony that would render him deportable. He alleged that he had been in the custody of immigration authorities since May 3, 2022.[1]

On January 24, 2023, the court, *K. Shay*, *J.*, dismissed the petition on the basis that the court lacked jurisdiction. The court stated that the petitioner could have raised his allegations of ineffective assistance of counsel at any time during his three year period of probation, which had expired in 2021. The court further explained

[1] The petitioner also alleged that he unsuccessfully had filed a petition for a writ of habeas corpus in June, 2022, and had submitted a prior petition for a writ of error coram nobis.

that the fact that the petitioner's immigration consequences arose after he was no longer in custody did not alter its jurisdictional determination. The petitioner filed a motion for reconsideration, which the court denied. This appeal followed.

On appeal, the petitioner claims that the court improperly determined that it lacked subject matter jurisdiction over his petition for a writ of error coram nobis. We begin our analysis by setting forth the applicable standard of review and relevant legal principles. "Our Supreme Court has long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . .

"A writ of error coram nobis is an ancient common-law remedy which authorized the trial judge, within three years, to vacate the judgment of the same court if the party aggrieved by the judgment could present facts, not appearing in the record, which, if true, would show that such judgment was void or voidable. . . . A writ of error coram nobis lies only in the unusual situation where no adequate remedy is provided by law. . . . Moreover, when habeas corpus affords a proper and complete remedy the writ of error coram nobis will not lie. . . . The errors in fact on which a writ of error [coram nobis] can be predicated are few. . . . This can be only where the party had no legal capacity to appear, or where he had no legal opportunity, or where the court had no power to render judgment." (Citations omitted; internal quotation marks omitted.) *State* v. *Brown*, 179 Conn. App. 337, 341–42, 179 A.3d 807, cert. denied, 328 Conn. 914, 180 A.3d 594 (2018).

The petitioner's primary argument on appeal is that "[t]he proper inquiry for whether the defendant had an adequate remedy at law requires looking at the circum-

stances *at the time the defendant filed his petition*, and not whether there was a prior remedy of which the defendant could have availed himself." (Emphasis in original.) Recent decisions of this court are controlling on this issue. In *State* v. *Sienkiewicz*, 177 Conn. App. 863, 173 A.3d 955 (2017), cert. denied, 327 Conn. 997, 176 A.3d 558 (2018), this court held that "[t]here can be no doubt . . . that the defendant would have had the ability to contest the effectiveness of counsel and the validity of his plea in a habeas action even if [adverse immigration consequences were] not imminent. In *State* v. *Stephenson*, [154 Conn. App. 587, 589, 108 A.3d 1125 (2015)] . . . [t]he record [did] not reflect that any adverse immigration consequences [had] yet occurred by the time the defendant was no longer in custody on the sentence in issue, and we held that the defendant could have brought an action seeking a writ of habeas corpus. . . . *Stephenson* clearly holds that the prior availability of the writ of habeas corpus defeats the jurisdiction of the trial court to entertain a petition for a writ of error coram nobis." (Citations omitted; internal quotation marks omitted.) *State* v. *Sienkiewicz*, supra, 870–71; see also, e.g., *State* v. *Brown*, supra, 179 Conn. App. 342–43 (rejecting petitioner's argument that he could not have pursued writ of habeas corpus while in custody because he did not learn of adverse immigration consequences until after he was released).

In the present case, because the petitioner could have raised his ineffective assistance of counsel claim in a petition for a writ of habeas corpus during his period of probation, he had alternative legal remedies available to him. Accordingly, the court properly determined that it lacked subject matter jurisdiction to entertain the petition for a writ of error coram nobis.[2]

[2] In light of this conclusion, we do not reach the state's alternative ground for affirmance, pursuant to which it argues that the court also lacked jurisdiction because the writ of error coram nobis was filed more than three years after the judgment of conviction was rendered.

Recognizing the binding precedent of *Stephenson*, *Sienkiewicz*, and *Brown*, the petitioner argues that *Stephenson* was wrongly decided and urges this court to overrule it. The petitioner, however, did not file a motion requesting that this court hear his appeal en banc. "It is well established . . . that one panel of this court cannot overrule the precedent established by a previous panel's holding. . . . As we often have stated, this court's policy dictates that one panel should not, on its own, reverse the ruling of a previous panel. The reversal may be accomplished only if the appeal is heard en banc. . . . Prudence, then, dictates that this panel decline to revisit such requests." (Internal quotation marks omitted.) *State* v. *Gonzalez*, 214 Conn. App. 511, 281 A.3d 501, cert. denied, 345 Conn. 967, 285 A.3d 736 (2022). Accordingly, we decline the petitioner's invitation to revisit our precedent.[3]

The judgment is affirmed.

STATE OF CONNECTICUT *v.* JEFFREY BARNES
(AC 46513)

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

Syllabus

The defendant, who had previously been convicted, following a guilty plea, of, inter alia, the crime of burglary in the second degree, filed a motion

[3] The petitioner also asserts, as a separate claim on appeal, that the court failed to properly canvass him regarding the immigration consequences of his guilty plea. The state responds that, "[b]ecause the trial court lacked jurisdiction to consider the claim asserted in the instant petition for a writ of error coram nobis . . . this court likewise is without jurisdiction to adjudicate the merits of that claim." In his reply brief, the petitioner, in reliance on *State* v. *Reid*, 277 Conn. 764, 778, 894 A.2d 963 (2006), requests that we invoke our supervisory authority to address the merits of his claim. "[C]onstitutional, statutory and procedural limitations are generally adequate to protect the rights of the defendant and the integrity of the judicial system. Our supervisory powers are invoked only in the rare circumstance where these traditional protections are inadequate to ensure the fair and just administration of the courts." (Internal quotation marks omitted.) *State* v. *Hill*, 307 Conn. 689, 706, 59 A.3d 196 (2013). Under the circumstances of this case, the exercise of our supervisory authority is not warranted.

for sentence modification pursuant to statute (§ 53a-39 (a)). Although the defendant was living at a halfway house at the time he filed his motion, by the time of the hearing before the trial court the defendant was on special parole. The court dismissed the motion, finding that, because the defendant was on special parole, the court lacked subject matter jurisdiction to hear the motion. On the defendant's appeal to this court, *held* that, although the trial court properly determined that the defendant was not entitled to a modification of his sentence pursuant to § 53a-39 (a) because he was no longer serving an "executed period of incarceration," the form of the judgment was improper; because the language of § 53a-39 (a) providing that a trial court may act "at any time during an executed period of incarceration" is a limit to the court's statutory authority, not its subject matter jurisdiction, the court should have denied the defendant's motion rather than dismissed it.

Argued May 30—officially released September 3, 2024

Procedural History

Substitute information charging the defendant with the crimes of burglary in the second degree, criminal mischief in the third degree, threatening in the second degree, and assault of an elderly person in the second degree, brought to the Superior Court in the judicial district of Hartford, geographical area number fourteen, where the defendant was presented to the court, *Williams*, *J.*, on a plea of guilty to burglary in the second degree; judgment of guilty in accordance with the plea; thereafter, the state entered a nolle prosequi as to the remaining charges; subsequently, the court, *Schuman*, *J.*, dismissed the defendant's motion for sentence modification, and the defendant appealed to this court. *Improper form of judgment*; *reversed*; *judgment directed.*

Chad L. Edgar, assigned counsel, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, were *Sharmese L. Walcott*, state's attorney, and *Edward R. Azzaro*, senior assistant state's attorney, for the appellee (state).

Opinion

CRADLE, J. The defendant, Jeffrey Barnes, appeals from the judgment of the trial court dismissing, for lack of subject matter jurisdiction, his motion for modification of his sentence pursuant to General Statutes § 53a-39 (a).[1] On appeal, the defendant claims that the court erred in determining that it did not have subject matter jurisdiction to hear the defendant's motion because he had been released on special parole and, therefore, was no longer serving "an executed period of incarceration" as prescribed by § 53a-39 (a). We conclude that the court improperly determined that it lacked subject matter jurisdiction to hear the defendant's motion but correctly concluded that the defendant was not entitled to relief under § 53a-39 (a) because he was no longer serving an "executed period of incarceration." The form of the judgment is improper, as the court should have denied rather than dismissed the motion. Accordingly, we reverse the judgment dismissing the defendant's motion for modification and remand the case with direction to deny that motion.

The following procedural history is relevant to our resolution of this appeal. In 2017, the defendant pleaded guilty to one count of burglary in the second degree in violation of General Statutes § 53a-102 and three counts of burglary in the third degree in violation of General Statutes § 53a-103. On November 27, 2017, the court, *Williams*, *J.*, imposed a total effective sentence of six years of incarceration and five years of special parole.

On June 6, 2022, the defendant, through counsel, filed the present motion for sentence modification, seeking

[1] General Statutes § 53a-39 (a) provides: "Except as provided in subsection (b) of this section, at any time during an executed period of incarceration, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced."

to have his sentence reduced to time served and either elimination of his special parole or a reduction of it to two years.[2] At the time he filed his application for sentence modification, the defendant was residing in The Open Hearth, a halfway house, in Hartford. By February 3, 2023, however, when the court, *Schuman*, *J.*, held a hearing on the defendant's motion for sentence modification, the defendant had been released on special parole. At the hearing, the court raised the question of "whether this is a motion within the meaning of paragraph (a) of [§ 53a-39] that would authorize the court at 'any time during an executed period of incarceration' to modify the sentence," explaining that, because the defendant "has completed his incarceration and is now on special parole," the court had "a question as to whether [it could] hear this motion because it's not 'any time during an executed period of incarceration.' " The court heard argument from the parties on this issue of subject matter jurisdiction and then issued an order for the parties to submit memoranda on it.

On March 1, 2023, after memoranda had been submitted by both parties, the court held a limited hearing on the question of whether it had subject matter jurisdiction to hear the defendant's motion for sentence modification. On March 9, 2023, the court issued a memorandum of decision, dismissing the defendant's motion for sentence modification. In so doing, the court noted that "[t]here is no statutory definition of the phrase 'executed period of incarceration.' . . . The term 'executed' in the phrase 'executed period of incarceration' generally refers to the time when the defendant is in custody, as opposed to 'unexecuted' or 'suspended,'

[2] On his motion, the defendant checked the box that indicated that he sought modification of his sentence by "suspending execution of the unexecuted portion of the jail sentence." He also asked that his sentence be modified by "re-sentencing the defendant to a total effective sentence of time served and changing special parole to probation."

when a defendant is released on probation or conditional discharge. . . . The ordinary meaning of the term 'incarceration' is 'confinement in a jail or prison.' " (Citations omitted.) The court then concluded that, "when read as a whole, the phrase 'executed period of incarceration' refers to a time when a person is in custody in a jail or prison" and that "that period of time does not include the time when a person is released on special parole."

The court also noted, however, that subsection "(a) of § 53a-39, under which this case arises, stands in contrast to [subsection] (b), pursuant to which a court has authority to modify a sentence at any time during *the period of a sentence* in which a defendant has been sentenced prior to, on or after October 1, 2021, to . . . an executed period of incarceration of more than seven years as a result of a plea agreement[3] . . . . [Subsection] (b) would apparently allow the court to modify a sentence while the defendant is on probation, conditional discharge, or special parole following a seven year or more term of incarceration. Although the reasoning for the different language used in [subsections] (a) and (b) is not clear or obvious, the court must construe the statute so that no word, phrase, or clause will be rendered meaningless." (Citation omitted; emphasis added; footnote added; footnotes omitted; internal quotation marks omitted.) The court, therefore, concluded that the differently worded subsections of the

[3] General Statutes § 53a-39 (b) provides: "On and after October 1, 2021, at any time during the period of a sentence in which a defendant has been sentenced prior to, on or after October 1, 2021, to an executed period of incarceration of more than seven years as a result of a plea agreement, including an agreement in which there is an agreed upon range of sentence, upon agreement of the defendant and the state's attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced."

statute have different meanings and held that, "[b]ecause the defendant was on special parole and not incarcerated at the time that the court heard this motion . . . the court lacks jurisdiction to act on the motion." This appeal followed.

On appeal, the defendant challenges the court's interpretation of § 53a-39 (a). "The defendant's claim raises a question of statutory interpretation, over which our review is plenary. . . . Relevant legislation and precedent guide the process of statutory interpretation." (Citation omitted.) *State* v. *Boyd*, 272 Conn. 72, 76, 861 A.2d 1155 (2004). "[T]o ascertain and give effect to the apparent intent of the legislature . . . General Statutes § 1-2z directs this court to first consider the text of the statute and its relationship to other statutes to determine its meaning. If, after such consideration, the meaning is plain and unambiguous and does not yield absurd or unworkable results, we shall not consider extratextual evidence of the meaning of the statute. . . . Only if we determine that the statute is not plain and unambiguous or yields absurd or unworkable results may we consider extratextual evidence of its meaning such as the legislative history and circumstances surrounding its enactment . . . [and] the legislative policy it was designed to implement . . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *State* v. *Bischoff*, 337 Conn. 739, 746, 258 A.3d 14 (2021); see also General Statutes § 1-2z. "In determining whether the plain language of [a statute] leads to an absurd or unworkable result, we are limited to considering its plain language and its relationship to other statutes." *State* v. *Bischoff*, supra, 759.

We have recognized that "[a] cardinal rule of statutory construction is that where the words of a statute . . . are plain and unambiguous the intent of the [drafters]

in enacting the statute . . . is to be derived from the words used. . . . Where the court is provided with a clearly written rule, it need look no further for interpretive guidance. . . . It is our duty to interpret statutes as they are written. . . . Courts cannot, by construction, read into statutes provisions which are not clearly stated. . . . The legislature is quite aware of how to use language when it wants to express its intent to qualify or limit the operation of a statute." (Internal quotation marks omitted.) *State* v. *Fetscher*, 162 Conn. App. 145, 152, 130 A.3d 892 (2015), cert. denied, 321 Conn. 904, 138 A.3d 280 (2016). "Simply put, [i]t is the duty of the court to interpret statutes as they are written . . . and not by construction read into statutes provisions which are not clearly stated." (Internal quotation marks omitted.) Id., 154.

The defendant, through his counsel, conceded at oral argument before this court that the language of § 53a-39 (a) "doesn't have a patent ambiguity" as to the phrase "an executed period of incarceration." The defendant acknowledges, and we agree, that "a plain reading of § 53a-39 (a) may lead to the conclusion that the movant must be incarcerated or otherwise under the jurisdiction of the Department of Correction during the entire course of the proceedings . . . ." He nevertheless challenges the court's interpretation of the statutory language on the ground that it "would collide with the spirit of the statute as a whole and the legislative history and circumstances that led to its recent amendment."[4]

[4] Section 53a-39 was amended by No. 21-102, § 25, of the 2021 Public Acts and by No. 22-36, § 1, of the 2022 Public Acts. These amendments expanded the authority of the court to grant certain motions for sentence modification. Specifically, prior revisions of § 53a-39 (b) required defendants serving "a definite sentence of more than three years" to obtain agreement of the state's attorney before the court could rule on their motions for sentence modification. General Statutes (Rev. to 2021) § 53a-39 (b). Now, after the amendments in 2021 and 2022, only a defendant serving "an executed period of incarceration of more than seven years as a result of a plea agreement" must obtain such agreement. General Statutes § 53a-39 (b). In 2023, the

He contends that "it is clear that [§ 53a-39] (a) is intended to be the more broadly inclusive provision that permits a wide range of movants to seek modification of their sentences. . . . In light of the clear intent of [§] 53a-39 (a), as amended, to provide a wide avenue of redress for defendants and the role of [§] 53a-39 (b) to provide a limited constraint thereto, it makes no sense that the legislature also intended [§] 53a-39 (b), as amended, to give courts broader jurisdiction to modify sentences than is the case under [§] 53a-39 (a)." (Citations omitted.) The defendant contends that, because "the amended version of [§] 53a-39 (a) was clearly intended to expand the previous version of [subsection] (a) in all respects, it must be that the legislature intended the court's jurisdiction to be at least as robust as in the previous version; therefore, it intended the court's jurisdiction to include . . . those movants . . . on . . . special parole." We disagree.

The language used by the legislature in § 53a-39 (b),[5] which provides for sentence modification "at any time during the period of a sentence in which a defendant has been sentenced," supports the conclusion that the legislature intended relief under § 53a-39 (a) to be more limited in that it demonstrates that the legislature knew how to broaden the window within which a defendant may seek relief if it intended to do so. In other words, if the legislature intended § 53a-39 (a) to apply to defendants on special parole, it knew how to effectuate that intent. Indeed, in amending § 53a-39 (a), the legislature could have replaced the "during an executed period of incarceration" language in § 53a-39 (a) to mirror the language that it used in § 53a-39 (b), but it chose not to do so. We therefore reject the defendant's argument

legislature made further changes to § 53a-39 that are not relevant to this appeal. See Public Acts 2023, No. 23-47, § 1.

[5] The court held and the parties do not dispute that § 53a-39 (a) applies to the defendant's motion for sentence modification.

that the language used in § 53a-39 (b) supports an expansive reading of the plain and unambiguous language of § 53a-39 (a).[6]

Further, subsections (a) and (b) of § 53a-39 apply in very different circumstances. Unlike § 53a-39 (a), § 53a-39 (b) applies only to defendants who have been sentenced to "an executed period of incarceration of more than seven years as a result of a plea agreement . . . ." In addition, § 53a-39 (b) requires the agreement of the state's attorney for the defendant to seek modification of his sentence. By contrast, the court has the authority to consider a motion to modify a sentence under § 53a-39 (a) even if the state's attorney opposes the motion. It is not absurd to infer that the legislature could reasonably have meant to grant the court broader authority to modify the sentences of defendants covered by § 53a-39 (b) because the state's attorney has agreed to the court's review of those sentences for modification. Because we cannot conclude that the plain and unambiguous language of § 53a-39 (a) leads to an absurd or unworkable result, we decline to consider extratextual sources. Accordingly, we conclude that the trial court properly determined that the defendant was not entitled to a modification of his sentence under § 53a-39 (a) because he was no longer serving an "executed period of incarceration."[7]

[6] The defendant also argues that, even if he was not entitled to relief under § 53a-39 as a special parolee, his eligibility should have been considered as of the date that he filed his motion for sentence modification, at which time he was in The Open Hearth halfway house. The court assumed that, at that time, the defendant was serving an "executed period of incarceration" because he was still in the custody of the Commissioner of Correction. See General Statutes § 18-100 (e). The language of § 53a-39 (a), however, is framed so as to provide when a court may afford relief and states that it may only do so during the time that a movant is serving an executed period of incarceration.

[7] The defendant also argues that "other trial courts have presided over proceedings where movants sought a sentence modification pursuant to [§] 53a-39 while on special parole" and cites to *State* v. *Farhad*, Docket No. CR-14-0125159-S, 2023 WL 2384806 (Conn. Super. February 14, 2023), as an

We agree, however, with the defendant that the court improperly dismissed his motion for sentence modification for lack of subject matter jurisdiction. Our Supreme Court has "recognized the distinction between a trial court's jurisdiction and its authority to act under a particular statute. Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action. . . . Although related, the court's authority to act pursuant to a statute is different from its subject matter jurisdiction. The power of the court to hear and determine, which is implicit in jurisdiction, is not to be confused with the way in which that power must be exercised in order to comply with the terms of the statute." (Internal quotation marks omitted.) *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 463, 239 A.3d 272 (2020).

Our courts "consistently have held that under the common law a trial court has the discretionary power

example. In *Farhad*, the defendant was on special parole at the time of the court's ruling, but the court nonetheless denied his motion for sentence modification on the basis of his failure to establish good cause to modify his sentence, rather than on the basis of the court's lack of authority to grant the motion. Id., *2. We note, however, that, although subsection (a) of § 53a-39 would have been applicable to the defendant's claim in *Farhad*, given that he had been serving "a sentence of five years followed by five years of special parole" as the result of a negotiated plea; see id., *1; the court did not specify whether it was acting pursuant to § 53a-39 (a) or (b) in reviewing the defendant's motion. In fact, the court simply referenced § 53a-39 generally. It therefore is unclear if the question of the court's authority to modify the sentence of a special parolee was considered by the court in *Farhad*. We therefore cannot conclude that the court's decision in *Farhad* supports the defendant's position here. Moreover, any legal conclusions drawn by the trial court in *Farhad* are not binding on this court.

to modify or vacate a criminal judgment before the sentence has been executed. . . . [But] the court loses jurisdiction over the case when the defendant is committed to the custody of the [C]ommissioner of [C]orrection and begins serving the sentence. . . . After this occurs, the trial court has jurisdiction to modify or vacate the criminal judgment if the legislature or the state constitution grants continuing jurisdiction." (Citation omitted; internal quotation marks omitted.) *State* v. *Ward*, 341 Conn. 142, 149, 266 A.3d 807 (2021). "[T]he legislature has granted criminal courts continuing statutory authority to make changes to a duly imposed sentence in two ways. First, the legislature has authorized the courts to conduct sentence review pursuant to General Statutes § 51-196. Second, a criminal defendant may seek sentence modification of or discharge from his sentence pursuant to § 53a-39." (Footnotes omitted.) *State* v. *Martin G.*, 222 Conn. App. 395, 406–407, 305 A.3d 324 (2023), cert. denied, 348 Conn. 944, 308 A.3d 34 (2024).

Through the enactment of § 53a-39, the legislature has determined that a court has competence to entertain sentence modifications and, thus, has conferred upon the court jurisdiction to modify a sentence. The statutory language that a court may act "at any time during an executed period of incarceration" is a limit to the court's statutory authority, not its subject matter jurisdiction. Although we agree with the defendant that the trial court had subject matter jurisdiction over his motion to modify his sentence, we conclude that the court did not have authority to afford the defendant relief under § 53a-39 (a) because he had been released on special parole and was no longer serving an executed period of incarceration. Accordingly, the court should have denied the defendant's motion, not dismissed it.

The form of the judgment is improper, the judgment is reversed and the case is remanded with direction to

render judgment denying the defendant's motion for sentence modification.

In this opinion the other judges concurred.

JOSE SANCHEZ *v.* CITY OF HARTFORD ET AL. (AC 46228)

Elgo, Clark and Westbrook, Js.

Syllabus

The plaintiff sought to recover damages from the defendants, the city of Hartford and D, a police officer employed by the city, in connection with injuries he sustained when a motorcycle he was driving collided with D's police vehicle. At the time of the accident, the plaintiff was driving through an intersection with a green light, and D, who was responding to an emergency call, accelerated his vehicle through the same intersection with a red light. D activated the lights and sirens on his vehicle pursuant to statute (§ 14-283) only as he entered the intersection, not before. The plaintiff alleged that D's negligence had caused his injuries and that the city was required to indemnify D pursuant to the municipal indemnification statute (§ 7-465). After a trial, the jury returned a verdict for the plaintiff against both defendants, and the trial court rendered judgment in accordance with the verdict. On the defendants' appeal to this court, *held*:

1. The defendants could not prevail on their claim that it was plain error for the trial court to instruct the jury on common-law principles of negligence regarding the operation of a motor vehicle and to fail to instruct the jury that D, as an operator of an emergency vehicle, was permitted to disregard driving statutes, ordinances and regulations: recent decisions by our Supreme Court, including *Adesokan* v. *Bloomfield* (347 Conn. 416) and *Daley* v. *Kashmanian* (344 Conn. 464), supported a claim that the law is unsettled with respect to whether common-law negligence principles apply in the context of § 14-283; moreover, the instructions to the jury regarding negligence in this case did not amount to an error so obvious on its face that it was undebatable, as the court's instructions adequately apprised the jury on the applicable exception to the ordinary rules of driving triggered on satisfaction of the requirements of § 14-283.
2. The defendants could not prevail on their claim that the trial court committed plain error by failing to instruct the jury that § 14-283 (e) imposed a legal duty on the plaintiff to slow down, pull over and/or stop prior to entering an intersection when an emergency vehicle with its lights and sirens on approached the same intersection; the court's instruction to the jury on contributory negligence substantially complied with the

language of § 14-283 (e) and adequately apprised the jury of the plaintiff's duty under § 14-283 (e), and the omission of a specific instruction was not so obvious an error as to constitute plain error.

Argued May 16—officially released September 3, 2024

Procedural History

Action to recover damages for, inter alia, personal injuries sustained as a result of the alleged negligence of the defendant James Davis, brought to the Superior Court in the judicial district of Hartford and tried to the jury before *Baio*, *J.*; verdict and judgment for the plaintiff, from which the defendants appealed to this court. *Affirmed.*

Thomas R. Gerarde, with whom were *Demar G. Osbourne* and *Lidia M. Michols*, for the appellants (defendants).

Michael J. Reilly, for the appellee (plaintiff).

Opinion

WESTBROOK, J. The defendants, the city of Hartford (city) and James Davis, a police officer employed by the city, appeal from the judgment of the trial court rendered after a jury trial finding Davis negligent in violation of General Statutes § 14-283,[1] the city liable for indemnification pursuant to General Statutes § 7-465,[2] and finding the plaintiff, Jose Sanchez, contributorily negligent. On appeal, the defendants claim that

[1] General Statutes § 14-283 provides in relevant part: "(b) (1) The operator of an emergency vehicle may . . . (B) except as provided in subdivision (2) of this subsection, proceed past any red light, stop signal or stop sign, but only after slowing down or stopping to the extent necessary for the safe operation of such vehicle . . . ."

[2] General Statutes § 7-465 (a) provides in relevant part that "[a]ny town, city or borough, notwithstanding any inconsistent provision of law, general, special or local, shall pay on behalf of any employee of such municipality . . . all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for infringement of any person's civil rights or for physical damages to person or property, except as set forth in this section, if the employee, at the time of the occurrence, accident, physical injury or damages complained of, was acting in the performance of his duties and within the scope of his

the court committed plain error[3] by (1) (a) instructing the jury on common law principles of negligence regarding the operation of a motor vehicle, including the duty to drive with due care, and (b) failing to instruct the jury that Davis, as an operator of an emergency vehicle, was permitted to disregard driving statutes, ordinances and regulations, and (2) failing to instruct the jury that, pursuant to § 14-283 (e), other operators of motor vehicles have a mandatory duty to drive to a position parallel to the curb of the roadway and remain there until the emergency vehicle has passed, "[u]pon the immediate approach of an emergency vehicle making use of . . . an audible warning signal device and such visible flashing or revolving lights . . . ."[4] General Statutes § 14-283 (e). We conclude that the record does not support

employment, and if such occurrence, accident, physical injury or damage was not the result of any wilful or wanton act of such employee in the discharge of such duty. . . ."

[3] The defendants failed to take exception to, and acquiesced in, the jury instructions following an opportunity to review them. "Relevant to the issue of waiver in the context of jury instruction claims, our Supreme Court stated that when the trial court provides 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." (Internal quotation marks omitted.) *State* v. *Leach*, 165 Conn. App. 28, 32, 138 A.3d 445, cert. denied, 323 Conn. 948, 169 A.3d 792 (2016). A court may, however, review an unpreserved claim under the plain error doctrine. See *State* v. *Bellamy*, 323 Conn. 400, 437, 147 A.3d 655 (2016). The plain error doctrine, "codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts [only] 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." (Internal quotation marks omitted.) Id.

The defendants' attorney conceded at oral argument before this court that all of the defendants' claims were unpreserved and are made under the plain error doctrine.

[4] The defendants additionally argue that the trial court improperly failed to charge the jury that driving with due regard for safety under § 14-283 "involved a discretionary determination by the operator of the emergency vehicle." We need not address this claim, however, because it is apparent

the defendants' claims that the challenged portions of the jury instructions constituted plain error. Accordingly, we affirm the judgment of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to the defendants' claims on appeal. On June 13, 2018, the plaintiff was injured in an automobile accident. At the time of the accident, the plaintiff was driving a motorcycle through a green light in a southbound direction on Wethersfield Avenue in Hartford. Davis was responding to an emergency call[5] and accelerated his vehicle through a red light on Brown Street heading in an eastbound direction. Davis, in accordance with the city's policy and § 14-283, had the lights and sirens of his police cruiser on as he travelled through the red light, but he had turned the lights and sirens on only as he entered the intersection, not before.[6] The plaintiff's motorcycle collided into the side of the police cruiser shortly after the cruiser entered the intersection.

In October, 2018, the plaintiff brought a claim of negligence against Davis alleging a violation of § 14-283, and a claim of indemnification against the city

that this claim is an attempt to apply discretionary act immunity under General Statutes § 52-557n to this case. Our Supreme Court's recent decisions in *Adesokan* v. *Bloomfield*, 347 Conn. 416, 297 A.3d 983 (2023), and *Daley* v. *Kashmanian*, 344 Conn. 464, 280 A.3d 68 (2022), however, clearly hold that discretionary act immunity under § 52-557n does not apply to *driving* a motor vehicle in either emergency or nonemergency circumstances. The defendants' citations to *Borelli* v. *Renaldi*, 336 Conn. 1, 243 A.3d 1064 (2020), in support of their claim are not persuasive, because *Borelli* held that the decision to *initiate* a police chase, as distinguished from the manner of *driving* an emergency vehicle, was protected as a discretionary act under § 52-557n. See id., 3–4. We therefore conclude that it was not plain error for the court to fail to charge the jury regarding the "discretionary determination by the operator of the emergency vehicle."

[5] Davis was responding to a report of an individual with a mental illness experiencing hallucinations in the intersection of Wethersfield Avenue, Airport Road and Brown Street.

[6] Davis turned off the police cruiser's lights and sirens as he approached the intersection so as not to disturb the individual reportedly in the intersec-

pursuant to § 7-465. The defendants filed an answer (1) denying liability and (2) asserting a number of special defenses, including contributory negligence.

The matter was tried before a jury over the course of several days in November, 2022. During trial, the trial court, *Baio*, *J.*, requested that the parties submit proposed jury charges and interrogatories. The defendants did not submit any jury charges prior to the court's deadline for doing so.[7] After the close of evidence, the court conducted a charging conference and summarized the results of the conference on the record, which reflected that the defendants did not object to the jury charges now challenged on appeal.[8]

The parties subsequently submitted proposed jury interrogatories. The plaintiff's proposed interrogatories tracked the language of § 14-283. The defendants' proposed interrogatories focused instead on discretionary act immunity. The trial court, in light of our Supreme Court's recent decision in *Daley* v. *Kashmanian*, 344 Conn. 464, 280 A.3d 68 (2022), reserved for itself the question of whether governmental immunity would apply to the facts presented, and opted to use the plaintiff's jury interrogatories rather than the defendants'.

In its charge to the jury, the trial court explained that the plaintiff was asserting a claim of negligence. The court instructed the jury that "[n]egligence is the doing of something which a reasonably prudent person would

tion. He turned both the lights and sirens back on only as he began to enter the intersection of Wethersfield Avenue and Brown Street.

[7] The defendants submitted two proposed jury charges after the deadline, one charge regarding foreseeability and another regarding sudden emergency. The court declined to add these untimely charges because the first was already subsumed in a different proposed charge and the second was irrelevant to the case.

[8] The defendants expressed concern only over the lack of inclusion of the factors of foreseeability and emergency circumstances in the negligence charge.

not do under the circumstances," and that "[t]he use of proper care in a given situation is the care which an ordinarily prudent person would use in view of the surrounding circumstances." The court explained that the plaintiff alleged that Davis "was negligent in that he violated § 14-283," and that, "[i]n order to find [Davis] negligent, [the jury] must find that he proceeded through the red light without due regard as set forth in the statute." The court additionally explained several common-law principles of negligence related to the operation of a motor vehicle, including failure to yield the right of way, failure to keep and maintain a reasonable and proper lookout for other vehicles on the roadway, failure to keep the vehicle under proper and reasonable control, failure to turn the vehicle to avoid the collision, failure to apply brakes in a timely fashion, and operating the vehicle in a careless manner and failing, under the circumstances, to take reasonable and proper precautions to avoid the probability of harm. The court instructed the jury that the defendants had asserted a special defense of comparative negligence and that they claimed that the plaintiff was negligent because he "failed to stop, yield, or keep a reasonable and proper lookout for emergency vehicles in violation of . . . § 14-283 and [General Statutes §] 14-283b."

After deliberation, the jury returned a verdict in favor of the plaintiff against both defendants in the amount of $1,069,649.04. The jury found Davis negligent and the plaintiff contributorily negligent, assigning 35 percent comparative negligence to the plaintiff. In its special interrogatories, the jury specifically found that Davis failed (1) to slow down or stop to the extent necessary for the safe operation of his vehicle when he proceeded past the red light and (2) to operate his vehicle at the time of the incident with due regard for the safety of all persons and property given all the circumstances and conditions then present. The court accepted the

jury's verdict and rendered judgment in accordance with the verdict on November 18, 2022.

The defendants filed posttrial motions, including a motion to set aside the verdict on the grounds that the defendants were immune from liability for negligence under the doctrine of governmental immunity and that the jury instructions and special interrogatories were prejudicial, irrelevant, and resulted in jury confusion. The court heard oral argument on the defendants' posttrial motions on January 13, 2023. After oral argument, the court denied the motions. This appeal followed.

The following legal principles guide our analysis of the defendants' claims. "It is well established that the plain error doctrine, codified at Practice Book § 60-5,[9] is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved [and nonconstitutional in nature], 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." (Footnote added; internal quotation marks omitted.) *State* v. *Ruocco*, 322 Conn. 796, 803, 144 A.3d 354 (2016).

"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 . . .

[9] Practice Book § 60-5 provides in relevant part that "[t]he court may reverse or modify the decision of the trial court if it determines that the factual findings are clearly erroneous in view of the evidence and pleadings in the whole record, or that the decision is otherwise erroneous in law. . . ."

obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record. Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. . . . [T]he 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. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice. . . . [Previously], [our Supreme Court] described the two-pronged nature of the plain error doctrine: [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 812, 155 A.3d 209 (2017).

I

The defendants first claim that it was plain error for the trial court to instruct the jury on common-law principles of negligence regarding the operation of a motor vehicle and for the court to fail to instruct the jury that Davis, as an operator of an emergency vehicle, was permitted to disregard driving statutes, ordinances and regulations. We disagree.

We turn to the first prong of the plain error doctrine, namely, whether the trial court's decision to instruct the jury on common-law principles of negligence

regarding the operation of a motor vehicle, and its failure to instruct the jury that Davis, as an operator of an emergency vehicle, was permitted to disregard driving statutes, ordinances and regulations, was so patent or readily discernible an error as to constitute plain error.

To determine whether the trial court committed plain error in instructing the jury on common-law principles of negligence regarding the operation of a motor vehicle, we must examine the trial court's jury instructions, mindful that, "[j]ury instructions are to be read as a whole, and instructions claimed to be improper are read in the context of the entire charge. . . . A jury charge is to be considered from the standpoint of its effect on the jury in guiding it to a correct verdict. . . . The test to determine if a jury charge is proper is 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. . . . [I]nstructions to the jury need not be in the precise language of a request. . . . Moreover, [j]ury instructions need not be exhaustive, perfect or technically accurate, so long as they are correct in law, adapted to the issues and sufficient for the guidance of the jury." (Citations omitted; internal quotation marks omitted.) *McDermott* v. *Calvary Baptist Church*, 263 Conn. 378, 383–84, 819 A.2d 795 (2003).

The trial court in this case instructed the jury that "the plaintiff specifically allege[d] that [Davis] was negligent in that he violated § 14-283 of the General Statutes and [the city's] general order concerning the operation of police vehicles.

"Where it would normally be a mandated finding of lack of due care for a civilian to proceed against a red light, [§] 14-283 permits a police officer to do so in certain circumstances. The statute permits the officer, if the operator of any emergency vehicle, to do so only after slowing down or stopping to the extent necessary

for the safe operation of such vehicle and only if driving with due regard for the safety of all persons and property. Emergency vehicle is defined in relevant part as any vehicle operated by a police officer 'answering an emergency call or in pursuit of fleeing law violators.' You may consider as evidence of what is required to determine due regard such things as the [police] manual and the circumstances then and there existing, including for example, sight lines, the ability to stop and the like. In order to find [Davis] negligent, you must find that he proceeded through the red light without due regard as set forth in the statute."

The court also instructed the jury on several common-law principles of negligence, including the failure to "yield the right of way to the plaintiff's vehicle," "keep and maintain a reasonable and proper lookout for other vehicles on the roadway," "keep his vehicle under proper and reasonable control," "turn his vehicle to the left or to the right to avoid the collision," "apply his brakes in a timely fashion to avoid the collision when, in the exercise of reasonable care, he could and should have done so," "sound his horn or otherwise signal or warn the plaintiff of the impending collision," and "take reasonable and proper precautions to avoid the probability of harm to the plaintiff" under the circumstances then and there existing.

The defendants in this case contend that the jury instructions were flawed because the jury should have been instructed only in accordance with § 14-283 once the requirements of the statute were satisfied, and not with common-law principles of negligence. The defendants argue that, under a plain reading of § 14-283, the only way a police officer responding to an emergency in accordance with the statute can be found negligent is if he or she was found to have not been "[driving] with due regard for the safety of all persons and property" and not "if they do not abide by traffic laws such

as failing to yield the right of way to the [plaintiff's] vehicle." They argue that it was therefore plain error for the court to instruct the jury in this case on other principles of negligence and to fail to instruct the jury that, under § 14-283, "emergency operators are authorized to disregard statutes, ordinances or regulations governing direction of movement or turning in a specific direction" because the requirements of § 14-283 were met.

Recent cases from our Supreme Court, however, undermine the defendants' claim. In *Adesokan* v. *Bloomfield*, 347 Conn. 416, 441, 297 A.3d 983 (2023), our Supreme Court stated, "by its own terms, § 14-283 (d) imposes . . . a negligence standard of care on emergency vehicle operators . . . ." "Section 14-283 provides the operators of emergency vehicles relief in certain discrete circumstances—such as the response to an emergency or the police pursuit of a fleeing law violator—from what ordinarily would be negligence *per se*, namely, the operation of a motor vehicle in violation of rules of the road such as speed limits and traffic control devices. . . . The effect of the statute is merely to displace the conclusive presumption of negligence that ordinarily arises from the violation of traffic rules. The statute does not relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others." (Citation omitted; emphasis added; footnote omitted; internal quotation marks omitted.) *Daley* v. *Kashmanian*, supra, 344 Conn. 492.

We conclude that the question of whether § 14-283 precludes the application of other common-law principles of negligence is unsettled and that, as a result, it was not plain error for the court to instruct the jury on both § 14-283 and common-law forms of negligence. "[W]e emphasize that it has been especially rare for a jury instruction to be so clearly improper that our courts have deemed plain error review necessary to correct

it. . . . This court has done so when the trial court has affirmatively misstated the law . . . and when it has failed to comply with a statute that mandates a particular instruction. . . . We do not suggest that there are no other circumstances in which an instruction could constitute plain error, but the reluctance with which we have chosen that course underscores that plain error is reserved for only the most egregious defects." (Citations omitted.) *State* v. *Kyle A.*, 348 Conn. 437, 448, 307 A.3d 249 (2024). On the basis of our review of our Supreme Court's decisions in *Daley* and *Adesokan*, we are not persuaded that the court's jury instruction addressing both § 14-283 and common-law principles of negligence amounted to an error so obvious on its face that is beyond debate. Existing case law, at best, supports a claim the law is unsettled with respect to whether common-law negligence principles apply in the context of § 14-283.

We additionally are not persuaded that, when read as a whole, the court's instructions inadequately apprised the jury that, under § 14-283, "emergency operators are authorized to disregard statutes, ordinances or regulations governing direction of movement or turning in a specific direction." The court noted in its instruction to the jury that § 14-283 provides an exception to the drivers of emergency vehicles, stating that, "[w]here it would normally be a mandated finding of lack of due care for a civilian to proceed against a red light, [§] 14-283 permits a police officer to do so in certain circumstances." Although not stated in the specific language of § 14-283, the court's instructions adequately apprised the jury on the applicable exception to the ordinary rules of driving triggered on the satisfaction of the requirements of the statute. We accordingly conclude that it was not plain error for the court to not specifically instruct the jury that, under § 14-283,

"emergency operators are authorized to disregard statutes, ordinances or regulations governing direction of movement or turning in a specific direction."

We are therefore unpersuaded that the court's negligence instructions amounted to an error so obvious on its face that is undebatable. We accordingly conclude that the negligence jury instructions in this case were not so clearly and obviously wrong that, when read as a whole, they constitute plain error.[10]

II

The defendants next claim that the court committed plain error by failing to instruct the jury that § 14-283 imposed a legal duty on operators of motor vehicles, such as the plaintiff, to slow down, pull over and/or stop prior to entering an intersection when an emergency vehicle with its lights and sirens on approaches the same intersection. We disagree.

We turn to the first prong of the plain error doctrine, as previously set forth in part I of this opinion, namely, whether the trial court's failure to instruct the jury that the plaintiff "had a mandatory obligation to immediately drive to a position parallel to, and as close as possible to, the right-hand curb of the roadway, keep clear of an intersection, and stop and remain in such position until the emergency vehicle passed pursuant to . . . § 14-283" is so clear an error that a failure to reverse the judgment would result in manifest injustice.

In the present case, the court instructed the jury that "the defendant[s] must prove that the plaintiff was

[10] "Having determined that the [defendants'] claim fails under the first prong of the plain error doctrine, we need not reach the second prong, which examines whether failure to correct the alleged error would result in manifest injustice. See *State* v. *Blaine*, 334 Conn. 298, 313 n.5, 221 A.3d 798 (2019) (declining to reach second prong of plain error doctrine because defendant's claim failed under first prong)." *Cookish* v. *Commissioner of Correction*, 337 Conn. 348, 359, 253 A.3d 467 (2020).

negligent in one or more of the ways specified in the special defense and that such negligence was a legal cause of any of the plaintiff's injuries.

"The special defense filed by the defendant[s] alleges a number of specific ways in which the plaintiff was negligent. . . . To establish that the plaintiff was negligent, it is not necessary for the defendant[s] to prove all of these specific allegations. The proof by a preponderance of the evidence of any one of these specific allegations is sufficient to prove negligence on the part of the plaintiff. The [defendants claim] that the plaintiff's injury was the result of his own negligence in that . . . *he failed to stop, yield, or keep a reasonable and proper lookout for . . . emergency vehicles in violation of . . . §§ 14-283 and 14-283b*." (Emphasis added.)

The defendants argue that "[t]he court should have instructed the jury that, if they found that the [plaintiff] failed to drive to a position parallel to the right-hand edge or curb of the roadway and remain stopped in that position until the emergency vehicle passed, then the jury could find that the [plaintiff] was contributorily negligent pursuant to . . . § 14-283."

Although the court did not read verbatim the duty in § 14-283 (e) that, "[u]pon the immediate approach of [a] . . . local police vehicle properly and lawfully making use of an audible warning signal device . . . the operator of every other vehicle in the immediate vicinity shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the emergency vehicle has passed," this omission did not constitute plain error. The court's instruction to the jury on contributory negligence, including that it consider whether the plaintiff had failed to "stop, yield, or keep a reasonable and

proper lookout for emergency vehicles in violation of . . . §§ 14-283 and 14-283b," substantially complied with the statutory language of § 14-283. A plain reading of the instruction as given is that it is a violation of § 14-283 to fail to stop and yield upon the approach of an emergency vehicle. As previously stated in part I of this opinion, "[t]he test to determine if a jury charge is proper is 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," and "[j]ury instructions need not be *exhaustive*, *perfect or technically accurate*, so long as they are correct in law, adapted to the issues and sufficient for the guidance of the jury." (Emphasis added; internal quotation marks omitted.) *McDermott* v. *Calvary Baptist Church*, supra, 263 Conn. 383–84. We are not persuaded that the court's omission of a specific instruction that an operator's duty is triggered by an approaching police vehicle with its sirens on, or that an operator is negligent when they fail to drive to a position parallel to the right-hand edge or curb of the roadway upon the immediate approach of a police vehicle with its sirens on was so obvious an error so as to constitute plain error. Taken as a whole, we conclude that the instruction fairly and adequately apprised the jury of the plaintiff's duty under § 14-283 (e).

The instruction as given generally tracks § 14-283 (e) and gave the jury a clear understanding of the issue presented under the cause of action, defenses, and evidence presented. We therefore conclude that the court's instruction on the defendants' special defense under § 14-283 in this case was not so clearly and patently wrong that it rose to the level of plain error.[11]

The judgment is affirmed.

In this opinion the other judges concurred.

[11] See footnote 10 of this opinion.

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NOTICE OF CONNECTICUT STATE AGENCIES

DEPARTMENT OF HOUSING

Notice of Issuance of a Certificate of Affordable Housing Project Completion in the Town of Orange

In accordance with C.G.S. 8-30g, the Department of Housing (DOH) has issued a Certificate of Affordable Housing Project Completion. This certificate entitles the Town of Orange to a Moratorium of Applicability with regard to said statute. The effective date of this moratorium is on the date of publication in the Connecticut Law Journal, and will remain in effect, unless revoked in accordance with the statute for a four-year period. For additional information, please call or write to Michael C. Santoro, Community Development Specialist, DOH, 505 Hudson Street, Hartford, CT 06106, (860) 270-8171.

NOTICE

Notice of Certification as Authorized House Counsel

Upon recommendation of the Bar Examining Committee, in accordance with § 2-15A of the Connecticut Practice Book, notice is hereby given that the following individuals have been certified by the Superior Court as Authorized House Counsel for the organization named:

Certified as of August 13, 2024:

Alla Zayenchik	Grayscale Investments, LLC

Certified as of August 14, 2024:

Roxanne Cahn	Charter Communications
Nathan Gallup	Boehringer Ingelheim

Certified as of August 20, 2024:

Kimberly Mihovics	Melissa & Doug, LLC

Hon. Elizabeth A. Bozzuto
Chief Court Administrator