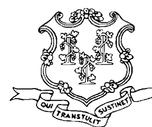
// CONNECTICUT LAW JOURNAL



Published in Accordance with
General Statutes Section 51-216a

VOL. LXXXVI No. 13 September 24, 2024 160 Pages

Table of Contents

CONNECTICUT REPORTS

Chabad Lubavitch of Western and Southern New England, Inc. *v.* Shemtov, 349 C 695 . . . 3
Summary process; claim that trial court erred in failing to enforce arbitration agreement; whether plaintiff was bound by arbitration agreement signed by plaintiff's founder and president; whether trial court erred in denying defendants' motion to stay proceedings and to compel arbitration; whether plaintiff's action fell within scope of arbitration agreement.
Gonzalez *v.* Commissioner of Correction (Order), 349 C 921 45
Hartford v. Johnson (Order), 349 C 920 44
Modzelewski's Towing & Storage, Inc. *v.* Commissioner of Motor Vehicles (Order), 349 C 921 45
Reed *v.* Commissioner of Correction (Order), 349 C 921 45
State *v.* Lueders (Order), 349 C 920. 44
William W. Backus Hospital *v.* Stonington, 349 C 713 21
Tax appeal; applications for charitable and hospital tax exemptions pursuant to statute (§ 12-81 (7) and (16)) for certain personal property that plaintiff hospital used to provide outpatient rehabilitation services at rehabilitation facility located in defendant town; whether plaintiff's personal property, even if exempt from taxation under § 12-81 (7) or (16), was nevertheless taxable under statute (§ 12-66a) that permits municipalities to tax any personal property incident to the rendering of health care services if such personal property is located at real property that was "acquired by a health system"; whether suite in which rehabilitation facility was located was "acquired" for purposes of § 12-66a when it was leased, rather than purchased, by plaintiff; whether plaintiff hospital was "health system," as defined by statute ((Supp. 2024) § 19a-508c (a) (5)).
Volume 349 Cumulative Table of Cases 47

CONNECTICUT APPELLATE REPORTS

Brennan *v.* Waterbury, 228 CA 231 . . . . 27A
Workers' compensation; subject matter jurisdiction; mootness.
Ciarleglio *v.* Martin, 228 CA 241 . . . . 37A
Dissolution of marriage; annulment of marriage; substitution of administrator of estate for deceased plaintiff; subject matter jurisdiction; applicability of statute (§ 52-599) to action to annul marriage; standing; standard of proof; plain error doctrine; annulment of marriage pursuant to statute (§ 46b-40).
Fothergill *v.* Hartford (Memorandum Decision), 228 CA 901 . . . . 89A
Middletown *v.* Wagner, 228 CA 265 . . . . 61A
Animal neglect; motion to suppress evidence; warrantless search and seizure pursuant to applicable statute (§ 22-329a (a)); fourth amendment to United States constitution; void for vagueness doctrine; fair notice of law; sufficiency of evidence.
Riccio *v.* Greenberg (Memorandum Decision), 228 CA 901 . . . . 89A
Waterbury *v.* Brennan, 228 CA 206. . . . . 2A
Workers' compensation; motion for summary judgment; plain error.
Mystic Oil Co. *v.* Shaukat, LLC, 228 CA 147 . . . . 149A
Breach of contract; breach of guarantee; damages award; motion for attorney's fees; evidentiary hearing.

(continued on next page)

© 2024 by The Secretary of the State, State of Connecticut

State *v.* Giannone, 228 CA 11 . . . . 13A
Sale of assault weapon; possession of silencer; possession of large capacity magazine; motion to dismiss; motion to suppress; constitutionality of weapons statutes (§§ 53-202b, 53-202w and 53a-211); defendant's right to bear arms under second amendment to United States constitution; adjudication of defendant's as applied constitutional challenge under New York State Rifle & Pistol Assn., Inc. v. *Bruen* (597 U.S. 1), discussed.
State *v.* Shane K., 228 CA 105 . . . . 107A
Assault third degree; criminal violation of protective order; motion to dismiss or transfer for improper venue; due process; statute (§ 51-352c (a) and (b)) governing jurisdiction of criminal charges; instructional error; waiver.
White *v.* FCW Law Offices, 228 CA 1. . . . . 3A
Identity theft; Connecticut Unfair Trade Practices Act (§ 42-110a et seq.); damages.
Volume 228 Cumulative Table of Cases 91A

NOTICE OF CONNECTICUT STATE AGENCIES

State Elections Enforcement Commission: Declaratory Ruling 2024-01 . . . . 1B
DSS: SPA 24-AA COVID-19 Updates. 6B
DSS: SPA 24-AB: October 2024 Quarterly HIPAA Compliant Update 9B

MISCELLANEOUS

Notice of Suspension of Attorney 1C
Notice of Placement of Attorney on Inactive Status 2C

CONNECTICUT LAW JOURNAL
(ISSN 87500973)

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

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

JOSEPH DIBENEDETTO, *Publications Deputy Director*

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

Syllabuses and Indices of court opinions by
ERIC M. LEVINE, *Reporter of Judicial Decisions*
Tel. (860) 757-2250

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

CONNECTICUT REPORTS

Vol. 349

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

©2024. Syllabuses, preliminary procedural histories and tables of cases and accompanying descriptive summaries are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

CHABAD LUBAVITCH OF WESTERN AND SOUTHERN NEW ENGLAND, INC. *v.* MOSHE SHEMTOV ET AL. (SC 20787)

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker, Alexander and Dannehy, Js.

Syllabus

The plaintiff organization sought to recover possession of certain commercial property occupied by the defendants S, C Co., and G Co. by way of a summary process action. Chabad Lubavitch (Chabad) is a hierarchical religious movement of Hasidic Judaism. D, the founder and former president of the plaintiff, had served the Chabad community in the city of Stamford as the shliach, or ecclesiastical leader, until 2014, when he entered into a written agreement to transfer his responsibilities to S. The 2014 agreement provided that, going forward, S would serve as the shliach for Stamford and assume various responsibilities in connection with that position, but it made no express reference to the plaintiff's property, which served as the central site for various services for the local Chabad community. S thereafter took possession of, and operated C Co. and G Co. out of, the property, and began making regular mortgage payments in connection with its possession of the property. When D and S's relationship deteriorated, S stopped making mortgage payments. D thereafter sent a letter to S, on the plaintiff's letterhead and in his capacity as the plaintiff's authorized representative, ordering him to vacate the property and purporting to remove him from his position as shliach. D and S then entered into an arbitration agreement, pursuant to which they agreed to resolve their various disagreements before a Bais Din, which is a rabbinical tribunal authorized to adjudicate disputes in accordance with Jewish law. D and S signed the arbitration agreement individually and on behalf of their respective institutions. The Bais Din ruled that S would continue to serve as shliach and ordered S to make the mortgage payments but that D would retain ownership of the property for three years, after which the issue of the ownership of the property

would be reviewed. The Bais Din subsequently reaffirmed that ruling. When D and S were summoned to return to the Bais Din to adjudicate the ownership issue, D did not comply. Instead, D sought, and was granted, permission from a different rabbinical tribunal to bring the dispute before a civil court. Thereafter, the plaintiff served the defendants with a notice to quit, and, when the defendants failed to quit possession of the property, the plaintiff initiated this summary process action. The defendants moved to dismiss the action for lack of subject matter jurisdiction. The trial court denied the motion but ordered a three month stay of the proceedings to allow the parties to arbitrate before the Bais Din. In reaching its decision, the court found that D had signed the arbitration agreement with the intent of binding the plaintiff and that the parties had intended the issue of ownership of the property to be adjudicated by the Bais Din. Following the stay period, the defendants filed a motion to stay the proceedings and to compel arbitration. The trial court, without making additional findings that a change in circumstances had rendered the arbitration agreement unenforceable, denied the defendants' motion, concluding that the plaintiff was not a party to any arbitration agreement and that the parties could still seek religious remedies in the appropriate forum while the court resolved ownership and landlord-tenant issues. The trial court subsequently rendered judgment of possession in favor of the plaintiff, from which the defendants appealed.

Held that the trial court erred in failing to enforce the arbitration agreement, and, accordingly, this court reversed the trial court's judgment and remanded the case with direction to grant the defendants' motion to stay the proceedings and to compel arbitration:

In its initial ruling, the trial court concluded that the parties were bound to arbitrate the issue concerning the ownership of the property before the Bais Din on the basis of its finding that, when D signed the arbitration agreement, he did so in a representative capacity with the intent to bind the plaintiff, and that finding was substantially supported by the record, insofar as D, as the plaintiff's founder and then president, signed the agreement on his own behalf and on behalf of the Chabad institutions, the two rulings of the Bais Din dealt with issues relating to the ownership of the property, the arbitration agreement was signed subsequent to the defendants' taking possession of the property, and D wrote the letter ordering S to vacate the property in D's capacity as the plaintiff's authorized representative and on the plaintiff's letterhead.

The trial court, however, improperly denied the defendants' subsequent motion to stay the proceedings and to compel arbitration, as it had already concluded that the parties were bound to the arbitration agreement, it made no findings that there was a change in circumstances that rendered the parties' arbitration agreement unenforceable, and, accordingly, in

the absence of any legal basis for not enforcing the agreement, the trial court erred in declining to stay the proceedings.

Moreover, the plaintiff's action fell within the scope of the arbitration agreement, which provided that the parties would submit all of their arguments in the case between them to arbitration, the plaintiff's claim that the defendants were no longer entitled to possess the property for failure to make mortgage payments was clearly such an argument, and, therefore, the plaintiff's action was arbitrable.

Argued December 14, 2023—officially released July 12, 2024*

Procedural History

Summary process action, brought to the Superior Court in the judicial district of Stamford-Norwalk, Housing Session at Norwalk, where the court, *Spader*, *J.*, denied the motions to dismiss, to stay the proceedings, and to compel arbitration filed by the named defendant et al.; thereafter, the case was tried to the court, *Spader*, *J.*; judgment for the plaintiff, from which the named defendant et al. appealed. *Reversed*; *further proceedings*.

L. Martin Nussbaum, pro hac vice, with whom were *Brenden P. Leydon* and, on the brief, *Andrew Nussbaum*, pro hac vice, for the appellants (named defendant et al.).

Gerard N. Saggese III, with whom were *Juliette Taylor* and, on the brief, *Trevor J. Larrubia*, for the appellee (plaintiff).

Opinion

ALEXANDER, J. This appeal requires us to determine the enforceability of an agreement to arbitrate before a Jewish rabbinical court called a "Bais Din" to resolve a dispute between the parties concerning the possession of certain real property. The defendants Rabbi Moshe Shemtov, Chabad of Stamford, Inc., and Gan Yeladim

* July 12, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

of Stamford, Inc.,[1] appeal from the trial court's judgment granting possession of a commercial property to the plaintiff, Chabad Lubavitch of Western and Southern New England, Inc. On appeal,[2] the defendants claim that the trial court erred in failing to enforce an arbitration agreement that the plaintiff was bound by and refused to honor. We agree and reverse the judgment of the trial court.

The record reveals the following relevant facts and procedural history. Chabad Lubavitch (Chabad) is a hierarchical religious movement of Hasidic Judaism led by its spiritual leader, known as the "Rebbe." Rabbi Yisrael Deren, founder and former president of the plaintiff, served the Chabad community as the shliach, or ecclesiastical leader, of Stamford[3] until August, 2014, when he entered into a written agreement (2014 agreement) to transfer his responsibilities as shliach to Shemtov. Pursuant to the 2014 agreement, Shemtov would serve as the shliach of Stamford going forward and would be responsible for "the vision for Chabad of Stamford, its implementation, institutions, programming, staffing, marketing, [public relations] and everything else related to Chabad of Stamford." The 2014 agreement made no express reference to the plaintiff's commercial property located at 752, 760, and 770 High Ridge Road in Stamford, known as the Chabad Center (property), which served as the central site of religious education, programming, and services for the Chabad

[1] The plaintiff also named John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, and John Doe 6 as defendants in this action. Those defendants have not participated in this appeal. For convenience, we refer to Shemtov, Chabad of Stamford, Inc., and Gan Yeladim of Stamford, Inc., collectively as the defendants and individually by name when appropriate.

[2] The defendants appealed to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[3] In his capacity as shliach, Deren served as the Rebbe's "emissary" for the Chabad community in Stamford.

community in Stamford. The 2014 agreement provided that any "misunderstandings or disputes" would be mediated before a "Vaad," which is a designated tribunal of select shluchim[4] empowered to resolve disputes arising out of the agreement.

Subsequently, Shemtov took possession of, and operated Chabad of Stamford, Inc., and Gan Yeladim of Stamford, Inc., out of, the property. The relationship between Shemtov and Deren deteriorated, however, and Shemtov stopped making the regular mortgage payments on the property. In May, 2016, Deren and Shemtov went before the Vaad to resolve "areas of serious disagreement . . . as to what the obligations of the other party are [under the 2014 agreement]." The Vaad specifically considered the following question: "Must [Deren] turn over ownership (or control of the [c]orporation that has ownership) of [the property] to [Shemtov]?" The Vaad concluded that "neither the [2014] agreement nor its intent requires [Deren] to cede control of the [property's] ownership. . . . As such, [Shemtov's] obligation to pay the mortgage is . . . part of his obligation to fund the Chabad activities in Stamford akin to paying rent for use of the [property]." In June, 2016, Deren sent a letter ordering Shemtov to vacate the property and terminating him from his position as shliach. Deren wrote the letter on the plaintiff's letterhead and in his capacity as the plaintiff's authorized representative.

On July 15, 2016, Deren and Shemtov entered into an arbitration agreement pursuant to which they agreed to resolve their various disagreements before a Bais Din, which is a panel of rabbinical judges that serves as a tribunal to adjudicate a particular dispute in accordance with Jewish law. The arbitration agreement, which was in Hebrew with a separate English transla-

[4] Shluchim is the plural form of shliach.

tion, established that the "jurisdiction of this [B]ais [D]in . . . shall be in force until its ruling is carried out in full, and [it is] empowered to make a decision on every disagreement about how the ruling should be carried out, or about the meaning of the ruling. [It] also retain[s] jurisdiction to come to a decision if it happens that one of the [parties] has arguments or [proof] to contradict the ruling, and likewise if in the ruling [it does] not make a decision (for whatever reason) on all issues . . . ." The arbitration agreement was signed by both Deren and Shemtov individually and on behalf of their respective Chabad institutions.[5]

In August, 2016, the Bais Din issued a ruling[6] in which it determined as follows: "(a) [Shemtov] remains in the full power of his function as [shliach] . . . and according to the conditions of the [2014] agreement.

"(b) [Concerning] all differences of opinion between [the parties] about the meaning of the [2014] agreement, they shall turn to the committee of three shluchim agreeable to both of them, and . . . [the committee] shall give the opportunity to the . . . parties to properly present and express their opinions about this.

"(c) [Shemtov] has to pay the . . . mortgage, and he has to return to [Deren] the sum of money that [Deren] has already paid in his stead. That means that [Shemtov] has to pay ten equal payments, one payment every month, to [Deren] for what [Deren] has paid for the mortgage.

"(d) The [property] shall remain for the time being, as it has been until now, under [Deren's] ownership.

[5] Although the translated version of the arbitration agreement that was admitted into evidence was not signed, it was undisputed that the original, untranslated version was signed by both Deren and Shemtov.

[6] The Bais Din's ruling was in Hebrew with a separate English translation that included bracketed language "added by the translator for clarification of the original [Hebrew] text."

"(e) After a period of three years, the discussion concerning the transfer of the [property] to [Shemtov] shall be reviewed again by the committee of three shluchim (or by the Central Committee of Chabad-Lubavitch Rabbis if one of the parties so desires), obviously in the hope that the agreement between them is fulfilled.

"(f) [Shemtov] should not be dismissed from his position as [shliach] except after bringing the issue before a [B]ais [D]in, as is customary . . . .

"(g) Both parties have to work together in an appropriate manner to arrange refinancing of the mortgage.

"(h) Neither party should arrange on his own to raise the mortgage [obligation] or [to take] equity loans [on the property] or the like without agreement of the other [party]; if it is agreed and done for the benefit of one of them, it is his responsibility to pay the extra payment that results from this."

In the course of its ruling, the Bais Din observed that, "[a]lthough the [2014] agreement does not state explicitly that [Shemtov] is obligated to pay the monthly mortgage payments . . . there is the assumption and assessment that since he is the person responsible for the institutions . . . it is taken for granted that he is obligated to pay also the mortgage for the [property where] the institutions [are located]." In June, 2017, the Bais Din reconvened and issued another ruling concerning certain financial disagreements between the parties. In its ruling, the Bais Din reaffirmed its previous ruling.[7]

Three years after the Bais Din's initial ruling, Rabbi Nochum Schapiro, secretary of the Central Committee

[7] The Bais Din's 2017 ruling included the following directive: "[Shemtov] must pay from now . . . on the mortgage in full every month, and cannot avoid it with claims that he is owed money or other claims. . . . [I]f he has other claims, he should present [them] to the Vaad, but he must pay the mortgage."

of Chabad-Lubavitch Rabbis, issued a series of summonses instructing Deren to return to the Bais Din to adjudicate the issue of ownership of the property. Deren did not comply but, instead, sought, and was granted, permission from a different rabbinical court located in Monsey, New York, to bring the dispute to civil court for resolution. The validity of that permission is disputed by the parties; Schapiro declared the decision to be of "no value . . . ."

In November, 2019, the plaintiff purported to terminate the defendants' right to occupy the property through proper service of a notice to quit. When the defendants failed to quit possession of the property, the plaintiff filed a three count complaint, alleging that the defendants' right or privilege to occupy the property had terminated, nonpayment of rent, and lapse of time. The defendants moved to dismiss the action for lack of subject matter jurisdiction, claiming equitable ownership of the property and that the parties were subject to arbitration agreements that provided for binding arbitration of their dispute. The trial court denied the motion to dismiss, observing that it maintained exclusive jurisdiction over landlord-tenant matters. The court, however, ordered a stay of the proceedings to allow the parties to conclude the arbitration proceedings pending before the Bais Din. The court found that Deren's signature, which "indicated [that] he was signing on his own behalf *and* on behalf of the '[Chabad] [i]nstitutions,' " bound the plaintiff to the arbitration agreement. (Emphasis in original.) The court also noted that the plaintiff was "representing itself [in the action] as the owner of the [property]" and that "[t]he factual issue of ownership . . . was agreed to be the subject of . . . arbitration [before] the Bais Din."

After the conclusion of the stay period, the plaintiff filed a motion for default for failure to plead and judg-

ment for possession (motion for judgment),[8] and the defendants filed a motion to stay the proceedings and to compel arbitration (motion to stay). The trial court reversed course from its initial ruling and, without making any new factual findings regarding the obligatory terms of the arbitration agreement, denied the motion to stay and ordered use and occupancy payments.[9] In denying the defendants' motion to stay, the court explained that the parties could "still seek religious remedies in the appropriate forums while [the] court resolves ownership and landlord-tenant issues, as it is the proper forum for said issues." This was in direct conflict with the court's previous finding that the parties intended that the issue of ownership be adjudicated by the Bais Din. Without further explanation, and despite its previous conclusion that the plaintiff was bound by the arbitration agreement, the court expressly concluded that, "as an entity, [the plaintiff] is not a party to any arbitration agreement."[10]

The defendants filed an answer in which they acknowledged receipt of the notice to quit but claimed a present

[8] The plaintiff submitted an affidavit of Rabbi Yoseph Deren in support of its motion for judgment in which he averred that he had spoken to Rabbi Nochem Kaplan, who confirmed that "there is nothing to be done and nothing more that the [Bais] Din can do. The parties had two arbitrations, and two rulings, there is nothing more the [Bais] Din can do." The defendants filed an opposition to the motion and, in support thereof, attached affidavits of Shemtov and Rabbi Moshe Bogomilsky in which they averred that the Bais Din would continue to exercise jurisdiction.

[9] The defendants appealed from this interlocutory ruling to the Appellate Court, claiming that General Statutes § 52-407bbb (a) (1) permitted an appeal from the denial of a motion to stay the proceedings and to compel arbitration. The plaintiff filed a motion to dismiss, contending that a motion to stay made pursuant to General Statutes § 52-409 is an unappealable interlocutory order. The Appellate Court granted the motion to dismiss and dismissed the appeal. That order is not at issue in this appeal.

[10] The trial court stated this conclusion in its order denying the defendants' motion to compel arbitration, which the defendants acknowledged was redundant to their motion to stay and was filed "solely to preserve their appellate rights . . . ."

right or privilege to occupy the property and asserted seven special defenses, including that the plaintiff's claims were subject to the arbitration agreement.[11] Subsequently, the defendants filed another motion to dismiss, claiming that the religion clauses of the first amendment to the United States constitution and article first, § 3, of the Connecticut constitution deprived the trial court of subject matter jurisdiction. The trial court denied the motion but allowed the defendants to file four additional special defenses that asserted that the plaintiff's claims could not succeed on constitutional grounds.

The trial court found for the plaintiff on all three counts of its complaint. The court found that the plaintiff was the owner of the property. Thus, although the defendants had been given permission to enter and occupy the property, this right or privilege had been terminated with the proper service of a notice to quit. The court further found that Shemtov, after agreeing to pay the monthly mortgage payments, had failed to make payments since at least the fall of 2019, which led to the initiation of a foreclosure action against the property. Finally, the court found that the time the defendants were permitted to be in possession of the property had lapsed.

The trial court next considered each of the defendants' special defenses. As for the constitutional defenses, the court concluded that the resolution of the matter would not "do anything other than [return] a property owner into possession of a premises it owns from a nonpaying tenant." Acknowledging that it had "encouraged" the parties "to continue engaging in mediation with church leadership," the court determined that "this

[11] The defendants also asserted several contractual and equitable special defenses, including unclean hands, breach of the duty of good faith and fair dealing, estoppel, and equitable ownership.

is a possession of property dispute and *not* a matter of faith or church doctrine." (Emphasis in original.) The court then rejected the defendants' contractual special defenses, finding that the plaintiff did not act in bad faith and could pursue the summary process action. The court similarly rejected the defendants' equitable special defenses, finding that, although the defendants had made improvements to the property, those investments could have been protected by making payments on the mortgage and that the defendants had no equitable interest in the property. Finally, the court rejected the arbitration special defense, or the "Bais Din defense," that the plaintiff was bound by the arbitration agreement and that it had refused to participate in ongoing proceedings before the Bais Din in bad faith. The court reasoned that the parties had attempted, but failed, to resolve the dispute in the Bais Din and that there was no pending arbitration proceeding known to the court. Accordingly, the court rendered judgment in favor of the plaintiff. This appeal followed.

On appeal, the defendants raise several claims, including that the trial court's judgment violates the ecclesiastical abstention doctrine.[12] However, we need address only the defendants' contention that the underlying dispute regarding possession of the property must be resolved through arbitration because it is dispositive of the defendants' appeal. See, e.g., *Mueller* v. *Tepler*, 312 Conn. 631, 649 n.17, 95 A.3d 1011 (2014) ("[t]his court has a basic judicial duty to avoid deciding a consti-

[12] The ecclesiastical abstention doctrine was first articulated by the United States Supreme Court in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727, 20 L. Ed. 666 (1871). See *Tilsen* v. *Benson*, 347 Conn. 758, 773, 299 A.3d 1096 (2023). The doctrine "recognizes that the [e]stablishment [c]lause of the [f]irst [a]mendment precludes judicial review of claims that require resolution of 'strictly and purely ecclesiastical' questions." *McRaney* v. *North American Mission Board of the Southern Baptist Convention, Inc.*, 966 F.3d 346, 348 (5th Cir. 2020), cert. denied, U.S. , 141 S. Ct. 2852, 210 L. Ed. 2d 961 (2021).

tutional issue if a nonconstitutional ground exists that will dispose of the case" (internal quotation marks omitted)).

The defendants claim that the trial court failed to recognize that the plaintiff's complaint was preempted by the arbitration agreement. They contend that, although the plaintiff is not an express signatory to the arbitration agreement, it is nonetheless bound to arbitrate because Deren acted in a representative capacity for the plaintiff by (1) transferring ownership and control over the plaintiff's finances in the 2014 agreement with Shemtov, (2) terminating Shemtov from his position as shliach in his capacity as authorized representative of the plaintiff, and (3) signing the arbitration agreement on behalf of the Chabad institutions. The plaintiff responds that it is not bound by any agreement to arbitrate, and, in the alternative, the dispute over possession of the property is not covered by any arbitration agreement. We agree with the defendants that the plaintiff is bound by the arbitration agreement. The trial court, therefore, erred in denying the defendants' motion to stay the proceedings for the parties to participate in arbitration before the Bais Din.

As a preliminary matter, we set forth the standard of review. "The scope of our appellate review depends [on] the proper characterization of the rulings made by the trial court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. When, however, the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record. . . . Therefore, the trial court's conclusions must stand unless they are legally or logically inconsistent with the facts found or unless they involve the application of some erroneous rule of law material to the case." (Cita-

tion omitted; internal quotation marks omitted.) *MSO, LLC* v. *DeSimone*, 313 Conn. 54, 62, 94 A.3d 1189 (2014). "Whether a contractual commitment has been undertaken is ultimately a question of the intention of the parties. Intention is an inference of fact, and the conclusion is not reviewable unless it was one that the trier could not reasonably make." (Internal quotation marks omitted.) *Otto Contracting Co.* v. *S. Schinella & Son, Inc.*, 179 Conn. 704, 709, 427 A.2d 856 (1980).

We begin with the defendants' contention that the trial court erred in failing to enforce the parties' arbitration agreement. Connecticut has established a clear public policy in favor of arbitrating disputes between parties that have agreed to do so. See, e.g., *Nussbaum* v. *Kimberly Timbers, Ltd.*, 271 Conn. 65, 71, 856 A.2d 364 (2004). "The issue of whether the parties to a contract have agreed to arbitration is controlled by their intention. . . . The parties' intent is determined from the language used interpreted in . . . light of the situation of the parties and the circumstances connected with the transaction." (Citation omitted; internal quotation marks omitted.) *State* v. *Philip Morris, Inc.*, 289 Conn. 633, 642, 959 A.2d 997 (2008). "When parties have a valid arbitration agreement, the courts are empowered to direct compliance with its provisions." (Internal quotation marks omitted.) *MCO, LLC* v. *DeSimone*, supra, 313 Conn. 63.

An agreement to arbitrate "shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally . . . ." General Statutes § 52-408. "A party's claim that it is not a signatory to a contract and therefore not bound by the agreement is clearly 'sufficient cause . . . for the avoidance of [written] contracts generally.' " *Total Property Services of New England, Inc.* v. *Q.S.C.V., Inc.*, 30 Conn. App. 580, 588, 621 A.2d 316 (1993). Our Appellate Court has recognized

that "[t]here are five theories for binding nonsignatories to arbitration agreements: [1] incorporation by reference; [2] assumption; [3] agency; [4] [veil piercing]/alter ego; and [5] estoppel." (Internal quotation marks omitted.) *Henry* v. *Imbruce*, 178 Conn. App. 820, 841, 177 A.3d 1168 (2017); see also *Thomson-CSF, S.A.* v. *American Arbitration Assn.*, 64 F.3d 773, 776 (2d Cir. 1995) (recognizing same theories and concluding that "such agreements must not be so broadly construed as to encompass claims and parties that were not intended by the original contract").

We note the lack of consistency in the trial court's conclusions with respect to its determination of whether the plaintiff was bound by the arbitration agreement. The court initially concluded that the parties were bound to arbitrate before the Bais Din and issued a three month stay of the proceedings to allow the parties to arbitrate.[13] In support of this conclusion, the court found that Deren signed the arbitration agreement with the intent of binding the plaintiff. The court explained: "[Because] . . . Deren indicated [that] he was engaging in the arbitration process on behalf of himself *and* the [plaintiff] in 2016, and the Bais Din anticipated a further hearing regarding ownership of the [property] that has not yet occurred, the ownership issue is still subject to the . . . arbitration [agreement]." (Emphasis in original.) Yet, six months later, in September, 2020, the court denied the defendants' subsequent motion to stay the proceedings and concluded that the parties "can still seek religious remedies in the appropriate forums while [the] court resolves ownership and landlord-tenant issues, as it is the proper forum for

[13] The defendants also contend that the plaintiff was bound to arbitrate because of a provision in the 2014 agreement that required the parties to mediate their disputes before a Vaad. Because we conclude that the plaintiff is bound by the arbitration agreement, we need not decide whether the plaintiff was also bound to resolve the parties' dispute before a Vaad pursuant to the 2014 agreement.

[those] issues." The court made no additional findings to indicate any change in circumstances that would render the parties' arbitration agreement unenforceable.

The trial court's initial finding that "Deren represented in the arbitration agreement that the plaintiff . . . was also subject to the arbitration," is substantially supported by the record. See, e.g., *Rund* v. *Melillo*, 63 Conn. App. 216, 222, 772 A.2d 774 (2001) (concluding that "[trial] court had before it sufficient evidence to find that the intent of the parties was to bind both the individuals and the corporate entities"). Deren, the founder and, at the time, the president of the plaintiff, signed the arbitration agreement on his own behalf and "on behalf of the [Chabad] [i]nstitutions." Although the "Chabad institutions" is not defined in the arbitration agreement, the court found that "the plaintiff is such an implied 'institution,' as it is representing itself [in the present case] as the owner of the [property], and one of the issues in the arbitration was ownership of the [property]." The court, therefore, expressly considered the actions of the plaintiff in finding that Deren acted in a representative capacity to bind the plaintiff to the arbitration agreement. See, e.g., *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership*, 309 Conn. 342, 353, 71 A.3d 480 (2013) ("apparent authority is to be determined, not by the agent's own acts, but by the acts of the agent's principal" (internal quotation marks omitted)). The two rulings of the Bais Din similarly support the trial court's finding that the parties understood the plaintiff to be bound by the arbitration agreement because both rulings dealt with issues relating to the ownership of and mortgage payments for the property.

As the trial court found, the parties agreed to arbitrate before the Bais Din "subsequent to the defendants' taking possession" of the property. The arbitration agreement was executed shortly after Shemtov received the

letter from Deren ordering him to vacate the property.[14] The letter was written by Deren in his capacity as the authorized representative of the plaintiff and sent on the plaintiff's letterhead. See, e.g., 2 Restatement (Third), Agency § 6.01, p. 3 (2006) ("[w]hen an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal . . . the principal and the third party are parties to the contract"). This letter further supports the trial court's implied finding that the plaintiff held Deren out as having the authority to bind it to an arbitration agreement relating to this dispute and that the parties intended for the plaintiff to participate in the arbitration. The court, therefore, correctly concluded that the plaintiff was bound to arbitrate before the Bais Din and issued a stay of the proceedings in accordance with the terms of the arbitration agreement.

The trial court subsequently erred, however, in failing to grant the defendants' motion to stay after the plaintiff filed its motion for judgment. General Statutes § 52-409 provides in relevant part that a court "shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in compliance with the agreement, provided the person making application for the stay shall be ready and willing to proceed with the arbitration." The defendants moved to stay the proceedings and indicated that they were willing to proceed with arbitration before the Bais Din, and the plaintiff opposed the motion. Section 52-409 "provides relief when a party to a contract that contains an arbitration clause [or an arbitration agreement] desires arbitration of a dispute, and the other party,

[14] The letter states in relevant part: "In light of your refusal to meet with me and as per the . . . letters from the Vaad ruling and confirming that your failure to pay . . . the mortgage on the [property] is your irrevocable abrogation of our . . . 2014 agreement and it is your [de facto] resignation as director of Chabad in Stamford, and as per my . . . letter to you revoking your status as [s]hliach . . . you . . . are . . . [p]rohibited from entering the [property]."

instead of proceeding with arbitration, institutes a civil action to resolve the dispute." (Internal quotation marks omitted.) *MCO, LLC* v. *DeSimone*, supra, 313 Conn. 63. Having already concluded that both parties were bound by the arbitration agreement, in the absence of any legal basis for not enforcing the agreement, the trial court erred in denying the defendants' motion to stay under § 52-409.[15] See General Statutes § 52-408 ("an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement . . . shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally"); see also *Morgan* v. *Sundance, Inc.*, 596 U.S. 411, 418, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022) ("a court must hold a party to its arbitration contract just as the court would to any other kind [of contract]"); *Success Centers, Inc.* v. *Huntington Learning Centers, Inc.*, 223 Conn. 761, 767, 613 A.2d 1320 (1992) ("the court, on motion of any party to the agreement, shall stay the action until arbitration has been had in compliance with the agreement").

We now address the defendants' contention that the plaintiff's action falls within the scope of the arbitration agreement. The plaintiff argues, in response, that any proceedings required by the agreement have been completed. "It is well established that, [in the absence of]

[15] The only ground on which the plaintiff opposes the enforceability of the arbitration agreement is its claim that it "is not now . . . nor has [it] ever been, a party to an arbitration agreement with [Shemtov] or any of the defendants." The parties never argued, and the trial court never concluded, that the arbitration agreement is otherwise "void for reasons that involve the formation of [the] agreement, such as duress, misrepresentation, fraud or undue influence." *Nussbaum* v. *Kimberly Timbers, Ltd.*, supra, 271 Conn. 74. The parties also do not argue that "an ordinary procedural rule—whether of waiver or forfeiture or what-have-you—would counsel against enforcement of [the] arbitration contract . . . ." *Morgan* v. *Sundance, Inc.*, 596 U.S. 411, 418, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022).

the parties' contrary intent, it is the court that has the primary authority to determine whether a particular dispute is arbitrable, not the arbitrators." *New Britain* v. *AFSCME, Council 4, Local 1186*, 304 Conn. 639, 647, 43 A.3d 143 (2012). Moreover, "[i]t is a long-standing principle of consensual arbitration that the nature and scope of an arbitration panel's authority is determined by the language of the arbitration [agreement]." *Lupone* v. *Lupone*, 83 Conn. App. 72, 75, 848 A.2d 539, cert. denied, 270 Conn. 910, 853 A.2d 526 (2004).

The arbitration agreement provides in relevant part: "[The parties] have accepted upon us (in the most effective manner possible according to our holy Torah) to set *all our arguments in the case between us* (including all the [counterclaims] of the [parties]) before the [specified Bais Din] . . . . The jurisdiction of this [B]ais [D]in . . . shall be in force until its ruling is carried out in full, and [it is] empowered to make a decision on every disagreement about how the ruling should be carried out, or about the meaning of the ruling. [It] also *retain*[*s*] *jurisdiction* to come to a decision if it happens that one of the [parties] has arguments or [proof] to contradict the ruling, and likewise *if in the ruling* [*it does*] *not make a decision (for whatever reason) . . .* [*it is*] *empowered to come to a decision . . . later*. . . . An explicit condition is hereby made that *no* [*B*]*ais* [*D*]*in in the world shall have power to cancel or change the ruling* even if, in their opinion, this [B]ais [D]in has erred." (Emphasis added.)

Although the parties have not manifested an intent to reserve the issue of possession for the Bais Din, the expansive language of the arbitration agreement leaves us with no question that this dispute is arbitrable. The arbitration agreement provides that the parties agreed to "set all [their] arguments in the case between [them]" to arbitration. The plaintiff's claim, therefore, that the defendants are no longer entitled to possess the prop-

erty for failure to make mortgage payments is without question an "argument in the case between [them]" and, as such, falls squarely within the bounds of the arbitration agreement. Indeed, the parties entered into their agreement to submit the case to the Bais Din shortly after Deren purported to revoke Shemtov's access to the property. The actions of the parties and the Bais Din confirm our reading of the arbitration agreement. The parties have made, and the Bais Din *has already considered*, arguments relating to Shemtov's obligation to make mortgage payments in two previous arbitrations. The Bais Din, moreover, expressly reserved adjudication of ownership of the property after three years. We, thus, conclude that the present action is arbitrable.

The judgment is reversed and the case is remanded with direction to grant the defendants' motion to stay the proceedings and to compel arbitration.

In this opinion the other justices concurred.

THE WILLIAM W. BACKUS HOSPITAL *v.* TOWN OF STONINGTON (SC 20805)

Robinson, C. J., and McDonald, Mullins, Ecker, Alexander, Dannehy and Elgo, Js.

Syllabus

Pursuant to statute (§ 12-66a), the following property may be taxed by a municipality provided such property is "held by or on behalf of a health system, as defined in section 19a-508c," even if it is otherwise exempted from taxation: (1) real property that "is acquired by a health system on or after October 1, 2015, that, at the time of such acquisition, is subject to taxation"; and (2) "any personal property incident to the rendering of health care services at the real property described in subdivision (1) . . . ."

The plaintiff hospital appealed to the trial court from the decision of the defendant town's board of assessment appeals. The board had upheld

the town assessor's denial of the plaintiff's applications for personal property tax exemptions in connection with the town's 2020 and 2021 grand lists. In those applications, the plaintiff claimed that certain personal property that it used for the provision of outpatient rehabilitation services was exempt from taxation pursuant to the statutory (§ 12-81 (7) or (16)) charitable or hospital tax exemptions. Although the plaintiff, which is owned by B Co., has its principal location in the city of Norwich, the personal property at issue was located at a rehabilitation facility that the plaintiff operated in the town. The sole member of B Co. is H Co., which is a health system, as defined by statute ((Supp. 2024) § 19a-508c (a) (5)). The plaintiff's rehabilitation facility is located in a suite that it subleased from H Co., and the suite is in a building that H Co. leases from the building's owner. The parties filed separate motions for summary judgment. Although the plaintiff claimed that the personal property at issue was exempt from taxation under § 12-81 (7) or (16), the town claimed that it was taxable pursuant to § 12-66a. The trial court agreed with the plaintiff and disagreed with the town. The court reasoned that, although the plaintiff is part of a health system, the personal property at issue was located at a rehabilitation facility that was leased, rather than owned, and, therefore, the real property at which the personal property at issue was being used had not been "acquired" by a health system within the meaning of § 12-66a. Accordingly, the court granted the plaintiff's motion for summary judgment and rendered judgment thereon, from which the town appealed.

Held that the personal property owned by the plaintiff and used "incident to the rendering of health care services" at the rehabilitation facility, even if otherwise exempt from taxation under § 12-81 (7) or (16), was taxable under § 12-66a, and, accordingly, this court reversed the trial court's judgment and remanded the case with direction to deny the plaintiff's motion for summary judgment and for further proceedings:

Whether the personal property at issue was taxable turned on whether the suite in which the rehabilitation facility was located had been "acquired by a health system" for purposes for § 12-66a, and, because the statutory scheme did not define the word "acquired," this court consulted dictionary definitions and determined that § 12-66a was ambiguous as to whether real property acquired by a health system excluded leased property from the operation of the statute, insofar as the definitions of "acquire" refer to possession and control, as well as ownership.

Because there were limited extratextual sources regarding the meaning of "acquired," as used in § 12-66a, this court applied the relevant principles of statutory construction and concluded that, if the legislature had intended to cabin the method of acquisition to real property that is purchased, rather than leased, by a health system, it would have conveyed its intent expressly by using more specific language, especially when the legislature has, in the context of other tax exemptions, used specific

language to limit the application of a tax exemption to property that is acquired in specific ways.

Moreover, the plaintiff's construction of § 12-66a, limiting the statute's application to real property that is acquired by purchase, would invite parties to structure transactions in a way that would frustrate the apparent purpose of the statute, which is to shield municipalities from the loss of tax revenue caused by the proliferation of takeovers by larger, tax-exempt health-care systems of smaller hospitals and private medical practices that are otherwise subject to property tax.

Furthermore, contrary to the plaintiff's argument that § 12-66a does not apply to it because it is not a "health system," § 12-66a incorporates the definition of health system from § 19a-508c (a) (5), that definition includes both the parent corporation of one or more hospitals and any hospitals or entities affiliated with the parent through ownership, governance, or membership, the plaintiff was affiliated with H Co., the parent corporation of one or more hospitals by virtue of H Co.'s status as the sole member of the plaintiff's owner, B Co., and a definition of "health system" that includes affiliated hospitals and entities furthers the statutory purpose by preventing health systems that would otherwise be subject to § 12-66a from rearranging their corporate structure to avoid its application.

Argued February 14—officially released July 12, 2024*

Procedural History

Appeal from the decision of the defendant's board of assessment appeals upholding the denial of the plaintiff's application for a tax exemption with respect to certain personal property, brought to the Superior Court in the judicial district of New London and transferred to the judicial district of New Britain, where the court, *Cordani*, *J.*, granted the plaintiff's motion for partial summary judgment, denied the defendant's motion for summary judgment and rendered judgment thereon, from which the defendant appealed. *Reversed*; *further proceedings*.

Lloyd L. Langhammer, for the appellant (defendant).

* July 12, 2024, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Alison P. Baker, with whom were *Jessica M. Signor* and *John P. D'Ambrosio* for the appellee (plaintiff).

Marilyn B. Fagelson, *Kari L. Olson* and *Rachel Snow Kindseth* filed a brief for the Connecticut Conference of Municipalities as amicus curiae.

Opinion

ROBINSON, C. J. This tax appeal requires us to consider whether General Statutes § 12-66a, which the legislature enacted in 2015 to address the property tax implications of major health-care systems' taking over hospital based medical facilities and medical practices in municipalities around the state, applies to personal property located on real property that was not purchased by a health-care system but was leased by that health-care system. The plaintiff, The William W. Backus Hospital, brought a tax appeal to the trial court from the decision of the Board of Assessment Appeals of the town of Stonington (board), denying the plaintiff's application for a tax exemption for certain personal property that the plaintiff uses to provide outpatient medical rehabilitation services at a facility (rehabilitation facility) located in the Mystic section of the defendant town of Stonington (town). The town now appeals[1] from the judgment of the trial court rendered for the plaintiff on all counts of its complaint. On appeal, the town contends, among other things, that the trial court incorrectly concluded that the rehabilitation facility—which was located on real property that the Hartford Healthcare Corporation (Hartford Healthcare) had leased, and then subleased to the plaintiff—had not been "acquired" by Hartford Healthcare for purposes of rendering it "held by or on behalf of a health system" under § 12-66a. We agree with the town's argument

[1] The town appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

that the rehabilitation facility had been "acquired" by Hartford Healthcare for purposes of § 12-66a, thus negating the charitable and hospital tax exemptions provided by General Statutes § 12-81 (7) and (16),[2] respectively, that otherwise would be applicable to the personal property at issue. Accordingly, we reverse the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. The plaintiff is a general hospital licensed by the state Department of Public Health (department), with its principal location in Norwich. It is a registered public charity in this state. The plaintiff is a wholly owned subsidiary of Backus Health Care, Inc., which is a corporate entity that is formed for charitable purposes under § 12-81 (7) and recognized by the Internal Revenue Service as a tax-exempt charitable organization pursuant to 26 U.S.C. § 501 (c) (3) of the Internal Revenue Code.[3] The sole member of the plaintiff is Hartford Healthcare, which is itself a § 501 (c) (3) charitable organization.

The plaintiff operates the rehabilitation facility in a suite located on real property located at 100 Perkins Farm Drive in the Mystic section of the town. The Mystic Health Center, LLC, owns the building in which the rehabilitation facility is located and leases it to Hartford

[2] Although § 12-81—and subdivision (7), specifically—has been amended by the legislature since the events underlying this case; see Public Acts 2022, No. 22-73, § 1; see also, e.g., Public Acts 2023, No. 23-71, § 11; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] The plaintiff maintains a financial assistance policy pursuant to 26 U.S.C. § 501 (r) (4) of the Internal Revenue Code under which it offers a significant amount of services to indigent patients for free or at substantially discounted rates. In 2020 and 2021, the plaintiff provided approximately 10 percent of its services to Medicaid patients. During those two years, it provided approximately $5 million worth of charitable care annually to financially eligible patients and wrote off approximately $12 million annually in bad debt for nonpayment for the provision of medical services.

Healthcare. Hartford Healthcare, in turn, subleased to the plaintiff the suite in which the plaintiff operates the rehabilitation center for a period of ten years, commencing January 1, 2020.

The rehabilitation facility is a satellite hospital facility offering outpatient rehabilitation services, including physical therapy, occupational therapy, speech therapy, and sports medicine.[4] The plaintiff owns a variety of personal property—including computer and telephone systems, furniture, and fixtures, along with medical equipment and durable medical equipment, such as upright and recumbent bicycles, a bariatric chair, and a ramp and curb training set—which it keeps at the rehabilitation facility and uses exclusively to provide those services in connection with its charitable and hospital purposes.

On October 27, 2020, the plaintiff filed an application for a tax exemption with the town assessor, asking that the personal property at the rehabilitation facility be exempted from taxation on the October, 2020 grand list pursuant to subdivision (7) or (16) of § 12-81. The assessor denied that tax exemption on November 12, 2020, stating that the rehabilitation facility was a "[c]linic" and that "no certificate of need" had been presented. Following a hearing, the board upheld that denial in April, 2021. The plaintiff renewed its request in connection with the town's 2021 grand list, and the board subsequently upheld the assessor's decision to deny relief on the ground that the property was ineligible for exemption under § 12-81 (7). The plaintiff paid the taxes for its personal property located at the rehabil-

[4] The plaintiff operates the rehabilitation facility under a single state license from the department that applies to its multiple satellite facilities, which render them a single "hospital facility" for purposes of their federal tax exemption. 26 C.F.R. § 1.501 (r)-1 (b) (17) (2023). The rehabilitation facility is an "[o]utpatient rehabilitation facilit[y]," as contemplated by General Statutes § 19a-638 (b) (8).

itation facility for both years under protest, reserving all rights.

The plaintiff appealed from the decisions of the board to the trial court pursuant to General Statutes §§ 12-89, 12-117a and 12-119, claiming, among other things, that the personal property at the rehabilitation facility was tax-exempt, either as property used for charitable purposes or as hospital property under subdivision (7) or (16) of § 12-81, respectively. The parties then filed separate motions for summary judgment. The trial court first concluded that the personal property at the rehabilitation facility was "exempt from taxation pursuant to § 12-81 (7) because the property is owned by an entity organized exclusively for charitable purposes, namely, the plaintiff, and it is used by that entity exclusively for charitable purposes, namely, the delivery of . . . rehabilitative services." The court next concluded that those rehabilitative services are "outpatient services [that] are within the ambit of hospital services," rendering the personal property exempt from taxation pursuant to the property of hospitals exemption under § 12-81 (16). Finally, the court rejected the town's claim that § 12-66a takes the personal property "outside of the purview of § 12-81 entirely," reasoning that, although the "plaintiff is a part of a health system, as defined" by the statute, the personal property is located at the rehabilitation facility, which is not a part of the plaintiff's campus and is leased, rather than owned, by the plaintiff. Relying on the legislative history of § 12-66a, the court concluded that the reference to property "acquired" by a health system is limited to property that is "purchased," rather than that which is leased, by the health system. The trial court reasoned that "[t]here is no principled difference between the personal property owned and used by the plaintiff in its main operations on its campus and the personal property owned and used by the plaintiff at the [rehabilita-

tion facility], other than its physical location, and, [because] § 12-66a does not apply, it is clear that the same tax treatment applies to both, namely, that the tax exemptions provided for in § 12-81 (7) and . . . (16) apply."

On the basis of these conclusions of law, the trial court granted the plaintiff's motion for summary judgment and denied the town's motion for summary judgment; it concluded that the "personal property may not be taxed on the grand lists for 2020 and 2021" and rendered judgment for the plaintiff on all four counts of the tax appeal complaint.[5] This appeal followed.

On appeal, the town argues that, even if the trial court correctly determined that the plaintiff's personal property at the rehabilitation facility falls within the charitable and hospital exemptions provided by § 12-81 (7) and (16), respectively, these exemptions are inapplicable because § 12-66a governs only the "taxability of the personal property of a hospital of a health system,"[6] which is a term that includes the plaintiff by virtue of its corporate affiliation with Hartford Healthcare. In contending that the trial court incorrectly determined that § 12-66a is inapplicable, the town, supported by the amicus curiae, the Connecticut Conference of Municipalities, contends that the trial court incorrectly

[5] The trial court observed that, although the plaintiff requested "judgment on counts two and four, which are § 12-119 claims," its "determination that the personal property is completely exempt from taxation" renders it "apparent that any assessment of taxation is excessive when compared to zero," thus requiring the court to render "judgment on counts one and three, which are corresponding § 12-117a claims." The court also declined to award interest or costs in connection with the tax appeal.

[6] The town also raises independent claims that the trial court incorrectly determined that the personal property was subject to the charitable and hospital exemptions provided by § 12-81 (7) and (16), respectively. Given our ultimate conclusion that § 12-66a operates to negate the applicability of these tax exemptions to the plaintiff's personal property at the rehabilitation facility, we need not address these claims in this opinion.

construed the word "acquired," as used in § 12-66a, to give it "a meaning beyond [its] normal meaning" of possession by limiting its application only to real property owned by a health system, rather than real property leased by that health system. The town and the amicus argue that the trial court's analysis runs afoul of the plain meaning rule prescribed by General Statutes § 1-2z because the word "acquired" is not ambiguous when read in the context of the statutory scheme, which treats personal property and real property distinctly, and that the trial court therefore improperly considered the legislative history of the statute in limiting the meaning of the word "acquired." Emphasizing the purpose of the statute, which is to protect municipalities from the loss of property tax revenue caused by the proliferation of takeovers by health-care systems of smaller hospitals or private medical practices, the town emphasizes that the "legislature cannot be presumed to have admitted or authorized complicated leasing arrangements by which taxation could be defeated by leasing the property [rather than] owning it."

In response, the plaintiff argues that the trial court correctly construed § 12-66a because (1) "the personal property at issue is not located at real property that has ever been 'acquired' by [the plaintiff], much less a health system," and (2) "the statute, by its express terms, precludes direct taxation of hospitals because it provides that any taxes imposed 'shall not be paid by a hospital . . . .' " The plaintiff argues that it is not "a 'health system' to which the statute applies but, rather, is a singular 'hospital . . . affiliated with [a] health system.' " It argues that, as a sublessee, its possessory interest in the rehabilitation facility is "temporary" and "transient" and does not constitute an "acquisition" of the premises within the meaning of § 12-66a. Contending that the word "acquired" is ambiguous and not defined by the statute, the plaintiff relies

on the fiscal note for the bill enacted as § 12-66a in 2015 to argue that the legislature meant "the word 'acquired' . . . only to reference real property *purchased* after October 1, 2015," and not leasehold interests. (Emphasis in original.) The plaintiff also contends that "revenue loss when a health system purchases real property . . . is not at issue here because [the plaintiff], as lessor, has not inhibited in any way the town's ability to assess real property taxes on the premises or the building in which the premises [are] located." Finally, the plaintiff argues that it is a "hospital," and not a "health system," and that § 12-66a expressly precludes towns from imposing real property taxes on hospitals. We, however, agree with the town and conclude that § 12-66a rendered unavailable the tax exemptions otherwise applicable to the plaintiff's personal property located at the rehabilitation facility.

The meaning of § 12-66a in this tax appeal[7] presents "a question of statutory construction, over which we exercise plenary review. . . . In addition to the usual

[7] We note that the plaintiff's tax appeal complaint has two sets of counts for each of the two annual grand lists at issue, one raising a claim under §§ 12-89 and 12-117a, involving overvaluation, and the other raising a claim under §§ 12-89 and 12-119, governing "illegal" assessments for which the town lacked authority or that followed an illegal methodology. Given the nature of the claims in this appeal, which raise the question of whether the personal property at issue was subject to a tax exemption as a matter of law under the relevant statutes, namely, §§ 12-66a and 12-81 (7) and (16), we follow the same analytical approach employed by the trial court; see footnote 5 of this opinion; and consider the § 12-117a claims and § 12-119 claims together. See *Rainbow Housing Corp.* v. *Cromwell*, 340 Conn. 501, 509–10 n.5, 264 A.3d 532 (2021); see, e.g., *Tuohy* v. *Groton*, 331 Conn. 745, 760 n.20, 207 A.3d 1031 (2019) (citing *Second Stone Ridge Cooperative Corp.* v. *Bridgeport*, 220 Conn. 335, 339, 597 A.2d 326 (1991), and explaining distinction between § 12-117a and § 12-119 tax appeals); see also *Wind Colebrook South, LLC* v. *Colebrook*, 344 Conn. 150, 176–78, 278 A.3d 442 (2022) (improper valuation of wind turbines' "associated equipment" as real property rather than personal property rendered them overvalued as matter of law under § 12-117a, and remand to trial court was necessary to determine correct assessment).

rules of statutory construction that apply generally [under § 1-2z] . . . our analysis . . . also is governed by the rule of strict construction applicable to statutory provisions granting tax exemptions. . . . It is . . . well established that in taxation cases . . . provisions granting a tax exemption are to be construed strictly against the party claiming the exemption, who bears the burden of proving entitlement to it. . . . Exemptions, no matter how meritorious, are of grace . . . . [Therefore] [t]hey embrace only what is strictly within their terms. . . . We strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. . . . [I]t is also true, however, that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used." (Citations omitted; internal quotation marks omitted.) *Rainbow Housing Corp.* v. *Cromwell*, 340 Conn. 501, 511–12, 264 A.3d 532 (2021); see, e.g., *St. Joseph's Living Center, Inc.* v. *Windham*, 290 Conn. 695, 707, 966 A.2d 188 (2009); *Isaiah 61:1, Inc.* v. *Bridgeport*, 270 Conn. 69, 73–74, 851 A.2d 277 (2004). We strictly construe § 12-66a against the party seeking the exemption, even though it is not an express exemption from taxes like the provisions of § 12-81, given its apparent purpose to cabin the application of those exemptions. Cf. *Snyder* v. *Newtown*, 147 Conn. 374, 386–87, 161 A.2d 770 (1960) (noting effect of exemption of church property from taxation, whether described as statutory exemption or "a policy of considering church property not ratable for tax purposes"), appeal dismissed, 365 U.S. 299, 81 S. Ct. 692, 5 L. Ed. 2d 688 (1961).

Our analysis begins with the text of § 12-66a, which provides: "Notwithstanding any provision of this chap-

ter or chapter 201 or 204 or any special act that provides an exemption from taxation of real or personal property held by or on behalf of a health system, as defined in section 19a-508c, the following real and personal property shall be taxable by a municipality in accordance with the provisions of this chapter and chapters 201 and 204: (1) Real property *that is acquired* by a health system on or after October 1, 2015, that, *at the time of such acquisition*, is subject to taxation under the provisions of this chapter and chapters 201 and 204, provided such acquiring health system had, for the fiscal year ending September 30, 2013, net patient revenue from facilities located within the state of one billion five hundred million dollars or more, and (2) *any personal property incident to the rendering of health care services at the real property* described in subdivision (1) of this section. The provisions of this section shall not apply to any real or personal property that is within a campus, as defined in subparagraph (A) of subdivision (2) of subsection (a) of section 19a-508c. *All taxes on real and personal property imposed pursuant to this section shall be liabilities of, and paid by, the health system*, and shall not be paid by a hospital or other entity affiliated with such health system." (Emphasis added.)

The town's claim on appeal turns on the meaning of the word "acquired," as used in § 12-66a, insofar as it renders taxable otherwise exempt "personal property incident to the rendering of health care services" at "[r]eal property *that is acquired* by a health system on or after October 1, 2015, that, *at the time of such acquisition*, is subject to taxation under the provisions of this chapter and chapters 201 and 204, provided such acquiring health system had, for the fiscal year ending September 30, 2013, net patient revenue from facilities located within the state of one billion five hundred million dollars or more . . . ." (Emphasis added.) Gen-

eral Statutes § 12-66a. The statute does not, however, define the term "acquired." Accordingly, we follow the "commonly approved usage" of the word at issue; General Statutes § 1-1 (a); which we ascertain by consulting contemporary dictionaries, given the relatively recent enactment of the statute in 2015. See, e.g., *Wilton Campus 1691, LLC* v. *Wilton*, 339 Conn. 157, 166, 260 A.3d 464 (2021); *Kuchta* v. *Arisian*, 329 Conn. 530, 537–39, 187 A.3d 408 (2018).

The Merriam-Webster Online Dictionary defines the word "acquire" as a transitive verb meaning "to get as one's own," with a relevant subdefinition of "to come into possession or control of *often by unspecified means* . . . ." (Emphasis added.) Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/acquire (last visited July 11, 2024). That online dictionary provides two examples, namely, to "*acquire* property" and "[t]he team *acquired* three new players this year." (Emphasis in original.) Id. Another popular and contemporary online dictionary similarly defines the word "acquire" as "to come into *possession or ownership* of; get as one's own," and provides "to acquire property" as an example. (Emphasis added.) Dictionary.com, available at https://www.dictionary.com/browse/acquire (last visited July 11, 2024); see also American Heritage College Dictionary (4th Ed. 2004) p. 12 (defining "acquire" as "[t]o gain possession of: *acquire 100 shares of stock*" (emphasis in original)).

These definitions of the word "acquire," which is a broad term that refers to both possession and control, as well as ownership, do not exclude property obtained via lease from the operation of § 12-66a. Nevertheless, given the low bar of reasonableness necessary to establish statutory ambiguity for purposes of § 1-2z, the multiple references in those definitions to the concept of ownership render § 12-66a ambiguous on this point, and we consider extratextual sources in addition to the

statutory language. See, e.g., *Clark* v. *Waterford, Cohanzie Fire Dept.*, 346 Conn. 711, 728, 295 A.3d 889 (2023); *Sena* v. *American Medical Response of Connecticut, Inc.*, 333 Conn. 30, 45–46, 213 A.3d 1110 (2019).

With only very limited extratextual sources available to us to illuminate the meaning of the word "acquired," as used in § 12-66a; see footnote 9 of this opinion; principles of statutory interpretation, such as strict or liberal construction, assume a primary role in resolving this ambiguity in the statute. See, e.g., *Northland Investment Corp.* v. *Public Utilities Regulatory Authority*, 349 Conn. 35, 48–50, 313 A.3d 1200 (2024); see also *Clark* v. *Waterford, Cohanzie Fire Dept.*, supra, 346 Conn. 728–29 (concluding that statutory language was ambiguous but provided more support for court's construction than did "the legislative history [which was] more general in nature and [did] not furnish any evidence of legislative intent with respect to the specific point of law at issue"). Thus, we find instructive the tenets of statutory construction indicating that, had the legislature intended to cabin the method of acquisition under § 12-66a to purchase, it presumably would have used more specific language in doing so. "[I]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so." (Internal quotation marks omitted.) *Rutter* v. *Janis*, 334 Conn. 722, 734, 224 A.3d 525 (2020); see id., 734–35 (concluding that word "days" for purposes of loan of dealer plates to customers authorized by General Statutes § 14-60 (a) are for "full calendar days" because "the legislature has provided for 'portions' or 'fractions' of days in numerous other statutes, indicating that it knows how to require fractions of days to be counted when it intends to do so"). Put differently, "[w]hen a statute, with reference to one subject contains a given provision, the omission of such provision

from a similar statute concerning a related subject . . . is significant to show that a different intention existed. . . . That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or [nonaction] will have [on] any one of them." (Internal quotation marks omitted.) *In re Annessa J.*, 343 Conn. 642, 671, 284 A.3d 562 (2022); see, e.g., *Wilton Campus 1691, LLC* v. *Wilton*, supra, 339 Conn. 174–75 (existence of several statutory provisions "authorizing the [municipal tax] assessor to act outside of the period prescribed by" General Statutes § 12-55 "demonstrate[s] that, when the legislature chooses to extend the assessor's statutory authority beyond the limits of § 12-55, it does so expressly," meaning that lack of "such [an] express extension of the assessor's statutory authority" in General Statutes § 12-63c renders controlling "the deadline contained in § 12-55 (b)").

In the context of the present case, the legislature has cabined the applicability of various tax exemptions to property that is acquired in specific ways, such as personal property that is "*loaned without charge or leased at a nominal charge* of one dollar per year to any tax-exempt educational institution above secondary level and used exclusively by such institution for teaching, research or teaching demonstration purposes"; (emphasis added) General Statutes § 12-81 (9); or water pollution control "[s]tructures and equipment *acquired by purchase or lease* . . . ."[8] (Emphasis added.) General

[8] Other examples of specific methods of acquisition abound in § 12-81. See, e.g., General Statutes § 12-81 (36) (property tax exemption for "[f]ishing apparatus belonging to any person or company to the value of five hundred dollars, providing such apparatus was *purchased for use* in the main business of such person or company at the time of purchase" (emphasis added)); General Statutes § 12-81 (49) ("[s]ubject to the provisions of subdivision (7) of this section and section 12-88, real property and its equipment *owned by or held in trust* for any charitable corporation exclusively used as a nonprofit camp or recreational facility for charitable purposes" (emphasis added)); General Statutes § 12-81 (52) (a) (tax exemption for air pollution control "[s]tructures and equipment *acquired by purchase or lease*" (emphasis

Statutes § 12-81 (51) (a). Guided by the strict construction given to statutes that provide tax exemptions, which favors municipalities given their effect on the public fisc; see, e.g., *Rainbow Housing Corp.* v. *Cromwell*, supra, 340 Conn. 511–12; we therefore decline to adopt the plaintiff's limited construction of § 12-66a. As the town and the amicus argue, this construction would invite the structuring of transactions to frustrate the evident purpose of § 12-66a—protecting the tax base of municipalities in the face of local health-care facilities that are subject to property taxes being purchased by large hospital based health-care systems, which would render them tax-exempt in the absence of the statute.[9] See *Tyler Equipment Corp.* v. *Wallingford*,

added)); General Statutes § 12-81 (58) ("[s]ubject to authorization of the exemption by ordinance in any municipality, *any real or personal property leased to a charitable, religious or nonprofit organization*, exempt from taxation for federal income tax purposes, provided such property is used exclusively for the purposes of such charitable, religious or nonprofit organization and not otherwise exempt under this section (emphasis added)); General Statutes § 12-81 (59) (a) (partial tax exemption for any manufacturing facility "acquired, constructed, substantially renovated or expanded on or after July 1, 1978, in a distressed municipality").

At oral argument before this court, counsel for the plaintiff cited General Statutes §§ 12-70 and 12-81r as examples of statutes the application of which would be complicated by a construction of the word "acquired" in § 12-66a to encompass leases as well as purchases. We disagree. Both of these statutes contain language of ownership that is expressly distinguishable from the more unqualified use of the term "acquired" in § 12-66a. See General Statutes § 12-70 ("[w]hen any person, *at the time he acquires equity in real estate*, expressly assumes the payment of taxes which are to become payable thereafter, he shall become liable for the payment thereof to the same extent and in the same manner as though such real estate were assessed in his name" (emphasis added)); General Statutes § 12-81r (a) (4) (authorizing municipalities to enter into property tax abatement agreements for period of environmental remediation and redevelopment of brownfields, and to "forgive all or a portion of the principal balance and interest due on delinquent property taxes for the benefit of any Connecticut brownfield land bank, as defined in section 32-760, *that has acquired or will acquire any real property* within the municipality" (emphasis added)).

[9] The legislative history of § 12-66a is limited and does not resolve the statute's ambiguity in the plaintiff's favor. Section 12-66a was enacted as § 238 of Public Acts, Spec. Sess., June, 2015, No. 15-5, which implemented

212 Conn. 167, 174–75, 561 A.2d 936 (1989) (This court concluded that mechanical equipment in the possession of prospective purchasers, who had entered into a lease-purchase agreement for the equipment, qualified for the property tax exemption provided by § 12-81 (54)

the budget bill, Senate Bill No. 1502 (June Spec. Sess. 2015) (S.B. 1502), for that session. The recorded House and Senate debates are silent as to the purpose of this provision. Both the plaintiff and the amicus, however, cite a fiscal note for S.B. 1502 in support of their respective constructions of § 12-66a. See Office of Fiscal Analysis, Connecticut General Assembly, Fiscal Note, Senate Bill No. 1502, An Act Implementing Provisions of the State Budget for the Biennium Ending June 30, 2017 Concerning General Government, Education and Health and Human Services. The fiscal note states that one of the purposes of the bill is to "[preclude] the revenue loss to municipalities (where such property is located) that could occur under current law when [health systems] *purchase* any property." (Emphasis added.) Id.; see id. (stating that applicable provisions would "make the following types of property subject to property taxation: [1] certain real property *purchased by certain health systems* after October 1, 2015 that was taxable at the time of purchase; [2] personal property associated with such real property; and [3] any real, residential property owned by nonprofit institutions of higher education and used as student housing" (emphasis added)).

We decline to rely on the fiscal note as evidence of legislative intent with respect to the meaning of the word "acquired." Consistent with the regular practice of the Office of Fiscal Analysis, the fiscal note warns the reader that it has been "prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and *does not represent the intent of the General Assembly or either chamber thereof for any purpose.*" (Emphasis altered.) Id. Consistent with this admonition, it is well settled that fiscal notes "may bear on the legislature's knowledge of interpretive problems that could arise from a bill" but "are *not*, in and of themselves, evidence of legislative intent . . . ." (Emphasis added; internal quotation marks omitted.) *State* v. *Bischoff*, 337 Conn. 739, 760–61, 258 A.3d 14 (2021); see *State* v. *Moore*, 180 Conn. App. 116, 124 n.4, 182 A.3d 696 (because this court "has recognized that fiscal impact statements are not evidence of legislative intent," "the fiscal impact statement cannot be utilized as a fulcrum to lever the statute's plain meaning into ambiguity"), cert. denied, 329 Conn. 905, 185 A.3d 595 (2018); cf. *Butts* v. *Bysiewicz*, 298 Conn. 665, 688 n.22, 5 A.3d 932 (2010) (summaries and comments by Office of Legislative Research). But see *State* v. *Kalil*, 314 Conn. 529, 569–70, 107 A.3d 343 (2014) (*Eveleigh, J.*, concurring and dissenting) (citing fiscal note in urging adoption of amelioration doctrine to allow changes to threshold amounts in larceny statute to apply retroactively and indicating that doing so would save general fund money by decreasing

for the goods of wholesale and retail businesses because "[t]o allow a tax exemption simply because the prospective purchaser has entered into a lease-purchase agreement, rather than an ordinary sale or lease under which either the purchaser or the lessor-owner would be required to pay taxes on the machine, would create an incentive for the lease-purchase form of transaction based [on] the opportunity to avoid taxes during a substantial period of the useful life of the machine. The towns, which bear the cost of fire and police protection for all tangible personal property, ought not to be deprived of the taxes such property would ordinarily generate while it is being used to produce revenue for its owner simply because the lease agreement also sets forth the terms of a possible sale in the future.").

The plaintiff argues, however, that § 12-66a does not apply to it because it is not a "health system" within the meaning of the statute and, instead, "is a singular 'hospital . . . affiliated with [a] health system.' " This argument is belied by the plain language of the statute. Section 12-66a incorporates the definition of "health system" from General Statutes (Supp. 2024) § 19a-508c (a) (5), which broadly defines that term as "(A) A parent corporation of one or more hospitals and *any entity affiliated with such parent corporation through ownership, governance, membership or other means*, or (B) a hospital and any entity affiliated with such hospital through ownership, governance, membership or other means . . . ."[10] (Emphasis added.) This broad defini-

number of incarcerations). Accordingly, we do not consider the fiscal note in determining the intent of the legislature.

[10] General Statutes (Supp. 2024) § 19a-508c (a) (6) defines the term "hospital" through a cross-reference to General Statutes § 19a-490, which provides that a "hospital" is "an establishment for the lodging, care and treatment of persons suffering from disease or other abnormal physical or mental conditions and includes inpatient psychiatric services in general hospitals . . . ." General Statutes § 19a-490 (b). It is, of course, undisputed that the plaintiff is itself a hospital.

tion, which includes both the health system itself *and* the affiliated hospitals or entities within the definition of "health system," plainly and unambiguously applies to the plaintiff. As the amicus aptly observes, this definition prevents "health systems that would otherwise be subject to § 12-66a" from "easily rearrang[ing] their corporate structure to avoid its application" by "cabin[ing] their various outpatient practices as subsidiaries of the hospital." Countenancing the construction urged by the plaintiff would undermine the purpose of the statute, which is to protect municipalities and the state's PILOT[11] program from the loss of tax revenues created by the proliferation of satellite hospital facilities under the umbrella of large health systems. See *Tyler Equipment Corp.* v. *Wallingford*, supra, 212 Conn. 174–75.

In sum, Hartford Healthcare, which is a parent corporation of one or more hospitals, is affiliated with the plaintiff through its "ownership, governance, [or] membership" because Hartford Healthcare is the sole member of Backus Health Care, Inc., which owns the plaintiff. General Statutes (Supp. 2024) § 19a-508c (a) (5). Indeed, the plaintiff's certificate of incorporation provides that it "shall be operated as a component part of the integrated [health-care] delivery system of which

[11] Payments in lieu of taxes, via state grants or voluntary agreements, commonly known by the acronym "PILOT," mitigate the fiscal burden imposed on municipalities hosting otherwise tax-exempt institutions, such as state property, hospitals, and universities. See Note, "Alternatives to the University Property Tax Exemption," 83 Yale L.J. 181, 185–87 (1973); see also, e.g., General Statutes § 12-18b (b) (2) (providing for grants "payable to any municipality or fire district for college and hospital property under the provisions of this section . . . equal to the total of seventy-seven per cent of the property taxes that, except for any exemption applicable to any college and hospital property under the provisions of section 12-81, would have been paid with respect to college and hospital property on the assessment list in such municipality or fire district for the assessment date two years prior to the commencement of the state fiscal year in which such grant is payable"); see also General Statutes § 12-20a (former PILOT provision applicable to nonprofit colleges and hospitals).

the parent is Hartford [Healthcare] . . . ." It is undisputed that Hartford Healthcare is a health system that has the requisite $1.5 billion in net patient revenue from facilities located in the state for the fiscal year ending September 30, 2013, as required by § 12-66a. It is also undisputed that—in contrast to the plaintiff's primary location in Norwich—the rehabilitation facility is a satellite facility, and not a "campus" exempt from the application of § 12-66a. See General Statutes (Supp. 2024) § 19a-508c (a) (2) (providing applicable definition of "campus" as "(A) The physical area immediately adjacent to a hospital's main buildings and other areas and structures that are not strictly contiguous to the main buildings but are located within two hundred fifty yards of the main buildings, or (B) any other area that has been determined on an individual case basis by the Centers for Medicare and Medicaid Services to be part of a hospital's campus").

We conclude, therefore, that the personal property owned by the plaintiff and used "incident to the rendering of health care services" at the rehabilitation facility, which is located in a suite, subleased to the plaintiff, of a building that Hartford Healthcare acquired by lease, is rendered taxable by § 12-66a, even if otherwise exempt from taxation under § 12-81 (7) or (16). General Statutes § 12-66a. Accordingly, the trial court improperly granted the plaintiff's motion for summary judgment.[12]

[12] We note that the trial court reasoned that its narrow construction of "acquired" was not inconsistent with the purpose of § 12-66a because the landlord of the rehabilitation facility would pay real property taxes. This construction, however, is inconsistent with the purpose and plain language of the statute to preserve the taxability of personal property, as well. Thus, as the amicus points out, construing leasehold interests to be within the ambit of § 12-66a "would not subject the health system to tax on the real property, but it would preserve the tax on the personal property."

Moreover, given the trial court's apparent concern about the payor of those property taxes, as was discussed at oral argument before this court, we observe that § 12-66a may obligate Hartford Healthcare to pay the taxes, rather than the plaintiff, which itself is the owner of the assessed personal

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

In this opinion the other justices concurred.

---

property. See General Statutes § 12-66a ("[a]ll taxes on real and personal property imposed pursuant to this section shall be liabilities of, and paid by, the health system, and shall not be paid by a hospital or other entity affiliated with such health system"). Although this statutory language supports the plaintiff's argument that it cannot ultimately be made to pay the taxes on the personal property at issue in this appeal, the question of whether the plaintiff, as the owner of that personal property, is the correct party for purposes of the underlying tax assessment is not before this court. With respect to the ultimate liability for the payment of the taxes at issue, we observe that Hartford Healthcare is not a party to this tax appeal. Accordingly, because Hartford Healthcare is not a party to this tax appeal, we do not decide any other questions concerning Hartford Healthcare's ultimate liability for the payment of those taxes under § 12-66a.

ORDERS

CONNECTICUT REPORTS

Vol. 349

CITY OF HARTFORD *v.* NEIL JOHNSON ET AL.

The named defendant's petition for certification to appeal from the Appellate Court, 224 Conn. App. 904 (AC 46552), is denied.

Neil Johnson, self-represented, in support of the petition.

Decided September 10, 2024

STATE OF CONNECTICUT *v.* HEIDI LUEDERS

The defendant's petition for certification to appeal from the Appellate Court, 225 Conn. App. 612 (AC 45519), is denied.

Brittany B. Paz, in support of the petition.

Denise B. Smoker, senior assistant state's attorney, in opposition.

Decided September 10, 2024

MODZELEWSKI'S TOWING & STORAGE, INC., ET AL. *v.* COMMISSIONER OF MOTOR VEHICLES ET AL.

The plaintiffs' petition for certification to appeal from the Appellate Court, 225 Conn. App. 386 (AC 45605), is granted, limited to the following issue:

"Did the Appellate Court correctly conclude that the rates for 'exceptional services' pursuant to § 14-63-36c (c) of the Regulations of Connecticut State Agencies exclude costs associated with the use of special equipment to accomplish the exceptional services provided?"

Jesse A. Langer, in support of the petition.

Drew S. Graham, assistant attorney general, in opposition.

Decided September 10, 2024

ISRAEL GONZALEZ *v.* COMMISSIONER OF CORRECTION

The petitioner Israel Gonzalez' petition for certification to appeal from the Appellate Court, 225 Conn. App. 902 (AC 46187), is denied.

Cheryl A. Juniewic, assigned counsel, in support of the petition.

Brett R. Aiello, assistant state's attorney, in opposition.

Decided September 10, 2024

DORAINE REED *v.* COMMISSIONER OF CORRECTION

The petitioner Doraine Reed's petition for certification to appeal from the Appellate Court, 225 Conn. App. 352 (AC 46226), is denied.

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

Doraine Reed, self-represented, in support of the petition.

Patrick T. Ring and *Diaghilev Lubin-Farnell*, assistant attorneys general, in opposition.

Decided September 10, 2024

Cumulative Table of Cases
Connecticut Reports
Volume 349

(Replaces Prior Cumulative Table)

Ajdini *v.* Frank Lill & Son, Inc. 1
Workers' compensation benefits; claim that Compensation Review Board improperly upheld decision of Workers' Compensation Commission administrative law judge, who precluded defendant employer from contesting liability as to plaintiff's claims for workers' compensation benefits; whether employer had timely filed with administrative law judge its notice of intention to contest plaintiff's right to compensation benefits pursuant to statute (§ 31-294c (b)).
Amado *v.* Commissioner of Correction (Order) 911
Avon *v.* Sastre (Order) 905
Bank of America, National Assn. *v.* Sorrentino (Order) 915
Bartolotta *v.* Human Resources Agency of New Britain, Inc. (Order) 908
Brewer *v.* Commissioner of Correction (Order). 910
Cardoza *v.* Waterbury (Order) 911
Chabad Lubavitch of Western and Southern New England, Inc. *v.* Shemtov 695
Summary process; claim that trial court erred in failing to enforce arbitration agreement; whether plaintiff was bound by arbitration agreement signed by plaintiff's founder and president; whether trial court erred in denying defendants' motion to stay proceedings and to compel arbitration; whether plaintiff's action fell within scope of arbitration agreement.
Cooke *v.* Williams 451
Legal malpractice; fraud; certification from Appellate Court; whether Appellate Court improperly upheld trial court's dismissal of plaintiff's legal malpractice claim against defendant attorney and defendant law firm for lack of subject matter jurisdiction; whether appellate or postconviction relief from underlying conviction was necessary element of claim of legal malpractice filed by criminally convicted plaintiff against his former habeas counsel; whether plaintiff's legal malpractice claim challenged validity of his underlying conviction; whether Appellate Court properly reversed trial court's judgment with respect to trial court's dismissal of plaintiff's fraud claim against defendants.
Davis *v.* Commissioner of Correction (Order). 917
Delgado *v.* Commissioner of Correction (Order) 902
Dept. of Public Health *v.* Estrada 223
Administrative appeal; alleged retaliation by plaintiff employer against defendant employee for employee's purported whistleblower disclosure; certification from Appellate Court; whether defendant Commission on Human Rights and Opportunities had subject matter jurisdiction to adjudicate employee's whistleblower retaliation claim brought pursuant to statute (§ 4-61dd); whether commission waived and abandoned several merits arguments by failing to raise or brief them before this court or Appellate Court; claim that employee's disclosure concerned misconduct in municipal government to which § 4-61dd does not apply; whether employee was entitled to whistleblower protection under § 4-61dd for reporting her own error; whether employee failed to prove that employer's adverse personnel actions were result of employee's reporting of her errors rather than fact that employee had made such errors.
Deutsche Bank AG *v.* Vik. 120
Tortious interference with business expectancy; litigation privilege; motion to dismiss; certification from Appellate Court; whether plaintiff's appeal was rendered moot by virtue of this court's decision in Deutsche Bank AG *v.* Sebastian Holdings, Inc. *(346 Conn. 564); whether Appellate Court incorrectly determined that plaintiff's claims against defendants were barred by litigation privilege.*
Deutsche Bank National Trust Co. *v.* Heidel (Order). 914
Donald G. *v.* Commissioner of Correction (Order) 902
Dur-A-Flex, Inc. *v.* Dy. 513
Breach of noncompete agreement; breach of common-law duty of confidentiality; misappropriation of trade secrets in violation of Connecticut Uniform Trade

Secrets Act (CUTSA) (§ 35-50 et seq.); malicious misappropriation; civil conspiracy; injunctive relief; sanctions; attorney's fees; claim that trial court incorrectly concluded that certain defendants did not misappropriate plaintiff's trade secrets in violation of CUTSA; whether certain defendants "used" plaintiff's trade secrets within meaning of statute (§ 35-51 (b) (2) (B) (iii)) defining "misappropriation"; whether trial court's finding that certain defendants did not know or have reason to know that named defendant had misappropriated plaintiff's trade secrets was clearly erroneous; claim that trial court improperly granted motion for summary judgment on plaintiff's civil conspiracy claims as to certain defendants on ground that it was procedurally improper for trial court to grant motion for summary judgment during trial and on ground that those civil conspiracy claims were preempted by CUTSA; claim that trial court improperly denied plaintiff's request to enjoin certain defendants from using plaintiff's trade secrets in future; whether trial court abused its discretion in imposing monetary penalty on plaintiff and awarding attorney's fees to defendants as sanctions for attempted spoilation of evidence; whether amount of sanctions and attorney's fees was grossly disproportionate to harm suffered by defendants and trial court; whether trial court abused its discretion in awarding attorney's fees to certain defendants pursuant to statute (§ 35-54) on ground that plaintiff's claims of misappropriation against them were made in bad faith; claim that trial court misconstrued knowledge requirement in § 35-51 (b) (2) (B) (iii) as requiring proof only that defendants knew or should have known that trade secret had been misappropriated rather than knowledge of trade secret itself; claim that trial court failed to properly balance defendants' interest in pursuing their livelihoods in area of their greatest expertise with plaintiff's interest in protecting itself from unfair competition when it determined that they had misappropriated plaintiff's trade secrets; claim that plaintiff failed to identify its trade secrets with sufficient particularity in its complaint and its responses to certain interrogatories; whether trial court applied incorrect standard in crafting its orders of monetary and injunctive relief as to certain defendants; claim that trial court's injunctive relief was impermissibly vague and restrictive; claim that trial court improperly limited testimony of plaintiff's damages expert; whether trial court correctly determined that noncompete agreement between plaintiff and at-will employee was unenforceable for lack of consideration; whether trial court correctly determined that CUTSA preempted plaintiff's claim that named defendant violated common-law duty of confidentiality; claim that trial court improperly rendered judgment for certain defendants on civil conspiracy claims on ground that those claims were preempted by CUTSA; claim that trial court incorrectly concluded that certain defendants did not act maliciously in misappropriating plaintiff's trade secrets; whether plaintiff was entitled to punitive damages and attorney's fees pursuant to statute (§ 35-53 (b)) governing damages for malicious misappropriation.

Dur-A-Flex, Inc. *v.* Dy 612

Breach of noncompete agreement; breach of common-law duty of confidentiality; violation of Connecticut Uniform Trade Secrets Act (CUTSA) (§ 35-50 et seq.); summary judgment; whether trial court incorrectly determined that noncompete agreement was unenforceable as matter of law; claim that noncompete agreement was enforceable because defendant had reaffirmed his promise not to compete; claim that trial court improperly rendered judgment for defendant on claim of breach of duty of confidentiality on ground that it was preempted by CUTSA; decision in companion case, Dur-A-Flex, Inc. *v.* Dy *(349 Conn. 513), dispositive of issues on appeal.*

Epright *v.* Liberty Mutual Ins. Co. 679

Writ of error; certification from Appellate Court; whether trial court improperly sanctioned plaintiff in error law firm for conducting ex parte communications with expert witness previously disclosed by opposing party; whether, under rule of practice (§ 13-4) governing expert discovery, attorney may be sanctioned for ex parte communications with opposing party's disclosed expert witness; whether § 13-4 was reasonably clear in prohibiting ex parte communications with another party's disclosed expert witness; request that this court exercise its supervisory authority over administration of justice to prohibit such ex parte communications.

Feaser *v.* Landress (Order) 904

Gonzalez *v.* Commissioner of Correction (Order) 921

Grant *v.* Commissioner of Correction (Order) 912

Green *v.* Paz (Order) 918

Green Tree Servicing, LLC *v.* Clark (Order) . . . 913
Greer *v.* State (Order). . . . 908
Hartford v. Johnson (Order) . . . 920
Homebridge Financial Services, Inc. *v.* Jakubiec (Order) . . . 909
In re A. H. (Order). . . . 918
In re Denzel W. (Order). . . . 918
In re M. S. (Order). . . . 920
In re P. M. (Order) . . . 919
In re Timothy B. (Order) . . . 919
In re Wendy G.-R. (Order) . . . 916
In re Zayden J. (Order) . . . 916
James P. *v.* Commissioner of Correction (Order). . . . 911
J. B. *v.* Y. H. (Order) . . . 905
J. F. *v.* M. F. (Order) . . . 919
Kuselias *v.* Zingaro & Cretella, LLC (Order) . . . 916
Markley *v.* State Elections Enforcement Commission . . . 67
Public campaign financing under statutory (§ 9-700 et seq.) Citizens' Election Program; first amendment; administrative appeal to trial court from decision of defendant, State Elections Enforcement Commission, assessing fines against plaintiffs, candidates for state legislative office in 2014 general election, for violating certain statutes and regulations governing campaign financing and Citizens' Election Program; unconstitutional conditions doctrine, discussed; claim that defendant had violated plaintiffs' first amendment rights by enforcing applicable statutes and regulations to preclude publicly funded candidates from using candidate committee funds to pay for campaign communications that, as rhetorical device, invoked name of candidate in different electoral race; whether communications at issue were prohibited functional equivalent of express advocacy for defeat of another candidate or, instead, were constitutionally protected messages in direct furtherance of publicly funded candidates' own campaigns.
Marshall *v.* Marshall (Order). . . . 902
M&T Bank *v.* Lewis . . . 9
Foreclosure; motion to strike; motion to dismiss appeal; whether federal filed rate doctrine implicates subject matter jurisdiction; whether trial court improperly struck special defenses of unclean hands and breach of implied covenant of good faith and fair dealing; whether defendant's allegations concerning conduct of plaintiff bank in purchasing force placed property insurance for defendant's property arose from making, validity or enforcement of mortgage; whether allegations were otherwise legally sufficient to plead valid special defenses of unclean hands and breach of implied covenant of good faith and fair dealing.
Modzelewski's Towing & Storage, Inc. *v.* Commissioner of Motor Vehicles (Order) 921
M. T. *v.* C. T. (Order) . . . 915
Nationstar Mortgage, LLC *v.* Zanett (Order) . . . 913
9 Pettipaug, LLC *v.* Planning & Zoning Commission . . . 268
Zoning; appeal from decision of defendant planning and zoning commission amending its zoning regulations; motion to dismiss; summary judgment; certification from Appellate Court; whether trial court correctly determined that defendant's publication of legal notice of its decision to amend certain zoning regulations did not comply with statute (§ 8-3 (d)) requiring that such notice be published "in a newspaper having a substantial circulation in the municipality"; meaning of terms "substantial circulation" and "general circulation," discussed; test for determining whether newspaper is one of general or substantial circulation, discussed.
Northland Investment Corp. *v.* Public Utilities Regulatory Authority. . . . 35
Administrative appeal; utilities; appeal to trial court from supplemental decision of defendant, Public Utilities Regulatory Authority (PURA), which found that plaintiff landlord's use of ratio utility billing (RUB) was not authorized by statute (§ 16-262e (c)); whether trial court erred in upholding PURA's determination that § 16-262e (c) prohibits plaintiff's proposed use of RUB methodology to recoup building wide utility costs by billing tenants for their estimated, proportionate share of total cost of utilities; claim that, if § 16-262e (c) prohibits landlords from utilizing RUB methodology, then it must also prohibit "building in" approach deemed acceptable by PURA.

Norwich *v.* Brenton Family Trust (Order) 905
131 Beach Road, LLC *v.* Town Plan & Zoning Commission 647
Zoning; appeal from decision of defendant plan and zoning commission denying plaintiff's request for text amendment to town's zoning regulations and conditionally approving plaintiff's request for approval of site plan and issuance of certificate of zoning compliance for proposed affordable housing development; claim that trial court incorrectly concluded that zoning commission had failed to meet its burden under affordable housing statute (§ 8-30g (g)) of demonstrating that condition placed on approval of plaintiff's affordable housing application was necessary to protect a substantial public interest that outweighed need for affordable housing; whether visual impact of proposed affordable housing development on neighboring historic district was significant so as to override need for public housing in town; claim that trial court incorrectly concluded that zoning commission was required to apply § 8-30g to plaintiff's request for text amendment to zoning regulations that would create new permissible use for affordable housing in district zoned exclusively for single family dwellings.
Rapp *v.* Commissioner of Correction (Order) 909
Reed *v.* Commissioner of Correction (Order) 921
Rios *v.* Commissioner of Correction (Order) 910
Rodriguez *v.* Hartford (Orders) 907
Seaport Capital Partners, LLC *v.* Speer (Order) 909
Smith *v.* Gerace (Order) 917
Stanley *v.* Grant (Order) 903
Stanley *v.* Quiros (Order). 903
State *v.* Andres C. 300
Sexual assault third degree; risk of injury to child; certification from Appellate Court; claim that defendant was entitled to disclosure of contents of complainant's handwritten journals, existence of which first came to light during trial, because they constituted "statement" under relevant rules of practice (§§ 40-13A and 40-15 (1)); whether complainant adopted or approved her journals as her statement for purposes of rules of practice; claim that defendant's rights under Brady *v.* Maryland *(373 U.S. 83) were violated insofar as prosecutors delegated review of complainant's journals for exculpatory and impeachment material to nonlawyer investigator employed by state's attorney's office; request that this court adopt prophylactic rule under federal constitution requiring prosecutor to personally review for impeachment or exculpatory information any purportedly exculpatory or impeachment material that first comes to light during trial.*
State *v.* Bember 417
Felony murder; attempt to commit robbery first degree; carrying pistol or revolver without permit; claim that trial court abused its discretion in permitting state to question certain witnesses about specific terms of their cooperation agreements with state during direct examination; claim that prosecutor impermissibly vouched for cooperating witnesses' credibility by introducing truthfulness provisions of their cooperation agreements, eliciting testimony from them that their attorneys were present in courtroom during their testimony, and referencing their previous testimony in other cases on behalf of state; claim that trial court abused its discretion in concluding that cooperating witnesses' testimony was sufficiently reliable to be admissible at trial pursuant to statute (§ 54-86p) governing reliability and admissibility of jailhouse informant testimony; whether trial court abused its discretion in opening reliability hearing to allow state to introduce certain evidence; harmlessness of trial court's improper consideration of its own assessment of cooperating witnesses' testimony in another case in determining that their proposed testimony was sufficiently reliable to be admitted at trial in present case; claim that trial court's denial of defendant's motion to suppress recording of jailhouse phone call and .22 caliber revolver seized by police as result of information acquired from recording violated defendant's rights under fourth amendment to the United States constitution.
State *v.* Bennings (Orders) 906
State *v.* Connecticut State University Organization of Administrative Faculty, AFSCME, Council 4, Local 2836, AFL-CIO 148
Application to vacate arbitration award; motion to confirm arbitration award; termination of employment; whether trial court improperly vacated arbitration award reinstating grievant to his position as state university's director of student conduct on ground that award violated public policy; factors that reviewing court should consider in evaluating whether arbitration award reinstating discharged

employee violates public policy enumerated in Burr Road Operating Co. II, LLC *v.* New England Health Care Employees Union, District 1199 *(316 Conn. 618), discussed.*
State *v.* Lueders (Order) 920
State *v.* Roberts (Order) 912
State *v.* Webber (Order) 915
Supronowicz *v.* Eaton (Order) 904
Vertefeuille *v.* Good Foundation, Inc. (Order) 901
Viering *v.* Groton Long Point Assn., Inc. (Order) 901
U.S. Bank National Assn. *v.* Blackman (Order) 904
Vecchiarino *v.* Potter (Order) 906
Vega *v.* Commissioner of Correction (Order) 914
Wahba *v.* JPMorgan Chase Bank, N.A. 483
Foreclosure; certification from Appellate Court; claim, as alternative ground for affirming Appellate Court's judgment, that doctrine of res judicata barred trial court from entertaining plaintiff's request that trial court modify judgment of strict foreclosure and order foreclosure by sale; whether Appellate Court incorrectly concluded that trial court lacked authority to entertain plaintiff's request that trial court modify judgment of strict foreclosure and order foreclosure by sale; whether Appellate Court incorrectly concluded that, even if trial court had authority on remand to order foreclosure by sale, plaintiff was required to file motion to open judgment of strict foreclosure and to present evidence that value of subject property had substantially increased since date of original judgment before trial court could exercise that authority; to extent that Appellate Court held in Connecticut National Bank *v.* Zuckerman *(31 Conn. App. 440) that reviewing court's order affirming judgment of strict foreclosure and remanding case to trial court for setting of new law days precludes trial court from opening judgment and ordering foreclosure by sale, overruled.*
William W. Backus Hospital *v.* Stonington 713
Tax appeal; applications for charitable and hospital tax exemptions pursuant to statute (§ 12-81 (7) and (16)) for certain personal property that plaintiff hospital used to provide outpatient rehabilitation services at rehabilitation facility located in defendant town; whether plaintiff's personal property, even if exempt from taxation under § 12-81 (7) or (16), was nevertheless taxable under statute (§ 12-66a) that permits municipalities to tax any personal property incident to the rendering of health care services if such personal property is located at real property that was "acquired by a health system"; whether suite in which rehabilitation facility was located was "acquired" for purposes of § 12-66a when it was leased, rather than purchased, by plaintiff; whether plaintiff hospital was "health system," as defined by statute ((Supp. 2024) § 19a-508c (a) (5)).
Williams *v.* Commissioner of Correction (Order) 901
Williams *v.* Mansfield (Order) 908
Woodbridge Newton Neighborhood Environmental Trust *v.* Connecticut Siting Council . 619
Application for certificate of environmental compatibility and public need pursuant to Public Utility Environmental Standards Act (§ 16-50g et seq.); whether trial court properly dismissed plaintiff's appeal from decision of defendant siting council approving application of defendant telecommunications company to construct cell phone tower in certain location; claim that plaintiff nonprofit association of real property owners lacked standing, as intervenor pursuant to statute (§ 22a-19), to raise issue of property values; claim that council had improperly declined to consider impact of proposed tower on private property values; whether private property values are among enumerated or unenumerated statutory (§ 16-50p (a) (3) (B)) criteria that siting council is required to consider in acting on application; claim that council's decision was unsupported by substantial evidence.

CONNECTICUT APPELLATE REPORTS

Vol. 228

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

©2024. Syllabuses, preliminary procedural histories and tables of cases and accompanying descriptive summaries are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

CITY OF WATERBURY *v.* JANET BRENNAN ET AL.
(AC 46178)

Elgo, Moll and Cradle, Js.

Syllabus

The defendant, in her individual capacity and as the executrix of the estate of the decedent, the former fire chief of the plaintiff city, appealed from the judgment of the trial court rendered in favor of the plaintiff. The defendant claimed that the trial court improperly granted the plaintiff's motion for summary judgment and improperly denied her motion for summary judgment. *Held*:

The trial court properly granted the plaintiff's motion for summary judgment, concluding that there was no genuine issue of material fact that the decedent, under the terms of his employment contract, was entitled to receive pension benefits under the collective bargaining agreement between the plaintiff and the plaintiff's municipal administrators association, rather than the collective bargaining agreement between the plaintiff and the firefighters union.

In light of the record and the plain and unambiguous language in the decedent's employment contract, this court concluded that the trial court properly denied the defendant's motion for summary judgment as no genuine issue of material fact existed as to whether the plaintiff's retirement board possessed authority under the city charter to unilaterally confer a pension benefit on the decedent pursuant to the collective bargaining agreement with the firefighters union.

The trial court did not abuse its discretion in denying the defendant's motion for reargument and reconsideration on the ground that the defendant did not properly preserve her claim that the plaintiff was not permitted to utilize the decedent's pension benefits to offset heart and hypertension benefits due to him, and the defendant did not demonstrate that the trial court committed plain error.

Argued February 5—officially released September 24, 2024

Procedural History

Action seeking, inter alia, a judgment declaring that no further workers' compensation payments are due to the defendants, and for other relief, brought to the Superior Court in the judicial district of Waterbury, where the court, *Roraback, J.*, denied the defendants' motion for summary judgment, granted the plaintiff's motion for summary judgment, and rendered judgment thereon, from which the defendants appealed to this court. *Affirmed.*

Robert C. Lubus, Jr., with whom, on the brief, was *Andrew S. Marcucci*, for the appellants (defendants).

Daniel J. Foster, corporation counsel, for the appellee (plaintiff).

Opinion

ELGO, J. In this action for declaratory relief, the defendant Janet Brennan[1] appeals from the judgment of the trial court rendered in favor of the plaintiff, the city of Waterbury (city). On appeal, the defendant claims that the court improperly denied her motion for summary judgment and, relatedly, that it improperly granted the motion for summary judgment filed by the city. We affirm the judgment of the trial court.

The backdrop to this appeal is detailed in *Brennan* v. *Waterbury*, 331 Conn. 672, 207 A.3d 1 (2019) (*Brennan I*). The city hired the decedent, Thomas Brennan,

[1] The city brought this action against Janet Brennan in both her individual capacity and as executrix of the estate of her late husband, Thomas Brennan.

as its fire chief on November 8, 1991. Id., 675. Following a heart attack in 1993, the decedent filed a claim for heart and hypertension benefits pursuant to General Statutes § 7-433c. Id., 676. In December, 1993, the workers' compensation commissioner (commissioner)[2] issued a finding and award, concluding that the decedent had sustained a compensable injury and ordering the city to pay all benefits to which he " 'is or may become entitled.' " Id. The city and the decedent thereafter attempted to no avail to reach an agreement on the payment of benefits. Id. While those negotiations were ongoing, the decedent elected to take disability retirement in December, 1995; id.; and the city's retirement board (board) authorized a 75 percent disability pension.[3] Id., 677 n.4. Although the city made payments to the decedent pursuant to § 7-433c in July, 1997, and June, 1999,[4] the decedent and the city never entered into a full and final settlement of the heart and hypertension claim. Id., 677.

The decedent died on April 20, 2006. Id., 678. As the court noted in *Brennan I*, "[i]t was not until 2013 that

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

Because many of the events underlying this appeal occurred prior to October 1, 2021, in this opinion we use the terms workers' compensation commissioner or commissioner.

[3] In its response to the defendant's requests for admission, the city admitted that "the annual pay of [the decedent] at the time of his retirement was $86,690.78" and that "[t]he disability pension granted to [the decedent] was in the amount of $65,018.04." It is undisputed that the decedent received monthly pension payments in the amount of $5418.17 from the time of his retirement on December 30, 1995, until his death on April 20, 2006.

[4] The record before us indicates that the city made lump sum payments toward the decedent's § 7-433c claim in the amounts of $59,200.20 in 1997 and $17,982.12 in 1999.

the decedent's attorney sought to finalize the decedent's permanent partial disability claim under § 7-433c." Id. The decedent's attorney subsequently moved to substitute the defendant as party claimant. The commissioner granted that motion and, in a decision dated December 7, 2015, ordered permanent partial disability benefits of 80 percent payable to her, less any advance payments made to date. See footnote 4 of this opinion.

The city commenced the present action by service of process on December 24, 2015. The gist of its complaint was that, due to a pension offset provision in the 1967 Waterbury city charter (city charter), no further heart and hypertension payments were due to the defendant.[5] The city thus sought a declaratory judgment that (1) "[p]ursuant to *Russo* [v. *Waterbury*, 304 Conn. 710, 41 A.3d 1033 (2012)], the city charter and [the decedent's] employment contract, any benefits allegedly due to [the decedent] under § 7-433[c] and the Workers' Compensation Act would have resulted in an offset of the defendant['s] or [the decedent's] pension"; (2) "[t]he offset applies to all amounts in contention, the 'net' amount in contention is zero and the city does not have to pay the defendant any additional benefits as a matter

[5] Section 2761 of the city charter contains an offset provision, which provides: "No payments of retirement, disability or death benefits shall be allowed or paid under the provisions of this act so long or for such period as payments are being made by [the city] under the provisions of the General Statutes relating to workers' compensation except when such payments would exceed the payments made under the provisions of the Workers' Compensation Act. In such cases the pensioner shall receive, in addition to his payments under the Workers' Compensation Act the difference between that amount and the amount which he would have received under the provisions of this act."

As our Supreme Court observed in *Russo* v. *Waterbury*, 304 Conn. 710, 714, 41 A.3d 1033 (2012), § 2761 of the city charter "allows the city to offset the . . . pension benefits [of municipal employees] based on their heart and hypertension benefits" under § 7-433c.

All references to the city charter herein are to the 1967 city charter unless otherwise indicated.

of law"; and (3) "[t]he judgment for benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the defendant any monies as a matter of law . . . ."[6]

The defendant subsequently filed a request to revise the city's complaint in multiple respects. The city filed an objection to that request, which the court sustained. The defendant also served two sets of requests for admission on the city in 2019 and 2021; copies of the city's responses thereto were filed with the court. At no time did the defendant answer the city's complaint.

On April 21, 2021, the city filed a motion for summary judgment, which was accompanied by a memorandum of law and several exhibits, including copies of the decedent's employment contract with the city (employment contract), the affidavit of Cynthia Van Deursen, a benefits analyst with the city, the affidavit of Daniel J. Foster, an attorney with the city, and collective bargaining agreements between the city and both the Waterbury Municipal Administrators Association[7] and the Waterbury Firefighters Association, Local 1339 (union). On September 29, 2021, the defendant filed an objection to that motion, as well as her own motion for summary judgment.

The primary disagreement between the parties, as detailed in their respective motions for summary judgment, concerned precisely which collective bargaining agreement governed the decedent's pension with the city. After hearing argument from the parties, the court

[6] The city also sought injunctive relief "prohibiting the payment of any benefits to the defendant following the ruling of the [commissioner] until [its request for] declaratory relief has been decided" by the trial court. That injunctive relief is not at issue in this appeal.

[7] In her affidavit, Van Deursen stated that the "Waterbury Municipal Administrators Association" was a labor union and was "also known as the 'Management Union.' "

rendered summary judgment in favor of the city. In so doing, the court concluded that no genuine issue of material fact existed as to whether the decedent, under the terms of his employment contract, was entitled to receive pension benefits under the collective bargaining agreement between the city and the Waterbury Municipal Administrators Association (administrator agreement),[8] rather than the collective bargaining agreement between the city and the union (firefighter agreement).[9] In addition, the court rejected the defendant's claim that certain actions on the part of the board created an issue of fact as to whether the decedent was entitled to the benefits set forth in the firefighter agreement.

With respect to the city's obligation to pay workers' compensation benefits pursuant to § 7-433c, the court noted, in light of the undisputed evidence of pension payments made to the decedent; see footnote 3 of this opinion; that, if the city "is permitted to offset pension payments . . . against any as of yet unpaid workers' compensation benefits to which [the decedent] might lawfully be entitled, the offsets would exceed the amounts due so as to relieve the city of any liability for payments on account of workers' compensation awards." The court then concluded that the defendant could not "escape [the] offset rules reducing amounts payable under workers' compensation awards by amounts that are received by way of pension payments" pursuant to the terms of the decedent's employment

[8] The record contains copies of two collective bargaining agreements between the city and the Waterbury Municipal Administrators Association, which covered the time periods of 1989–1993 and 1994–1998, respectively. Because there is no material difference in those agreements relevant to this appeal, for convenience we refer to them as the administrative agreement.

[9] The record contains copies of three collective bargaining agreements between the city and the union, which covered the time periods of 1989–1992, 1992–1995, and 1995–1999, respectively. Because there is no material difference in those agreements relevant to this appeal, for convenience we refer to them as the firefighter agreement.

contract. The court thus granted the city's motion for summary judgment and denied the defendant's motion.

On July 11, 2022, the defendant filed a motion seeking reargument and reconsideration, to which the city filed an objection. The court heard argument from the parties and thereafter denied that motion, and this appeal followed.

As a preliminary matter, we note the well established standard that governs our review of a trial court's decision to grant a motion for summary judgment. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . [T]he moving party . . . has the burden of showing the absence of any genuine issue as to all the material facts . . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the [nonmoving] party must present evidence that demonstrates the existence of some disputed factual issue. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Citations omitted; internal quotation marks omitted.) *Lucenti* v. *Laviero*, 327 Conn. 764, 772–73, 176 A.3d 1 (2018).

I

On appeal, the defendant claims that the court improperly concluded that no genuine issue of material fact existed as to whether the decedent was entitled to

receive pension benefits under the administrator agreement, rather than the firefighter agreement. We disagree.

A

As the court noted in its decision, it is undisputed that, when the decedent was hired as the city's fire chief in 1991, he had not previously been employed by the city and had never been a member of the union.[10] At the time of his hire, the decedent entered into the employment contract with the city.[11] That employment contract provides in relevant part that the decedent "shall be paid an annual salary commencing November 4, 1991 at $65,000"; that he "shall be entitled to twenty days vacation"; that he "shall be entitled to sick leave as Management personnel are entitled to"; and that he "shall be entitled to all insurance . . . benefits and all other fringe benefits, *including pension if eligible, currently available to members of the Waterbury Municipal Administrators Association*." (Emphasis added.) The employment contract further provides that "[t]his Contract embodies the whole agreement between [the city] and [the decedent] and there are no inducements, promises, terms, conditions or obligations made or entered into by either party other than those contained herein. . . . This Contract may not be changed except by a written Agreement signed by the Mayor of [the city] and [the decedent]."[12]

"Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a

[10] The record indicates that the decedent previously had been employed as a firefighter in New York City before serving as an editor at Fire Department Magazine for approximately nine years.

[11] A copy of the employment contract was appended to the city's memorandum of law in support of its motion for summary judgment.

[12] The record also contains an addendum to the employment contract dated January 6, 1995, which extended its term for an additional three years and increased the decedent's annual salary. Both the decedent and the city's mayor signed that addendum.

question of fact . . . [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [T]he interpretation and construction of a written contract present only questions of law, within the province of the court . . . so long as the contract is unambiguous and the intent of the parties can be determined from the agreement's face. . . . Contract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion. . . . A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity, and words do not become ambiguous simply because lawyers or laymen contend for different meanings. . . . When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract . . . ." (Citations omitted; internal quotation marks omitted.) *Christian* v. *Gouldin*, 72 Conn. App. 14, 20, 804 A.2d 865 (2002).

The employment contract plainly and unambiguously provides that the decedent may be eligible for the pension "currently available to members of the Waterbury Municipal Administrators Association." The employment contract also states that it embodied "the whole agreement" between the city and the decedent and may only be changed by written agreement of those parties. That contract contains no reference whatsoever to either the union or the firefighter agreement. Moreover, the decedent and the city's mayor never entered into a written agreement to change the fringe benefits provision of the employment contract, which expressly provides a pension benefit to the decedent pursuant to the administrator agreement.[13] In light of the plain and

[13] We reiterate that the administrator agreement is the collective bargaining agreement between the Waterbury Municipal Administrators Association and the city. See footnote 8 of this opinion.

unambiguous language contained in the employment contract, we agree with the court's conclusion that the decedent's employment with the city entitled him to a pension pursuant to the administrator agreement.

B

The defendant nevertheless argues that (1) the decedent qualified for a pension under the firefighter agreement and (2) the board awarded him such a pension. Neither contention has merit.

1

As the court observed in its decision, the decedent was never a member of the Waterbury Fire Department or the union prior to being hired as fire chief by the city. Despite that undisputed fact, the defendant maintains that the decedent qualified for a pension under the firefighter agreement.

"It is axiomatic that a collective bargaining agreement is a contract." *D'Agostino* v. *Housing Authority*, 95 Conn. App. 834, 838, 898 A.2d 228, cert. denied, 280 Conn. 905, 907 A.2d 88 (2006). For that reason, "[p]rinciples of contract law guide our interpretation of collective bargaining agreements." *Honulik* v. *Greenwich*, 293 Conn. 698, 710, 980 A.2d 880 (2009); see also *Christian* v. *Gouldin*, supra, 72 Conn. App. 20.

Article I, § 1, of the firefighter agreement recognizes the union "as the sole and exclusive bargaining agent for all full-time permanent uniformed and investigatory employees of the Waterbury Fire Department . . . ." It then specifies exactly who qualifies as an "employee," as that term is used in the firefighter agreement, stating: "The term 'employees or employee' as used in this Agreement shall refer only to those personnel who occupy positions whose job specifications required that the work be performed by uniformed and/or investigatory members of the Waterbury Fire Department and

who are covered by the bargaining unit referred to herein; which bargaining unit, the parties agree, does *not* include the following positions and/or classifications: Fire Chief . . . ." (Emphasis added.) That language plainly and unambiguously provides that the fire chief is neither an employee nor a member of the union for purposes of the firefighter agreement between that bargaining unit and the city.

The defendant nonetheless argues that, read together, article I, § 4, and article XXXIII, § 3 (1), of the firefighter agreement, compel the conclusion that the fire chief is considered an employee who is eligible for a pension under that agreement. We do not agree. Article XXXIII is the pension portion of the firefighter agreement. Section 3 (1) thereof provides: "The term 'employee' shall be defined per Article I, [§] 1, including Article I, [§] 4 of this Agreement . . . ." We already have concluded that the fire chief is categorically not an employee under article I, § 1. The remaining question is whether the decedent, in his capacity as fire chief, qualifies as an employee under article I, § 4.

Article I, § 4, of the firefighter agreement provides in relevant part that "[t]he parties . . . agree that for the purposes of [Article XXXIII], any member promoted to the rank-classification of Fire Chief . . . may, if he so elects, receive the pension benefits prescribed by, and his pension contribution will be governed by Article XXXIII hereof." For multiple reasons, we conclude that the decedent does not meet the qualifications of that section. First, the phrase "member promoted," as used therein, plainly refers to someone who previously was a member of the Waterbury Fire Department. See Firefighter Agreement, art. I, § 1 (explaining that firefighter agreement pertains to "personnel who occupy positions whose job specifications required that the work be performed by uniformed and/or investigatory members of the Waterbury Fire Department"). It is undisputed that

the decedent never was a member of the Waterbury Fire Department prior to his hiring as fire chief.[14] Second, the decedent was not a member who was promoted to the rank of fire chief; the record unequivocally indicates that he was a magazine editor for nine years prior to his hiring by the city. See footnote 10 of this opinion.

Third, article I, § 4, provides that any member promoted to the position of fire chief "may, if he so selects, receive the pension benefits prescribed by, and his pension contribution will be governed by Article XXXIII hereof." That provision plainly and unambiguously requires members promoted to the position of fire chief to (1) make a selection to receive a pension under the firefighter agreement and then (2) make pension contributions in accordance with the requirements of article XXXIII. In moving for summary judgment and opposing the city's motion, the defendant furnished no evidence indicating that the decedent, following his hiring as fire chief by the city, made a selection to receive a pension under the firefighter agreement at any time prior to filing for retirement in 1995.

There likewise is no evidence in the record before us that the decedent made pension contributions in accordance with the requirements of article XXXIII, as expressly required by article I, § 4, of the firefighter agreement. To the contrary, the evidence in the record demonstrates that the decedent, in his four years of employment as fire chief, made pension contributions at rates of 5 percent and 6 percent, consistent with the requirements of the administrative agreement.[15] Article

[14] In his affidavit submitted in support of the city's motion for summary judgment, Foster averred that "[a] review of all documents that could be located with reasonable effort relating to [the decedent] found no documents indicating that he held any position of employment with [the city] or its fire department other than fire chief." The defendant does not argue otherwise.

[15] In her affidavit, Van Deursen averred in relevant part that, "[u]pon being hired in 1991, [the decedent] made pension contributions at the rate of 5%" and that, "[i]n July of 1993, [the decedent's] pension contribution rate increased to 6%, where it stayed until his retirement."

XXXIII of the firefighter agreement, by contrast, required pension contributions at a rate of 6 percent from the time of the decedent's hire until June 29, 1992, at a rate of 7 percent from July 1, 1992 until June 30, 1995, and at a rate of 9.5 percent from July 1, 1995 until the decedent retired on December 30, 1995.

In light of the foregoing, we conclude that no genuine issue of material fact exists as to whether the defendant qualified for a pension under the firefighter agreement. The pleadings, affidavits, and other evidence submitted demonstrate that the decedent (1) never was a member of the Waterbury Fire Department or the union prior to his hiring as fire chief, (2) was not an "employee," as that term is defined in article I, § 1, of the firefighter agreement, (3) was not a "member promoted," as that phrase is used in article I, § 4, of the firefighter agreement, (4) did not make a selection to receive a pension under the firefighter agreement upon being hired as fire chief, as required by article I, § 4, of the firefighter agreement, and (5) did not make pension contributions while employed as fire chief at the rates specified in article XXXIII, as required by article I, § 4, of the firefighter agreement. The court, therefore, properly determined that the decedent did not qualify for a pension under the firefighter agreement.

2

The defendant further claims that, irrespective of the decedent's entitlement to a pension under the terms of the firefighter agreement, the board in this case awarded him a disability pension under that agreement. For two distinct reasons, we disagree.

a

First, the record belies the defendant's claim. It is undisputed that, in applying for a disability pension, the decedent and his attorney requested a disability

pension pursuant to the terms of the firefighter agreement. Appended to the defendant's motion for summary judgment are two letters sent to the board from the decedent and Attorney Angelo Maragos. Those letters, dated November 28, 1995 and November 30, 1995, respectively, both state in relevant part that the decedent was exercising his option, pursuant to article I, § 4, of the firefighter agreement, to receive a pension pursuant thereto.[16] In part I B 1 of this opinion, we have explained why that request was untenable, as (1) the decedent was not a "member promoted" to the position of fire chief, as that terminology is used in the firefighter agreement, (2) there is no evidence that the decedent ever made a selection to receive a pension thereunder upon being hired as fire chief, and (3) there is no evidence that the decedent, while employed as fire chief, made the requisite pension contributions as mandated by article I, § 4, and article XXXIII of the firefighter agreement.

Although the decedent requested a pension pursuant to the firefighter agreement, the record indicates that the board did not grant that specific request. In its January 11, 1996 written notice of its decision, the board informed the decedent that it had approved his application for a disability retirement and had awarded him an annual pension of $86,690.78 pursuant to the terms of the administrative agreement.[17] The board's January

[16] In his letter to the board, the decedent stated in relevant part: "[I] do hereby make my election of Option one with regard to computing my pension entitlement under [article I, § 4, of the firefighter agreement] . . . ." Attorney Maragos similarly stated, in his letter to the board, that the decedent "makes election, pursuant to [article I, § 4, of the firefighter agreement] to retire, as is his right."

[17] Appended to the city's motion for summary judgment were copies of both the board's January 11, 1996 written notice of its decision to the decedent and the April 21, 2021 affidavit of Van Deursen, which indicate that the board granted the decedent a disability pension based on the "Waterbury Municipal Administrators Asso[ciation] (non union)." In addition, the decedent's pension worksheet similarly states that it was calculated in accordance with the "(Management) Waterbury Municipal Administration Associ-

11, 1996 letter also advised the decedent in relevant part: "If you have any questions regarding your pension or benefits, please do not hesitate to contact our office." The decedent nevertheless did not raise any issue or request clarification with respect to the board's determination that his pension was governed by the administrative agreement. To the contrary, the record before us indicates that the decedent, after receiving written notice of the board's decision in January, 1996, proceeded to collect his pension for more than ten years without question. The defendant's claim, therefore, fails as a factual matter.

b

In addition, we note that the board's decision to grant the decedent a pension in accordance with the terms of the administrative agreement is entirely consistent with the plain and unambiguous terms of his employment contract with the city. As noted in part I A of this opinion, that contract provides that the decedent's benefits may include a pension pursuant to the administrative agreement with the Waterbury Municipal Administrators Association and that the terms of the employment contract "may not be changed except by a written Agreement signed by the Mayor of [the city] and [the decedent]." In granting the decedent a pension pursuant to the administrative agreement, the board's decision comports with the principle that municipal agencies cannot bind the municipality by contract, in the absence of express authorization in the municipal charter or the General Statutes. See *Fennell* v. *Hartford*, 238 Conn. 809, 813, 681 A.2d 934 (1996).

Fennell is instructive in this regard. In that case, a group of supervisory police officers brought an action

ation." The administrative agreement sets forth pension benefits for the Waterbury Municipal Administrators Association. See footnote 13 of this opinion.

against the defendant municipality and its pension commission, claiming that a statement in a pension manual prepared by the pension commission created an implied contract between the municipality and those officers. Id., 811–13. In rejecting that claim, our Supreme Court observed that "a city's charter is the fountainhead of municipal powers . . . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised. . . . Agents of a city, including [its boards], have no source of authority beyond the charter. . . . In construing a city charter, the rules of statutory construction generally apply. . . . The officer, body or board duly authorized must act [on] behalf of the municipality, otherwise a valid contract cannot be created. Generally the power to make contracts on behalf of the municipality rests in the council or governing body . . . . Generally, no officer or board, other than the common council, has power to bind the municipal corporation by contract, unless duly empowered by statute, the charter, or authority conferred by the common council, where the latter may so delegate its powers . . . ." (Citation omitted; internal quotation marks omitted.) Id., 813. "It follows that agents of a city, including its [boards], have no source of authority beyond the charter. [T]heir powers are measured and limited by the express language in which authority is given or by the implication necessary to enable them to perform some duty cast upon them by express language." (Internal quotation marks omitted.) Id., 814.

The court then concluded, "as a matter of law, that the pension manual created and distributed by the commission could not confer any additional benefits not provided for by the city's charter." Id., 816. As it explained: "In order for additional retirement or pension benefits to be conferred on the plaintiffs and other city employees, the city council must adopt ordinances

in compliance with the statutory and charter mandates. . . . The plaintiffs concede that this was not done. If additional benefits were allowed to be conferred in any other manner, the actions of the commission would impinge on the city council's legislative prerogative to oversee the maintenance of the city's municipal employees' retirement fund. . . . In sum, the commission was without authority to confer additional benefits through the pension manual." (Citations omitted; footnote omitted.) Id., 817–18. The court further stated: "The plaintiffs argue that in order to carry out its obligation to administer the municipal employees' retirement fund, the commission must, by necessity, interpret the charter and confer pension benefits upon eligible recipients. We disagree. The fact that the commission has authority to administer the city's municipal employees' retirement fund does not give it authority to amend the pension plan and circumvent the city council's authority to amend the municipal employees' retirement fund." Id., 818 n.7.

In the present case, the defendant has identified no provision in the city charter that authorized the board to unilaterally grant the decedent a pension that is (1) contrary to the express terms of his employment contract and (2) pursuant to a collective bargaining agreement under which the decedent did not qualify for a pension. In this regard, we note that the defendant, in moving for summary judgment, did not furnish a copy of the entire city charter to the court, but rather appended only select portions to her memorandum of law. On appeal, the defendant relies on § 2767 of the city charter.[18] That reliance is unavailing, as that section

[18] Section 2767 of the city charter provides in relevant part: "All acts, actions, payments, failures to pay, pensions, contributions from employees and proceedings of the [board] . . . are validated, confirmed, approved, ratified and made binding on the [city] and the participants in the retirement system."

merely provides in broad terms that official actions of the board are binding on the city. As applied to the facts of this case, § 2767 mandates that the board's decision to grant a pension to the decedent in accordance with the administrative agreement, as communicated to the decedent by written notice on January 11, 1996, is binding on the city.

The defendant also overlooks the fact that the city charter contains a distinct section titled "Adjustment of pensions paid under retirement system." It provides in relevant part: "Notwithstanding the provisions of the [city charter] or any special act or any requirements in Section 2-14 of the General Statutes . . . the [board] with the approval of the board of aldermen may by appropriate action, including approval by a majority vote . . . of said [board] and a majority vote of the board of aldermen, *with respect to monthly payments* of [disability pensions] . . . to retired employees . . . including retired teachers, firemen, policemen, officer participants and regular participants as such classifications of retired employees are established by the [city charter], provide for *adjustments in the amount of such monthly payments* as deemed necessary by said [board] and the board of aldermen . . . . Any actions taken by the [board] and the board of aldermen . . . in accordance with this act are hereby validated and . . . binding upon the [c]ity."[19] (Emphasis added.) Waterbury City Charter, Div. 2, § 2711 (1989 Supp.). Section 2711 thus demonstrates that, when the city charter intends to confer authority on the board to modify the pension benefits of a particular person, it does so explicitly. See *Stafford* v. *Roadway*, 312 Conn. 184, 194, 93 A.3d 1058 (2014) ("[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to

[19] A copy of that section of the city charter was submitted in support of the defendant's motion for summary judgment.

use broader or limiting terms when it chooses to do so" (citation omitted; internal quotation marks omitted)).

In the present case, it is undisputed that the decedent's employment contract with the city provided for a pension benefit pursuant to the administrative agreement. To the extent that the defendant argues that the board intended to deviate from the plain terms of that employment contract and grant the decedent all of the benefits contained in the firefighter agreement,[20] § 2711 of the 1989 Supplement to the city charter provides little recourse, as that section only authorizes adjustments to the amount of monthly pension payments.

Moreover, assuming arguendo that § 2711 of the 1989 Supplement to the city charter could be broadly construed to encompass pension benefits generally, the plain language of that section obligated the board to secure the approval of a majority of the board of aldermen in order to make such an adjustment to the decedent's pension benefits. There is no suggestion by the defendant, nor evidence in the record before us, that such approval was sought or granted by the board of aldermen. On the record before us, we therefore conclude that no genuine issue of material fact exists as to whether the board possessed authority under the city charter to unilaterally confer a pension benefit on the decedent pursuant to the firefighter agreement.[21]

[20] The defendant claims that the board granted the decedent *all* of the benefits contained in the firefighter agreement, including the provision pertaining to the offset of § 7-433c benefits. That provision is contained in article XXXIII, § 11, of the firefighter agreement and provides in relevant part: "The parties hereto agree that . . . an employee who applies for, and receives, a disability pension [pursuant to § 7-433c] shall be entitled to, and shall receive, a maximum disability pension of [76 percent] of BASE PAY. . . . The parties agree that the provisions of this Section shall not apply to, and shall not require a reduction of, any specific injury award [pursuant to § 7-433c]."

[21] The defendant also claims that the board's handling of her spousal pension demonstrates that it "treated [the decedent's] disability pension as a pension under the firefighter contract," as reflected on a "pension worksheet." That pension worksheet plainly states that it is a pension work-

See *Fennell* v. *Hartford*, supra, 238 Conn. 818 n.7 ("[t]he fact that the [pension commission] has authority to administer the city's municipal employees' retirement fund does not give it authority to amend the pension plan and circumvent the city council's authority to amend the municipal employees' retirement fund").

II

The defendant alternatively contends that § 2761 of the city charter does not permit the city to utilize the decedent's pension benefits to offset heart and hypertension benefits due to him. In response, the city submits that this claim is unpreserved. We agree with the city.

A

Our rules of practice require a party, as a prerequisite to appellate review, to distinctly raise its claim before

sheet for "(Management) Waterbury Municipal Administration Association" and—like the written notice sent by the board to the decedent on January 11, 1996—indicates that the pension benefit was calculated pursuant to the administrative agreement. The defendant nevertheless claims that the undisputed fact that she was granted a spousal pension in excess of that to which she was entitled under the administrative agreement demonstrates an intention on the part of the board to grant the decedent a pension pursuant to the firefighter agreement. In light of our conclusion that nothing in the city charter authorized the board to grant a pension to the decedent pursuant to the firefighter agreement, that claim is unavailing. Any miscalculation of the defendant's spousal pension benefits by the board cannot create additional pension benefits for the decedent. See *Fennell* v. *Hartford*, supra, 238 Conn. 817–18.

We note that the city has *not* sought a reduction of the defendant's spousal pension as part of this declaratory judgment action, which she has received without interruption for almost two decades. The city merely sought a declaration that, due to the offset provision of the city charter, it is not obligated to make further payments on the decedent's heart and hypertension claim. As the city averred in its objection to the defendant's motion for reargument and reconsideration: "[The defendant] . . . assert[s] that the city cannot offset pension payments made to Janet Brennan in her capacity as surviving spouse. . . . But the city never has sought to do so. The city asserts that no additional payments are owed to the estate [of the decedent] because the pension payments made to [the decedent] during his lifetime would have been subject to an offset covering 100 percent of any

the trial court. See Practice Book § 5-2 ("[a]ny party intending to raise any question of law which may be the subject of an appeal must . . . state the question distinctly to the judicial authority"); Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial"). For that reason, we repeatedly have held that "we will not decide an issue that was not presented to the trial court. To review claims . . . not raised before the trial court would be nothing more than a trial by ambuscade of the trial judge." (Internal quotation marks omitted.) *State* v. *Martin*, 110 Conn. App. 171, 180, 954 A.2d 256 (2008), appeal dismissed, 295 Conn. 192, 989 A.2d 1072 (2010); see also *State* v. *Jorge P.*, 308 Conn. 740, 753, 66 A.3d 869 (2013) ("the sina qua non of preservation is fair notice to the trial court"); *State* v. *Favoccia*, 119 Conn. App. 1, 14, 986 A.2d 1081 (2010) ("[i]t is axiomatic that issues not properly raised before the trial court ordinarily will not be considered on appeal"), aff'd, 306 Conn. 770, 51 A.3d 1002 (2012).

The record reveals, and the defendant does not dispute, that she did not raise her claim regarding the proper application of the offset provision of § 2761 of the city charter at any time prior to the court's June 27, 2022 decision on the parties' respective motions for summary judgment.[22] Although the defendant thereafter

[permanent partial disability] payments allegedly owed to him." (Citation omitted; emphasis omitted.)

[22] The defendant's assertion that this claim arose subsequent to the court's ruling on the motions for summary judgment is unavailing. The entire basis for the city's declaratory action was its assertion that the offset provision in question operates to bar any further payments of heart and hypertension benefits to the decedent's estate. In its complaint, the city sought a declaratory judgment that "[t]he offset applies to all amounts in contention, the 'net' amount in contention is zero and the city does not have to pay the defendant any additional [heart and hypertension] benefits as a matter of law" and that "[t]he judgment for benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the defendant any monies

filed a motion for reargument and reconsideration, she likewise did not advance such a claim in that written motion. Rather, the record indicates that the defendant raised this claim for the first time during argument before the court on September 26, 2022.[23]

It is well established that, generally speaking, "[r]aising an issue for the first time in a motion to reargue will not preserve that issue for appellate review." *White* v. *Mazda Motor of America, Inc.*, 313 Conn. 610, 634, 99 A.3d 1079 (2014). For that reason, the court correctly concluded that the defendant's offset provision claim was not properly preserved. Mindful that our review of a court's denial of a motion to reargue is pursuant to the abuse of discretion standard; see *Klass* v. *Liberty Mutual Ins. Co.*, 341 Conn. 735, 740–41, 267 A.3d 847 (2022); and that motions for reargument and reconsideration are not to be used as an opportunity for a second bite of the apple; see *Hudson Valley Bank* v. *Kissel*, 303 Conn. 614, 624, 35 A.3d 260 (2012); we further conclude that the court did not abuse its discretion in denying the defendant's motion on that basis.

B

The defendant also seeks to prevail on her unpreserved claim pursuant to the plain error doctrine. As

as a matter of law . . . ." The city similarly argued, in its memorandum of law in support of its motion for summary judgment, that "any [heart and hypertension] benefits to which [the decedent] may have been entitled would have been offset, in their entirety, from the [pension] sums already being paid to him by the city."

[23] The defendant also raised the issue of the tax implications of offsetting § 7-433c benefits due to pension payments for the first time at oral argument on her motion for reargument and reconsideration. On appeal, we do not address that unpreserved claim, as the defendant has not distinctly briefed that issue in accordance with our rules of practice. See Practice Book §§ 67-4 (b) and (e); see also *Weber* v. *Pascarella Mason Street, LLC*, 103 Conn. App. 710, 713–14 n.2, 930 A.2d 779 (2007). Rather, she mentions that claim in a mere sentence of the supervisory authority section of her principal appellate brief.

our Supreme Court has explained, "[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. . . . [P]lain error review is reserved for only the most egregious errors. When an error of such a magnitude exists, it necessitates reversal." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 813–14, 155 A.3d 209 (2017). The defendant's burden under the first prong of that doctrine is to demonstrate the existence of an error that is "obvious in the sense of not debatable. . . . [T]his inquiry entails a relatively high standard, under which it is not enough for the defendant simply to demonstrate that [her] position is correct. Rather, the party seeking plain error review must demonstrate that the claimed impropriety was so clear, obvious and indisputable as to warrant the extraordinary remedy of reversal." (Internal quotation marks omitted.) *State* v. *Coccomo*, 302 Conn. 664, 685, 31 A.3d 1012 (2011).

On appeal, the defendant claims that the court's decision to render summary judgment in favor of the city was predicated on "an obvious misinterpretation of [§ 2761 of the city charter] as permitting the [city] to offset [§ 7-433c] benefits against pension benefits." In her view, § 2761 of the city charter permits a reduction in pension payments as a result of offsetting § 7-433c payments, but not the converse.

Section 2761 of the city charter provides: "No payments of retirement, disability or death benefits shall be allowed or paid under the provisions of this act so long or for such period as payments are being made by [the city] under the provisions of the General Statutes relating to workers' compensation except when such

payments would exceed the payments made under the provisions of the Workers' Compensation Act. In such cases the pensioner shall receive, in addition to his payments under the Workers' Compensation Act the difference between that amount and the amount which he would have received under the provisions of this act." In *Russo* v. *Waterbury*, supra, 304 Conn. 714, our Supreme Court concluded that § 2761 of the city charter "allows the city to offset the . . . pension benefits [of municipal employees] based on their heart and hypertension benefits" under § 7-433c.[24]

Although the defendant now claims that the court committed an "obvious misinterpretation" of § 2761 of the city charter to permit the offset of § 7-433c benefits due to pension payments made by the city, that error apparently was not obvious to the defendant's counsel, who did not raise that claim at any time between the commencement of this action in December, 2015, and the court's decision to grant the plaintiff's motion for summary judgment more than six and one-half years later. That error also was not obvious to the defendant at the time that she filed her motion for reargument and reconsideration in July, 2022. While the defendant raised four distinct grounds in that motion, she did not claim that the court had misinterpreted § 2761 of the city charter.

Moreover, in *Russo*, our Supreme Court, in considering the applicability of § 2761 of the city charter, emphasized that "[t]he purpose of . . . § 7-433c is to protect against a wage loss, not to give some firemen and policemen a double recovery for the same wage loss." (Internal quotation marks omitted.) Id., 730. If the defendant's construction of § 2761 of the city charter is correct—

[24] In *Brennan I*, the Supreme Court noted that "§ 7-433c benefits are subject to pension offsets and caps." *Brennan* v. *Waterbury*, supra, 331 Conn. 692.

and § 7-433c benefits cannot be offset by pension payments made by the city—the result would be a double recovery by the decedent for the same wage loss. In our view, whether the city charter intended to permit that double recovery is, at the very least, debatable.[25]

As our Supreme Court has noted, "[p]lain error is a doctrine that should be invoked sparingly." (Internal quotation marks omitted.) *State* v. *Jamison*, 320 Conn. 589, 596, 134 A.3d 560 (2016). The defendant's burden under the first prong of that doctrine is to demonstrate proof of "an error so obvious on its face that it is undebatable." *State* v. *McClain*, supra, 324 Conn. 820 n.13. On the record before us, we conclude that the defendant has not met that burden.[26]

The judgment is affirmed.

In this opinion the other judges concurred.

---

[25] We reiterate that, in moving for summary judgment on her claim regarding the proper application of § 2761 of the city charter, the defendant did not furnish the court with a complete copy of the city charter. The inadequacy of the record in that respect impairs our ability to conclude that the court's interpretation of the charter in the present case was obviously and indisputably incorrect. See *State* v. *Coccomo*, supra, 302 Conn. 685 (party seeking review under plain error doctrine must demonstrate "obvious and indisputable" error (internal quotation marks omitted)); *Putala* v. *DePaolo*, 225 Conn. 378, 386, 623 A.2d 989 (1993) (court required to construe section of municipal charter "in the context of the charter as a whole with a view toward reconciling its parts in order to obtain a sensible and rational overall interpretation" (internal quotation marks omitted)); *Kusterer* v. *Sheehy*, 2 Conn. App. 712, 714–15, 483 A.2d 1105 (1984) ("[t]o construe a specific provision in the charter it is necessary to look at the charter as a whole").

[26] The defendant also asks us to exercise our supervisory authority to review her unpreserved claim. See *State* v. *Turner*, 334 Conn. 660, 686–87, 224 A.3d 129 (2020). We decline that invitation.

JANET BRENNAN, EXECUTRIX (ESTATE OF THOMAS BRENNAN) *v.* CITY OF WATERBURY (AC 45467)

Elgo, Moll and Cradle, Js.

Syllabus

The defendant city appealed from the judgment of the Compensation Review Board affirming in part the decision of the workers' compensation commissioner awarding certain workers' compensation benefits to the plaintiff. The defendant claimed, inter alia, that the board improperly affirmed the commissioner's conclusion that the plaintiff was entitled to interest pursuant to statute (§ 7-433c). *Held*:

In light of this court's resolution of the related appeal in *Waterbury* v. *Brennan* (228 Conn. App. 206), this court could afford the defendant no practical relief and, therefore, the present appeal was rendered moot and the appeal was dismissed for lack of subject matter jurisdiction.

Argued February 5—officially released September 24, 2024

Procedural History

Appeal from the decision of the Workers' Compensation Commissioner for the Fifth District, inter alia, approving certain workers' compensation benefits, brought to the Compensation Review Board, which reversed in part the commissioner's decision and remanded the case for further proceedings, and the defendant appealed to this court. *Appeal dismissed.*

Daniel J. Foster, corporation counsel, for the appellant (defendant).

Robert C. Lubus, Jr., with whom was *Andrew S. Marcucci*, for the appellee (plaintiff).

Opinion

ELGO, J. The defendant, the city of Waterbury (city), appeals from the judgment of the Compensation Review Board (board), affirming in part the decision of the

Workers' Compensation Commissioner (commissioner)[1] in favor of the plaintiff, Janet Brennan, the executrix of the estate of Thomas Brennan. On appeal, the city claims that the board improperly affirmed the commissioner's conclusions that (1) the plaintiff's entitlement to heart and hypertension benefits pursuant to General Statutes § 7-433c matured during the lifetime of the decedent, Thomas Brennan, (2) the plaintiff is entitled to statutory interest on § 7-433c benefits, and (3) the city unduly delayed payment on, and unreasonably contested, the decedent's claim for § 7-433c benefits. In light of our resolution of the related appeal in *Waterbury* v. *Brennan*, 228 Conn. App. 206, A.3d (2024), which also was released today, we conclude that the present appeal is moot, as this court can provide the city no practical relief. Accordingly, we dismiss the appeal.

The backdrop to this appeal is detailed in *Brennan* v. *Waterbury*, 331 Conn. 672, 207 A.3d 1 (2019) (*Brennan I*). The city hired the decedent as its fire chief on November 8, 1991. See id., 675. Following a heart attack in 1993, the decedent filed a claim for § 7-433c benefits. Id., 676. In December, 1993, the commissioner issued a finding and award, concluding that the decedent had sustained a compensable injury and ordering the city to pay all benefits to which he " 'is or may become entitled.' " Id. The city and the decedent thereafter attempted, to no avail, to reach an agreement on the

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

As all events involving the workers' compensation commissioner underlying this appeal occurred prior to October 1, 2021, we refer to the workers' compensation commissioner as the commissioner.

payment of benefits.[2] Id. Although the city made advance payments to the decedent pursuant to § 7-433c in July, 1997, and in June, 1999,[3] the decedent and the city "never entered into a full and final settlement of the heart and hypertension claim." Id., 677.

The decedent died on April 20, 2006. Id., 678. As the court noted in *Brennan I*, "[i]t was not until 2013 that the decedent's attorney sought to finalize the decedent's permanent partial disability claim under § 7-433c." Id.. The decedent's attorney subsequently moved to substitute the plaintiff as party claimant. Id. The commissioner granted that motion and, in a decision dated December 7, 2015, ordered permanent partial disability benefits of 80 percent payable to her, less any advance payments made to date. Id., 278–79. On appeal, the board concluded that an estate was not a qualified recipient of vested but unpaid § 7-433c benefits. Id., 680. The board thus vacated the commissioner's decision granting the motion to substitute the plaintiff as party claimant and remanded the case to the commissioner to determine the proper recipient. Id.

From that judgment, the plaintiff appealed to this court. The Supreme Court then transferred the appeal to itself pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. In its decision, the Supreme Court first concluded that "§ 7-433c benefits properly may be paid to a claimant's estate, if such benefits matured before the claimant's death." Id., 682. The court further concluded that, "on the present record, we cannot state with certainty that the unpaid portion of the 80 percent

[2] While those negotiations were ongoing, the decedent elected to take disability retirement in December, 1995, and the city's retirement board authorized a 75 percent disability pension. *Brennan* v. *Waterbury*, supra, 331 Conn. 676–77 and n.4.

[3] The commissioner found, and the record confirms, that the city made lump sum payments toward the decedent's § 7-433c claim in the amount of $59,200.20 in 1997 and $17,982.12 in 1999.

permanent partial disability benefits necessarily matured before the decedent's death. Our uncertainty in this regard exists because the commissioner's decision does not include necessary findings on the critical issues, and we therefore leave open the possibility that the commissioner, on remand, may find that some portion of the benefits matured before the decedent's death." Id., 694. In that regard, the court explained that "permanent disability benefits mature only after the degree of permanency has been fixed by way of an award or an agreement between the parties sufficient to establish a binding meeting of the minds. . . . [W]e cannot conclude on the present record that the degree of permanency was fixed prior to the decedent's death. However, because this issue was not addressed by the commissioner, and the case is being remanded to the commissioner for further proceedings, we leave open the possibility that the commissioner may conclude that some portion of the benefits matured during the decedent's lifetime." Id., 697. The Supreme Court thus reversed the board's determination that the commissioner improperly granted the motion to substitute the plaintiff as party claimant and remanded the case for further proceedings before the commissioner "to determine the proper beneficiary and the amount of benefits due . . . ." Id., 700.

The commissioner held a hearing in accordance with that remand and issued a decision on May 21, 2021, in which he concluded, inter alia, that (1) "there was a clear meeting of the minds that the [decedent] had sustained a 77.5 [percent] permanent partial disability"; (2) the decedent's § 7-433c benefits "vested and matured on or before May 28, 1998"; (3) the decedent's estate "is entitled to all unpaid [§ 7-433c] benefits . . . less the payments made" to the decedent in July, 1997, and June, 1999; (4) "the [city] . . . is obligated to pay

statutory interest pursuant to General Statutes § 31-295, for all benefits due and owing from the date of maximum medical improvement of October 13, 1993"; (5) "the [city] unduly delayed and unreasonably contested this matter in violation of General Statutes §§ 31-288 and 31-300"; and (6) the city's "continued contest and arguments regarding the permanent partial disability issue [is] unreasonable given the Supreme Court decision in this matter, and the evidence in this case . . . which clearly establishes an agreement as to the permanent partial disability of 77.5 [percent]." The commissioner also stated that "[f]urther hearings will be held, if necessary, to address penalties and attorney's fees." In response, the city filed a motion to correct certain findings in that decision, which the commissioner denied.

The city then appealed from that decision to the board. In its April 11, 2022 decision, the board concluded that the commissioner had "properly determined that the parties had reached a compromise permanency agreement prior to May 28, 1998," and that said agreement was sufficient to establish a binding meeting of the minds pursuant to the Supreme Court's decision in *Brennan I*. The board also rejected the city's claim that a risk manager for the city lacked authority to bind the city to that agreement. With respect to the commissioner's award of interest under § 31-295 (c), which, the board noted, is not triggered "until the determination has been made that the claimant is entitled to the permanency benefits and the issue is no longer the subject of litigation," the board stated that it was "unable to identify" the date on which that interest should begin to accrue "on the basis of either the evidentiary record or the [commissioner's] findings . . . ." (Citation omitted.) The board therefore concluded that the commissioner's decision was erroneous in that limited regard and remanded the matter "for clarification relative to

the commencement date for the statutory interest . . . .'' Although the board rejected the city's challenge to the award of penalties and attorney's fees, as no such award had yet been granted, the board remanded the matter to the commissioner ''for additional proceedings on that issue, as well.'' From that decision, the city appealed to this court on May 2, 2022.

Distinct from this workers' compensation proceeding is a declaratory judgment action brought in the Superior Court by the city against the plaintiff[4] in 2015, regarding her entitlement to any further § 7-433c benefits.[5] As we noted in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 209–10, ''[t]he gist of [the city's] complaint [in that action] was that, due to a pension offset provision in the 1967 Waterbury city charter (city charter), no further heart and hypertension payments were due to the [plaintiff]. The city thus sought a declaratory judgment that (1) '[p]ursuant to *Russo* [v. *Waterbury*, 304 Conn. 710, 41 A.3d 1033 (2012)], the city charter and [the decedent's] employment contract, any [§ 7-433c] benefits allegedly due to [the decedent] . . . would have resulted in an offset of the [plaintiff's] or [the decedent's] pension'; (2) '[t]he offset applies to all amounts in contention, the ''net'' amount in contention is zero and the city does not have to pay the [plaintiff] any additional [§ 7-433c] benefits as a matter of law'; and (3) '[t]he judgment for [§ 7-433c] benefits issued by the [commissioner] would result in a double recovery explicitly forbidden by the [city charter] and *Russo*, therefore the city does not have to pay the [plaintiff] any monies as a matter of law . . . .' '' (Footnote omitted.) By order dated June

[4] The city brought that action against Janet Brennan in both her individual capacity and as executrix of the estate of the decedent. *Waterbury* v. *Brennan*, supra, 228 Conn. App. 207 n.1.

[5] It is well established that an appellate court may ''take judicial notice of the court files in another suit between the parties . . . .'' *McCarthy* v. *Warden*, 213 Conn. 289, 293, 567 A.2d 1187 (1989), cert. denied, 496 U.S. 939, 110 S. Ct. 3220, 110 L. Ed. 2d 667 (1990).

27, 2022, the trial court in that action rendered summary judgment in favor of the city. In its decision, the court concluded that (1) the plaintiff could not "escape the . . . offset rules reducing amounts payable under workers' compensation awards by amounts that are received by way of pension payments" from the city and (2) the offsets in that case exceeded the amount of § 7-433c benefits due to the plaintiff "so as to relieve the city of *any* liability for payments on account of workers' compensation awards." (Emphasis added.)

The plaintiff thereafter filed a motion for reargument and reconsideration of that decision, which the court denied. In that motion, the plaintiff did not challenge the propriety of the court's determination that the amount of the offsets stemming from pension payments to the decedent relieved the city of "any liability for payments on account of workers' compensation awards."[6] The plaintiff likewise did not seek an articulation of the court's decision in that regard or file a motion for review with this court. See Practice Book §§ 66-5 and 66-6; see also *Orcutt* v. *Commissioner of Correction*, 284 Conn. 724, 739 n.25, 937 A.2d 656 (2007) ("in the absence of an articulation . . . [an appellate court will] presume that the trial court acted properly").

On January 13, 2023, the plaintiff appealed to this court from the judgment of the trial court in that declar-

[6] The plaintiff advanced "four reasons" in support of her motion for reargument and reconsideration. She argued that (1) there was a genuine issue of material fact as to whether the decedent had been granted a pension pursuant to a collective bargaining agreement between the city and the Waterbury Firefighters Association, Local 1339; (2) the court incorrectly determined that the city's retirement board "lacked the authority to bind the city to providing a disability pension" pursuant to that collective bargaining agreement; (3) the court's decision permitting the offset of § 7-433c benefits was "impermissible as the benefits are to be paid to two distinct legal entities"; and (4) the court's decision "left unanswered the issue of the length of time the [city] is permitted to offset *Janet Brennan's pension benefits* when the remaining [§ 7-433c] benefits are past due in one lump sum payment." (Emphasis added.)

atory judgment action.[7] In *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206, we concluded that the court properly rendered summary judgment in favor of the city in the declaratory judgment action and affirmed its decision in all respects, including its determination that no further payments related to the decedent's heart and hypertension claim were due to the plaintiff. In light of that conclusion, a question of mootness arises with respect to the present appeal.[8]

"Mootness presents a legal question and implicates this court's subject matter jurisdiction, a threshold matter to resolve. . . . This court has a duty to dismiss cases over which it lacks subject matter jurisdiction, which cannot be conferred by the consent of the parties." (Citation omitted.) *Gladstein* v. *Goldfield*, 325 Conn. 418, 424, 159 A.3d 661 (2017). "[T]he question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, *at any time* . . . ." (Emphasis in original; internal quotation marks omitted.) *M&T Bank* v. *Lewis*, 349 Conn. 9, 20, 312 A.3d 1040 (2024). Our review of the question of mootness is plenary. *State* v. *Rodriguez*, 320 Conn. 694, 699, 132 A.3d 731 (2016).

[7] On February 5, 2024, this court heard oral argument on both Docket No. AC 46178, the plaintiff's appeal from the judgment of the trial court in the declaratory judgment action, and Docket No. AC 45467, the city's appeal from the decision of the board now before us.

[8] By order dated July 25, 2024, this court ordered the parties to file simultaneous supplemental briefs on "whether, if this court concludes that the trial court properly rendered judgment in favor of the . . . city in [Docket No.] AC 46178, this court can provide the parties any practical relief in AC 45467 or whether that appeal must be dismissed as moot." In its supplemental brief, the city—the sole appellant in this appeal—concedes that, if this court were to affirm the judgment of the trial court in Docket No. AC 46178, "there will be no practical relief that can be granted through disposition of the merits of [the claims raised in] the present appeal, and this appeal will be moot."

"[M]ootness implicates the well established rule that [a]n actual controversy must exist not only at the time [an] appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . [T]he requirement of an actual controversy . . . is premised upon the notion that courts are called upon to determine existing controversies, and thus may not be used as a vehicle to obtain advisory judicial opinions on points of law. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In short, [when] the question presented is purely academic, we must refuse to entertain the appeal." (Citations omitted; internal quotation marks omitted.) *Gladstein* v. *Goldfield*, supra, 325 Conn. 424–25.

As our Supreme Court observed more than one-half century ago, "the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . The question may be made moot by the act of the court from which the appeal is taken, as where pending an appeal some judgment or order rendered or made in the cause renders the determination of the questions presented by the appeal unnecessary. Likewise it may arise from the act of another court or judge." (Citation omitted.) *Reynolds* v. *Vroom*, 130 Conn. 512, 515, 36 A.2d 22 (1944). We conclude that the city's appeal in the present case has been rendered moot due to our decision in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206.

In the present case, the city asks this court to determine whether the board improperly affirmed the commissioner's conclusions that (1) the plaintiff's entitlement to § 7-433c benefits matured during the decedent's lifetime, (2) the plaintiff is entitled to statutory interest on § 7-433c benefits, and (3) the city unduly delayed and unreasonably contested the decedent's claim for § 7-433c benefits. Those questions are purely academic in light of our decision in *Waterbury* v. *Brennan*, supra, 228 Conn. App. 206. In rendering summary judgment in favor of the city in the declaratory judgment action, the trial court concluded that an offset provision in the city charter relieved the city of "*any liability* for payments on account of workers' compensation awards." (Emphasis added; internal quotation marks omitted.) Id., 211. On appeal, we affirmed that judgment. Id., 207, 230. Accordingly, the city is not liable for any payments to the plaintiff arising from the decedent's claim for § 7-433c benefits beyond those that it made to the decedent in July, 1997, and June, 1999. See footnote 3 of this opinion. Because the city is not liable for such payments, it follows that the city cannot be liable for statutory interest, penalties, or attorney's fees for delaying payment thereon.[9] For that reason, resolution of the claims raised in this appeal would not benefit the parties in any meaningful way.[10] See *State* v. *Lester*,

[9] See General Statutes § 31-288 (b) (providing for civil penalties when payment of "compensation due" to claimant is unduly delayed by employer); General Statutes § 31-295 (c) (employer shall pay interest only on sums that "the employee is entitled to receive" that "are not so paid"); General Statutes § 31-300 ((“[i]n cases where, through the fault or neglect of the employer or insurer, adjustments of compensation have been unduly delayed, or where . . . payments have been unduly delayed, the administrative law judge may include in the award . . . a reasonable attorney's fee"). Pursuant to the plain language of those statutes, a prerequisite to recovery thereunder is the existence of a workers' compensation payment due and owing to a claimant.

[10] In her supplemental brief filed with this court, the plaintiff argues that, because workers' compensation benefits are nontaxable, "the city caused [the decedent] to pay taxes on funds that were not taxable." She thus asserts that, "[u]nless handled within the compensation claim, [the plaintiff] upon final judgment would have a new suit against [the city] for intentionally

324 Conn. 519, 526, 153 A.3d 647 (2017) ("[i]n determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way" (internal quotation marks omitted)). In light of the foregoing, we conclude that the city's appeal is moot and must be dismissed for lack of subject matter jurisdiction.

The appeal is dismissed.

In this opinion the other judges concurred.

VINCENT CIARLEGLIO *v.* MIRIAM MARTIN (AC 45535)

Elgo, Suarez and Seeley, Js.*

Syllabus

The defendant appealed from the judgment of the trial court granting an annulment of her marriage to the decedent. The defendant claimed, inter alia, that the trial court lacked subject matter jurisdiction because the substitute plaintiff, the administrator of the decedent's estate, lacked standing to continue the annulment action after the decedent's death. *Held*:

The trial court did not lack subject matter jurisdiction over the action pursuant to statute (§ 52-599 (a)).

The exception set forth in § 52-599 (c) (1) was inapplicable to the circumstances presented by this case as the annulment action was not rendered useless by the death of the decedent, the administrator of his estate having had a legitimate fiduciary interest in establishing the identity of the rightful heirs as well as a duty to carry out the wishes of the decedent.

The plaintiff's continuation of the action to annul the marriage following the death of the decedent did not constitute an impermissible collateral attack on a legally valid marriage.

---

misreporting the payments as taxable." That tax issue is not properly before us, as it was not raised at any time before the commissioner or the board. The plaintiff likewise did not raise it in her appellate brief with this court.

* Although Judge Suarez was not present at oral argument, he has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.

The defendant failed to preserve her claim, and induced any error, with respect to the applicable standard of proof and could not prevail under the plain error doctrine.

Argued January 8—officially released September 24, 2024

Procedural History

Action for the dissolution or annulment of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Haven, where Steven M. Allinson, the administrator of the plaintiff's estate, was substituted as the plaintiff; thereafter, the matter was tried to the court, *Goodrow, J.*; judgment annulling the marriage, from which the defendant appealed to this court. *Affirmed.*

Sean R. Caruthers, for the appellant (defendant).

Gregory A. Allen, with whom were *Steven M. Allinson*, and, on the brief, *Kathleen S. Lima*, for the appellee (substitute plaintiff).

Opinion

ELGO, J. The defendant, Miriam Martin, appeals from the judgment of the trial court granting an annulment of her marriage to the decedent, Vincent Ciarleglio.[1] On appeal, the defendant claims that (1) the court lacked

[1] Ciarleglio commenced the present action by service of process on June 21, 2019. He died shortly thereafter, on August 24, 2019, and a motion to substitute party was granted on January 5, 2021. A motion to amend the complaint subsequently was granted, resulting in the operative complaint improperly naming the "Estate of Vincent Ciarleglio" (estate) as the plaintiff. The parties do not contest that a scrivener's error occurred when the court improperly substituted the estate as the plaintiff instead of Steven M. Allinson in his capacity as the administrator thereof. See *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 32, 144 A.3d 420 (2016) ("An estate is not a legal entity. It is neither a natural nor artificial person, but is merely a name to indicate the sum total of the assets and liabilities of the decedent or incompetent. . . . Not having a legal existence, it can neither sue nor be sued." (Internal quotation marks omitted.)). For clarity, we refer to Ciarleglio as the decedent and to the administrator of his estate as the plaintiff in this opinion.

subject matter jurisdiction because the plaintiff lacked standing to continue the annulment action after the decedent's death, (2) the plaintiff's action to annul the marriage following the death of the decedent constituted an impermissible collateral attack on a legally valid marriage, and (3) the court held the plaintiff to an incorrect burden of proof when it granted the annulment. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the defendant's claims. The parties obtained a marriage license on February 7, 2019, and were married later that day. At the time of the marriage, the decedent was eighty-two years old, and the defendant was fifty-two years old. The marriage ceremony was performed by a justice of the peace who was a friend of the defendant and an acquaintance of the decedent. No family members were invited to or attended the ceremony. Two days before the defendant obtained the marriage license, the decedent underwent a surgical procedure and was suffering from numerous medical conditions. The decedent was hospitalized two days after the ceremony.

On May 22, 2019, the Probate Court appointed the decedent's niece as his conservator under a voluntary conservatorship. In June, 2019, the decedent met with an attorney to secure legal representation for a divorce or annulment and, on June 21, 2019, he commenced an action to dissolve or annul the marriage on the basis that he "was incompetent at [the] time of marriage." On July 8, 2019, the decedent's attorney filed numerous motions on his behalf, in which the decedent sought exclusive possession of his premises and the return of certain personal items. On July 22, 2019, the decedent's attorney filed a motion asking the court to enjoin the defendant from collecting rent on properties owned by the decedent. Both parties filed mandatory disclosure and production orders, and the defendant filed a motion

for alimony pendente lite. Less than two months after this action commenced, the decedent died intestate on August 24, 2019.

On September 3, 2019, the defendant filed a motion to dismiss the action for lack of subject matter jurisdiction, asserting that the court was unable to grant any relief in the matter due to the decedent's death. Noting that the parties were married when the action commenced and relying on General Statutes § 52-599 (a), the court concluded that an annulment action does not abate upon the death of a plaintiff, unless there is no fiduciary in place to continue the litigation on behalf of the decedent.[2] Stating that it was unaware of any fiduciary acting on behalf of the estate, the court granted the defendant's motion and dismissed the action without prejudice.

Less than one month later, the Probate Court appointed the plaintiff, Steven M. Allinson, as temporary administrator of the estate of the decedent, with broad authority "to deal with all aspects of the estate, including but not limited to lawsuits, finances, rents, custody of the remains, and any other matter the temporary administrator feels is necessary to fulfill his duties." On February 14, 2020, the plaintiff moved to open the judgment of dismissal and simultaneously moved to substitute the decedent's estate as party plaintiff "[i]n order to preserve any and all claims by the decedent."[3]

[2] General Statutes § 52-599 (a) provides: "A cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person."

[3] In his supplemental brief in support of the motion to substitute, the plaintiff argued that, because the annulment action affects not only the "legality of the marriage" but also "the division of property and other assets as well," the "interest of the parties in an annulment and the purpose of an annulment does not extinguish at the death of one of the parties and the action may survive by the executor." See *Perlstein* v. *Perlstein*, 26 Conn. Supp. 257, 258, 217 A.2d 481 (1966) ("[a] direct action to annul a marriage not only affects the status of the marriage itself but may also affect property rights arising from this status").

On November 30, 2020, the court granted the motion to open the judgment. The court thereafter held a hearing on the motion to substitute, which the defendant did not attend. Following the hearing, the court granted that motion.[4]

On February 8, 2021, the plaintiff filed a motion for permission to file an amended complaint, in which he sought an annulment of the marriage on the ground that it was void or voidable due to incompetence. The defendant objected, citing procedural defects in the motion to amend. The plaintiff then filed a second motion to amend the complaint; after a hearing, the court granted the motion without objection.[5]

A trial was scheduled for April 25, 2022. Before trial, the plaintiff filed proposed orders requesting: "(1) The parties' marriage of February 7, 2019, shall be annulled and deemed void as of the date of its initiation, February 7, 2019, and the marriage be annulled; [and] (2) [a]ll issues regarding the estate of [the decedent] and finances in this matter shall be referred to the Hamden/Bethany Probate Court for further proceedings consistent with the finding that the marriage between [the decedent] and [the defendant] was annulled and deemed void." A three day trial followed, at which both the defendant and the plaintiff were represented by counsel.

On May 9, 2022, the court issued a memorandum of decision, in which it found the following relevant facts:

[4] As previously noted, the action continued under "Estate of Vincent Ciarleglio" due to a scrivener's error; see footnote 1 of this opinion; despite the order of the court granting substitution of the administrator.

[5] The defendant did not, at any time in the underlying action, raise an objection based on the plaintiff's lack of standing. Because standing implicates subject matter jurisdiction, which can be raised at any time, and the defendant asserts a colorable claim of lack of standing, we nevertheless consider her claim on appeal. See, e.g., *Kloiber* v. *Jellen*, 207 Conn. App. 616, 621–22, 263 A.3d 952 (2021).

"The decedent was under medical care at the time the parties married, [had] uncontrolled diabetes and . . . was medically compromised with reduced blood flow. On February 5, 2019, two days before the marriage, the decedent was infused with fentanyl and Demerol so that his physician could search his upper bowels to determine the cause of his blood loss, dizziness, and general weakness. He was suffering from a defective heart, hypertension, heart valve failure, loss of blood to the brain, fainting and immune deficiency in addition to other illnesses. On February 7, 2019, the day of the marriage, the decedent was acutely ill, medically compromised and could not have made prudent decisions. He was suffering from numerous medical conditions, including a seizure caused by a blood infection, blood loss and dizziness, weakness, chronic anemia, difficulty breathing, fever, kidney failure and the beginnings of liver failure. The kidney failure impacted the decedent's cognitive abilities and affected his competency and ability to comprehend and make decisions. He was not receiving sufficient oxygen to the brain. The court finds based on Dr. [Michael] Nelken's opinion that the decedent's body was 'poisoning his brain' for a period prior to the marriage."[6]

[6] In finding those facts, the court credited the testimony of the plaintiff's expert witness, Nelken, an expert in the field of psychiatry who had reviewed the decedent's extensive medical records. The court found that Nelken "credibly testified that the decedent was medically compromised to such a degree on February 7, 2019, that he was not competent to make important decisions." Nelken's testimony included, inter alia, that just days prior to the ceremony, the decedent was suffering from twenty-eight separate medical conditions—these conditions, which were listed in Nelken's report, included prostate cancer, a blood infection, congestive heart failure, anemia, edema, gout, and numerous other heart problems. Additionally, just two days before the wedding ceremony, the decedent underwent a surgical procedure to investigate his blood loss and dizziness. The day after the ceremony, February 8, the decedent was advised to go to an emergency room—due to shortness of breath and the ongoing blood infection—but he did not go until the following day. When testing was done on February 8—one day after the ceremony—it revealed kidney failure. Kidney failure, Nelken opined, raises "questions about [the decedent's] competence" because

In its memorandum of decision, the court credited testimony from the decedent's niece that, during his February, 2019 hospitalization, the decedent told her that he was not married. She further testified that when she later presented him with the marriage license in early May, 2019, the following exchange took place: "At first he didn't know what I was showing him. And then I—I explained to him that it was a marriage license and that his signature was on the paper, the copy that I had. And he just looked at me confused and he said, no, he goes, I didn't get married. And I said, well apparently you did because I have the license in front of me. And I was showing it to him. And all he said to me was, I was tricked."

On the basis of the medical records of the decedent's hospitalization on February 9, 2019, which were admitted into evidence, the court further found that the decedent "was panting, wheezing, had blood in his feces, swollen legs, a heart murmur, and kidney failure" and that he "refused to admit that he was experiencing any medical problems and denied any medical complaints, demonstrating confusion and inattention," from which the court inferred that "the decedent was not in touch with reality."

The court did not credit the testimony of the defendant or the witness who performed the ceremony. The court expressly found that "[t]heir testimony was inconsistent regarding the planning of the marriage and not credible considering the overwhelming weight of the evidence that the decedent was not competent to consent to the marriage." The defendant does not challenge the propriety of those findings on appeal.

"these kinds of results don't occur instantaneously." On February 9, the decedent was hospitalized for four days, and further testing revealed anemia—the inability of the blood to transmit oxygen—and blood infection. Nelken's report was admitted as a full exhibit and credited by the court.

In its memorandum of decision, the court stated that, although statutory prohibitions can render a marriage void, a lack of consent is a "substantive defect, derived from the common law, sufficient to avoid a marriage."[7] (Internal quotation marks omitted.) The court found that "the decedent was not competent to marry" on the basis of "[t]he overwhelming evidence" before it and concluded that "[t]he decedent did not possess at the time of the marriage on February 7, 2019, a sufficient mental capacity to understand and comprehend the consequences of the marriage or to consent to the marriage. He was medically and cognitively compromised to such a degree on February 7, 2019, that he was unable to consent to the marriage. Therefore, because the decedent was incapable of consenting to the marriage due to his insufficient mental capacity, the marriage is void." The court thus rendered judgment annulling the marriage of the decedent and the defendant, and this appeal followed.

I

The defendant first claims that the court lacked subject matter jurisdiction because the plaintiff lacked standing to continue the annulment action following the death of the decedent. More specifically, the defendant argues that § 52-599 does not grant standing to the administrator of an estate, when substituted in an annulment action initiated by a decedent plaintiff, because an exception set forth in subsection (c) of that statute

[7] On appeal, the defendant claims that "the trial court's memorandum of decision makes no distinction between a void marriage and a voidable marriage" and argues that the marriage at issue in this case was voidable, rather than void. The plaintiff, likewise, does not dispute that it sought an annulment of a voidable marriage on the basis of mental incapacity and that "[a]t no time did any party state [that the decedent] was statutorily incapacitated to the point that the marriage from the start was void." During closing arguments, the plaintiff's counsel explicitly argued that the decedent did not "properly enter into the contract of marriage."

applies to this scenario. Because standing is a threshold issue, we first address the question of whether the plaintiff is statutorily aggrieved under § 52-599.

The following legal principles are relevant to this claim. "When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . . Standing requires no more than a colorable claim of injury; a [party] ordinarily establishes . . . standing by allegations of injury. Similarly, standing exists to attempt to vindicate arguably protected interests. . . . Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved. . . . [Statutory] [s]tanding concerns the question [of] whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." (Internal quotation marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525, 119 A.3d 541 (2015).

"Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Burton* v. *Commissioner of Environmental Protection*, 291 Conn. 789, 803, 970 A.2d 640 (2009).

In the present case, the plaintiff claims to be aggrieved pursuant to § 52-599 (a). To resolve that claim, we first consider whether such standing exists under the broad contours of the statute and then turn to the question of whether an exception set forth in § 52-599 (c) applies.

A

Section 52-599 sets out the circumstances under which an action interrupted by the death of a litigant shall be allowed to continue by substituting the executor or administrator of the estate in place of a deceased litigant. When presented with questions of statutory interpretation, we are guided by General Statutes § 1-2z, commonly known as the plain meaning rule, which provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

The language of § 52-599 (a) is both broad and mandatory, providing that "[a] cause or right of action shall not be lost or destroyed by the death of any person, but shall survive in favor of or against the executor or administrator of the deceased person." Substitution in this manner can cure a jurisdictional defect, which is the precise purpose of § 52-599.[8] "The phrase right of action includes the right to commence and maintain an action." (Internal quotation marks omitted.) *Hayes* v. *Smith*, 194 Conn. 52, 62, 480 A.2d 425 (1984).

Both principles of equity and judicial precedent support the proposition that the administrator of an estate properly may maintain an annulment action initiated by a decedent plaintiff. Although there is no clear precedent establishing that an annulment action, initiated

[8] Discussing the substitution of an administrator of an estate for a conservator who had brought various tort actions on behalf of a plaintiff who died prior to judgment, our Supreme Court noted that any potential jurisdictional defect was cured by the substitution of the administrator of the estate. *Kortner* v. *Martise*, 312 Conn. 1, 10–11, 91 A.3d 412 (2014).

prior to the death of a party, can proceed under § 52-599, we note that, as a general principle, "[o]ur rules of practice . . . permit the substitution of parties as the interests of justice require." *Federal Deposit Ins. Corp.* v. *Retirement Management Group, Inc.*, 31 Conn. App. 80, 84, 623 A.2d 517, cert. denied, 226 Conn. 908, 625 A.2d 1378 (1993); see also General Statutes §§ 52-107, 52-108 and 52-109; Practice Book §§ 9-18 and 9-19. The rules permitting the substitution of parties as the interests of justice require "are to be construed so as to alter the harsh and inefficient result that attached to the mispleading of parties at common law." (Internal quotation marks omitted.) *Byrne* v. *Avery Center for Obstetrics & Gynecology, P.C.*, 212 Conn. App. 339, 372 n.24, 275 A.3d 639, cert. denied, 343 Conn. 933, 276 A.3d 974 (2022).

Alongside these guiding principles, we also have guidance from our Supreme Court, which, as this court previously has noted, "has described § 52-599 as having a broad sweep and that the *only* exceptions to its application are those set forth in § 52-599 (c): (1) . . . any cause or right of action or . . . any civil action or proceeding the purpose or object of which is defeated or rendered useless by the death of any party thereto, (2) . . . any civil action or proceeding whose prosecution or defense depends upon the continued existence of the persons who are plaintiffs or defendants, or (3) . . . any civil action upon a penal statute." (Emphasis in original; internal quotation marks omitted.) *In re David B.*, 167 Conn. App. 428, 442, 142 A.3d 1277 (2016).

It is also a long-standing principle that, because marriage is of vital social importance, "any question touching its dissolution should be passed upon with that fact and the interests of the [s]tate and society in view . . . ." *Lyman* v. *Lyman*, 90 Conn. 399, 411, 97 A. 312 (1916); see also *Boddie* v. *Connecticut*, 401 U.S. 371, 376, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) ("marriage

involves interests of basic importance in our society"). There is a strong presumption of validity for marriage, as "[t]he policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void." *Hames* v. *Hames*, 163 Conn. 588, 599, 316 A.2d 379 (1972).

In the present case, the defendant asks us to rule that the death of a party seeking an annulment would *automatically* validate the very same marriage that is being challenged as invalid. Given the broad and mandatory language of § 52-599, we cannot agree.

Our Supreme Court has held that the administrator of an estate has, by virtue of the survival statute, and rooted in common law, "the right and duty to recover or clear title to real property when the estate is insolvent." *Miner* v. *Miner*, 137 Conn. 642, 647, 80 A.2d 512 (1951). In *Miner*, the administrator of an estate continued a quiet title action initiated by a decedent plaintiff; id., 643–44; although the legal title may have been with the heirs or devisees.[9] Id., 647; see also *Poglitsch* v. *Camp Bethel Assn., Inc.*, Docket No. CV-19-6018358-S, 2021 WL 1400927, *9 (Conn. Super. March 1, 2021) ("[t]he court concludes that § 52-599, which does not place any limit on the type of action that may survive upon substitution of an executor, operates so as to provide statutory aggrievement to an executor or administrator to continue pursuit of a quiet title action commenced prior to the death of a testator").

[9] In *Miner*, our Supreme Court applied General Statutes (1949 Rev.) § 8337, the predecessor to § 52-599, in determining that the trial court possessed subject matter jurisdiction. See *Miner* v. *Miner*, supra, 137 Conn. 646–47. Connecticut has had similar statutes in place since at least 1903. See *Pickett* v. *Ruickoldt*, 91 Conn. 680, 683, 101 A. 82 (1917) ("[u]nder [the Survival Act of 1903] the survival of actions is the rule and not the exception, and the presumption is that every cause or right of action survives until the contrary is made to appear by way of exception to the rule").

Conversely, our courts have prohibited substitution in cases where specific relief was sought, such as an injunction for specific performance. See *Groton* v. *Commission on Human Rights & Opportunities*, 169 Conn. 89, 100–101, 362 A.2d 1359 (1975). Determination of paternity, a proceeding instituted to ascertain a relationship or status between persons, was held to be purely "personal to the parties." (Internal quotation marks omitted.) *Hayes* v. *Smith*, supra, 194 Conn. 62.

In the present case, the plaintiff proposed orders relating to the court's division of the estate. The plaintiff cites the "significant financial implications" of an annulment, given that the decedent died intestate. The defendant likewise acknowledges that the granting of an annulment "stripped" her of "the rights and benefits that she enjoyed as a married person" despite the death of the decedent.

Given that there was sufficient purpose to continue the annulment action, as conceded by the defendant's own characterization of the situation and supported by established precedent, we conclude that the administrator of the estate of a decedent plaintiff is statutorily aggrieved and, thus, has standing to continue an annulment action under § 52-599 (a).

B

We turn next to the question of whether the exception set forth in § 52-599 (c) (1) applies in this case. We conclude that it does not.

Section 52-599 (c) (1) provides: "The provisions of this section shall not apply . . . [t]o any cause or right of action or to any civil action or proceeding the purpose or object of which is defeated or rendered useless by the death of any party thereto . . . ." The defendant claims that § 52-599 (c) (1) applies in the present case, arguing that the action seeking annulment is rendered

useless or absurd because "the very same second the motion to open [would be] granted, General Statutes § 46b-40 would immediately operate to dissolve the marriage." Section 46b-40 provides in relevant part: "(a) A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction. (b) An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed. . . ." The defendant contends that, by allowing an annulment action to continue under the survival statute, the court effectively reinstated a marriage that already had dissolved upon the death of one of the parties. Because we do not read the statute to compel that result, we cannot agree with the defendant.

The broad application of § 52-599 mandated by our Supreme Court; see *Foisie* v. *Foisie*, 335 Conn. 525, 532, 239 A.3d 1198 (2020); *In re David B.*, supra, 167 Conn. App. 442; informs our analysis of the exceptions contained therein. There is a general policy favoring "the continuation and timely resolution of actions on the merits whenever possible." *In re David B.*, supra, 442. As this court previously has observed, when a party seeks to substitute the administrator of the estate of a deceased plaintiff, the applicability of § 52-599 can reasonably be construed to extend to those civil cases in which, despite the death of the plaintiff, "the continuation of the litigation arguably could benefit the decedent's estate, typically in some pecuniary manner . . . ." Id., 446. Where the value of the estate is at issue, causes of action have been allowed to be continued by the administrator of the estate because the substitution would "do no more than enhance or diminish the estate the same as it would have enhanced or diminished the deceased [party's] assets if he had lived." *Foisie* v. *Foisie*, supra, 542.

In considering the applicability of § 52-599 to an action to annul a marriage, we note that, because property rights attach to the status of marriage, an action to annul not only seeks to affect the status of the marriage itself, but also those attendant property rights. The defendant acknowledges as much, arguing that "[t]he trial court's decision not only invalidated the parties' marriage, but it also stripped [the defendant] of the rights and benefits that she enjoyed as a married person." It is clear that, upon the death of a party seeking an annulment, especially when that party dies intestate, the purpose of the underlying action becomes heightened—not useless. See *Perlstein* v. *Perlstein*, 26 Conn. Supp. 257, 258, 217 A.2d 481 (1966) (noting that, under § 52-599, action to annul marriage was not rendered useless upon death of plaintiff). This is particularly so in this case where the decedent, prior to his death, took action to protect his assets by seeking exclusive possession of the premises, the return of personal items, and to enjoin the defendant from collecting rent on his properties.

In arguing that the continuation of an annulment action effectively seeks to reinstate an already dissolved marriage, the defendant mischaracterizes the holding of our Supreme Court in *Foisie* v. *Foisie*, supra, 335 Conn. 525. She contends that, pursuant to § 46b-40, the Supreme Court "expressly prohibit[ed]" the trial court's reopening of the judgment in that case because "[t]he party's death would defeat and render useless the motion [seeking to alter marital status], because, once granted, the reinstated marriage would automatically be dissolved as of the date of the deceased party's death . . . ." The defendant is mistaken, as the court in *Foisie* considered—and rejected—the argument that every motion to open, if granted, would effectively reinstate a marriage, even if one of the parties had died during the pendency of the action. See *Foisie* v. *Foisie*, supra,

537.[10] In concluding that the trial court in that case erred in determining that a motion to open a dissolution judgment would automatically reinstate the marriage, triggering § 46b-40 and immediately dissolving it, our Supreme Court held that the determination of the issue turned on the relief requested in the motion to open.[11] Id., 536.

In the present case, the relief sought was an annulment, and not the reinstatement, of a marriage. Although the defendant's theory may be compelling if the sole relief being sought by the motion to open was reinstatement of the marriage, it would be absurd to demand that an action for annulment requires the reinstatement of a marriage in order to void it. Here, as in *Foisie*, the plaintiff was not attempting to have the marriage reinstated. See id., 537. Indeed, the plaintiff had moved to open the annulment action that had been commenced by the decedent, who had taken steps to protect his assets, and, on his death, the plaintiff duly moved to protect the decedent's estate.

Because the administrator of the estate has a legitimate fiduciary interest in establishing the identity of

[10] Trial courts also have opened dissolution judgments for the limited purpose of reconsidering financial orders with the stipulation of the parties. See *Reinke* v. *Sing*, 186 Conn. App. 665, 667 n.1, 201 A.3d 404 (2018); see also *Lavy* v. *Lavy*, 190 Conn. App. 186, 192, 210 A.3d 98 (2019) (parties agreed to have court open dissolution judgment for purpose of conducting limited discovery related to fraud claims). Here, the defendant did not object to the motion to open the judgment nor the motion to substitute a party. This is the functional equivalent of a stipulation to open the judgment for a limited purpose, which was also operative in *Foisie*. The defendant's claim of lack of subject matter jurisdiction does not erase the underlying procedural history.

[11] As our Supreme Court stated, "[a]lthough a motion to open, if granted, may vacate the dissolution of the marriage and thereby reinstate the marriage, that does not mean that the granting of every motion to open necessarily vacates the dissolution of the marriage. Not every motion to open *seeks* to vacate the dissolution of the marriage." (Emphasis in original.) *Foisie* v. *Foisie*, supra, 335 Conn. 537.

the rightful heirs, as well as a duty to carry out the wishes of the decedent, it is only logical that he be permitted to continue an action to annul a marriage under the circumstances presented by this case.

We therefore conclude that the purpose of the cause of action originally pursued by the decedent was not defeated or rendered useless by his death. Accordingly, the exception set forth in § 52-599 (c) (1) does not apply in this case.

II

We next address the defendant's claim that, because the marriage was voidable based on a claim of lack of mental capacity, the decedent's failure to "act" on his annulment prior to his death operates as a waiver of the voidable defect and abates upon his death. In other words, because the marriage was voidable, it remained legally valid until it was automatically dissolved upon the decedent's death pursuant to § 46b-40 (a). The defendant therefore argues that the plaintiff's action to annul the marriage following the death of the decedent constitutes an impermissible collateral attack on a legally valid marriage.[12]

Whether the plaintiff's action to annul the marriage following the death of the decedent constitutes an

[12] Although we agree with the defendant that the operative complaint seeks to annul a voidable marriage, we do not read the trial court's memorandum of decision as necessarily differing from that premise. We reiterate that both parties do not dispute that an annulment may be granted for either voidable or void marriages, which, if granted, in either case would result in a judgment that the marriage was void. Because the defendant raised her lack of standing claim for the first time on appeal, which is also premised on her contention that a voidable marriage dissolves upon death, the court had no occasion to determine the legal status of the marriage as being either voidable or void prior to rendering judgment. Against that backdrop, the court's finding and conclusion that, because "the decedent was incapable of consenting to the marriage due to his insufficient mental capacity, the marriage is void" appears to represent the court's judgment that the marriage is void based on those findings and pursuant to the relief sought.

impermissible collateral attack on a legally valid marriage presents a question of law over which our review is plenary. "Because our review is plenary, we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Karen* v. *Loftus*, 210 Conn. App. 289, 297, 270 A.3d 126 (2022).

On appeal, the defendant contends that, if a party does not "act [to obtain] an annulment from a court of competent jurisdiction prior to the death of one of the parties, the voidable defect is deemed waived and will abate with the death of a party." We do not agree.

As our Supreme Court has explained, "[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases since *Gould* v. *Gould*, 78 Conn. 242, 247, 61 A. 604 (1905), that such a marriage, though imperfect, is dissoluble rather than void. *Hames* v. *Hames*, supra, [163 Conn.] 598; *Perlstein* v. *Perlstein*, 152 Conn. 152, 157–58, 204 A.2d 909 (1964); *Vendetto* v. *Vendetto*, 115 Conn. 303, 305, 161 A. 392 (1932)." *Carabetta* v. *Carabetta*, 182 Conn. 344, 349, 438 A.2d 109 (1980).

At the same time, "[w]e recognize that an annulment and a dissolution of marriage differ fundamentally. An annulment renders the marriage void ab initio while a dissolution is based upon a valid marriage which terminates as of the date of the judgment of dissolution." *Durham* v. *Miceli*, 15 Conn. App. 96, 96, 543 A.2d 286 (1988).

By statute, an annulment must be granted if the marriage is either void or voidable under the laws of this state or of the state in which the marriage was performed.[13] Section 46b-40 (a) provides that "[a] marriage

[13] We note that our General Assembly could have prohibited the issuance of an annulment after the death of one of the parties as other jurisdictions

is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction." Subsection (b) of § 46b-40 further provides: "An annulment shall be granted if the marriage is void or voidable under the laws of this state or of the state in which the marriage was performed."

Our modern statutory construction of § 46b-40 supports the distinction between annulment and dissolution and provides for annulments, in equity, to be granted simply when "void or voidable." Here, the plaintiff commenced an action to annul the parties' marriage but died before a decree of annulment could be issued by the court. Had the plaintiff not commenced that action, there can be little dispute that § 46b-40 (a) would have operated to dissolve the marriage upon his death. However, the defendant's contention that the court erred because the plaintiff did not "act [to obtain] an annulment" prior to his death and therefore waived the voidable defect suffers from a false premise. By commencing the action in the first place, the plaintiff did act to obtain an annulment. That he died before the action was concluded does not obviate that undisputed fact. We are thus hard-pressed to conclude that the voidable defect must be deemed waived in the circumstances presented by this case.[14]

Put differently, § 46b-40 (a) does not set up a race between two different actions—it sets up an alternative, and legally distinct, avenue to effect the dissolution of a marriage. In light of the foregoing, we conclude that

have done, but it has not elected to do so. See, e.g., Wis. Stat. § 767.313 (2) (2009) ("A judicial proceeding is required to annul a marriage. A marriage may not be annulled after the death of a party to the marriage.").

[14] Indeed, the court, in ruling on the motion to dismiss, recognized that the circumstances warranted granting the motion without prejudice and implicitly acknowledged that the action could be revived if a fiduciary was appointed to continue the litigation pursuant to § 52-599.

the plaintiff's action to annul the marriage following the death of the decedent did not constitute an impermissible collateral attack on a legally valid marriage.

III

The defendant also claims that the court held the plaintiff to an incorrect standard of proof—a preponderance of the evidence—when the appropriate standard was clear and convincing evidence. The defendant argues that this claim is properly preserved but that, in the alternative, we should apply the plain error doctrine. We disagree with both contentions.

"The question of whether a trial court has held a party to a less exacting standard of proof than the law requires is a legal one. . . . Accordingly, our review is plenary." (Internal question marks omitted.) *In re Denzel W.*, 225 Conn App. 354, 372, 315 A.3d 346, cert. denied, 349 Conn. 918, 317 A.3d 1 (2024). When determining whether an issue is properly preserved, "[i]t is well established that an appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Emphasis in original; internal quotation marks omitted.) *Downing* v. *Dragone*, 216 Conn. App. 306, 327, 285 A.3d 59 (2022), cert. denied, 346 Conn. 903, 287 A.3d 601 (2023).

Moreover, Practice Book § 5-2 provides in relevant part: "Any party intending to raise any question of law which may be the subject of an appeal must either state

the question distinctly to the judicial authority in a written trial brief . . . or state the question distinctly to the judicial authority on the record before such party's closing argument and within sufficient time to give the opposing counsel an opportunity to discuss the question. If the party fails to do this, the judicial authority will be under no obligation to decide the question."

The record reveals that, on the second day of trial, the court sua sponte raised the issue of the applicable standard of proof. The court stated: "It is this court's view that the standard of proof which the plaintiff must meet is proof by a preponderance of the evidence. I recognize that other trial courts in the past have applied the clear and convincing evidence standard. I am aware of no Appellate or Supreme Court case [subsequent to] the enactment of the annulment statute which squarely addresses the issue.

"The court concluded in a prior case that the preponderance of the evidence standard is appropriate based upon statutory construction in that the annulment statute is silent as to the applicable standard. And, therefore, the court is required to apply the less stringent standard of preponderance of the evidence." The plaintiff's counsel concurred, and then the following colloquy ensued:

"The Court: And, [Defendant's Counsel], if you disagree with that analysis, I would ask you to, as soon as possible, bring to the court's attention some authority to the contrary.

"[The Defendant's Counsel]: Your Honor, I—I believe that your research is superior to mine. And I defer to your best judgment in that regard.

"The Court: Thank you for that . . . . I'll share with counsel that this was one of the very first issues that I had to address when I first began family matters . . . ."

Throughout the remainder of the trial, the defendant did not raise an issue regarding the applicable standard of proof nor file a posttrial motion to allow the court an opportunity to address the claim. In its memorandum of decision, the court applied the preponderance of the evidence standard, citing precedent and basic principles of statutory interpretation.[15] The defendant now claims, for the first time on appeal, that the court applied an incorrect standard of proof.

The defendant acknowledges that she did not distinctly raise this claim of error before the trial court. She nonetheless claims that the "ultimate purpose of issue preservation" was achieved by the on the record statement by the court. The defendant quotes *Overley* v. *Overley*, 209 Conn. App. 504, 268 A.3d 691 (2021), cert. denied, 343 Conn. 901, 272 A.3d 657 (2022), for the proposition that "because the sine qua non of preservation is fair notice to the trial court . . . the determination of whether a claim has been properly preserved will depend on a careful review of the record to ascertain whether the claim on appeal was articulated below with sufficient clarity to place the trial court on reasonable notice of *that very same claim*." (Emphasis added; internal quotation marks omitted.) Id., 513.

The defendant overlooks the undisputed fact that the court invited the defendant to provide it with any contrary arguments or authority "as soon as possible." The defendant's counsel declined to do so, stating: "Your Honor, I—I believe that your research is superior to mine. And I defer to your best judgment in that

[15] The court noted that it was the plaintiff's burden to establish the basis for an annulment and that "the court must adhere to the language of the statute. When a statute is silent regarding the standard of proof [to apply to the evidence], the court must apply the preponderance of the evidence standard. *Stuart* v. *Stuart*, 297 Conn. 26, 34–35, 996 A.2d 259 (2010)."

regard."[16] Moreover, in her appellate brief, the defendant concedes that there is an "absence of any binding [appellate] authority" on that legal issue.

Although it is true that the issue of the proper standard of proof was briefly discussed by the court at trial, the defendant declined the court's invitation to weigh in on that issue and voiced no objection to the court's conclusion that the applicable legal standard was the preponderance of the evidence standard. Rather, she affirmatively deferred to the court on that issue and did not raise any objection until this appeal.

Allowing the defendant to now raise the issue after deferring to the court's "best judgment" and forgoing the opportunities she previously had to address it "would be sanctioning trial by ambush, which we have repeatedly stated we will not allow." *In re David B.*, supra, 167 Conn. App. 444. Accordingly, we conclude that the defendant failed to preserve her claim, and induced any error, with respect to the applicable standard of proof.

In the alternative, the defendant submits that the plain error doctrine should apply. "[T]he plain error

[16] We note that the doctrine of induced error is implicated in the present case. "[T]he term induced error, or invited error, has been defined as [a]n error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the [allegedly] erroneous ruling. . . . It is well established that a party who induces an error cannot be heard to later complain about that error. . . . This principle bars appellate review of induced nonconstitutional error and induced constitutional error. . . . The invited error doctrine rests [on principles] of fairness, both to the trial court and to the opposing party. . . . [W]hether we call it induced error, encouraged error, waiver, or abandonment, the result—that the . . . claim is unreviewable—is the same." (Internal quotation marks omitted.) *Boone* v. *Boehringer Ingelheim Pharmaceuticals, Inc.*, 335 Conn. 547, 567–68, 239 A.3d 1175 (2020). To the extent that the defendant declined to furnish any legal authority to the court and expressly indicated that she would defer to the court's "superior" research and "best judgment" on the issue of the applicable standard of proof, she induced the error of which she now complains.

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. . . . [P]lain error review is reserved for only the most egregious errors. When an error of such a magnitude exists, it necessitates reversal." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 813–14, 155 A.3d 209 (2017). "An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily [discernible] on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record. 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. . . . [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.) Id., 812.

We conclude that the defendant has not satisfied that burden. At trial, the court explained that it had concluded "in a prior case that the preponderance of the evidence standard is [the] appropriate" legal standard for claims involving § 46b-40. The court also acknowledged the lack of appellate authority on that issue. Moreover, in deciding to apply the preponderance

of the evidence standard, the court expressly relied on *Stuart* v. *Stuart*, 297 Conn. 26, 38–40, 996 A.2d 259 (2010).

The defendant's burden under the first prong of the plain error doctrine requires proof of "an error so obvious on its face that it is undebatable." *State* v. *McClain*, supra, 324 Conn. 820 n.13. On the basis of the record before us, we conclude that the defendant has not met that burden. She therefore cannot prevail under the plain error doctrine.

The judgment is affirmed.

In this opinion the other judges concurred.

CITY OF MIDDLETOWN *v.* JUSTIN WAGNER ET AL.
(AC 46940)

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

Syllabus

The defendant appealed from the trial court's judgment vesting in the plaintiff city ownership of certain dogs seized from a barn that was leased by the defendant and J, after the court found that the dogs were neglected. The defendant claimed, inter alia, that his rights under the fourth amendment to the United States constitution were violated because the evidence presented did not permit a finding that the police reasonably believed a warrantless entry was necessary to help an animal in immediate need of assistance. *Held*:

The trial court properly applied the applicable statute (§ 22-329a (a)) in denying the defendant's motion to suppress, and, because the evidence supported the court's finding that the plaintiff's animal control officers reasonably concluded that the dogs confined in the barn were in imminent harm and were neglected, the warrantless search did not violate the defendant's rights under the fourth amendment.

The applicable statutes (§§ 22-329a and 53-247) afforded the defendant and J adequate notice of the type of conduct prohibited thereby, and, accordingly, the defendant failed to demonstrate that the statutes were unconstitutionally vague.

This court declined to review the defendant's inadequately briefed claim that the police did not provide J with fair notice of the law because they

failed to notify her that the lack of ventilation in the barn constituted neglect under § 22-329a.

The trial court applied the proper legal standard in determining that the dogs in the barn, having been neglected by the defendant and J, were properly subject to a warrantless seizure pursuant to § 22-329a (a) because it was clear from the plain language of § 53-247 that the neglect referred to in § 22-329a included neglect committed by individuals, not just neglect committed by commercial kennels or large breeding operations.

The evidence was sufficient to support the trial court's finding that the dogs in the barn were neglected because, pursuant to § 22-329a, the plaintiff demonstrated that the defendant and J failed to supply the dogs with wholesome air, food and water.

Argued March 7—officially released September 24, 2024

Procedural History

Verified petition seeking, inter alia, custody in favor of the plaintiff of certain animals taken from the defendants' possession that were allegedly neglected, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Shah, J.*, granted the plaintiff's application for an order to show cause, vesting temporary care and custody of the defendants' animals in the plaintiff; thereafter, the named defendant filed a motion for the return of his property and to suppress evidence; subsequently, the matter was tried to the court, *Hon. Edward S. Domnarski*, judge trial referee; judgment denying the named defendant's motion to suppress and granting the plaintiff's petition in part; thereafter, the court, *Hon. Edward S. Domnarski*, judge trial referee, denied the motion for a new trial filed by the named defendant, and the named defendant appealed to this court. *Affirmed.*

Justin Wagner, self-represented, the appellant (named defendant).

Kori Termine Wisneski, deputy general counsel, for the appellee (plaintiff).

Opinion

SUAREZ, J. In this animal welfare action, the self-represented defendant Justin Wagner[1] appeals from the judgment of the trial court vesting ownership of the dogs seized from a barn leased by the defendant and Destiny Jennings, together with the puppies subsequently born to those dogs, in the plaintiff, the city of Middletown, after it found that the dogs were neglected. On appeal, the defendant claims that (1) the trial court erred when it denied the defendant's motion to return property and suppress evidence obtained pursuant to a warrantless search and seizure of the property, (2) General Statutes §§ 22-329a and 53-247,[2] as applied to the defendant and Jennings, are void for vagueness, (3) the police did not provide Jennings with fair notice of the law, (4) the court did not apply the proper legal standard, and (5) there was insufficient evidence presented at the hearing to support a finding that the dogs in the barn were neglected.[3] We affirm the judgment of the trial court.

The following facts, as set forth in the court's August 21, 2023 memorandum of decision, and procedural history are relevant to our resolution of this appeal. "On

[1] Destiny Jennings was also named as a defendant in the underlying action but is not a party to this appeal. Accordingly, all references in this opinion to the defendant are to Wagner only. The defendant represented himself in both the trial court and this court.

[2] Although § 22-329a has been amended by the legislature since the events underlying this appeal; see Public Acts 2023, No. 23-149, § 5; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, unless otherwise indicated, we refer to the current revision of the statute.

Although § 53-247 has been amended by the legislature since the events underlying this appeal; see Public Acts 2023, No. 23-149, § 7; those amendments have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

[3] In his appellate brief, the defendant raised eight claims of error related to the trial court's August 21, 2023 judgment and two claims of error relating to the court's September 20, 2023 order denying his motion for a new trial. Specifically, the defendant characterized his claims of error as follows: (a) "[t]he court erred when it improperly denied [the defendant's] motion to

June 27, 2023, the Middletown Police Department responded to a domestic violence call at 797 Washington Street, [in] Middletown . . . . [The defendant] was arrested and taken into custody as a result of the incident. The police officers found the house on the premises to be in very poor condition. In response to these conditions, the police officers contacted the Department of Health, and the department condemned the home as unfit for human occupancy. The two dogs in the house, a German shepherd named Leanna and a golden retriever named Ruby, were placed with a neighbor that night. The neighbor later decided he could not

return property and suppress evidence obtained pursuant to a warrantless search and seizure"; (b) "[t]he court erred in concluding [§] 22-329a authorized a warrantless search and seizure as [there is] no objective evidence on the record to support the court's conclusion that a reasonable officer would determine the dogs were both in 'imminent harm and neglected' "; (c) "the court was persuaded to erroneously apply [§ 22-329a], when it omitted the statutory requirement of being 'neglected' "; (d) "[t]he statutory language of [§] 53-247 is impermissibly vague when applied to the specific facts of the case"; (e) the "[p]olice . . . did not provide . . . Jennings with fair notice of law"; (f) "[t]he court abused its discretion when it applied an improper legal standard"; (g) "[t]he false statements provided by [Animal Control Officer Gail] Petras should be enough to grant the [defendant and Jennings] a new trial, as it's clear the false statements [affected] the court's conclusion"; (h) "[t]he new evidence, specifically the police body camera footage, should be enough to grant the [defendant and Jennings] a new trial"; (i) "[t]he [judgment] is not supported by the clear weight of the evidence, as there is no proof on the record of the dogs being deprived, and because the substantial evidence contradicts the allegation of 'neglect' "; and (j) "[t]he court abused its discretion because the [judgment] is not supported by any empirical or objective evidence, nor by substantial evidence."

The defendant has not appealed from or amended his appeal to include the court's September 20, 2023 order denying his motion for a new trial. Accordingly, we will not review the defendant's claims related to the September 20, 2023 court order. See *OneWest Bank, N.A.* v. *Ceslik*, 202 Conn. App. 445, 465–66, 246 A.3d 18 (declining to review claim because defendant did not appeal from or amend appeal to include court's denial of motion related thereto), cert. denied, 336 Conn. 936, 249 A.3d 39 (2021). We have reframed the defendant's remaining claims, in some instances condensing closely related claims, to more accurately reflect the arguments in the defendant's brief. See, e.g., *Doe* v. *Quinnipiac University*, 218 Conn. App. 170, 173 n.4, 291 A.3d 153 (2023).

care for the dogs, and he turned them over to an animal control officer.

"On the evening of June 27, 2023 . . . Jennings left the premises with her minor child to go stay with a relative in Massachusetts. Before she left the premises, Jennings informed the police officers that there were three dogs in a padlocked barn behind the house and that two of the dogs were pregnant. She told the police officers that she did not have a key for the padlock, and she would not allow the police officers to enter the barn. The next day, June 28, [2023, the defendant] was still in custody and Jennings had not returned to the premises. The animal control officers were concerned about the conditions in the barn because it was their understanding that the dogs had not been tended to since the previous morning. The officers attempted to contact Jennings without success.

"On the afternoon of June 28, [2023] the weather was hot and humid with temperatures in the mid-eighties. The officers returned to the premises because they were concerned about the condition of the dogs locked inside the barn. The officers understood that the dogs in the barn had been left unattended for at least thirty-six hours. Police officers broke the door frame and entered the barn. It is undisputed that they did not have a warrant. The barn floor was covered in urine and feces and there was a strong smell of ammonia and feces that affected the officers' breathing. The officers reported a burning sensation in their eyes and noses from the strong smell in the barn. There was no active ventilation in the barn.

"There were five dogs in the barn, all German shepherds. [The defendant] later provided the names of the dogs and they can be referred to here. Deacon and Ruby were running free in the barn. Mitzi was chained to a post in the barn with two padlocks on her collar. Mitzi

was confirmed to be pregnant. Because of the way Mitzi was chained, the officers were concerned that the dog could wrap the chain around the post and be strangled. These three dogs did not have access to water or food.

"Two other German shepherds, Luna and Lily, both pregnant, were located within a fenced off area of the barn. Lily had an injury above her eye. These two dogs did not have access to food, they did have access to water. The fur on the dogs was wet and matted and smelled of urine. All five dogs were taken into the custody of the animal control officer. After they were taken into custody, the three pregnant German shepherds delivered a total of twenty-two puppies, of which, nineteen have survived.

"On [June] 30, 2023, an animal control officer also took custody of three corgi puppies, approximately ten weeks old, that were kept in the basement of the house. The names of the puppies were not part of the evidence. Jennings did not inform the animal control officers of these puppies before she left the premises. These puppies were left unattended until Jennings asked her neighbor to retrieve them. The neighbor turned the puppies over to animal control on June 30, 2023."

On July 11, 2023, the plaintiff, pursuant to § 22-329a, filed an application for an order to show cause and a verified petition as to the custody of the dogs seized from the property leased by the defendant and Jennings. In its petition, the plaintiff requested, inter alia, orders that (1) the dogs and unborn puppies at issue were neglected and/or were treated cruelly in violation of § 53-247, (2) the court vest temporary and permanent ownership and custody of the dogs and unborn puppies with the plaintiff pursuant to § 22-329a (g), and (3) the defendant and Jennings, pursuant to § 22-329a (h), pay the plaintiff the expenses incurred in providing proper food, shelter, and care to the dogs of which it took

custody under § 22-329a. On July 12, 2023, the court, *Shah, J.*, granted the plaintiff's application for an order to show cause, vesting temporary care and custody of the dogs in the plaintiff, and scheduled an evidentiary hearing within fourteen days.

On July 19, 2023, the defendant filed a motion for the return of his property and to suppress evidence. In his motion, the defendant argued that the officers' entry into the locked barn and the seizure of the dogs therein violated his rights under the fourth amendment to the United States constitution because the police did not have a warrant to enter the barn or probable cause that any crime was being committed that would allow them to enter the barn. On July 24, 2023, the plaintiff filed an objection to the defendant's motion to suppress. The plaintiff argued that the officers' decision to enter the barn did not constitute an illegal search under the fourth amendment. Specifically, the plaintiff asserted that § 22-329a authorizes warrantless searches and seizures when, as in the present case, an animal control officer has reasonable cause to believe that an animal is in imminent harm and neglected, or cruelly treated. The plaintiff also argued that, even if a warrant were required, the officers' decision to enter the barn fell within the consent and exigent circumstance exceptions to the warrant requirement.

On July 26, 2023, the court, *Hon. Edward S. Domnarski*, judge trial referee, held an evidentiary hearing on the plaintiff's petition and the defendant's motion to suppress. The court heard testimony from Animal Control Officer Gail Petras, the defendant, and Jennings. The plaintiff offered multiple photographs, which were admitted into evidence, that documented the conditions of the house and barn leased by the defendant and Jennings, and the dogs found therein, along with a bill for the veterinary expenses for the dogs. The defendant and Jennings also offered photographs of the exterior

of the barn, which were admitted into evidence, that depicted one open window, high on the gable end of the barn.

On August 21, 2023, the court issued a memorandum of decision in which it granted the plaintiff's petition, in part, and denied the defendant's motion to suppress. The court concluded that the plaintiff did not establish that the dogs in the defendant's and Jennings' home, including the three corgi puppies, were neglected as required by § 22-329a. The court, however, found that the five dogs in the barn were neglected under § 22-329a. The court also concluded that, because it found that the pregnant dogs in the barn were neglected, it followed that the unborn puppies those dogs were carrying were likewise neglected. The court reasoned that "[t]he dogs had been left confined and unattended for approximately thirty-six hours when the weather was hot and humid. [Petras] was present when police officers entered the padlocked barn. She testified as to the unwholesome and unsanitary conditions in the barn. . . . Petras also testified as to the condition and appearance of the five dogs in the barn.

"At the hearing, [the defendant] and Jennings stated that the conditions in the house and barn were the result of a 'bad day.' The court does not find [the defendant or] Jennings to be credible on this issue. [Petras] testified that the conditions in the barn did not come about in only one day. The court has considered the testimony of [Petras] related to the conditions in the barn and the animals therein. The court finds the testimony of [Petras], as supported by the submitted exhibits, to be credible." (Citation omitted.)

Regarding the defendant's motion to suppress evidence related to the police officers' entry into the locked barn, the court stated that it was unpersuaded by the defendant's arguments. The court noted that § 22-329a

(a) allows an animal control officer to act and enter property to take custody of an animal when that animal is in imminent harm and is neglected. The court concluded that the circumstances that existed on June 27, 2023, met the requirement of imminent harm provided for in the statute. The court stated that, "[a]t the time the officers entered the barn on the afternoon of June 28, 2023, it was their understanding that the dogs had been confined and left unattended for at least thirty-six hours. The officers attempted to contact Jennings without success. [The defendant] was still in custody from the earlier arrest. The officers had not been informed that someone was coming to unlock the barn and tend to the dogs. . . . Because of the high levels of temperature and humidity, the officers were concerned that the dogs did not have adequate ventilation, water, or food. . . . [U]nder §§ 22-329a and 53-247, failure to supply confined animals wholesome air, food, and water constitutes neglect." (Citations omitted.) Accordingly, the court issued the following orders: "(1) The dogs in the barn . . . together with the nineteen puppies . . . are found to be neglected and the court vests ownership of these dogs and puppies in [the plaintiff]. (2) The dogs in the house . . . and the three . . . corgi puppies, are found not to be neglected and may be returned to an agent of the [defendant and Jennings] . . . . (3) The [defendant and Jennings] are to pay the [plaintiff] the sum of $1062.50 for veterinary expenses. (4) The [defendant and Jennings] are to pay the [plaintiff] $19,020 for expenses for the care and custody of the dogs found to be neglected."

On August 29, 2023, the defendant filed a motion for a new trial and a memorandum of law in support of his motion. On September 6, 2023, the plaintiff filed an objection to the defendant's motion. On September 18, 2023, the court held a hearing on the defendant's motion, and, on September 20, 2023, the court issued

an order denying the defendant's motion. This appeal followed.

I

The defendant first claims that the court erred when it improperly denied his motion to return property and suppress evidence obtained pursuant to a warrantless search and seizure. Specifically, the defendant argues that his constitutional rights under the fourth amendment to the United States constitution were violated because the evidence presented at the hearing "did not permit a finding that the police reasonably believed a warrantless entry was necessary to help an animal in immediate need of assistance." The defendant also asserts that there was "no objective evidence on the record to support the court's conclusion that a reasonable officer would determine the dogs were both in 'imminent harm and neglected.' " The defendant further contends that the court improperly applied § 22-329a in denying his motion to suppress because it omitted the statutory requirement that the officers have reason to believe the confined animals were neglected. We are not persuaded.

The following legal principles and additional procedural history are relevant to our resolution of the defendant's claim. "As a general matter, the standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record. . . . [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . .

[W]here the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision. . . . Moreover, [i]t is by now well settled that, in order to determine whether the defendant's constitutional rights have been infringed, [w]e review the record in its entirety and are not limited to the evidence before the trial court at the time the ruling was made on the motion to suppress." (Citation omitted; internal quotation marks omitted.) *State* v. *Leuders*, 225 Conn. App. 612, 632–33, 317 A.3d 69 (2024).

The defendant does not dispute that, by virtue of § 22-329 (a), an animal control officer may lawfully take physical custody of an animal if the officer has reasonable cause to believe that the animal is in imminent harm and is neglected or cruelly treated. Nor does he claim that an imminent threat to the animals would not justify a warrantless search under the fourth amendment to the United States constitution.[4] He asserts, instead, that the evidence and circumstances of this case do not satisfy the imminent harm standard under § 22-329a (a) and, therefore, that the animal control officers were required to obtain a warrant, pursuant

[4] The law is clear that "[t]he fourth amendment does not bar police officers, when responding to emergencies, from making warrantless entries into premises and warrantless searches when they reasonably believe that *a person* within is in need of immediate aid." (Emphasis added; internal quotation marks omitted.) *State* v. *DeMarco*, 311 Conn. 510, 535, 88 A.3d 491 (2014). As this court recently noted though, neither our Supreme Court nor this court has addressed whether the imminent threat of harm to a nonhuman animal justifies a warrantless search. See *State* v. *Leuders*, supra, 225 Conn. App. 636 n.22. Courts in other states that have considered the issue have held that the risk of imminent harm to a nonhuman animal constitutes exigent circumstances under the fourth amendment. See, e.g., *Commonwealth* v. *Duncan*, 467 Mass. 746, 751–54, 7 N.E.3d 469, cert. denied, 574 U.S. 891, 135 S. Ct. 224, 190 L. Ed. 2d 170 (2014); *State* v. *Fessenden*, 355 Or. 759, 775–76, 333 P.3d 278 (2014). Because the defendant has not argued otherwise, we need not resolve that question in this case.

to § 22-329a (b) and the fourth amendment, prior to entering the barn and taking custody of any animal on the property. We disagree.

Section 22-329a is titled "Seizure and custody of neglected or cruelly treated animals." It provides in relevant part: "(a) Any animal control officer . . . may take physical custody of any animal when such animal control officer has reasonable cause to believe that such animal is in imminent harm and is neglected or is cruelly treated in violation of section 22-366, 22-415, 53-247, 53-248, 53-249, 53-249a, 53-250, 53-251, 53-252 or 53a-73b, and, not later than ninety-six hours after taking physical custody, shall proceed as provided in subsection (c) of this section . . . ." General Statutes § 22-329a (a). Subsection (c) of § 22-329a provides in relevant part: "Such officer shall file with the superior court which has venue over such matter or with the superior court for the judicial district of Hartford at Hartford a verified petition plainly stating such facts of neglect or cruel treatment as to bring such animal within the jurisdiction of the court and praying for appropriate action by the court in accordance with the provisions of this section. . . ."[5] It is clear from the plain language of § 22-329a that an animal control officer may take physical custody of an animal when the officer has reasonable cause to believe that such animal is in imminent harm and is neglected or cruelly treated. In such circumstances, a warrant is unnecessary. As previously noted in this opinion, the defendant does not claim that

[5] We note that, in nonemergency circumstances, an animal control officer must first obtain a warrant, pursuant to § 22-329a (b), in order to take physical custody of an animal. Specifically, General Statutes § 22-329a (b) provides in relevant part: "Any animal control officer . . . may take physical custody of any animal upon issuance of a warrant finding probable cause that such animal is neglected or is cruelly treated in violation of section 22-366, 22-415, 53-247, 53-248, 53-249, 53-249a, 53-250, 53-251, 53-252 or 53a-73b, and shall thereupon proceed as provided in subsection (c) of this section . . . ."

the statutory imminent harm requirement is incompatible with or different from the immediate aid or exigent circumstances requirements for warrantless searches under the fourth amendment. Once an animal control officer takes physical custody of such animal, she must then seek court intervention within ninety-six hours.[6]

[6] In *Wethersfield ex rel. Monde* v. *Eser*, 211 Conn. App. 537, 548–51, 274 A.3d 203 (2022), this court had occasion to discuss the legislative history underlying § 22-329 (a). Although we need not resort to the statute's legislative history to resolve the issues presented in the present case, this court's prior discussion of the legislative history provides useful background: "The legislative history of § 22-329a reveals that the 2007 amendment to that statute; see Public Acts 2007, No. 07-230, § 1; substantially revised it in response to Judge Berger's criticism of the prior version of the statute in *State ex rel. Griffin* v. *Thirteen Horses*, Docket No. CV-06-4019747-S, 2006 WL 1828459 (Conn. Super. June 16, 2006). In that decision, Judge Berger noted that portions of the statute were 'difficult to understand because if the court has found probable cause to believe that an animal is neglected or cruelly treated, then leaving the animal in the owner's custody pending a hearing would only perpetuate its suffering. . . . One could argue that . . . the legislature did not intend to require a judicial finding in advance of the seizure . . . . If the legislature does intend to vest the seizure decision in the animal control officer, rather than in the court, the statute should be redrafted accordingly, with provisions for immediate filing of the petition and a speedy hearing.' . . . Id., *4–5. Judge Berger concluded with respect to the prior revision of the statute that, 'despite the deficiencies of the statute, the state successfully complied with its twofold obligation of obtaining a judicial determination of reasonable cause prior to seizure . . . and following the filing process . . . . The state obtained the search and seizure warrant from the court . . . and filed its petition with the court . . . .' Id., *5.

"When discussing the 2007 amendment on the floor of the House of Representatives, Representative Gerry Fox explained the origins of the amendment: 'This bill came to us from the Commissioner of Agriculture and requested a change to the way that animal control officers currently handle situations where animals are treated cruelly or neglected. Presently, when an animal control officer sees a situation that may appear to be dangerous to an animal, they're required to go to court and get a warrant. What this would allow is if there's reasonable cause to believe that an animal [is] in imminent harm of being cruelly or negligently treated, the animal control officer may, at that time, seize the animal.' 50 H.R. Proc., Pt. 25, 2007 Sess., p. 8077, remarks of Representative Gerry Fox. In support of the legislation, Representative Urban stated: 'This bill makes it much easier when there is an animal that is being subjected to cruel treatment or a cruel situation to get in and to mitigate that situation and be able to move the horse, the dog, the cat, the puppy, whatever it happens to be, out of that situation and into a place where they will be able to receive the treatment they need.' Id., pp. 8078–79, remarks of Representative Diana Urban. In the judiciary committee, the then Commissioner of Agriculture, F. Philip Prelli, explained that 'the Department of Agriculture is the lead agency in investiga-

In its memorandum of decision, the court denied the defendant's motion to suppress on the basis that "[t]he circumstances that existed on June 27, 2023, as testified to by [Petras], met the requirement of imminent harm provided for in [§ 22-329a (a)]." The court reasoned that, "[o]n June 27, 2023, Jennings told the officers that there were three dogs in the barn. One of the dogs was an aggressive male and the other two dogs were pregnant. At the time the officers entered the barn on the afternoon of June 28, 2023, it was their understanding that the dogs had been confined and left unattended for at least thirty-six hours. The officers attempted to contact Jennings without success. . . . The officers

tion of animal cruelty and negligence. . . . Even if it's done on a local level, the department is involved with those. The primary purpose of [this] legislative proposal is to better define and clarify the section to enable animal control officers to take physical custody of animals that animal control officers have a reasonable cause to believe are in imminent harm and/or are neglected or being cruelly treated. One of the things that we've noticed about the law that's there, it's been a while since it's been modified, and the language tends to be language that was written a number of years ago. . . . Usually, the animal control officers will go in there and try to work with the people to either get the animals fed, get the treatment up right, so they're treated correctly, and then go to the steps. And if they still feel they need to take those steps, they will get a warrant first. So the steps that we're defining here are never going to be the norm. But there are times when our animal control officers will see an animal that is truly in jeopardy of dying, and we've seen that. We've seen horses down, and we've seen cows down, where we've had to try to seize those animals and then go and get the court order. So what this does is then sets up the procedure that will give us the opportunity to seize the animals. Then within [ninety-six] hours, we will have to get a court order . . . .' Conn. Joint Standing Committee Hearings, Judiciary, Pt. 14, 2007 Sess., pp. 4422–23, remarks of Commissioner of Agriculture F. Philip Prelli.

"According to the legislative history, the process in § 22-329a (a) for taking physical custody of animals in imminent harm is not the norm. Rather, the usual process is codified in § 22-329a (b), which provides in relevant part that '[a]ny animal control officer or regional animal control officer . . . may take physical custody of any animal upon issuance of a warrant finding probable cause that such animal is neglected or is cruelly treated . . . and shall thereupon proceed as provided in subsection (c) of this section . . . .' General Statutes (Supp. 2022) § 22-329a (b). Accordingly, when, prior to taking physical custody of an animal, a warrant is issued finding probable cause that such animal is neglected or cruelly treated, there is no statutory time frame for the filing of a verified petition." (Footnote omitted.) *Wethersfield ex rel. Monde* v. *Eser*, supra, 211 Conn. App. 548–51.

had not been informed that someone was coming to unlock the barn and tend to the dogs. . . . Because of the high levels of temperature and humidity, the officers were concerned that the dogs did not have adequate ventilation, water or food. . . . Petras also stated there was a concern that the dogs could suffer from dehydration, which could cause death. . . . The court finds [Petras'] testimony regarding her belief that the dogs were in imminent harm and neglected to be reasonable and credible." (Citations omitted.)

Our scrupulous examination of the entire record supports the court's conclusion that the officers had reasonable cause to believe that the dogs contained within the barn were in imminent harm and neglected, or cruelly treated. Petras testified that, prior to entering the barn, the officers believed that the dogs therein had not been cared for in approximately thirty-six hours and that the officers were concerned that the dogs' lives were potentially in danger on the basis of the weather, the lack of ventilation in the barn, and the dogs' access to water. The court credited Petras' testimony. On the basis thereof, we conclude that the court properly determined that the animal control officers had reason to believe the dogs confined in the barn were in imminent harm and neglected, or cruelly treated, and that they properly took physical custody of the dogs therein.

Accordingly, we conclude that the court properly applied § 22-329a (a) in denying the defendant's motion to suppress evidence. We further conclude that, because the evidence supported the court's finding that the officers reasonably concluded that the dogs were in imminent danger, the warrantless search did not violate the defendant's rights under the fourth amendment.[7]

[7] Although the plaintiff has not questioned whether the fourth amendment's exclusionary rule applies in this case, it is not entirely clear to us that it does. This court has previously recognized the general principle that "the exclusionary rule does not apply to civil cases . . . ." (Citation omit-

II

The defendant next claims that §§ 22-329a and 53-247, as applied to both him and Jennings, are void for vagueness. Specifically, the defendant argues that the statutes do not define neglect with particularity because the failure to provide "wholesome air, food and water" to a confined animal, which is prohibited by § 53-247 (a), does not identify what type of ventilation is required to provide a confined animal with wholesome air or how long an animal can go without food or water before such conduct is considered to be neglect. We are not persuaded.

As a preliminary matter, we address the plaintiff's argument that this claim was not preserved for appellate

ted.) *Tompkins* v. *Freedom of Information Commission*, 136 Conn. App. 496, 499 n.4, 46 A.3d 291 (2012). Both our Supreme Court and this court have applied a balancing test based on the United States Supreme Court's decision in *United States* v. *Janis*, 428 U.S. 433, 446–47, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976), when addressing whether the fourth amendment applied in a case other than a criminal prosecution. See, e.g., *Fishbein* v. *Kozlowski*, 252 Conn. 38, 54, 743 A.2d 1110 (1999) (applying *Janis* balancing test when determining whether exclusionary rule applies to driver's license suspension hearings); *Payne* v. *Robinson*, 207 Conn. 565, 570–73, 541 A.2d 504 (applying *Janis* balancing test when determining whether exclusionary rule applies to probation revocation proceedings), cert. denied, 488 U.S. 898, 109 S. Ct. 242, 102 L. Ed. 2d 230 (1988); *Boyles* v. *Preston*, 68 Conn. App. 596, 612–13, 792 A.2d 878 (applying *Janis* balancing test when determining whether exclusionary rule applies to civil trial), cert. denied, 261 Conn. 901, 802 A.2d 853 (2002). The *Janis* balancing test requires a court to "weigh the likely social benefits of excluding unlawfully seized evidence against the likely costs." *Immigration & Naturalization Service* v. *Lopez-Mendoza*, 468 U.S. 1032, 1041, 104 S. Ct. 3479, 82 L. Ed. 2d 778 (1984). "The question of whether the exclusionary rule applies in a particular civil case requires weighing the deterrent benefits of applying the rule against the societal cost of excluding relevant evidence. . . . There is no 'bright line' to determine when the rule should apply, and courts must apply the *Janis* analytic framework on a case by case basis." (Citation omitted.) *Ahart* v. *Colorado Dept. of Corrections*, 964 P.2d 517, 520 (Colo. 1998). Because the parties have not undertaken a *Janis* analysis or otherwise addressed the applicability of the exclusionary rule, and because we have concluded that the defendant's claim fails, even if we were to assume that the exclusionary rule applies to the search in this case, we do not need to reach the question of the exclusionary rule's applicability to the facts of this case.

review. Although we agree with the plaintiff that this claim is unpreserved, we conclude that the claim is reviewable under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015),[8] but that it nonetheless fails under the third prong of *Golding*.[9]

The following additional legal principles are relevant to our resolution of this claim. "The void for vagueness doctrine is a procedural due process concept that originally was derived from the guarantees of due process contained in the fifth and fourteenth amendments to the United States constitution. . . . The doctrine [of void for vagueness] requires statutes to provide fair notice of the conduct to which they pertain and to establish minimum guidelines to govern law enforcement." (Internal quotation marks omitted.) *In re Aurora H.*, 222 Conn. App. 307, 328, 304 A.3d 875, cert. denied, 348 Conn. 931, 306 A.3d 1 (2023). "A statute . . . [that] forbids or requires conduct in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process. . . . Laws must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. . . . A statute is not void for vagueness

[8] "Under *Golding*, a defendant can prevail on an unpreserved claim only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis in original; internal quotation marks omitted.) *State* v. *Carlson*, 226 Conn. App. 514, 532 n.15, 318 A.3d 283 (2024).

[9] "[T]o obtain review of an unpreserved claim pursuant to [*Golding*], a defendant need only raise that claim in his main brief, wherein he must present a record that is [adequate] for review and affirmatively [demonstrate] that his claim is indeed a violation of a fundamental constitutional right." (Internal quotation marks omitted.) *Bethlehem* v. *Acker*, 153 Conn. App. 449, 471 n.16, 102 A.3d 107, cert. denied, 315 Conn. 908, 105 A.3d 235 (2014).

unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity. . . . To demonstrate that [a statute] is unconstitutionally vague as applied to [them], the [defendants] therefore must . . . demonstrate beyond a reasonable doubt that [they] had inadequate notice of what was prohibited or that [they were] the victim[s] of arbitrary and discriminatory enforcement. . . . [T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect of a governing statute . . . and the guarantee against standardless law enforcement. . . . If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness since [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties. . . . Unless a vagueness claim implicates the first amendment right to free speech, [a] defendant whose conduct clearly comes within a statute's unmistakable core of prohibited conduct may not challenge the statute because it is vague as applied to some hypothetical situation . . . ." (Citation omitted; internal quotation marks omitted.) *State ex rel. Gregan* v. *Koczur*, 287 Conn. 145, 156–57, 947 A.2d 282 (2008). "A statute is not unconstitutional merely because a person must inquire further as to the precise reach of its prohibitions, nor is it necessary that a statute list the exact conduct prohibited." (Internal quotation marks omitted.) *In re Aurora H.*, supra, 329.

In *Koczur*, our Supreme Court stated that it is clear from the language of the statute that "§ 22-329a does not contain an independent standard of neglect but, instead, incorporates by reference the standards of the specific statutes enumerated therein." *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 153; id., 157 (§ 22-329a is not void for vagueness despite its failure to define "neglect"). At issue in *Koczur*, as in the present

case, was the portion of § 22-329a that expressly incorporates the standard of neglect codified in and prohibited by § 53-247. See id., 153–55. Section 53-247 provides in relevant part: "(a) Any person who . . . deprives of necessary sustenance . . . any animal, or who, having impounded or confined any animal, fails to give such animal proper care or . . . fails to supply any such animal with wholesome air, food and water, or . . . having charge or custody of any animal . . . fails to provide it with proper food, drink or protection from the weather . . . shall, for a first offense, be fined not more than one thousand dollars or imprisoned not more than one year or both . . . ." In *Koczur*, our Supreme Court determined that "[i]t is reasonable to conclude . . . that the neglect referred to in § 22-329a includes the failure to provide necessary sustenance, proper care, wholesome air, food and water under § 53-247 (a)." *State ex rel. Gregan* v. *Koczur*, supra, 154.

Even assuming, as the defendant claims, that the phrase "wholesome air, food and water" as used in § 53-247 (a) may be susceptible to some degree of interpretation, our careful review of the record satisfies us that the defendant's and Jennings' conduct comes within the statute's unmistakable core of prohibited conduct. In the present case, the court found that the dogs had been left unattended in the barn for at least thirty-six hours when the weather was hot and humid and that Deacon, Ruby, and Mitzi did not have access to food or water. Luna and Lily, both pregnant, also did not have access to food; however, they had access to water. Moreover, the court found that the barn floor was covered in urine and feces and that the smell of ammonia and feces was so strong that it affected the officers' breathing and created a burning sensation in their eyes and noses. The court also found that the barn did not

have active ventilation.[10] Put simply, a person of ordinary intelligence would know that confining five dogs in a barn in these conditions for at least thirty-six hours constituted a failure to provide proper care for the dogs under any reasonable standard. Accordingly, we conclude that the statute afforded the defendant and Jennings adequate notice of the type of conduct prohibited thereby and that the defendant therefore has failed to demonstrate that § 53-247 (a) is unconstitutionally vague as applied to his and Jennings' conduct through § 22-329a.

III

The defendant next claims that the police did not "provide [Jennings] with fair notice of the law" because the officers failed to notify her that the lack of ventilation in the barn constituted neglect under § 22-329a. Specifically, the defendant argues that the officers should have notified him and Jennings of the neglectful conditions and provided them with an opportunity to remedy the situation. We conclude that this claim is inadequately briefed, and, therefore, we decline to address it.

"We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only

[10] The defendant argues that the court failed to give greater weight to the evidence that he submitted of an open window in the barn that provided air to the dogs. The court acknowledged, however, that the defendant submitted evidence of an open window in the barn in its memorandum of decision but concluded that, when "[c]onsidering the size of the barn, the pictures of the interior of the barn, and the testimony regarding breathing conditions in the barn, the court cannot find that this one window was sufficient to provide wholesome air for the five dogs in the barn."

cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . .

"We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [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.) *Gleason* v. *Durden*, 211 Conn. App. 416, 439–40, 272 A.3d 1129, cert. denied, 343 Conn. 921, 275 A.3d 211 (2022).

The defendant baldly asserts that the officers were required to notify Jennings that the conditions of the barn were neglectful and to give them a chance to remedy the situation. The defendant, however, does not provide any applicable legal authority or meaningful analysis in his appellate brief, nor are we aware of any legal authority, to support his claim. See *C. W.* v. *Warzecha*, 225 Conn. App. 137, 147, 314 A.3d 617 (2024) (claim was inadequately briefed when defendant provided no applicable legal authority or meaningful analysis in support of claim). Accordingly, the defendant's claim is inadequately briefed, and we decline to review it.

IV

The defendant further claims that the court applied an improper legal standard in defining neglect under

§ 22-329a. Specifically, the defendant argues that the court applied a standard of neglect that is applicable only to commercial kennels meant for large breeding operations. We disagree.

The following additional legal principles are relevant to our resolution of the defendant's claim. "The meaning of neglect under § 22-329a is a question of statutory interpretation, over which our review is plenary. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citation omitted; internal quotation marks omitted.) *State ex rel. Gregan* v. *Koczur*, supra, 287 Conn. 152–53.

We reiterate that § 22-329a (a) provides in relevant part: "Any animal control officer . . . may take physical custody of any animal when such animal control officer has reasonable cause to believe that such animal is in imminent harm and is neglected or is cruelly treated in violation of section . . . 53-247 . . . ." Section 53-247 provides in relevant part: "(a) *Any person* who . . .

deprives of necessary sustenance . . . or who, having impounded or confined any animal, fails to give such animal proper care . . . or fails to supply any such animal with wholesome air, food and water . . . or, having charge or custody of any animal . . . fails to provide it with proper food, drink or protection from the weather or abandons it . . . shall, for a first offense, be fined not more than one thousand dollars or imprisoned not more than one year or both, and for each subsequent offense, shall be guilty of a class D felony." (Emphasis added.)

Neither § 22-329a nor § 53-247 defines "person." "Generally, in the absence of statutory definitions, we look to the contemporaneous dictionary definitions of words to ascertain their commonly approved usage." *Ledyard* v. *WMS Gaming, Inc.*, 338 Conn. 687, 697, 258 A.3d 1268 (2021). Webster's Third New International Dictionary defines "person" as "an individual human being . . . a human being as distinguished from an animal or thing . . . ." Webster's Third New International Dictionary (2002) p. 1686. It is therefore clear from the plain language of § 53-247 that the neglect referred to in § 22-329a includes neglect committed by individuals such as the defendant and Jennings, and not just neglect committed by commercial kennels or large breeding operations, as the defendant suggests. Accordingly, in the absence of any indication to the contrary, we conclude that the court applied the proper legal standard in determining that the dogs in the barn, having been neglected by the defendant and Jennings, were properly subject to a warrantless seizure pursuant to § 22-329a (a).

V

The defendant's final claim is that there was insufficient evidence to support a finding that the dogs in the barn were neglected. Specifically, the defendant argues

that there was no evidence in the record to support the court's finding that the health or physical conditions of the dogs were adversely affected as a result of the defendant's and Jennings' alleged neglect.[11] We are not persuaded.

We begin by setting forth the applicable standard of review. "The standards governing our review of a sufficiency of evidence claim are well established and rigorous. . . . [W]e must determine, in the light most favorable to sustaining the [judgment], whether the totality of the evidence, including reasonable inferences therefrom, supports the [court's judgment] . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the [judgment] of which it is reasonably capable. . . . In other words, [i]f the [court] could reasonably have reached its conclusion, the [judgment] must stand, even if this court disagrees with it. . . .

"We apply this familiar and deferential scope of review, however, in light of the equally familiar principle that the plaintiff must produce sufficient evidence to remove the [court's] function of examining inferences and finding facts from the realm of speculation." (Internal quotation marks omitted.) *C. W.* v. *Warzecha*, supra, 225 Conn. App. 148.

After a careful review of the record, we conclude that the totality of the evidence was sufficient to support the court's judgment that the dogs confined in the barn were neglected. During the July 26, 2023 hearing, Petras testified that the dogs in the barn had not received care for at least thirty-six hours prior to the officers entering the barn. Petras also testified that, when the officers entered the barn, they "found ripped open bags of dog

[11] In his appellate brief, the defendant also claims that the court abused its discretion because "the [judgment] is not supported by any empirical or objective evidence nor by substantial evidence." We consider this claim to be factually interrelated to the defendant's evidentiary sufficiency claim, and, therefore, we address both of the defendant's claims together as a singular claim.

food that were empty on the floor. [Luna and Lily] had [one] half of a five gallon pail with water in it, and we found empty buckets tipped over [for Deacon, Ruby, and Mitzi]." Petras further testified that "it was very hot and humid in there because there was no airflow, and there was an excessive amount of feces and urine on the floor of the barn. . . . It was very difficult to breathe. The officers who were in [the barn] reported that their . . . eyes and noses were burning from the ammonia smell of the urine." In addition to Petras' testimony, the plaintiff submitted photographs, which were admitted into evidence, depicting the conditions of the barn and the dogs found therein. The court specifically found that Petras' testimony was supported by the photographs submitted. Therefore, construing the evidence in the light most favorable to upholding the judgment, we conclude that the evidence was sufficient to support a finding of neglect pursuant to § 22-329a.

To the extent the defendant argues that the plaintiff was required to produce evidence that the dogs' health or physical conditions were adversely affected for the court to find the dogs neglected, such argument assigns a higher burden of proof than that which is required by the relevant statutes. Pursuant to § 22-329a, the plaintiff can prove that the dogs confined in the barn were neglected or cruelly treated under § 53-247 (a) by showing that the defendant and Jennings failed to supply the dogs with wholesome air, food and water. The statute does not require the plaintiff to prove that the confined animals suffered actual physical injuries or adverse effects as a result of those conditions.

Accordingly, we conclude that the evidence was sufficient to support the court's finding that the dogs in the barn were neglected.

The judgment is affirmed.

In this opinion the other judges concurred.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 228

MEMORANDUM DECISIONS

CAROL RICCIO *v.* HOWARD GREENBERG (AC 46647)

Clark, Westbrook and DiPentima, Js.

Submitted on briefs September 11—officially released September 24, 2024

Plaintiff's appeal from the Superior Court in the judicial district of New Haven, *Grossman*, *J.*

Per Curiam. The judgment is affirmed.

CLAYVERN FOTHERGILL *v.* CITY OF HARTFORD (AC 46742)

Clark, Seeley and Harper, Js.

Argued September 12—officially released September 24, 2024

Defendant's appeal from the Superior Court in the judicial district of New Britain, *Hon. Joseph M. Shortall*, judge trial referee.

Per Curiam. The appeal is dismissed.

Cumulative Table of Cases
Connecticut Appellate Reports
Volume 228

(Replaces Prior Cumulative Table)

Brennan *v.* Waterbury 231
Workers' compensation; subject matter jurisdiction; mootness.
Ciarleglio *v.* Martin 241
Dissolution of marriage; annulment of marriage; substitution of administrator of estate for deceased plaintiff; subject matter jurisdiction; applicability of statute (§ 52-599) to action to annul marriage; standing; standard of proof; plain error doctrine; annulment of marriage pursuant to statute (§ 46b-40).
Fothergill *v.* Hartford (Memorandum Decision) 901
Hallock *v.* Hallock 81
Dissolution of marriage; pendente lite motions for alimony and counsel fees; legal standard for determination of alimony and distribution of marital property; statutes (§§ 46b-81 and 46b-82) governing alimony and marital property distribution, discussed; judicial notice.
Karen *v.* Loftus 163
Dissolution of marriage; motion to open; subject matter jurisdiction; statutory (§ 52-420 (b)) time limit to challenge arbitration award allegedly obtained by fraud, discussed; probable cause standard, discussed.
Labieniec *v.* Megna 127
Postjudgment motion for modification of child custody; postjudgment motion for order seeking passport for child.
Middletown *v.* Wagner 265
Animal neglect; motion to suppress evidence; warrantless search and seizure pursuant to applicable statute (§ 22-329a (a)); fourth amendment to United States constitution; void for vagueness doctrine; fair notice of law; sufficiency of evidence.
Mystic Oil Co. *v.* Shaukat, LLC 147
Breach of contract; breach of guarantee; damages award; motion for attorney's fees; evidentiary hearing.
Riccio *v.* Greenberg (Memorandum Decision) 901
State *v.* Giannone 11
Sale of assault weapon; possession of silencer; possession of large capacity magazine; motion to dismiss; motion to suppress; constitutionality of weapons statutes (§§ 53-202b, 53-202w and 53a-211); defendant's right to bear arms under second amendment to United States constitution; adjudication of defendant's as applied constitutional challenge under New York State Rifle & Pistol Assn., Inc. *v.* Bruen *(597 U.S. 1), discussed.*
State *v.* Shane K. 105
Assault third degree; criminal violation of protective order; motion to dismiss or transfer for improper venue; due process; statute (§ 51-352c (a) and (b)) governing jurisdiction of criminal charges; instructional error; waiver.
Waterbury *v.* Brennan 206
Workers' compensation; motion for summary judgment; plain error.
White *v.* FCW Law Offices 1
Identity theft; Connecticut Unfair Trade Practices Act (§ 42-110a et seq.); damages.

STATE ELECTIONS ENFORCEMENT COMMISSION

State Elections Enforcement Commission advisory opinions are published herein pursuant to General Statutes Section 9-7b (14) and are printed exactly as submitted to the Commission on Official Legal Publications.

Declaratory Ruling 2024-01

Concerning the Return of Stolen Contributions and their Use by the Senate Republican Victory Committee

On August 12, 2024, the Commission received a Petition for declaratory ruling filed by Attorney Joel Rudikoff, on behalf of the Connecticut Senate Democratic Caucus (the ''Petitioner''). At its regular meeting on September 18, 2024, the Commission voted to issue a declaratory ruling proceeding responsive to this petition.[1]

The Petition specifically requests the Commission to address two questions in a declaratory ruling:

1) Whether the recent lump sum payment of more than $160,000 received on May 9, 2024, by the Senate Republican Victory Committee (the ''SRVC''), as a result of the Commission's April 17, 2024 Order authorizing the transfer of this lump sum to SRVC (discussed in the Commission's Order dated May 1, 2024, File No-2018-118), should be subject to the version of Connecticut General Statutes § 9-718 in effect at the time of the theft of this money from February, 2014 to December, 2018, rather than the current version of § 9-718 as amended in 2023, which allows for the aggregation of organization expenditures?

2) Whether SRVC can utilize this lump sum in one election cycle when the funds were stolen during the course of multiple election cycles?

Background

The background of this case is largely summarized in the case *In the Matter of the Senate Republican Leadership Committee, Hartford,* File No. 2018-118, and so need not be repeated in detail here. In short, the treasurer of the Senate Republican Leadership Committee (the ''SRLC'') was discovered to have been stealing contributions from that committee over a long period, beginning some time before 2018. The chair of the committee self-reported the situation to the Commission and an investigation was opened on December 19, 2018. On February 13, 2019, the treasurer was arrested for larceny in the first degree and a criminal case ensued in the Superior Court. The case was resolved in 2023 when the treasurer pled guilty and, as a consideration in his sentencing, agreed to return to the SRLC a set sum ($248,670) representing some portion of the stolen contributions as restitution. He was sentenced

[1] At its regular meeting on August 28, 2024, the Commission opened a comment period ending September 10, 2024, at 5:00 p.m. The Commission received and reviewed comments from the SRVC (the Senate Republican Majority Committee and the Senate Republican Campaign Committee also submitted letters supporting and adopting the comments of SRVC as their own), the Connecticut Democratic State Central Committee (DSCC) and Len Fasano.

to seven years in prison, execution suspended after six months with three years' probation. The Commission worked with the successor committee to the SRLC to pay off the committee's unpaid debts resulting from the lack of funds caused by the theft. The Commission authorized the transfer of the remainder of the returned funds ($160,928.93) to the SRVC in May 2024.

Analysis

Restitution

This case presents a novel situation involving restitution to a committee that was part of a plea deal in a criminal court. While we have no prior precedent for court ordered restitution funds being paid to a committee, the Federal Election Commission (the ''FEC'') does. *In re Scott Coleman*, MUR 7692, the respondent was a treasurer of a political committee and in that capacity made $88,679 in unauthorized ATM withdrawals from the committee's bank account, incurred $86,273.40 in personal expenses on the committee credit card, and authorized payment of the credit card charges with the committee's funds. To conceal the theft, the respondent did not disclose contributions corresponding to the amounts stolen in the committee's disclosure reports. The respondent was sentenced to jail, two years' probation and a $5,000 fine. The respondent also made restitution to the committee in the amount of $341,983.06 to cover the embezzled amounts, legal fees associated with the criminal investigation, and the internal review costs. The FEC additionally fined the respondent $20,528 for converting campaign funds to personal use and failing to file accurate reports with the Commission.

Similarly, the FEC advised that court ordered restitution payments were allowed in *Advisory Opinion 2005-04: Jan W. Baran*. There the respondent treasurer was ordered by the court to pay restitution, in monthly installments, to the ''Friends of John Boehner'' committee as part of his sentencing for embezzling campaign funds. The committee wished to have the restitution payments assigned to a charitable organization of their choice. The FEC advised that restitution payments could not be paid directly to a charitable organization, absent an amendment to the original court order because the respondent treasurer had an obligation under the court order to make restitution payments to the committee.

Additionally, the FEC has consistently advised that a court order requiring restitution payment to an authorized committee gives rise to a debt owed to that authorized committee that must be reported. *In Advisory Opinion 1991-38: Gene Karp*, the respondent treasurer embezzled approximately $500,000, leaving the committee with a debt of approximately $60,000. After the respondent treasurer completed his prison sentence for embezzlement, the court ordered the respondent to make restitution in a sum determined by probation. The FEC concluded that the entire restitution amount was a debt owed to the committee until extinguished and must be reported as such. Since the committee affected by embezzlement was still active, the Commission advised that the restitution debt could be rolled over into the candidate's new committee with both committees reporting the rollover, to allow the old committee to terminate. See also *In Advisory Opinion 2005-04: Jan W. Baran* (the entire restitution amount is subject to reporting requirements and must be reported as a debt owed to the committee until the debt is extinguished. Likewise, each restitution payment is a receipt of the committee that must be included in the Committee's reports).

It must be noted that while the FEC has issued guidance on the payment of embezzled funds into a committee's bank account and the reporting required by

those committees, we were not able to find precedent of the FEC issuing any restriction on how court ordered restitution funds should be spent by the committees. Based on the advice given in *In Advisory Opinion 2005-04: Jan W. Baran*, the assignment of court ordered restitution funds is subject to the court's order, which can only be changed by an amendment to the court's order. We see no reason to depart from the FEC's precedent. While the interpretation of General Statutes § 9-718 is within our jurisdiction, any rulings in equity of how the court ordered restitution funds should be used by the committee and over how many election cycles, lies with the court that ordered the restitution.

Application of the Current Law

Both questions posed by the Petitioner can be boiled down to one simpler one: should the current law be applied to the unusual circumstances of the present matter? We can find no support in the law for the position set forth by the Petitioner.

The request implicates three statutes in particular: the recently amended General Statutes § 9-718[2] and § 9-608 and § 9-618 which set forth the properties and powers of ongoing political committees, such as the SRVC.[3]

It is worth focusing first on the latter two statutes. The SRVC is a type of ongoing political committee. Unlike durational political committees (see General Statutes § 9-619, e.g.), and all candidate committees, ongoing political committees do not have to distribute their surplus and terminate after each primary, election or referendum (as the case may be).[4] This means that the contributions they collect in any given year or cycle can be carried forward into the future, indefinitely. Of course, they may also be spent down to zero every year—but they are not required to do, as is the case with durational committees.

[2] Sec. 171. Subsection (a) of section 9-718 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) Notwithstanding any provision of the general statutes and except as provided in subsection (e) of this section, a legislative leadership committee and a legislative caucus committee, or a legislative leadership committee and another legislative leadership committee, or all three such committees, for the same political party in the Senate may aggregate their maximum allowable amounts for an organization expenditure or expenditures made for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state senator for the general election campaign, provided a written agreement for such aggregation exists among the treasurers of each such aggregating committee. Upon execution of such written agreement, such treasurers shall jointly submit such written agreement to the State Elections Enforcement Commission, which shall make such written agreement available to the public on the commission's Internet web site.

[3] As discusses supra and in *In the Matter of the Senate Republican Leadership Committee, Hartford, File No. 2018-118*, the SRVC is a successor committee to the SRLC, a result of the Commission's order to suspend operations of the latter while the criminal case against the SRLC's treasurer went forward and the facts of the matter could be determined by the Superior Court. In the interim, the SRVC could continue on as a functioning ongoing leadership committee, albeit one without any initial funds. Had no theft taken place, the SRLC, which was established in 2000, would undoubtedly have continued on as an ongoing political committee, and the creation of the SRVC would not have been necessary.

[4] General Statutes § 9-608

(e) **Distribution or expenditure from surplus funds. Reporting re deficits.** (1) Notwithstanding any provisions of this chapter, in the event of a surplus the treasurer of a candidate committee or of a political committee, other than a political committee formed for ongoing political activities or an exploratory committee, shall distribute or expend such surplus not later than ninety days, or for the purposes of subparagraph (H) of this subdivision, one hundred twenty days after a primary which results in the defeat of the candidate, an election or referendum not held in November or by March thirty-first following an election or referendum held in November, or for the purposes of subparagraph (H) of this subdivision, June thirtieth following an election or referendum held in November, in the following manner. . . (Emphasis added.)

One practical upshot is that all of the contributions from the years in which the theft took place could have been saved for future election cycles, or spent, as the committee saw fit. Because of the theft, there were fewer funds to spend for a period of time resulting in a situation where the stolen funds could *not* be spent, and a period of uncertainty when it was unclear whether they ever would be. But had the theft never occurred, the committee could have saved them voluntarily and legally and would have gained no unfair or—and this is more to the point—no illegal advantage by doing so.

The second upshot, speaking directly to the Petitioner's second question, is that there is no limitation—nor was there ever any limitation—on how much or how little an ongoing political committee can raise or spend in any given election cycle. The Petitioner's request is for the Commission to create a one-off limitation in these special circumstances. This is not the proper subject for a declaratory ruling by the Commission, but for the creation of a law by the legislature.

The recent law change regarding a cyclic limitation on *certain types* of expenditures (organization expenditures) by *certain types* of committees (leadership and caucus committees), like the SRVC, in fact made no change to the dollar limitations themselves, but only how some committees could employ them. General Statutes § 9-718 was amended by Public Act 23-205 to enable leadership and caucus committees to aggregate the amounts that they are allowed to spend on organization expenditures. Formerly, each of three committees could each spend a statutory amount on a single candidate. Public Act 23-205 changed the law to enable one of those same three committees to spend triple the statutory amount if the other two relinquished their right to do so. Or they could allocate some portion of the statutory amount to one or the other committees, but the overall aggregate remained capped. It is worth noting that the change in the law was passed by an overwhelming bi-partisan majority of legislators.[5]

Briefly, looking at the text of the law change, we find no support for the Petitioner's position that the timing of when funds enter a committee's coffers (or are stolen from the same) should guide which version of the law is applied when it chooses to spend those funds. As discussed, *infra*, as an ongoing committee, the SLVC is legally allowed to have funds carry over from cycle to cycle, going back in perpetuity.[6] The law change in P.A. 23-205 casts no shadow on the effect of General Statutes §§ 9-608 or 9-618, and significantly was in effect, from passage, in June of 2023—nearly a year before the return of the stolen contributions in May of 2024. When performing statutory interpretation, as the Connecticut Supreme Court noted in 2020, ''[the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [one must] seek to determine, in a reasoned manner, the meaning of the statutory language. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .'' (Internal quotation marks omitted.) *Fay* v. *Merrill*, 336 Conn., 432, 445-446, 246 A.3d 970 (2020). Here we find no ambiguity: the statute dictates how certain committees can act with respect to organization

[5] The House Bill passed 145 to 4; the Senate Bill, 35-1. It was signed by the Governor into law on June 29, 2023.

[6] The SRLC was established in 2000, and could still, theoretically, have funds from that period remaining in its account. The election laws have changed many times since then.

expenditures going forward, not with respect to the source of the accumulated funds that is the source of the expenditures.

Similarly, with respect to the second request, the statutes plainly delineate which types of committees must close after each cycle and therefore cannot spend contributions received in one cycle during a later cycle. Legislative leaderships committees are not among them. As a result, the Commission cannot grant the Petitioner's second request to limit spending of a leadership committee's returned contributions by election cycle.

Equitable Remedy

Even if the statutes did not so plainly militate against granting the Petitioner's requests, the Commission could not act. ''When a statute is not plain and unambiguous, we are directed to look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .'' (Internal quotation marks omitted.) *Id.,* at 446.

The Petition, however, does not address these factors for interpretative guidance. Rather, the Petition asks the Commission to act solely on the basis of preventing ''an unacceptably inequitable situation, inadvertently giving one party a massive, unexpected fundraising advantage.'' The government may not act solely to equalize financial resources in the electoral process. *Green Party of Connecticut v. Garfield,* 616 F.3d 213, 243-246 (2nd Cir. 2010)*; Davis v. FEC*, 554 U.S., 724, 738-742 (2008).

This constitutes a declaratory ruling pursuant to General Statutes § 4-176. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

Adopted this 18th day of September 2024 at Hartford, Connecticut by a vote of the Commission.

Stephen T. Penny, Chairperson
By Order of the Commission

NOTICES OF CONNECTICUT STATE AGENCIES

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 24-AA COVID-19 Updates

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS). Public comment information is at the bottom of this document.

Changes to Medicaid State Plan

Due to the American Rescue Plan Act (ARP) period ending on September 30, 2024, there will be several changes to coverage and reimbursement related to COVID-19 for laboratory services, testing and vaccine administration.

Effective on or after October 1, 2024, SPA 24-AA will amend Attachment 4.19-B as follows:

- End dating the COVID-19 proprietary laboratory analysis (PLA) testing codes to remain consistent with the current PLA coverage policy (not covered).
- Repricing the COVID-19 laboratory codes from 100% to 70% of the Medicare rate to remain consistent with CMAP's current payment methodology for independent laboratories., from 100% to 95% to remain compliant with similarly priced services for family planning clinics, and from 100% to 80% to remain compliant with services reimbursed to medical clinics.
- To continue reimbursing pharmacies for COVID-19 tests and vaccines at a revised rate.
- COVID vaccine administration billed as procedure code 90480 will continue to be reimbursed at 100% of the Medicare rate for both pediatric and adult members covered under the HUSKY Health A, B, C, and D programs.
- COVID-19 vaccine administration billed by pharmacies will be reimbursed average wholesale price (AWP) plus $1.00.
- COVID-19 at home test kits will continue to be reimbursed to pharmacies at the average wholesale price (AWP).

Fee schedules are published at: http://www.ctdssmap.com. Select "Provider", then select "Provider Fee Schedule Download"; after accepting the Terms and Conditions, proceed to the applicable fee schedule.

Fiscal Impact

Overall, DSS anticipates that this SPA will increase annual aggregate expenditures by approximately $3,843,051 in State Fiscal Year (SFY) 2025 and $4,968,091 in SFY 2026.

This proposed change of COVID-19 vaccine administration paid to providers at reduced rates is estimated to have a gross fiscal impact of $2,528,497 in SFY 2025, and $3,275,794 in SFY 2026.

The proposed change of continuing to reimburse for COVID-19 testing and revising the reimbursement rate to meet current policy is estimated to have a gross fiscal impact of $4,883,189 in SFY 2025, and $6,288,293 in SFY 2026

It is estimated that proposed changes to the reimbursement rates paid to pharmacies for COVID-19 tests and vaccines to have a gross fiscal impact of $2,093,990 in SFY 2025, and $2,745,012 in SFY 2026 and $2,769,010.

This proposed change of COVID-19 vaccine administration paid to clinics is estimated to have a gross fiscal impact of $3,589 in SFY 2025, and $3,780 in SFY 2026

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-State-Plan-Amendments. The proposed SPA may also be obtained at any DSS resource center, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: **Public.Comment.DSS@ct.gov** or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105. Please reference "SPA 24-AA COVID-19 Updates".

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than **October 8, 2024**.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 24-AB: October 2024 Quarterly HIPAA Compliant Update-Physician Office and Outpatient Fee Schedule, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule and Medical Clinics Fee Schedule/ Updates to the Chiropractor Fee Schedule and Family Planning Clinic Fee Schedules

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS). Public comment information is at the bottom of this document.

Changes to Medicaid State Plan

Effective on or after October 1, 2024, SPA 24-AB will amend Attachment 4.19-B of the Medicaid State Plan to incorporate the October 2024 Healthcare Common Procedure Coding System (HCPCS) changes (additions, deletions, and description changes) to the physician office and outpatient, DMEPOS and medical clinic fee schedules. DSS is making these changes to ensure the fee schedules remain compliant with the Health Insurance Portability and Accountability Act (HIPAA).

Secondly, effective October 1, 2024, the following evaluation/ management (E/M) procedure codes will be added to the chiropractor fee schedule (see below):

Procedure Code*	Description	Rate
99202	Office o/p new sf 15 min	$44.98
99203	Office o/p new low 30 min	$66.40
99204	Office o/p new mod 45 min	$100.17
99205	Office o/p new hi 60 min	$125.34
99211	Office o/p est sf phy/qhp	$14.94
99212	Office o/p est 10 min	$26.83
99213	Office o/p est low 20 min	$42.93
99214	Office o/p est mod 30 min	$64.99
99215	Office o/p est hi 40 min	$87.60

Third, the family planning clinic fee schedule is being update with the addition of procedure code 57522- Conization of cervix, with or without. fulguration, with or without dilation, effective October 1, 2024.

Fee schedules are published at this link: http://www.ctdssmap.com (select "Provider," then "Provider Fee Schedule Download," accept the terms and conditions, and select the applicable fee schedule).

Fiscal Impact

The HIPAA updates to the physician office and outpatient fee schedule are estimated to increase annual aggregate expenditures by $6,885 in state fiscal year (SFY) 2025, and $10,637 in SFY 2026.

The HIPAA updates to the DMEPOS fee schedule are estimated to increase annual aggregate expenditures by $178,433 in SFY 2025, and $275,679 in SFY 2026.

The HIPAA updates to the medical clinic fee schedule are not expected to have any fiscal impact, since similar procedure codes have no clinical utilization in SFY 2024.

The addition of select E/M procedure codes to the chiropractor fee schedule is estimated to increase annual aggregate expenditures by $828,281 in SFY 2025, and $1,270,377 in SFY 2026.

The update to the family planning clinic fee schedule is estimated to increase annual aggregate expenditures by $29,756 in SFY 2025 and $45,973 in SFY 2026.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-State-Plan-Amendments. The proposed SPA may also be obtained at any DSS resource center, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: **Public.Comment.DSS@ct.gov** or write to: Department of Social

Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105. Please reference "SPA 24-AB: October 2024 Quarterly HIPAA Compliant Update - Physician Office and Outpatient Fee Schedule, Durable Medical Equipment, Medical Surgical Supplies and Orthotics and Prosthetics Fee Schedule and Medical Clinics Fee Schedule/ Updates to the Chiropractor Fee Schedule and Family Planning Clinic Fee Schedules".

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than **October 9, 2024**.

NOTICES

Notice of Suspension of Attorney

Pursuant to Practice Book §2-54, notice is hereby given that on September 16, 2024, Juliana M. Romano, juris number 423010, was suspended from the practice of law for a period of 1 year with conditions including:

1. The Respondent shall comply with all terms and conditions of Practice Book §2-47B; Restrictions on the Activities of Deactivated Attorneys.

2. The Respondent shall not apply for reinstatement unless and until she is compliant with the continuing legal education requirements in the underlying grievance, Santana v. Romano # 21-0302.

3. Any application for reinstatement shall be made pursuant to the provisions of Practice Book § 2-53.

Notice is further given that Assistant Chief Disciplinary Counsel Lee N. Johnson, ("OCDC Trustee," Juris No. 443752), 100 Washington Street, Hartford, CT 06106, is appointed Trustee to take such steps as are necessary to protect the interests of Respondent's clients, inventory the active client files, receive the business mail, and take control of Respondent's clients' funds, IOLTA, and fiduciary accounts.

The complete orders and conditions may be viewed in the electronic file, docket number UWYCV24-6076587-S*, Office of Chief Disciplinary Counsel v. Romano, Juliana M.*

Barbara N. Bellis, *Judge*

Notice of Placement of Attorney on Inactive Status

Pursuant to Practice Book §2-54, notice is hereby given that on September 16, 2024, in docket #UWYCV246078411S, this Court placed Attorney Joseph S. Hubicki, Juris #424961 of Westport CT on inactive status until further order of the Court.

Notice is further given that Assistant Chief Disciplinary Counsel Lee N. Johnson, ("OCDC Trustee," Juris No. 443752), 100 Washington Street, Hartford, CT 06106, is appointed Trustee to take such steps as are necessary to protect the interests of Respondent's clients, inventory the active client files, receive the business mail, and take control of Respondent's clients' funds, IOLTA, and fiduciary accounts.

Barbara N. Bellis, *Judge*