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ORDERS

CONNECTICUT REPORTS

Vol. 351

ANTHONY SANTANIELLO, JR. *v.* COMMISSIONER OF CORRECTION

The petitioner Anthony Santaniello, Jr.'s petition for certification to appeal from the Appellate Court, 230 Conn. App. 741 (AC 46199), is denied.

McDONALD and BRIGHT, Js., did not participate in the consideration of or decision on this petition.

Desmond M. Ryan, assistant public defender, in support of the petition.

Timothy F. Costello, supervisory assistant state's attorney, in opposition.

Decided April 30, 2025

FOUNDATION FOR THE ADVANCEMENT OF CATHOLIC SCHOOLS, INC., ET AL. *v.* THE MOST REVEREND LEONARD P. BLAIR ET AL.

The defendants' petition for certification to appeal from the Appellate Court, 230 Conn. App. 793 (AC 46603), is denied without prejudice to their right to seek certification from this court on the same question after subsequent proceedings in the trial court and the Appellate Court, and after following the procedure set forth in Practice Book § 84-1.

Richard P. Colbert and *Hannah F. Kalichman*, in support of the petition.

James M. Moriarty and *Eric Henzy*, in opposition.

Decided April 30, 2025

STATE OF CONNECTICUT *v.* JOSEPH E.

The defendant's petition for certification to appeal from the Appellate Court, 231 Conn. App. 556 (AC 46582), is denied.

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

Russell C. Zentner, senior assistant state's attorney, in opposition.

Decided April 30, 2025

DHATI COLEMAN *v.* COMMISSIONER OF CORRECTION

The petitioner Dhati Coleman's petition for certification to appeal from the Appellate Court, 231 Conn. App. 223 (AC 46627), is denied.

ALEXANDER and BRIGHT, Js., did not participate in the consideration of or decision on this petition.

Judie Marshall, assigned counsel, in support of the petition.

Alexander A. Kambanis, deputy assistant state's attorney, in opposition.

Decided April 30, 2025

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES EX REL. WENDY PIZZOFERRATO ET AL. *v.* THE MANSIONS, LLC, ET AL.

The petition of the plaintiff the Commission on Human Rights and Opportunities for certification to appeal from the Appellate Court, 231 Conn. App. 121 (AC 46774), is granted, limited to the following issue:

"Did the Appellate Court correctly conclude that the trial court had applied an incorrect legal standard for determining whether an accommodation is 'necessary' for the use and enjoyment of a dwelling under General Statutes § 46a-64c (a) (6) (ii)?"

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

Libby Reinish, human rights attorney, in support of the petition.

Richard M. Hunt, pro hac vice, and *Maria K. Tougas*, in opposition.

Decided April 30, 2025

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES EX REL. WENDY PIZZOFERRATO ET AL. *v.* THE MANSIONS, LLC, ET AL.

The defendants' cross petition for certification to appeal from the Appellate Court, 231 Conn. App. 121 (AC 46774), is granted, limited to the following issue:

"Did the Appellate Court correctly conclude that the trial court had correctly determined that the plaintiff had a 'mental disability' within the meaning of General Statutes § 46a-51 (20)?"

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

Richard M. Hunt, pro hac vice, and *Maria K. Tougas*, in support of the petition.

Libby Reinish, human rights attorney, in opposition.

Decided April 30, 2025

IN RE C. Y.

The petition of the respondent father for certification to appeal from the Appellate Court, 231 Conn. App. 633 (AC 47852), is denied.

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

David E. Schneider, Jr., assigned counsel, in opposition.

Decided April 30, 2025

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15 UNQUOWA ROAD, LLC *v.* WATER POLLUTION CONTROL AUTHORITY OF THE TOWN OF FAIRFIELD

The defendant's petition for certification to appeal from the Appellate Court (AC 48035) is denied.

James T. Baldwin, in support of the petition.

Christopher J. Smith, in opposition.

Decided April 30, 2025

DEUTSCHE BANK NATIONAL TRUST COMPANY, TRUSTEE *v.* GARY L. POWELL ET AL.

The named defendant's petition for certification to appeal from the Appellate Court (AC 48432) is denied.

Gary L. Powell, self-represented, in support of the petition.

Decided April 30, 2025

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CONNECTICUT APPELLATE REPORTS

Vol. 232

CASES ARGUED AND DETERMINED

IN THE

APPELLATE COURT

OF THE

STATE OF CONNECTICUT

ONE EIGHTY-FIVE STAGG ASSOCIATES *v.* LINWOOD AVENUE III, LLC, ET AL.
(AC 47206)

Alvord, Clark and Prescott, Js.

Syllabus

The plaintiff appealed from the trial court's judgment granting the defendants' motion for a directed verdict in the plaintiff's action seeking damages in connection with an oil leak from a tank on the named defendant's property that impacted the plaintiff's property. The plaintiff claimed, inter alia, that the court erred in granting the defendants' motion on the ground that the plaintiff failed to present sufficient evidence in support of its claims. *Held*:

The plaintiff waived its claims challenging the trial court's ruling with respect to the counts of the operative complaint alleging statutory causes of action and negligence per se, as the plaintiff failed to raise or brief any claim challenging the court's ruling with respect to those counts.

The trial court erred in directing a verdict for the defendants on the counts of the operative complaint alleging common-law negligence and common-law negligent nuisance, as there was sufficient evidence from which the jury could have found that the defendants were negligent, had control of the oil tank, and their negligence was a substantial factor in causing the plaintiff's damages.

The trial court abused its discretion in ordering the redaction of portions of certain account notes maintained by the oil company servicing the defendants' property following the oil spill, as the redacted portions were relevant to the issue of the defendant M's possession or control of the oil tank, and, even assuming that the redacted portions of the account notes constituted evidence of subsequent remedial measures, that evidence was admissible to prove M's control of the oil tank.

Argued January 6—officially released May 13, 2025

Procedural History

Action to recover damages for, inter alia, injuries sustained by the plaintiff as a result of the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Reed*, *J.*, granted the plaintiff's motion to cite in Mary Jane McGoldrick in her capacity as conservator for Charles P. McGoldrick III as a defendant; thereafter,

the court, *Gould*, *J.*, granted the plaintiff's motion to strike the defendants' claim for a jury trial as to the counts seeking declaratory and injunctive relief and the remaining counts of the complaint were tried to the jury; subsequently, the court, *Gould*, *J.*, granted the defendants' motion for a directed verdict as to all counts and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed in part*; *new trial.*

James A. Lenes, for the appellant (plaintiff).

Kelly E. Petter, for the appellees (defendants).

Opinion

CLARK, J. The plaintiff, One Eighty-Five Stagg Associates, appeals from the judgment of the trial court granting the motion for a directed verdict in favor of the defendants, Linwood Avenue III, LLC (Linwood), Charles P. McGoldrick III (McGoldrick), and Mary Jane McGoldrick in her capacity as McGoldrick's conservator.[1] On appeal, the plaintiff claims that the court erred in (1) granting the defendants' motion for a directed verdict on the basis that the plaintiff failed to present sufficient evidence in support of its claims, and (2) ordering the redaction of certain statements contained in a documentary exhibit presented by the plaintiff. We agree with the plaintiff with respect to both claims and, accordingly, reverse in part the judgment of the trial court.[2]

[1] In this opinion, we refer to Mary Jane McGoldrick by her full name and to Charles P. McGoldrick III by his last name only.

[2] Although our conclusion that the court erred in directing a verdict in favor of the defendants is dispositive of this appeal, we address the plaintiff's second claim because it is sufficiently likely to arise on remand. See *Murchison* v. *Waterbury*, 218 Conn. App. 396, 412, 291 A.3d 1073 (2023) ("although our resolution of the defendant's first claim is dispositive of this appeal, because it is sufficiently likely to arise on remand, we will also address the defendant's second claim").

The plaintiff also claims that the trial court erred in granting a motion for a protective order and a motion to quash a subpoena for documents and testimony that the plaintiff had served on the defendants' liability insurer, and in precluding the admission of a report prepared by an engineer retained

The following facts, construed in the light most favorable to the plaintiff; see *Pellet* v. *Keller Williams Realty Corp.*, 177 Conn. App. 42, 49, 172 A.3d 283 (2017); and procedural history are relevant to this appeal. Linwood owns a residential property located at 284 Linwood Avenue in Fairfield. At the relevant time period, McGoldrick was the sole member and manager of Linwood. The plaintiff owns a commercial property located at 186 Linwood Avenue in Fairfield, which abuts 284 Linwood Avenue to the east.

The residence at 284 Linwood Avenue sits approximately fifteen feet from a commercial building at 186 Linwood Avenue, with a fence along the boundary line that separates the two properties. At the time of the events at issue, a 275 gallon oil tank was located outdoors at 284 Linwood Avenue adjacent to the eastern wall of the residence, approximately six or seven feet from the fence. On May 28, 2020, Santa Fuel, Inc. (Santa), delivered 184 gallons of heating oil to the tank at 284 Linwood Avenue. Six days later, on June 3, 2020, Santa received a service call for 284 Linwood Avenue reporting that there was no hot water at the property. A technician from Santa responded to the call and noted that the tank was empty and that the oil had leaked out of the bottom of the tank. Santa reported the oil spill to the Department of Energy and Environmental Protection (DEEP).

Shortly after the oil spill at 284 Linwood Avenue, DEEP contacted Christopher Kopley, a licensed environmental professional with Advanced Environmental Redevelopment, LLC (AER), and requested that he investigate whether the spill impacted 186 Linwood Avenue. DEEP was familiar with Kopley because he had managed environmental remediations and monitor-

by the same insurer. We decline to address these claims because we are not persuaded that they are sufficiently likely to arise on remand.

ing at 186 Linwood Avenue related to previous environmental contamination issues on other areas of the property. Kopley testified at trial and was admitted as an expert witness in the field of environmental remediation.

During his investigation, Kopley inspected the oil tank at 284 Linwood Avenue to determine the cause of the spill. Kopley looked inside the tank and noted that there were two holes in the bottom of the tank that appeared to be the result of corrosion and oil stains on the outside of the tank along the bottom in the area of the holes. A gauge at the top of the tank had been broken off, which would have allowed water to enter the tank. In addition, the tank was designed for indoor use only and was not designed to withstand exposure to temperature changes and precipitation.

Kopley testified that, to conduct a proper remediation, the extent of the contamination should be investigated as soon as possible and remediation efforts should begin in the area where the spill occurred. Contamination from an oil spill can spread through three different pathways, all of which should be investigated within days of the spill: through the soil, through the groundwater, and through vapors that migrate through the soil. If the contamination is not addressed in the area of the spill, the extent of the affected area will expand as the groundwater migrates to the surrounding areas. To prevent the contamination from spreading further than necessary and minimize the effects to the surrounding area, remediation should begin in the area of the spill soon after the event. The defendants, however, only excavated the soil directly beneath the spill site; they did not investigate or remediate any potential contamination to the groundwater or soil in the surrounding area. In addition, Kopley did not have permission from the defendants to investigate the contamination on the 284 Linwood Avenue property until

approximately three years after the spill and, even then, did not have authorization to investigate potential impacts from soil vapors.

Kopley installed monitoring wells on the 186 Linwood Avenue property to identify the area of the contamination on that parcel. Approximately one month after the spill, Kopley checked the monitoring wells and found that they contained evidence of heating oil in the soil and groundwater. At that time, AER manually removed as much of the contaminated soil as possible from the wells. AER continued to manually remove contaminated soil from the wells installed on the 186 Linwood Avenue property for approximately one year after the spill. Without addressing the contamination on the 284 Linwood Avenue property, however, it was not possible to complete the remediation solely from the 186 Linwood Avenue property. AER continued to monitor the wells at 186 Linwood Avenue through the date of trial; the week before trial, oil continued to seep into the wells.

On November 17, 2020, the plaintiff commenced the present action against Linwood and McGoldrick. On November 9, 2022, the plaintiff filed an amended complaint adding Mary Jane McGoldrick as a defendant in her capacity as conservator of McGoldrick.[3] The operative complaint contains ten counts. Counts one and two sound in common-law negligence and allege that the failure of McGoldrick and Linwood to exercise reasonable care in maintaining the 284 Linwood Avenue property "caused and continues to cause contamination of the air, soil and groundwater on, at, and beneath [186 Linwood Avenue]."[4] Counts three and four sound in

[3] The record indicates that Mary Jane McGoldrick was appointed conservator of the person and estate of McGoldrick on December 14, 2020, and granted authority over McGoldrick's real property and business interests.

[4] Specifically, the complaint alleges that the defendants were negligent for, inter alia, "directing the activities that caused the [oil spill]," "failing to properly direct the activities which would have prevented the [oil spill]," "failing to exercise reasonable care in the maintenance of [284 Linwood

common-law negligent nuisance based on the same acts of negligence described in the first two counts. Counts five and six seek reimbursement from the defendants for the costs of remediation pursuant to General Statutes § 22a-452.[5] Counts seven and eight allege that the defendants "unreasonably polluted, impaired or destroyed . . . the public trust in the water and/or natural resources of the [state]," and seek declaratory and injunctive relief pursuant to General Statutes § 22a-16.[6] Counts nine and ten sound in negligence per se based on the defendants' alleged violation of General Statutes §§ 22a-16, 22a-427,[7] and 22a-430.[8]

Avenue]," "failing to inspect [284 Linwood Avenue] regularly or failing to exercise reasonable care in [their] inspection of [284 Linwood Avenue]," and "failing to property inspect and monitor the condition of the oil tank . . . ."

[5] General Statutes § 22a-452 provides in relevant part: "(a) Any person, firm, corporation or municipality which contains or removes or otherwise mitigates the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes resulting from any discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste shall be entitled to reimbursement from any person, firm or corporation for the reasonable costs expended for such containment, removal, or mitigation, if such oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes pollution or contamination or other emergency resulted from the negligence or other actions of such person, firm or corporation. When such pollution or contamination or emergency results from the joint negligence or other actions of two or more persons, firms or corporations, each shall be liable to the others for a pro rata share of the costs of containing, and removing or otherwise mitigating the effects of the same and for all damage caused thereby. . . ."

[6] General Statutes § 22a-16 provides in relevant part: "[A]ny person, partnership, corporation, association, organization or other legal entity may maintain an action in the superior court for the judicial district wherein the defendant is located, resides or conducts business . . . for declaratory and equitable relief against . . . any person, partnership, corporation, association, organization or other legal entity, acting alone, or in combination with others, for the protection of the public trust in the air, water and other natural resources of the state from unreasonable pollution, impairment or destruction . . . ."

[7] General Statutes § 22a-427 provides: "No person or municipality shall cause pollution of any of the waters of the state or maintain a discharge of any treated or untreated wastes in violation of any provision of this chapter."

[8] General Statutes § 22a-430 provides in relevant part: "(a) No person or municipality shall initiate, create, originate or maintain any discharge of

On August 24, 2022, the defendants filed a jury claim. On November 28, 2023, the plaintiff moved to strike the jury claim as to counts seven and eight on the basis that those counts sought declaratory and injunctive relief, which the plaintiff argued should be decided by the court rather than a jury. On December 4, 2023, prior to the commencement of evidence, the court, *Gould*, *J.*, heard argument on various pending matters. At that time, the defendants stated that they did not object to the plaintiff's motion to strike the jury claim with respect to counts seven and eight because they agreed that those counts sought only declaratory and injunctive relief and that whether to grant such relief is "a question for the court and not a question for the jury." The court granted the motion.

Trial commenced on December 7, 2023, at which the plaintiff presented the testimony of Peter Russell, the president of Santa; Kopley; and Michael Schinella, the managing member of the plaintiff. On December 12, 2023, after the plaintiff rested its case but before the defendants presented any evidence, the defendants orally moved for a directed verdict on the basis that the plaintiff did not present sufficient evidence of negligence, proximate cause, or that McGoldrick had possession or control of the oil tank. Following oral argument, the trial court, *Gould*, *J.*, granted the defendants' motion for a directed verdict as to all counts.[9] In its oral ruling

water, substance or material into the waters of the state without a permit for such discharge issued by the [Commissioner of Energy and Environmental Protection]. . . ."

[9] We note that, when a case is tried to the court, the proper mechanism for challenging the sufficiency of the evidence at the close of the plaintiff's case is a motion to dismiss pursuant to Practice Book § 15-8, rather than a motion for directed verdict. Following oral argument, on February 21, 2025, this court, for the purpose of ascertaining whether the plaintiff had appealed from a final judgment, sua sponte ordered the trial court to articulate whether its order granting the motion for directed verdict also disposed of counts seven and eight of the amended complaint—which, as noted previously in this opinion, were tried to the court—and, if so, whether the court rendered judgment on all counts of the amended complaint. On April 2, 2025, the

explaining its reasoning for granting the motion, the court only addressed the negligence issues raised by the defendants; the court did not address any of the plaintiff's statutory claims. Judgment in favor of the defendants was rendered the same day. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The plaintiff first claims that the trial court erred in granting the motion for a directed verdict. In making that claim, the plaintiff focuses solely on the elements of negligence addressed by the court, arguing that there was sufficient evidence presented from which a jury reasonably could have found in favor of the plaintiff with respect to each element. We agree with the plaintiff that the court erred in directing a verdict in favor of the defendants on counts one through four of the complaint alleging common-law negligence and nuisance. We further conclude that the plaintiff abandoned any claim challenging the court's ruling with respect to counts five through ten of the complaint.

We begin by setting forth the standard of review applicable to the plaintiff's claim. "Whether the evidence presented by the plaintiff is sufficient to withstand a motion for a directed verdict is a question of law, over which our review is plenary. . . . Directed verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusion. . . . In reviewing the trial court's decision [to grant a defendant's motion for a directed verdict] we must consider

court, *Gould*, *J.*, issued an articulation stating that it had "granted the defendants' motion for a directed verdict as to all counts of the complaint" and that "[j]udgment entered forthwith." Accordingly, we treat the order granting a directed verdict as to counts seven and eight as a dismissal pursuant to Practice Book § 15-8. See, e.g, *McMillion* v. *Commissioner of Correction*, 151 Conn. App. 861, 866 n.6, 97 A.3d 32 (2014).

the evidence in the light most favorable to the plaintiff. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party." (Internal quotation marks omitted.) *Farrell* v. *Johnson & Johnson*, 335 Conn. 398, 416–17, 238 A.3d 698 (2020).

In assessing whether the evidence was sufficient to survive a motion for a directed verdict, we emphasize that "[i]t is [the] function of the jury to draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Internal quotation marks omitted.) *Curran* v. *Kroll*, 303 Conn. 845, 856, 37 A.3d 700 (2012). "[P]roof of a material fact by inference from circumstantial evidence need not be so conclusive as to exclude every other hypothesis. It is sufficient if the evidence produces in the mind of the trier a reasonable belief in the probability of the existence of the material fact. . . . Thus, in determining whether the evidence supports a particular inference, we ask whether that inference is so unreasonable as to be unjustifiable. . . . In other words, an inference need not be compelled by the evidence; rather, the evidence need only be reasonably susceptible of such an inference." (Emphasis omitted; internal quotation marks omitted.) *Procaccini* v. *Lawrence + Memorial Hospital, Inc.*, 175 Conn. App. 692, 717, 168 A.3d 538, cert. denied, 327 Conn. 960, 172 A.3d 801 (2017).

"This court has emphasized two additional points with respect to . . . motions for a directed verdict: First, the plaintiff in a civil matter is not required to prove his case beyond a reasonable doubt; a mere preponderance of the evidence is sufficient. Second, the well established standards compelling great deference to the historical function of the jury find their roots in the constitutional right to a trial by jury." (Internal

quotation marks omitted.) *Pellett* v. *Keller Williams Realty Corp.*, supra, 177 Conn. App. 48.

The following additional procedural history is relevant to the plaintiff's claim. On December 8, 2023, during the cross-examination of Kopley, the defendants moved to strike "any testimony from [Kopley] with respect to the alleged [cause] of the failure [of the oil tank]." The defendants argued that Kopley's testimony at trial that he inspected the oil tank was inconsistent with a portion of his deposition testimony, in which he testified that he had not been to the 284 Linwood Avenue property and had not done any "investigative or remediative work" on that property. The trial court reserved ruling on the defendants' motion. On redirect examination, Kopley testified that he had, in fact, been to the 284 Linwood Avenue property to inspect the oil tank, as evidenced by photographs that he took of the tank and the location of the oil spill, which were attached to one of his reports and admitted into evidence as full exhibits. Kopley further clarified that, when he testified at his deposition that he had not done any "investigative or remediative work" at 284 Linwood Avenue, he meant that he had not investigated the impact of the spill or conducted any remediation work on that property.

In their oral motion for a directed verdict, the defendants asked the court to direct a verdict in their favor "as to all counts against all defendants." During oral argument on the motion, however, the defendants focused only on issues related to the plaintiff's negligence claims. First, the defendants renewed their previous request to strike the portions of Kopley's testimony regarding the cause of the oil tank failure, as well as the portions of reports authored by Kopley related to the same issue, and argued that there was no admissible evidence establishing that the defendants' negligence caused the tank to leak.

Second, the defendants argued that the court should direct a verdict as to all counts against McGoldrick in his individual capacity because the plaintiff failed to present evidence that he "individually has a legal duty with respect to the property at issue or the fuel oil tank at issue." The defendants further argued that "[t]here has been absolutely no evidence that [McGoldrick] individually had possession or control of 284 Linwood Avenue or that he created the defect at issue." The defendants further argued that the plaintiff did not present any evidence that would allow the court to pierce the corporate veil and hold McGoldrick personally liable for the acts of Linwood.

With respect to the defendants' argument regarding Kopley's inspection of the oil tank, the plaintiff argued that Kopley had clarified on redirect examination that he did inspect the oil tank and that his testimony regarding the cause of the oil spill was supported by photographs that were admitted into evidence. The plaintiff further argued that any inconsistency between Kopley's trial testimony and his deposition was an issue for the jury and did not render the plaintiff's evidence insufficient as a matter of law. With respect to McGoldrick, the plaintiff argued that evidence that he personally dealt with Santa in connection with the oil tank and that he was the sole member and manager of Linwood was sufficient for the jury to find him personally liable. The plaintiff further noted that the complaint contained additional counts not specifically addressed by the defendants, arguing: "We have negligen[ce] per se counts. We have many different counts that would mean he had to have some duty. He has a duty not to create a nuisance. An oil spill, we have an argument there [that's] a nuisance. There's many levels here that can be addressed. I don't think [McGoldrick] should be able to escape liability on the basis of that argument."

In its oral ruling granting the defendants' motion, the court did not separately address each count of the complaint. Rather, the court's oral decision focused only on the issues related to negligence raised by the defendants, without articulating whether those issues also applied to the plaintiff's statutory claims. Specifically, the court stated that "the plaintiff must prove the defendants owed a duty to the plaintiff and somehow breached that duty. Reviewing the evidence in a light [most] favorable to the plaintiff, the plaintiff has only shown that there was an above ground oil tank that had some kind of marking on it that said indoor tank, it was on the defendant's property, it had a hole in it, and there was [heating] oil in the ground. The court has not heard a scintilla of evidence that the defendants were negligent, how they were negligent, and that the alleged negligence was the proximate cause of the plaintiff's damages. There has been no evidence that the defendant, either McGoldrick or [Linwood], was in possession or control of the oil tank. Merely making those allegations in a complaint is not enough. For those reasons the defendants' motion for directed verdict as to [all] defendants is granted."

A

Before addressing the merits of the plaintiff's claim that the court erred in granting the defendants' motion for a directed verdict, we clarify the scope of the plaintiff's challenge to that ruling. As discussed previously, the court's oral ruling on the defendants' motion for a directed verdict focused solely on issues related to whether the plaintiff established negligence. The court did not expressly address the plaintiff's statutory claims.

On appeal, the plaintiff argues only that the court erred in granting a directed verdict because there was sufficient evidence that the defendants were negligent,

had possession and control of the oil tank, and proximately caused the plaintiff's damages. The plaintiff's arguments plainly are sufficient to challenge the trial court's ruling as applied to counts one through four of the complaint alleging common-law negligence and negligent nuisance because both causes of action required the plaintiff to prove that the defendants were negligent and that such negligence caused the plaintiff's damages. See *Pestey* v. *Cushman*, 259 Conn. 345, 361, 788 A.2d 496 (2002) ("[I]n order to recover damages in a common-law private nuisance[10] cause of action, a plaintiff must show that the defendant's conduct was the proximate cause of an unreasonable interference with the plaintiff's use and enjoyment of his or her property. The interference may be either intentional . . . or the result of the defendant's negligence." (Citation omitted; footnote added.)); see also *Fisk* v. *Redding*, 164 Conn. App. 647, 656 n.9, 138 A.3d 410 (2016).[11]

[10] This case deals with a private nuisance because it is "concerned with conduct that interferes with an individual's private right to the use and enjoyment of his or her land." *Pestey* v. *Cushman*, supra, 259 Conn. 357. In contrast, "[p]ublic nuisance law is concerned with the interference with a public right, and cases in this realm typically involve conduct that allegedly interferes with the public health and safety." Id.

[11] In *Fisk*, this court recognized that "a line between nuisance and negligence . . . may or may not exist, depending on the case at issue." *Fisk* v. *Redding*, supra, 164 Conn. App. 656 n.9. In that case, the plaintiff claimed that the trial court improperly granted summary judgment in favor of the defendant on the plaintiff's nuisance claim. Id., 648–49. On appeal, the defendant "assert[ed] that the plaintiff's claim is really one for negligence; therefore it cannot be a nuisance claim." Id., 656 n.9. Citing commentary from legal scholars "address[ing] the sometimes overlapping nature of nuisance and negligence liability," this court explained that " '[t]here may be nuisances that do not involve negligence, and there may be negligence that does not produce a nuisance (though it causes other injury). But negligence is one way in which a nuisance may be caused, and where that is the case there is no distinction—the two coalesce.' . . . 1 F. Harper et al., Torts (3d Ed. 2006) § 1.23, pp. 10[1]–102." *Fisk* v. *Redding*, supra, 656 n.9; see also 4 Restatement (Second), Torts § 822, comment (c), p. 110 (1979) ("[N]egligent interference with the use and enjoyment of land is private nuisance in respect to the interest invaded and negligence in respect to the type of conduct that causes the invasion. Many interests other than those in the

In addition, the complaint relied on the same allegations of negligence in support of both causes of action.

The plaintiff does not, however, argue that the court erred in granting a directed verdict as to the statutory causes of action alleged in counts five through eight of the operative complaint or the negligence per se claims in counts nine and ten; in fact, the plaintiff's principal appellate brief does not mention those claims at all. In its reply brief, the plaintiff states in a footnote that, "[s]ignificantly, the trial court's decision granting the defendants' motion for directed verdict was silent as to the plaintiff's statutory causes of action," but does not present any further argument with respect to those causes of action.

It is well established that "[f]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed." (Internal quotation marks omitted.) *Jalbert* v. *Mulligan*, 153 Conn. App. 124, 133, 101 A.3d 279, cert. denied, 315 Conn. 901, 104 A.3d 107 (2014). "Whe[n] an issue is merely mentioned, but not briefed beyond a bare assertion of the claim, it is deemed to have been waived." (Internal quotation marks omitted.) *Connecticut Coalition Against Millstone* v. *Connecticut Siting Council*, 286 Conn. 57, 87, 942 A.2d 345 (2008). Because the plaintiff failed to raise or brief any claim challenging the trial court's ruling with respect to counts five through ten of the complaint, we conclude that the plaintiff has waived any such claim.

use and enjoyment of land may be invaded by negligent . . . conduct, and it is only when an interest in the use and enjoyment of land is invaded that an action for private nuisance and an action based on the type of conduct involved are actions for the same cause, and are not to be distinguished but identified.").

B

As discussed previously, the trial court's ruling directing a verdict in favor of the defendants was based on its determination that the plaintiff did not present sufficient evidence to establish that the defendants were negligent, had possession or control of the oil tank, or proximately caused the plaintiff's damages. The plaintiff claims that it presented sufficient evidence with respect to each of those issues. We address each issue in turn.

1

We first address the plaintiff's claim that the court erred in determining that the plaintiff failed to present evidence that the defendants were negligent. The plaintiff argues that Kopley's testimony provided a sufficient basis from which the jury could have found that the defendants were negligent. Specifically, the plaintiff relies on Kopley's testimony that (1) the defendants improperly used an indoor oil tank outdoors and failed properly to maintain that tank, and (2) the defendants failed to undertake proper remediation efforts after the oil spill. We agree with the plaintiff that there was sufficient evidence for the jury to find that the defendants were negligent.

"In order to make out a prima facie case of negligence, the plaintiff must submit evidence that, if credited, is sufficient to establish duty, breach of duty, causation, and actual injury. . . . A defendant's duty and breach of duty is measured by a reasonable care standard, which is the care [that] a reasonably prudent person would use under the circumstances." (Citation omitted; internal quotation marks omitted.) *Rawls* v. *Progressive Northern Ins. Co.*, 310 Conn. 768, 776, 83 A.3d 576 (2014). "It is well settled that the question of reasonable care under the circumstances is a question for the jurors, to which we ask them to bring their common

experiences to bear in assessing the wisdom of the plaintiff's action." *O'Brikis* v. *Supermarkets General Corp.*, 34 Conn. App. 148, 151 n.1, 640 A.2d 165 (1994).

Regarding the defendants' alleged negligence, Kopley testified that he physically inspected the tank shortly after the incident. During that inspection, he saw holes in the bottom of the tank with stains around them, indicating that was the source of the leak. He also saw a brass tag on the top of the tank indicating that the tank was "for indoor use only." In addition, Kopley reviewed photographs taken by the Santa service technician on the day the leak was reported, which depicted the condition of the tank at that time. The photographs showed that the tank was sitting on concrete blocks that were buried in the dirt so that the tank was almost touching the ground and surrounded by overgrown grass and weeds. The photographs also showed that a fuel gauge that was supposed to be connected to the top of the tank had broken off, which would have allowed water to enter the tank. Kopley testified that the conditions of the tank showed that it had not been properly maintained.

Kopley also testified that the use of an indoor tank and broken fuel gauge likely caused the holes in the tank. In particular, Kopley testified that the holes appeared to be the result of corrosion and explained that the defendants' use of an indoor oil tank and their failure to repair the broken fuel gauge both were likely factors in causing that corrosion. He testified that an outdoor oil tank is either double walled or contains an internal bladder that holds the oil and an external steel structure surrounding it, which provides a secondary containment so that, in the event of a leak in the internal layer, the outer layer will prevent the oil from discharging to the ground. Kopley also testified that an indoor tank like the one used by the defendants does not contain a secondary containment, so any leak will cause

oil to discharge to the ground. In addition, he testified that, when an indoor tank is placed outdoors, exposure to temperature changes can cause condensation to form inside the tank, which results in corrosion. Kopley further testified that the broken fuel gauge would have allowed water to enter the tank, which also would have contributed to the corrosion. In his spill investigation report dated August, 2023, which was admitted into evidence as a full exhibit, Kopley wrote that the information he reviewed "document[ed] [that] the heating oil tank failure [was] due to the lack of maintenance and use of an inappropriate tank for outdoor use . . . ."

Finally, Kopley testified that the defendants did not take appropriate action after the leak to investigate and remediate the contamination. In particular, he testified that investigation of an oil spill should begin in the area of the spill "within days" to determine the extent of the contamination. As noted previously, Kopley further testified that the defendants did not properly investigate or remediate the contamination because they only excavated the soil directly beneath the oil tank. The defendants did not conduct any groundwater or soil vapor testing or take steps to remove contaminated groundwater. Kopley also testified that the defendants' failure to investigate or remediate the contamination from the 284 Linwood Avenue property made it impossible for the plaintiff to properly remediate its own property.

The defendants contend that the jury could not have relied on Kopley's testimony to find that the defendants were negligent because Kopley "did not actually perform any investigations at 284 Linwood [Avenue]." In support of that argument, the defendants rely on Kopley's deposition testimony in which he testified that he did not do any "investigative or remediative work" relating to 284 Linwood Avenue and that he had not

physically been to the defendants' property.[12] The defendants argue that Kopley's deposition testimony demonstrates that "he did not actually investigate 284 Linwood [Avenue]."

We are not persuaded by the defendants' argument. On redirect examination, Kopley testified that he had, in fact, been to 284 Linwood Avenue and physically inspected the oil tank. He testified that he took photographs at that time, which were admitted into evidence as part of his spill investigation report dated August 31, 2020, and which indicate that he was physically present at 284 Linwood Avenue while the tank was still on the property. He further clarified that, when he was asked during his deposition whether he had done any "investigative or remediative" work at 284 Linwood Avenue, he understood the question to be asking whether he had conducted environmental investigation or remediation of the contamination, and that he did not consider his inspection of the oil tank to fall into that category.

Although the defendants could have relied on Kopley's deposition testimony to argue to the jury that it should not credit his opinions regarding the cause of the leak, a directed verdict is not warranted merely because there

[12] The deposition transcript was not marked as an exhibit. At trial, the defendants' counsel read portions of the transcript and asked Kopley whether it was an accurate reflection of his testimony, to which he agreed. Specifically, Kopley was asked at his deposition, "what investigative and remediative work have you done that relates to 284 Linwood Avenue?" Kopley replied, "None." He also was asked at his deposition whether he had "the ability to testify about any investigative or remediative work you've done on 284 Linwood Avenue?" Kopley replied, "I have been . . . studying this spill from 284 [Linwood Avenue] as it's affected 186 [Linwood Avenue]. So, I have not physically walked over the [property] line . . . but I have been subject to and that spill at 284 [Linwood Avenue] has been the subject of my actions on 186 [Linwood Avenue]. . . . Have I been on 284 [Linwood Avenue]? No, of course not. . . . Have I studied 284 [Linwood Avenue's] issues, yes, as it's impacted 186 [Linwood Avenue]." Finally, he was asked at his deposition, "you've never been on 284 [Linwood Avenue] have you?" Kopley replied, "No. . . . Other than a look across the fence."

is conflicting evidence in the record; rather, the court should grant a directed verdict only if "a jury could not reasonably and legally have reached any other conclusion." (Internal quotation marks omitted.) *Farrell* v. *Johnson & Johnson*, supra, 335 Conn. 417. "If there is conflicting evidence . . . the fact finder is free to determine which version of the event in question it finds most credible." (Internal quotation marks omitted.) *Fink* v. *Golenbock*, 238 Conn. 183, 210, 680 A.2d 1243 (1996). Kopley's testimony provided a sufficient basis for the jury to find that the defendants failed to exercise reasonable care in maintaining the oil tank and in their remediation efforts following the oil spill. Accordingly, we conclude that there was sufficient evidence for the jury to find that the defendants were negligent.

2

We next address the plaintiff's contention that the court erred in determining that there was insufficient evidence that either McGoldrick or Linwood was in possession or control of the oil tank. We agree that the evidence was sufficient for the jury to find that both McGoldrick and Linwood had control of the oil tank.[13]

This court has explained that "[t]he word control has no legal or technical meaning distinct from that given

[13] In its reply brief, the plaintiff argues for the first time that it "was never required to present evidence of the defendants' possession or control of the oil tank." Specifically, the plaintiff argues that possession or control is an element of a premises liability cause of action but is not an element of either ordinary negligence or private nuisance. The plaintiff further contends that, because "[t]his is not a premises liability case . . . the plaintiff should not be held to premises liability requirements." The plaintiff, however, did not raise this claim before the trial court or in its principal appellate brief, and "we generally decline to address a claim raised for the first time in a reply brief . . . ." (Citation omitted.) *State* v. *Hill*, 307 Conn. 689, 697 n.6, 59 A.3d 196 (2013). Moreover, because we conclude that the plaintiff presented sufficient evidence of the defendants' possession or control of the oil tank, we need not address the plaintiff's claim that it was not required to prove possession or control as an element of its claims.

in its popular acceptation . . . and refers to the power or authority to manage, superintend, direct or oversee." (Internal quotation marks omitted.) *Sweeney* v. *Friends of Hammonasset*, 140 Conn. App. 40, 50, 58 A.3d 293 (2013). A person has possession of land if he or she is " 'in occupation of the land with intent to control it.' " *Millette* v. *Connecticut Post Ltd. Partnership*, 143 Conn. App. 62, 70, 70 A.3d 126 (2013), quoting 2 Restatement (Second), Torts § 328E, p. 170 (1965). Whether a defendant has possession or control over property or a condition thereon is generally a question of fact for the jury. See *State* v. *Tippetts-Abbett-McCarthy-Stratton*, 204 Conn. 177, 185, 527 A.2d 688 (1987) ("the question of whether a defendant maintains control over property sufficient to subject him to [public] nuisance liability normally is a jury question"); *Domogala* v. *Molin*, 57 Conn. App. 525, 528, 749 A.2d 676 (2000) ("In light of the evidence presented, the issue of control of the premises, a question of fact . . . was in conflict. The court therefore should not have concluded that a jury could not, without speculation, have returned a verdict for the defendant . . . ." (Citation omitted.)).

In support of its argument that the jury reasonably could have found that both McGoldrick and Linwood had possession or control over the oil tank, the plaintiff first relies on evidence that McGoldrick contacted Santa about the oil spill and communicated with Santa about the leak. Specifically, Peter Russell, Santa's president, provided a copy of customer account notes maintained by Santa concerning the 284 Linwood Avenue account, a redacted version of which was admitted as a full exhibit. Russell testified that Santa maintains such notes on a software system for every customer, which documents every customer contact and "tells a story of what happens on certain dates when we have contact with a customer." A redacted version of the note from the date of the oil spill states: "Per Bob Shaw . . . no

hot water—tank out of oil. Tank empty, [it's] leaking out [of] the bottom. I put customer on a can. . . . [McGoldrick] said he would call [S]anta tomorrow . . . ." An invoice from the same date indicates that Shaw was the Santa technician that responded to the call. In addition, the invoices from Santa for its work related to the oil tank were addressed to "McGoldrick Investment Property." A jury reasonably could infer from this evidence that McGoldrick was Santa's point of contact for issues relating to the oil tank, that he contacted Santa on the day of the spill, and that he communicated with Shaw about the next steps to be taken following the spill. As the plaintiff argues, this evidence suggests that "McGoldrick had power or authority regarding the oil tank on the day of the oil release and assumed management responsibilities in connection with the oil release."

Moreover, as the defendants concede, McGoldrick was the sole member and manager of Linwood, which in turn owned 284 Linwood Avenue.[14] Kopley's spill investigation report from February, 2023, attaches two letters from Sovereign Consulting, Inc. (Sovereign), regarding remediation work relating to the incident, both of which were addressed to Linwood with a salutation reading: "Dear Mr. McGoldrick." The first letter, dated January 18, 2021, documents excavation and testing that was completed at 284 Linwood Avenue on December 30, 2020. The second letter, dated June 22, 2021, contains a proposal for additional investigation work relating to the spill. The letter begins by stating that Sovereign was submitting the proposal "for your

[14] We note that the property field card for 284 Linwood Avenue, which was attached to Kopley's August, 2020 spill investigation report, indicates that McGoldrick owned the property directly from 1994 through 2005, at which time he transferred ownership to Linwood. Thus, the evidence indicates that McGoldrick had an ownership interest in the property, either directly or derivatively through Linwood, for more than twenty-five years prior to the incident.

review and approval," and closes by inviting McGoldrick to "contact [Sovereign] if you have any questions or require additional information pertaining to this proposed work scope." These letters support the inference that Linwood was responsible for any investigation and remediation work at 284 Linwood Avenue following the oil spill, and that McGoldrick, in his role as sole member and manager of Linwood, had authority to direct Linwood's response. We conclude that, on the basis of this evidence, the jury reasonably could have found that McGoldrick and Linwood had " 'authority to manage, superintend, direct or oversee' " the maintenance of the oil tank. *Sweeney* v. *Friends of Hammonasset*, supra, 140 Conn. App. 50.

The defendants argue that the jury could not find McGoldrick personally liable based on this evidence because it does not show that he "was acting as anything other than [Linwood's] sole member," which the defendants contend is not sufficient to pierce the corporate veil of Linwood. It is well established, however, that a member of a limited liability company may be held liable for his or her own tortious conduct "without requiring the piercing of the corporate veil . . . ." (Citation omitted.) *Sturm* v. *Harb Development, LLC*, 298 Conn. 124, 133, 2 A.3d 859 (2010). Although a member of a limited liability company "does not incur personal liability for [the company's] torts merely because of his official position," if he "commits or participates in the commission of a tort, whether or not he acts on behalf of [the company], he is liable to third persons injured thereby." (Internal quotation marks omitted.) *Ventres* v. *Goodspeed Airport, LLC*, 275 Conn. 105, 141–42, 881 A.2d 937 (2005), cert. denied, 547 U.S. 1111, 126 S. Ct. 1913, 164 L. Ed. 2d 664 (2006). "[T]he issue of whether a corporate officer has committed or participated in the wrongful conduct of a corporation is a question of fact . . . ." Id., 142; see also, e.g., *Scribner*

v. *O'Brien, Inc.*, 169 Conn. 389, 403–404, 363 A.2d 160 (1975) (evidence that president of construction company was present on job site and personally supervised construction of house and driveway sufficient to hold him individually liable for defects in construction); *Joseph General Contracting, Inc.* v. *Couto*, 144 Conn. App. 241, 257–58, 72 A.3d 413 (2013) (court reasonably found that sole member of limited liability company was liable for causing debris to be buried underneath foundation on construction site where he worked on construction project and there was no evidence of any intervening cause), rev'd in part on other grounds, 317 Conn. 565, 119 A.3d 570 (2015). Thus, McGoldrick's liability is not diminished by the fact that he had control of the oil tank only in his role as member and manager of Linwood.[15]

3

We next address the plaintiff's contention that the trial court erred in determining that the plaintiff failed to present evidence to establish proximate cause. In support of its argument, the plaintiff relies on Kopley's testimony that (1) the oil that leaked from the defendants' tank migrated to the plaintiff's property, (2) the heating oil found on the plaintiff's property was not from a preexisting source of contamination, and (3) the defendants' failure to address the contamination following the spill prevented the plaintiff from properly remediating the contamination and increased the cost of the remediation. We agree that the plaintiff presented

[15] The defendants also argue that, because there was evidence that Santa "delivered oil to 284 Linwood [Avenue] for several years" and "that its employees were instructed and trained not to deliver oil if doing so would create a safety risk or spill risk," the evidence suggests that the defendants relied on Santa to maintain the oil tank. Even if a jury could find that the defendants relinquished all control over the oil tank simply because they hired Santa to provide heating oil, as discussed previously in this opinion, the fact that there is conflicting evidence in the record is not a sufficient basis to grant a directed verdict.

sufficient evidence for the jury to find that the defendants proximately caused the plaintiff's damages.

"[T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection. . . . This causal connection must be based upon more than conjecture and surmise." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, 307 Conn. 364, 374–75, 54 A.3d 532 (2012).

Kopley testified that, when there is a sudden release of a large quantity of oil, it seeps through the soil to the surface of the water table and then "starts to flow sideways because it's being driven down by the weight of the additional product . . . ." He testified that, "as that product [the oil] is released, it flow[ed] downward, outward on the water table surface and in an easterly direction . . . ." In his August, 2023 spill investigation report, which was admitted as a full exhibit, Kopley further explained that the topography of the surrounding area supported the conclusion that the oil would have migrated from the location of the spill to the plaintiff's property; specifically, he explained that the "nearly flat groundwater surface [in the area] would be vulnerable to radial spread of contamination," and that "[t]he mass of the initial release combined with the driving force of rainfall percolation through the soils has likely driven the [oil] eastward on to . . . 186 Linwood Avenue . . . ."

Kopley also testified that the oil found on the plaintiff's property was from the defendants' oil tank and not from another source. He testified that, approximately one month after the leak, he installed monitoring wells at 186 Linwood Avenue and found approximately

1.5 feet of floating petroleum product in the groundwater. He testified that the petroleum was easily identified as heating oil because of its bright red color and distinctive smell. Kopley further testified that the monitoring wells continued to show the presence of heating oil as recently as the week before trial. In addition, Kopley testified that, although there were contamination issues at 186 Linwood Avenue prior to the oil spill, those issues were on the eastern side of the property, whereas the heating oil was found on the western side. He also testified that the prior issues involved different contaminants; in fact, he testified that in thirteen years of groundwater monitoring at 186 Linwood Avenue, he had never detected any indication of heating oil prior to this incident.

Finally, Kopley testified that the defendants' failure properly to address the oil spill exacerbated the contamination of the plaintiff's property and increased the cost of the remediation. Specifically, he testified that, following the release of oil into the ground, it is important to begin investigation and remediation at the source of the spill as soon as possible in order to "beat the spread" and "make that [area of contamination] as small as possible . . . ." In addition, Kopley testified that the most effective remediation plan would be to address the contamination from 284 Linwood Avenue using a method called vacuum extraction, in which powerful vacuum trucks are used to remove the contaminated groundwater. That process would be repeated several times as the oil percolates through the soil to the groundwater, until the groundwater quality complies with state regulations. Kopley testified that beginning the process as soon as possible after the spill would have prevented the spread of contamination and decreased the amount of time necessary to complete the remediation. He further testified that conducting

the remediation entirely from 186 Linwood Avenue would take significantly longer and be more expensive.

In arguing that the evidence was insufficient to establish proximate cause, the defendants contend that Kopley's testimony that there was a history of contamination at 186 Linwood Avenue undermined his conclusion that the oil spill at the defendants' property was the cause of the contamination at issue in this case. As noted previously, however, Kopley testified that the previous contamination at 186 Linwood Avenue occurred on the opposite side of the property and did not involve heating oil. The defendants also argue that Kopley "acknowledged that he lacked sufficient data to model the purported spread of oil from 284 Linwood [Avenue]." In fact, however, Kopley testified that, using best practices accepted by both state and federal environmental authorities, he had sufficient data to determine the spread of the contamination from the oil spill.[16]

Moreover, it is well established that "[i]t is the [jury's] exclusive province to weigh the conflicting evidence and to determine the credibility of witnesses. . . . The [jury] can . . . decide what—all, none, or some—of a witness' testimony to accept or reject." (Internal quotation marks omitted.) *Micalizzi* v. *Stewart*, 181 Conn. App. 671, 691, 188 A.3d 159 (2018). "[T]he issue of proximate causation is ordinarily a question of fact for the trier. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach

[16] In the portion of the testimony cited by the defendants, in response to a question on cross-examination whether he had sufficient data, Kopley testified that "[w]e have sufficient data, and we could use additional sufficient data." He went on to explain that, while he "can always use more data" to provide a more definitive model of the contamination spread, he stood by his conclusions regarding the cause of the contamination and the cost to remediate it. On redirect examination, Kopley reiterated that "the facts are fairly clear" that the heating oil contamination on 186 Linwood Avenue "was directly related to the release of heating oil from the 284 [Linwood Avenue] property undoubtedly."

only one conclusion; if there is room for a reasonable disagreement, the question is one to be determined by the trier as a matter of fact." (Internal quotation marks omitted.) *Augustine* v. *CNAPS, LLC*, 199 Conn. App. 725, 730, 237 A.3d 60 (2020). In the present case, Kopley's testimony provided a sufficient basis from which the jury could have found that the defendants' negligence was a substantial factor in causing the plaintiff's damages. Accordingly, we conclude that the trial court erred in directing a verdict in favor of the defendants on counts one through four of the complaint.

II

We next address the plaintiff's claim that the trial court erred in ordering the redaction of portions of the account notes regarding Santa's interactions with McGoldrick following the oil spill. We conclude that the trial court erred by excluding the evidence in question.

The following additional procedural history is relevant to this claim. As noted previously, during Russell's testimony, the plaintiff sought to admit notes maintained by Santa regarding the 284 Linwood Avenue account. The defendants agreed that some entries could be admitted but objected to the admission of others. After excusing the jury, the court asked the defendants' counsel to further explain the objection. As relevant here, the defendants objected to the admission of a note dated June 4, 2020, that read: "Rob—stop delivery tank leaking owner changing out per [B]ob's [email]. [McGoldrick] was upset that we contacted [DEEP] regarding the oil tank leak at the cottage. He called John Santa to complain. John recommended that Mark Inderdohnen call him to explain why we had to call [DEEP]. Mark called [McGoldrick] who continued to use profane language, so the call was discontinued." The plaintiff also objected to a portion of the note from the date of the oil spill; see part I B 2 of this opinion;

that indicated that McGoldrick told Santa that "he was going to change the tank out himself." The defendants argued that the challenged portions of the notes were hearsay, related to subsequent remedial measures, and were not relevant.

Immediately following the defendants' argument, the court indicated that it would order the challenged portions of the note redacted, but did not initially state the ground on which it had sustained the objection. After a colloquy between the court and the defendants' counsel clarifying the portions that would be redacted, the plaintiff's counsel asked for permission to be heard on the objection, to which the court responded: "No. Okay. It's not relevant." Without entertaining further argument, the court asked the clerk to bring the jurors back into the courtroom.

The following standard of review and legal principles are relevant to the plaintiff's claim. "To the extent [that] a trial court's admission [or exclusion] of evidence is based on an interpretation of the Code of Evidence, our standard of review is plenary. For example, whether a challenged statement properly may be classified as hearsay and whether a hearsay exception properly is identified are legal questions demanding plenary review. . . . We review the trial court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion." (Internal quotation marks omitted.) *No. 2 Fraser Place Condominium Assn., Inc.* v. *Mathis*, 225 Conn. App. 534, 550, 316 A.3d 813, cert. denied, 350 Conn. 905, 323 A.3d 342 (2024).[17]

[17] Ordinarily, "[i]n addition to the burden of demonstrating an erroneous evidentiary ruling, a party seeking reversal of a judgment must also demonstrate that the challenged ruling was harmful, meaning that it likely affected the outcome." *No. 2 Fraser Place Condominium Assn., Inc.* v. *Mathis*, supra, 225 Conn. App. 550. In the present case, "[b]ecause we address this claim as an issue likely to arise on remand, we need not address questions of harmless error in the present appeal." *State* v. *Raynor*, 337 Conn. 527, 561 n.20, 254 A.3d 874 (2020).

Section 4-1 of the Connecticut Code of Evidence provides that " '[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence." "Relevance does not exist in a vacuum. . . . To determine whether a fact is material . . . it is necessary to examine the issues in the case, as defined by the underlying substantive law, the pleadings, applicable pretrial orders, and events that develop during the trial. Thus, relevance of an offer of evidence must be assessed against the elements of the cause of action, crime, or defenses at issue in the trial. The connection to an element need not be direct, so long as it exists." (Internal quotation marks omitted.) *Angel C.* v. *Commissioner of Correction*, 226 Conn. App. 837, 846, 319 A.3d 168, cert. denied, 350 Conn. 908, 323 A.3d 1091 (2024).

As explained previously, in granting the defendants' motion for a directed verdict, the trial court determined that the plaintiff failed to present evidence that McGoldrick had possession or control of the oil tank. The redacted portions of the account notes were relevant to that issue. First, evidence that McGoldrick told Santa that "he was going to change the tank out himself" would have further supported the inference that McGoldrick had control over the oil tank. See, e.g., *Panaroni* v. *Johnson*, 158 Conn. 92, 99, 256 A.2d 246 (1969) ("[t]he making of repairs by the landlord, in and of itself, may denote a retention of control or may be an indicia of limited, temporary or full control"). Second, evidence that McGoldrick reacted angrily when he learned that Santa had reported the oil spill to DEEP would have supported the inference that McGoldrick bore responsibility for the alleged improper maintenance of the oil tank. As the plaintiff argues, the jury could have inferred from McGoldrick's allegedly angry response to Santa

calling DEEP that he "understood that he and/or [Linwood] were responsible for the environmental impact of the fuel oil spill."

The defendants argue that, even if the redacted portions of the account notes were relevant, we should affirm the trial court's ruling on the basis that the excluded evidence referenced subsequent remedial measures.[18] See, e.g., *Geremia* v. *Geremia*, 159 Conn.

[18] The defendants also argue that we should affirm the trial court's ruling because the redacted portions of the account notes contain hearsay. Prior to offering the account notes as an exhibit, the plaintiff elicited testimony from Russell relevant to establishing that the account notes were admissible under the business record exception to the hearsay rule. See Conn. Code Evid. § 8-4. In their appellate brief, the defendants, relying on our decision in *Midland Funding, LLC* v. *Mitchell-James*, 163 Conn. App. 648, 656, 137 A.3d 1 (2016), argue that the plaintiff failed to present evidence to establish that the software system that Santa used to create the account notes was reliable. See id. ("the proponent of the computer generated business records must establish that the basic elements of the computer system are reliable" (internal quotation marks omitted)).

As noted previously, the defendants objected to the challenged portions of the account notes on three different grounds: that they contained hearsay, that they related to subsequent remedial measures, and that they were not relevant. The court initially sustained the objection without indicating the ground on which it was doing so. When the plaintiff asked to be heard regarding the objection, the court refused, stating, "[i]t's not relevant." Had the court sustained the defendants' objection on the ground that it was hearsay, the plaintiff would have the opportunity to elicit additional testimony from Russell to establish that the software system was reliable. Under these circumstances, we decline to address whether the court properly could have sustained the defendants' objection on hearsay grounds.

The defendants also argue that the plaintiff waived its right to challenge the court's ruling excluding portions of the account notes because the plaintiff "did not make a clear record of [its] objections during trial." This argument ignores that it was the defendants, not the plaintiff, who objected to the admission of the account notes; as the offering party, the plaintiff was not required to object to the defendants' objection. Because the court sustained the objection on relevance grounds, the plaintiff's only obligation was to ensure that there was an adequate record for this court to review whether the excluded portions of the account notes were relevant, which the plaintiff did by having the unredacted version marked for identification. See *Finan* v. *Finan*, 287 Conn. 491, 495, 949 A.2d 468 (2008) ("[t]he purpose of marking an exhibit for identification is to preserve it as part of the record and to provide an appellate court with a basis for review" (internal quotation

App. 751, 779, 125 A.3d 549 (2015) ("[w]e have long held that this court may affirm a trial court's proper decision, although it may have been founded on a wrong reason" (internal quotation marks omitted)). Although the defendants are correct that evidence of subsequent remedial measures are "inadmissible to prove negligence or culpable conduct in connection with the event," such evidence "is admissible when offered to prove controverted issues such as ownership [or] control . . . ." Conn. Code Evid. § 4-7 (a); see also *Smith* v. *Greenwich*, 278 Conn. 428, 447, 899 A.2d 563 (2006) ("'[i]n several cases, we have admitted . . . evidence [of subsequent remedial measures] when the defendant's control of the hazardous instrumentality is at issue in the suit' "). Even assuming, therefore, that the redacted portions of the account notes constitute evidence of subsequent remedial measures, that evidence was admissible to prove McGoldrick's control of the oil tank. Accordingly, we conclude that the court abused its discretion in sustaining the defendants' objection to the redacted portions of the account notes.

The judgment is reversed with respect to counts one through four of the complaint and the case is remanded for a new trial on those counts; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

62-64 BANK STREET, LLC *v.* CARMINE AMELIO (AC 48082)

Moll, Westbrook and Prescott, Js.

Syllabus

The defendant tenant appealed from the trial court's judgment for the plaintiff landlord in the plaintiff's summary process action, and the plaintiff

marks omitted)). Accordingly, the plaintiff did not waive its claim that the court erred in sustaining the defendants' objection to the account notes.

moved to dismiss the appeal. The plaintiff claimed, inter alia, that this court lacked subject matter jurisdiction over the appeal because it was jurisdictionally late pursuant to statute (§ 47a-35 (b)). *Held*:

The defendant's appeal was timely pursuant to § 47a-35 (b), as new five day appeal periods with respect to the judgment of possession and the denial of the defendant's motion to reargue arose following the trial court's grant of the defendant's fee waiver application pursuant to the rule of practice (§ 63-1 (c) (1)), this court having determined, under the limited and unique circumstances presented in this appeal, that, when the defendant attempted to file a timely and proper appeal during the appeal periods, the appeal should have remained pending, rather than having been rejected, notwithstanding an error on the appeal form, and, treating the appeal form as if it had been returned on the basis of the error, the defendant corrected it within the time allowed pursuant to the rule of practice ((2024) § 62-7 (a)).

The defendant's appeal was not moot, even though he was no longer in possession of the leased premises, because the parties' lease did not expire until 2027, and, accordingly, if the defendant were successful on the merits of his appeal, he could be afforded practical relief in the form of a writ of restoration.

Considered February 5—officially released May 13, 2025

Procedural History

Summary process action, brought to the Superior Court in the judicial district of Litchfield, where the case was tried to the court, *Lobo*, *J.*; judgment for the plaintiff; thereafter, the court, *Lobo*, *J.*, denied the defendant's motion to reargue and to vacate the judgment of possession, and the defendant appealed to this court; subsequently, the plaintiff filed a motion to dismiss the appeal. *Motion to dismiss appeal denied.*

John D. Tower, in support of the motion.

Carmine Amelio, self-represented, in opposition to the motion.

Opinion

MOLL, J. In this summary process appeal, the self-represented defendant, Carmine Amelio, appeals from the judgment of possession rendered by the trial court in favor of the plaintiff, 62-64 Bank Street, LLC, as well

as from the court's denial of his motion to reargue. On October 11, 2024, the plaintiff moved to dismiss this appeal for lack of subject matter jurisdiction on the grounds that it is (1) jurisdictionally late pursuant to General Statutes § 47a-35 (b)[1] and/or (2) moot because the defendant is no longer in possession of the premises at issue. On February 5, 2025, we denied the plaintiff's motion to dismiss and indicated that an opinion would follow. This opinion sets forth the reasoning for our decision.

The following procedural history is relevant to our resolution of the plaintiff's motion to dismiss. In February, 2024, the plaintiff commenced the present summary process action against the defendant with respect to a commercial property located at 64 Bank Street in New Milford (premises).[2] The sole ground alleged by the plaintiff in support of its complaint was nonpayment

[1] General Statutes § 47a-35 provides: "(a) Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days.

"(b) No appeal shall be taken except within such five-day period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to give bond, as provided in section 47a-35a. If execution has not been stayed, as provided in this subsection, execution may then issue, except as otherwise provided in sections 47a-36 to 47a-41, inclusive."

[2] The plaintiff commenced a separate summary process action (separate action) against the defendant with respect to a commercial property located at 62 Bank Street in New Milford, which action was consolidated with the present action for trial on March 26, 2024. The trial court, *Lobo*, *J.*, rendered judgments of possession in the present action and in the separate action simultaneously. On the basis of the defendant's appeal form, the defendant has appealed only from (1) the judgment of possession rendered in the present action and (2) the denial of his motion to reargue filed in the present action. Thus, the judgment of possession rendered in the separate action is not at issue in this appeal and is not germane to the plaintiff's motion to dismiss. Accordingly, notwithstanding that the present action and the separate action were consolidated for trial, we refer only to the present action in setting forth the relevant procedural history.

of rent by the defendant.[3] The defendant answered the plaintiff's complaint and asserted several special defenses, which the plaintiff denied.

On April 4, 2024, the defendant filed a notice indicating that the present action had been removed to the United States District Court for the Southern District of New York. See 28 U.S.C. §§ 1441[4] and 1446 (2018).[5] On June 27, 2024, the United States District Court for the Southern District of New York granted a motion filed by the plaintiff to remand the present action to the Superior Court, concluding that the removal had been improper and that the present action should have been removed, if at all, to the United States District Court for the District of Connecticut (District Court). Thereafter, the United States District Court for the Southern District of New York remanded the present action to the Superior Court.

On July 15, 2024, the defendant filed a notice indicating that the present action had been removed to the

[3] In a pretrial brief, the plaintiff represented that the parties' lease for the premises began on February 1, 2023, and expires on December 31, 2027.

[4] Title 28 of the United States Code, § 1441, provides in relevant part: "(a) GENERALLY.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. . . ."

[5] Title 28 of the United States Code, § 1446, provides in relevant part: "(a) GENERALLY.—A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action. . . .

"(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded. . . ."

District Court. On July 24, 2024, the District Court, sua sponte, issued an order of remand for lack of subject matter jurisdiction. Thereafter, on August 8, 2024, the District Court remanded the present action to the Superior Court.

Trial in the present action was scheduled to begin on the morning of August 13, 2024. Prior to the start of trial that morning, the defendant filed a notice with the trial court indicating that the present action had been removed, for a second time, to the District Court. Additionally, the defendant filed a separate notice requesting that the trial court take judicial notice that, in light of the aforementioned removal of the present action to the District Court, the trial court lacked jurisdiction to proceed further. That same day, the trial court, *Lobo*, *J.*, summarily denied the defendant's request for judicial notice and proceeded with trial, which the defendant did not attend. The trial court, on the record, defaulted the defendant for his failure to appear at trial.

On August 14, 2024, the trial court rendered a judgment of possession in the plaintiff's favor with respect to the premises. At the outset of its decision, the trial court stated that, "[a]t 8:48 a.m. on the morning of trial, the defendant again filed another last minute notice of removal to the [District Court], making the same jurisdictional arguments that were previously denied . . . . As the [District] Court no longer has jurisdiction pursuant to *Miles* v. *Miles*, [Docket No. 12-CV-4014 (JS) (ETB), 2012 WL 3542319, *1 (E.D.N.Y. August 13, 2012)], and *Shapiro* v. *Logistec USA, Inc.*, 412 F.3d 307, 310–11 ([2d Cir.] 2005), the [trial] court contacted the defendant via both telephone and email informing the defendant that the court was moving forward on the underlying matter. Although [trial] was scheduled for 9:30 a.m., evidence was heard in the afternoon following the defendant's failure to appear . . . ." The trial court

proceeded to determine that (1) the plaintiff had satisfied, by a preponderance of the evidence, its burden of proof and (2) the defendant had failed to establish, by a fair preponderance of the evidence, any defenses. In addition to rendering a judgment of possession in the plaintiff's favor, the trial court determined that the defendant owed an arrearage of $13,113.59 with respect to the premises, exclusive of costs and attorney's fees. There was no additional activity in the present action until August 26, 2024, when the plaintiff filed a summary process execution for possession, which was issued that same day.

On August 28, 2024, the defendant filed a motion to reargue, to reconsider, and to vacate the judgment of possession (motion to reargue) on the basis that the trial court lacked jurisdiction to render the judgment of possession while the present action, after it had been removed to the District Court for a second time, remained pending before the District Court. On August 30, 2024, the trial court summarily denied the defendant's motion to reargue.

Meanwhile, on August 29, 2024, the District Court, sua sponte, issued an order of remand on the basis of lack of subject matter jurisdiction. Thereafter, the District Court remanded the present action to the Superior Court on September 11, 2024.

On September 23, 2024, the plaintiff returned the summary process execution for possession, which reflected that, on September 13, 2024, the defendant's possessions had been removed from the premises. On October 2, 2024, after he had been granted a fee waiver by the trial court on September 25, 2024, the defendant filed this appeal from the judgment of possession and the denial of his motion to reargue.[6]

[6] On the basis of his appeal form and his preliminary statement of the issues, the defendant also is appealing from the trial court's denial of his August 13, 2024 request for judicial notice, an interlocutory ruling that became subject to appellate review upon the rendering of the judgment of

On October 11, 2024, the plaintiff moved to dismiss this appeal for lack of subject matter jurisdiction on two separate grounds. First, the plaintiff asserts that this appeal is jurisdictionally late pursuant to § 47a-35 (b). Second, the plaintiff contends that this appeal is moot because the defendant no longer has possession of the premises. On October 31, 2024, the defendant filed an opposition to the plaintiff's motion to dismiss.[7] For the reasons that follow, we conclude that this appeal is neither jurisdictionally late nor moot.

The following legal principles are relevant to our resolution of the plaintiff's claims. "A threshold inquiry of this court upon every appeal presented to it is the question of appellate jurisdiction. . . . It is well established that the subject matter jurisdiction of the Appellate Court . . . is governed by [General Statutes] § 52-263, which provides that an aggrieved party may appeal to the court having jurisdiction from the final judgment of the court. . . . [O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case. . . . If it becomes apparent to the court that such jurisdiction is lacking, the appeal must be dismissed." (Footnote omitted; internal quotation marks omitted.) *U.S. Bank Trust, N.A.* v. *Healey*, 224 Conn. App. 867, 872–73, 315 A.3d 1112, cert. denied, 350 Conn. 910, 324 A.3d 141 (2024).

possession. See *Blue Cross/Blue Shield of Connecticut, Inc.* v. *Gurski*, 49 Conn. App. 731, 734, 715 A.2d 819 ("[r]eview of an interlocutory ruling must await an appeal from the final judgment" (internal quotation marks omitted)), cert. denied, 247 Conn. 920, 722 A.2d 809 (1998). In the interest of simplicity, in analyzing the merits of the plaintiff's motion to dismiss, we refer to the judgment of possession, without accompanying references to the denial of the request for judicial notice, and the denial of the defendant's motion to reargue as the decisions from which the defendant has appealed.

[7] The defendant was granted an extension of time to file his opposition to the plaintiff's motion to dismiss.

The defendant's removal of the present action to the District Court prior to the start of trial, as well as the District Court's subsequent remand of the present action to the Superior Court, materially affect our examination of the plaintiff's claims. " 'Removal is effective upon filing a notice of removal in both the relevant federal and state courts, and providing notice to the other parties. 28 U.S.C. § 1446 (a) [and] (d). At that time, "the State court shall proceed no further unless and until the case is remanded." 28 U.S.C. § 1446 (d). "A proper filing of a notice of removal immediately strips the state court of its jurisdiction." *Yarnevic* v. *Brink's, Inc.*, 102 F.3d 753, 754 (4th Cir. 1996). Thus, even if a case is later remanded, it is under the sole jurisdiction of the federal court from the time of filing until the court remands it back to state court.' *In re Diet Drugs*, 282 F.3d 220, 231 n.6 (3d Cir. 2002)."[8] *Wells Fargo Bank, N.A.* v. *Tarzia*, 186 Conn. App. 800, 804–805 n.4, 201 A.3d 511 (2019). "When . . . a certified copy of a remand to state court is mailed to the state court clerk, 28 U.S.C. § 1447 (c)[9] authorizes the state

[8] We note that repeated removals of an action to federal court may subject a litigant to sanctions, such as a prohibitory order. See, e.g., *Hatcher* v. *Ferguson*, 664 Fed. Appx. 308, 309, 311 (4th Cir. 2016) (affirming order prohibiting litigant from attempting future removals of particular state court action following litigant's third removal to federal court); *Miles* v. *Miles*, supra, 2012 WL 3542319, *1 (barring litigant from filing additional removal petitions with respect to particular state court action in conjunction with order remanding action, for lack of subject matter jurisdiction, to state court for second time). Moreover, 28 U.S.C. § 1447 (c) provides in relevant part that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. . . ."

[9] Title 28 of the United States Code, § 1447 (c), provides: "A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446 (a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed

court to proceed again with the case. See *Ins. Co. of Pennsylvania* v. *Waterfield*, 102 Conn. App. 277, 283, 925 A.2d 451 (2007) (under plain language of 28 U.S.C. § 1447, state court has subject matter jurisdiction to proceed as soon as remand effected)." (Footnote added.) *Massad* v. *Greaves*, 116 Conn. App. 672, 678, 977 A.2d 662, cert. denied, 293 Conn. 938, 981 A.2d 1079 (2009), cert. denied, 560 U.S. 904, 130 S. Ct. 3276, 176 L. Ed. 2d 1183 (2010); see also *Shapiro* v. *Logistec USA, Inc.*, supra, 412 F.3d 312 (federal court's jurisdiction terminates when remand order issued under 28 U.S.C. § 1447 (c), which provision " 'is not self-executing,' " has been mailed to state court).

I

We first address the plaintiff's claim that this appeal is jurisdictionally late pursuant to § 47a-35 (b). The defendant argues that (1) his appeal from the denial of his motion to reargue is timely in light of the fee waiver application that he had filed, and the trial court had granted, before he had filed this appeal, and (2) he had moved for permission to file a late appeal from the judgment of possession.[10] For the reasons that follow, we conclude that this appeal is timely pursuant to § 47a-35 (b).

Section 47a-35 provides: "(a) Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days.

by the clerk to the clerk of the State court. The State court may thereupon proceed with such case."

[10] On October 16, 2024, after the plaintiff had moved to dismiss this appeal, the defendant filed a motion for permission to file a late appeal in which he maintained that this appeal was (1) timely, insofar as he had appealed from the denial of his motion to reargue, and (2) untimely, insofar as he had appealed from the judgment of possession, but that good cause existed to warrant a belated appeal therefrom. On February 5, 2025, we ordered that no action was necessary on the defendant's motion for permission to file a late appeal following our denial of the plaintiff's motion to dismiss.

"(b) No appeal shall be taken except within such five-day period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to give bond, as provided in section 47a-35a. If execution has not been stayed, as provided in this subsection, execution may then issue, except as otherwise provided in sections 47a-36 to 47a-41, inclusive."

"Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed. . . .

"Appeals in summary [process] proceedings are governed by the statutes specifically relating thereto rather than statutes relating to appeals generally. . . . Thus, parties must comply with the five day appeal period pursuant to § 47a-35, rather than with the general twenty day appeal period provided in Practice Book § 63-1 (a).[11] The requirement that appeals in summary process actions comply with § 47a-35 is jurisdictional. . . . Therefore, compliance with its mandate is a necessary prerequisite to an appellate court's subject matter jurisdiction." (Citation omitted; emphasis omitted; footnote added; internal quotation marks omitted.) *Housing Authority* v. *Parks*, 211 Conn. App. 528, 530–31, 273 A.3d 245 (2022); see also *HUD/Barbour-Waverly* v. *Wil-*

[11] Practice Book § 63-1 (a) provides in relevant part that, "[u]nless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. . . ."

son, 235 Conn. 650, 659, 668 A.2d 1309 (1995) ("[i]n light of the plain language of § 47a-35, the fact that the summary process statutes are in derogation of common law and the legislative policy in favor of the swift resolution of disputes between landlords and tenants regarding rights of possession, we conclude that an appeal pursuant to § 47a-35 must be brought within five days of the rendering of a summary process judgment"); *Three Deer Associates Ltd. Partnership* v. *Johnson*, 223 Conn. App. 544, 549–50 and n.3, 308 A.3d 1109 (2024) (this court lacked jurisdiction over late portion of appeal challenging stipulated summary process judgment but had jurisdiction over remaining portion of appeal challenging denial of motion to open judgment when appeal was filed within five day statutory appeal period that arose following denial of motion); cf. *Centrix Management Co., LLC* v. *Fosberg*, 218 Conn. App. 206, 214–15, 291 A.3d 185 (2023) (twenty day appeal period of Practice Book § 63-1, rather than five day appeal period of § 47a-35 (b), applied to postjudgment award of attorney's fees pursuant to General Statutes § 42-150bb in summary process action because postjudgment motion for statutory attorney's fees did not challenge underlying judgment of possession but, rather, was "a separate ancillary proceeding distinct from the judgment of possession rendered pursuant to the summary process statutes").

Pursuant to Practice Book § 63-1 (c) (1),[12] the filing of certain motions during an appeal period functions

[12] Practice Book § 63-1 (c) (1) provides: "If a motion is filed within the appeal period that, if granted, would render the judgment, decision or acceptance of the verdict ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion, except as provided for additur or remittitur in the next paragraph.

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

to create a new appeal period after the motions are resolved as detailed in the provision. Section 63-1 (c) (1) applies to summary process actions. See, e.g., *Atlantic St. Heritage Associates, LLC* v. *Bologna*, 204 Conn. App. 163, 170, 252 A.3d 881 (2021) (new five day appeal period was created as to judgment of possession following issuance of notice of trial court's denial of motion to open judgment, which motion was filed within original five day appeal period). In addition to encompassing motions that, if granted, would render the judgment or decision "ineffective," § 63-1 (c) (1) provides in relevant part that, "[i]f, within the appeal period, any motion is filed, pursuant to Section 63-6 or 63-7, seeking waiver of fees, costs and security or appointment of counsel, a new twenty day appeal period or statutory period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion. If a party files, pursuant to Section 66-6, a motion for review of any such motion, the new appeal period shall begin on the day that notice of the ruling is given on the motion for review."

The following additional procedural history is relevant to our resolution of the plaintiff's timeliness claim.

"Motions that, if granted, would render a judgment, decision or acceptance of the verdict ineffective include, but are not limited to, motions that seek: the opening or setting aside of the judgment; a new trial; the setting aside of the verdict; judgment notwithstanding the verdict; reargument of the judgment or decision; collateral source reduction; additur; remittitur; or any alteration of the terms of the judgment. Motions that do not give rise to a new appeal period include those that seek: clarification or articulation, as opposed to alteration, of the terms of the judgment or decision; a written or transcribed statement of the trial court's decision; or reargument of a motion listed in the previous paragraph.

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

The defendant did not attempt to file an appeal within the five day appeal period that arose following the judgment of possession rendered on August 14, 2024, or the separate five day appeal period that followed the denial of his motion to reargue on August 30, 2024.[13] On September 4, 2024, the defendant attempted to file an appeal; however, that appeal was rejected by the Office of the Appellate Clerk on September 5, 2024, because the defendant did not pay the requisite filing fee or submit a fee waiver. Additionally, on September 4, 2024, the defendant filed with the trial court a fee waiver application, which the court, *Menjivar*, *J.*, denied on September 6, 2024. On September 9, 2024, the defendant timely requested a hearing on the denied fee waiver application.[14] On September 13, 2024, the trial court clerk assigned the denied application for a hearing scheduled for September 24, 2024, with the hearing later being rescheduled to September 25, 2024. On September 25, 2024, following a hearing, the court, *Lynch*, *J.*, granted the fee waiver application. On October 1, 2024, the defendant again attempted to file an appeal; however, that appeal was rejected by the Office of the Appellate Clerk that same day for reasons that we detail

[13] The defendant filed the motion to reargue outside of the five day appeal period vis-à-vis the judgment of possession, and, therefore, the denial of the motion to reargue did not create a new appeal period as to the judgment of possession. See Practice Book § 63-1 (c) (1); see also *Three Deer Associates Ltd. Partnership* v. *Johnson*, supra, 223 Conn. App. 549–50 and n.3 (this court lacked jurisdiction over late portion of appeal from stipulated summary process judgment but had jurisdiction over remaining, timely portion of appeal from denial of motion to open judgment); *Housing Authority* v. *Parks*, supra, 211 Conn. App. 533–34 (denial of motion to reargue filed outside of five day appeal period with respect to judgment of dismissal of summary process action did not give rise to new appeal period as to judgment of dismissal).

[14] See Practice Book § 63-6 ("If the [fee waiver] application is denied in whole or in part, and the applicant wishes to challenge that denial, the applicant shall file a written request for a hearing, pursuant to Section 8-2, within ten days of the issuance of notice of the denial of the application. The clerk of the trial court shall assign the application for a hearing within twenty days of the filing of the request and the judicial authority shall act promptly on the application following the hearing.").

later in this opinion. On October 2, 2024, the defendant successfully filed this appeal.

At this juncture, we consider the ramifications of the defendant's removal of the present action to the District Court on August 13, 2024, and the District Court's remand of the present action to the Superior Court on September 11, 2024.[15] In doing so, we are guided by this court's decision in *Knutson Mortgage Corp.* v. *Salata*, 55 Conn. App. 784, 740 A.2d 918 (1999). In *Salata*, within the appeal period that arose with respect to an order confirming a foreclosure sale (confirmation order), the defendant filed for bankruptcy, invoking the stay provisions of 11 U.S.C. § 362 (a) (1).[16] Id., 786–87. Approximately three months later, the plaintiff obtained relief from the bankruptcy stay. Id., 786. The next day, the defendant filed a motion to reargue the confirmation order. Id. The trial court denied the motion to reargue, and the defendant filed an appeal challenging both the confirmation order and the denial of the motion to reargue. Id. The plaintiff moved to dismiss the appeal as untimely. Id., 785. This court denied the motion to dismiss, concluding that (1) the defendant's bankruptcy filing stayed the appeal period attendant to the confirmation order because the bankruptcy stay prohibited the filing of an appeal, thereby preventing the appeal period from running, and (2) after the bankruptcy stay

[15] We iterate that, although the District Court issued an order of remand on August 29, 2024, the District Court did not remand the present action to the Superior Court until September 11, 2024. See *Shapiro* v. *Logistec USA, Inc.*, supra, 412 F.3d 312; *Massad* v. *Greaves*, supra, 116 Conn. App. 678.

[16] Title 11 of the United States Code, § 362 (a), provides in relevant part: "[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . ."

had been lifted, the defendant filed the motion to reargue within the appeal period that had restarted and later filed a timely appeal following the denial of that motion. Id., 788.

We deem the rationale in *Salata* to be compelling and applicable to the circumstances of present action. In *Salata*, a bankruptcy stay prohibited the filing of an appeal from the confirmation order until the stay had been lifted, thereby preventing the relevant appeal period from running in the interim. Id. Similarly, after the defendant had removed the present action to the District Court on August 13, 2024, thereby "immediately strip[ping] the state court of its jurisdiction"; (internal quotation marks omitted) *Wells Fargo Bank, N.A.* v. *Tarzia*, supra, 186 Conn. App. 805 n.4; no appeal could have been filed as to the August 14, 2024 judgment of possession or the August 30, 2024 denial of the defendant's motion to reargue until the District Court had remanded the present action to the Superior Court on September 11, 2024, whereupon the District Court's sole jurisdiction over the present action was terminated. See 28 U.S.C. §§ 1446 (d) and 1447 (c) (2018). It follows, therefore, that the respective five day appeal periods that arose as to the judgment of possession and the denial of the motion to reargue were stayed until September 11, 2024.

We now turn to the events that transpired following the District Court's remand of the present action to the Superior Court on September 11, 2024. No appeal or motion pursuant to Practice Book § 63-1 (c) (1) was filed within five days—excluding the intervening Sunday—after the remand.[17] At the time of the remand,

[17] Within this time period, the defendant (1) moved to disqualify Judge Lobo and Judge Menjivar from presiding over any additional proceedings in the present action and (2) filed a notice of bankruptcy, as later amended. The motions to disqualify are of no moment to our analysis because, if granted, no judgment or decision would have been rendered ineffective. See Practice Book § 63-1 (c) (1). As for the bankruptcy notice, as amended, the defendant claimed that a bankruptcy stay was in effect because a non-

however, there were ongoing proceedings in the trial court in connection with the defendant's fee waiver application filed on September 4, 2024, and initially denied on September 6, 2024. Two days prior to the remand, on September 9, 2024, the defendant requested a hearing on the denied fee waiver application, and two days following the remand, on September 13, 2024, the trial court clerk assigned the denied application for a hearing to be held on September 24, 2024. On September 13, 2024, the defendant filed a caseflow request seeking to reschedule the hearing, which request the trial court, *Roraback*, *J.*, granted on September 16, 2024, rescheduling the hearing to September 25, 2024. On the day of the hearing, the trial court, *Lynch*, *J.*, granted the fee waiver application.

We are cognizant of the fact that, for purposes of invoking the operation of Practice Book § 63-1 (c) (1), no fee waiver application was filed within the respective appeal periods of the judgment of possession and the denial of the defendant's motion to reargue once they began to run upon the District Court's remand of the present action to the Superior Court. Nevertheless, under the limited and unique circumstances before us, where the trial court was engaged in ongoing proceedings on the defendant's September 4, 2024 fee waiver application at the time of the remand, we conclude that treating that fee waiver application as if it had been filed timely upon remand is appropriate. Indeed, concluding otherwise would suggest that the defendant was required to file another fee waiver application within the five day appeal periods following the remand in order to activate the provisions of § 63-1 (c) (1), which would be an unreasonable requirement when, after the

party named Alfonso Amelio, who had an alleged financial interest in the premises, had filed for bankruptcy. We deem the bankruptcy filing by a nonparty, which neither party addresses in connection with the plaintiff's motion to dismiss, to be immaterial to the timeliness issue before us.

remand, (1) the trial court clerk assigned the fee waiver application, which was initially denied on September 6, 2024, for a hearing and (2) the trial court, following the hearing, granted the fee waiver application. Accordingly, we conclude that, following the trial court's September 25, 2024 grant of the fee waiver application,[18] new five day appeal periods arose vis-à-vis the judgment of possession and the denial of the motion to reargue pursuant to § 63-1 (c) (1). Excluding the intervening Sunday, the new appeal periods expired on October 1, 2024.

Finally, we now must address the fact that the defendant arguably filed this appeal on October 2, 2024, one day following the expiration of the new five day appeal periods. Again emphasizing the limited and unique circumstances of the present action, we deem this appeal to have been timely filed on October 1, 2024.

The record reveals that, on October 1, 2024, the defendant attempted to file a timely appeal, submitting an appeal form (October 1, 2024 appeal form) accompanied by the fee waiver granted by the trial court in the present action on September 25, 2024. The fee waiver listed the docket number for the present action only, whereas the October 1, 2024 appeal form listed the docket numbers for both the present action and the separate summary process action (separate action) commenced by the plaintiff against the defendant. See footnote 2 of this opinion. On October 1, 2024, the Office of the Appellate Clerk rejected that appeal for

[18] Notice of the trial court's September 25, 2024 grant of the fee waiver application was issued that same day. See Practice Book § 63-1 (c) (1) ("[i]f, within the appeal period, any motion is filed, pursuant to Section 63-6 or 63-7, seeking waiver of fees, costs and security or appointment of counsel, a new twenty day appeal period or statutory period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion").

nonpayment of the requisite filing fee[19] stemming from the mismatch between the two docket numbers listed on the October 1, 2024 appeal form and the single docket number listed on the fee waiver. See Practice Book § 60-7 (b) ("At the time of filing, the appellant must (1) pay all required fees; or (2) upload a signed application for waiver of fees and the order of the trial court granting the fee waiver; or (3) certify that no fees are required. Any document that requires payment of a fee as a condition of filing may be returned or rejected for noncompliance with the Rules of Appellate Procedure.") In other words, the defendant appeared to be relying on the fee waiver granted in the present action *only* to appeal from (1) the judgment of possession rendered in the present action, along with the denial of his motion to reargue, *and* (2) the judgment of possession rendered in the separate action; however, without a separate fee waiver granted in the separate action, the defendant could not forgo payment of the filing fee required in order to appeal from the judgment rendered in the separate action.[20] The next day, the defendant properly filed this appeal, with both the appeal form (October 2, 2024 appeal form) and the appended fee waiver listing the docket number for the present action only.

It is apparent that, on October 1, 2024, the defendant attempted to file a timely and proper appeal with

[19] When an appeal is rejected for nonpayment of the requisite filing fee, an appellate docket number is generated by the electronic filing system but the Office of the Appellate Clerk will not accept any filings under that docket number because the appeal is deemed to be disposed.

[20] Effective January 1, 2025, our rules of appellate procedure were amended to clarify that, "if an appellant is using a fee waiver for a joint appeal, a granted waiver is required for each trial court docket number being appealed." Practice Book § 61-7, commentary; see Practice Book § 61-7 (a) (3) ("In the case of a joint appeal, only one entry fee is required. The appellant filing the appeal shall pay the entry fee. If using a fee waiver for a joint appeal, a granted waiver is required for each trial court docket number being appealed.").

respect to the present action as reflected by his October 1, 2024 appeal form, as well as the accompanying fee waiver, which both listed the docket number for the present action. We conclude, under the limited and unique circumstances presented here, that the error in the October 1, 2024 appeal form—the improper inclusion of two docket numbers—did not mandate *rejection* of the appeal for nonpayment of the requisite filing fee; instead, the appeal should have remained pending and the *October 1, 2024 appeal form should have been returned* as a result of the error. See *Pritchard* v. *Pritchard*, 281 Conn. 262, 275, 914 A.2d 1025 (2007) ("[T]he forms for appeals and amended appeals do not in any way implicate appellate subject matter jurisdiction. They are merely the formal, technical vehicles by which parties seek to invoke that jurisdiction. Compliance with them need not be perfect; it is the substance that matters, not the form."). Pursuant to Practice Book (2024) § 62-7 (a),[21] if the Office of the Appellate Clerk *returns* any papers that are timely but noncompliant with the rules of appellate procedure, then "[a]ny papers correcting [the] timely, noncomplying filing shall be deemed to be timely filed if a complying document is refiled . . . within fifteen days . . . ." The defendant could then have filed a corrected appeal form that properly listed only the docket number for the present action.

[21] Practice Book (2024) § 62-7 (a) provides: "It is the responsibility of counsel of record to file papers in a timely manner and in the proper form. The appellate clerk may return any papers filed in a form not in compliance with these rules; in returning, the appellate clerk shall indicate how the papers have failed to comply. The clerk shall note the date on which they were received before returning them, and shall retain an electronic copy thereof. Any papers correcting a timely, noncomplying filing shall be deemed to be timely filed if a complying document is refiled with the appellate clerk within fifteen days of the official notice date, which is the notice date indicated on the return form. The official notice date is not the date the return form is received. Subsequent returns for the same filing will not initiate a new fifteen day refiling period. The time for responding to any such paper shall not start to run until a complying paper is filed."

On the basis of the record, we deem this appeal to have been timely filed on October 1, 2024, because (1) the defendant attempted to file a timely and proper appeal vis-à-vis the present action on October 1, 2024, which appeal, notwithstanding an error in the October 1, 2024 appeal form, should have remained pending rather than been rejected, (2) the October 1, 2024 appeal form should have been returned on the basis of the error contained therein, and (3) treating the October 1, 2024 appeal form as if it had been returned, the error in the October 1, 2024 appeal form was corrected by the October 2, 2024 appeal form within the time allowed by Practice Book (2024) § 62-7 (a).[22]

In sum, we conclude that this appeal is timely pursuant to § 47a-35 (b).

II

We next address the plaintiff's claim that this appeal is moot on the basis that the defendant is no longer in possession of the premises. The defendant argues that this appeal is not moot because (1) he is claiming on the merits of this appeal that the trial court improperly conducted proceedings while the present action, following removal on August 13, 2024, was pending before the District Court and (2) possession of the premises may be restored to him following this court's adjudication of the merits. We conclude that this appeal is not moot.

"Mootness implicates [this] court's subject matter jurisdiction and is thus a threshold matter for us to

[22] We note that, pursuant to Practice Book § 60-2, this court "may . . . on its own motion or upon motion of any party . . . (5) order that a party for good cause shown may file a late appeal . . . unless the court lacks jurisdiction to allow the late filing . . . ." Our decision today does not, in contravention of § 60-2 (5), permit the late filing of an appeal that is jurisdictionally late; rather, for the reasons that we delineated, we hold that this appeal is deemed to have been timely filed on October 1, 2024.

resolve. . . . It is a [well settled] general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction; it is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . An actual controversy must exist not only at the time the appeal is taken, but also throughout the pendency of the appeal. . . . When, during the pendency of an appeal, events have occurred that preclude an appellate court from granting any practical relief through its disposition of the merits, a case has become moot. . . . [A] subject matter jurisdictional defect may not be waived . . . [or jurisdiction] conferred by the parties, explicitly or implicitly. . . . [T]he question of subject matter jurisdiction is a question of law . . . and, once raised, either by a party or by the court itself, the question must be answered before the court may decide the case." (Internal quotation marks omitted.) *Brookstone Homes, LLC* v. *Merco Holdings, LLC*, 208 Conn. App. 789, 798–99, 266 A.3d 921 (2021).

"Summary process appeals are particularly susceptible to becoming moot upon some action taken by the parties. . . . As a general matter, this court has concluded that an appeal has become moot when, at the time of the appeal, an appellant no longer is in possession of the premises. . . . As our Supreme Court has explained, that general rule does not apply when an appellant can demonstrate that the judgment has potentially prejudicial collateral consequences to the defendant. . . . Such collateral consequences include the impairment of a party's ability to seek a writ of restoration, which allows a tenant wrongly evicted to be restored to the premises . . . .

"Almost two centuries ago, this state's highest court recognized that a party to a summary process action that wrongly is dispossessed of leased property is

clearly entitled to a writ restoring him to the possession thereof, provided that the term of the lease has not yet expired. . . . As [our] Supreme Court observed, courts have been in the habit of awarding such writs . . . . If therefore, the tenant has been [wrongly] dispossessed of his property, both justice and authority require, that he be restored." (Citations omitted; internal quotation marks omitted.) *Bridgeport* v. *Grace Building, LLC*, 181 Conn. App. 280, 295–96, 186 A.3d 754 (2018).

In the present action, per the plaintiff's representation, the parties' lease for the premises does not expire until December 31, 2027. See footnote 3 of this opinion. Moreover, according to his preliminary statement of the issues and his opposition to the plaintiff's motion to dismiss, the defendant intends to claim on the merits of this appeal that he is entitled to restoration to the premises because the trial court improperly rendered the judgment of possession, which thereafter led to the issuance of the summary process execution for possession, while the present action was pending before the District Court following removal. If the defendant is successful on the merits of this appeal, then "an avenue of practical relief remains viable under Connecticut precedent, in the form of a writ of restoration." *Bridgeport* v. *Grace Building, LLC*, supra, 181 Conn. App. 298. Accordingly, we conclude that this appeal is not moot.

The motion to dismiss is denied.

In this opinion the other judges concurred.

WALDEN H. MATHEWS *v.* SUSAN M. MATHEWS (AC 47372)

Elgo, Moll and Lavine, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed from the judgment of the trial court denying his postdissolution motion for contempt and granting the defendant's postdissolution

motion for contempt. He claimed, inter alia, that the court improperly denied his motion because the defendant prevented him from retrieving certain of his property from the marital residence and wilfully violated court orders by disposing of that property. *Held*:

The trial court did not abuse its discretion in denying the plaintiff's postdissolution motion for contempt with respect to his claim that the defendant violated the court's order to provide him access to the marital residence to retrieve his personal property, as the court's property distribution orders were ambiguous as to whether the property at issue belonged to the plaintiff, and the record demonstrated that a dispute existed between the parties as to the ownership of that property.

The trial court did not abuse its discretion in denying the plaintiff's postdissolution motion for contempt with respect to his claim that the defendant violated the court's property distribution orders, as the court reasonably could have found, on the basis of the evidence adduced at the evidentiary hearing on the motion, that the defendant did not wilfully violate the court's orders when she disposed of the property at issue for no value after having offered the plaintiff the opportunity to retrieve that property.

The trial court did not abuse its discretion in granting the defendant's postdissolution motion for contempt, as evidence in the record substantiated the court's finding that the plaintiff wilfully ignored the court's escrow order requiring him to pay $15,000 to the defendant's counsel on or before a specified date.

Argued February 19—officially released May 13, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, and tried to the court, *Heller*, *J.*; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Vizcarrondo*, *J.*, rendered judgment granting the defendant's postjudgment motion for contempt and denying the plaintiff's postjudgment motion for contempt, from which the plaintiff appealed to this court. *Affirmed.*

Walden H. Mathews, self-represented, the appellant (plaintiff).

Opinion

ELGO, J. In this postdissolution matter, the self-represented plaintiff, Walden H. Mathews, appeals from the

judgment of the trial court granting the motion for contempt filed by the defendant, Susan M. Mathews, and denying the motion for contempt filed by the plaintiff. On appeal, the plaintiff claims that the court improperly (1) denied his motion for contempt regarding the disposition of personal property located in the basement of the marital residence and (2) granted the defendant's motion for contempt regarding a court order that obligated him to escrow $15,000 with the defendant's counsel. We affirm the judgment of the trial court.

The record discloses the following undisputed facts. The parties married in 1990, and three children were born of the marriage. Following the subsequent breakdown of the marriage, the plaintiff commenced a dissolution action in 2017. In response, the defendant filed an answer and a cross complaint, and an eight day trial followed. On March 20, 2020, the court rendered judgment dissolving the parties' marriage, finding that it had broken down irretrievably.

As part of the judgment of dissolution, the court made numerous factual findings and entered various orders. The court found, inter alia, that the plaintiff had not paid alimony to the defendant during the pendency of the dissolution action and awarded the defendant lump sum alimony in the amount of $90,000. With respect to that award, the court ordered the plaintiff to make three payments of $30,000 to the defendant on or before April 15, May 15 and June 15, 2020.[1]

[1] When the plaintiff failed to make the alimony payment due on April 15, 2020, the defendant filed a postjudgment motion for contempt on April 27, 2020. While that motion was pending, the plaintiff filed an appeal challenging the propriety of the court's March 20, 2020 judgment of dissolution. This court dismissed that appeal as untimely on September 16, 2020. On September 21, 2020, the plaintiff paid his alimony obligation to the defendant in full. In light of that payment, the court denied the defendant's April 27, 2020 motion for contempt. That motion for contempt is not at issue in this appeal.

The court also found that the marital estate contained two properties. The court found that the plaintiff had inherited a cottage on a lake in Acton, Maine years earlier, which had a fair market value of $450,000. In its property distribution orders, the court awarded the plaintiff "ownership of the Maine property, free and clear of any claim by the defendant."

With respect to the parties' marital residence on Cove Avenue in Norwalk, the court found that it was an "antique Victorian home" that had undergone various renovations which, at the time of trial, had not been completed. In light of those "unfinished interior renovations," the court found that the property had a fair market value of $675,000. The court also found that the property was encumbered by a $290,000 mortgage. The court ordered the sale of the Cove Avenue property and stated in relevant part that "the sale proceeds shall first be applied to pay in full the following: the mortgage, real estate commissions, and other normal and customary closing costs. The remaining sale proceeds shall be paid to the defendant."

As the court noted, the parties "agreed that it will cost approximately $30,000 to complete the repairs and improvements to the [Cove Avenue] property . . . before [it] can be sold. Each party has also agreed to contribute $15,000 toward the cost of the repairs and improvements [required] to enhance its marketability." The court thus ordered each party to "send $15,000 to counsel for the defendant . . . to be held in escrow pending the work on the Cove Avenue property." The court awarded the defendant "exclusive possession of the Cove Avenue property until the closing of the sale of the property" and further ordered that "[t]he parties shall agree upon reasonable dates and times for the plaintiff to have access to the Cove Avenue property to remove his personal property."

In its property distribution orders, the court awarded each of the parties certain property.[2] With respect to personal property generally, the court stated in relevant part: "Each party is awarded his or her own clothing, jewelry, and personal items such as photographs, books, and memorabilia. . . . *The parties shall divide all . . . other personal property in the Cove Avenue property to their mutual satisfaction* on or before April 15, 2020. This date may be extended to and including the closing date of the sale of the Cove Avenue property in the event that the listing broker recommends that certain furniture and furnishings remain in the Cove Avenue property to facilitate its sale. *If the parties are not able to agree on the disposition of specific items, those items shall be sold at fair market value on or before the closing date.* . . . [T]he net proceeds of such sale shall be shared equally between the parties." (Emphasis added.)

On October 29, 2020, the plaintiff filed a postjudgment motion for contempt, in which he alleged, inter alia, that the defendant had not allowed him to retrieve "tools and other belongings situated in the basement of the Cove Avenue property" when he visited the property on September 11, 2020. One week later, the defendant filed a motion for contempt that was predicated, in part, on the plaintiff's failure to make the $15,000 escrow payment to her legal counsel for repairs to the Cove Avenue property, as ordered by the court.

The court held an evidentiary hearing on the parties' respective motions for contempt on February 7, 2023.[3]

[2] For example, the court awarded the plaintiff "the contents of the Maine property" and awarded the defendant a Boston Whaler boat and trailer "free and clear of any claim by the plaintiff."

[3] On April 5, 2023, the plaintiff filed what he titled a "supplemental motion for contempt," to which he appended copies of email communications between the parties and a detailed list of what he characterized as "personal belongings not retrieved" from the Cove Avenue property and their purported values. None of those documents was offered or admitted into evidence at the February 7, 2023 evidentiary hearing, and there is no indication

The court thereafter issued separate orders on those motions on June 7, 2023. With respect to the defendant's motion for contempt, the court found that the order requiring the plaintiff to pay the defendant's counsel $15,000 on or before April 15, 2020, for home repairs to the Cove Avenue property was clear and unambiguous. The court further found that the plaintiff had not complied with that order, stating in relevant part: "There is no dispute that the requisite funds were not tendered to [the defendant's counsel]. The plaintiff testified that he instead paid the defendant $8000 directly, rather than through counsel, as ordered." The court thus concluded that the defendant had demonstrated wilful noncompliance on the part of the plaintiff and ordered further proceedings "to properly determine (1) the cost of repairs actually expended by the defendant, (2) the attorney's fees expended in prosecuting the defendant's motion, and (3) the appropriateness of statutory interest on any loss amount."

In its separate order on the plaintiff's motion for contempt, the court found that the order in question was "not clear and unambiguous as to what constituted the plaintiff's personal property." The court further found that the plaintiff had not established wilful noncompliance on the part of the defendant and denied the motion for contempt. The plaintiff thereafter filed motions for reconsideration of both contempt rulings, which the court denied, and this appeal followed.[4]

As a preliminary matter, we note certain principles relevant to this appeal. "[C]ivil contempt is committed

in the court's June 7, 2023 orders that the court considered them in any manner in acting on the parties' motions for contempt.

[4] The defendant appeared, but has not participated, in this appeal. Because she did not file an appellate brief, we ordered that the appeal shall be considered on the basis of the plaintiff's brief, oral argument, and the record. See, e.g., *Ammar I.* v. *Evelyn W.*, 227 Conn. App. 827, 830 n.2, 323 A.3d 1111 (2024).

when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. . . . If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Citations omitted; internal quotation marks omitted.) *Puff* v. *Puff*, 334 Conn. 341, 364–66, 222 A.3d 493 (2020); see also *Ramin* v. *Ramin*, 281 Conn. 324, 336, 915 A.2d 790 (2007) ("the abuse of discretion standard applies to a trial court's decision on a motion for contempt").

I

On appeal, the plaintiff claims that the court improperly denied his motion for contempt. His claim is twofold in nature. The plaintiff first alleges that the defendant improperly precluded him from retrieving tools and other equipment that belonged to him from the basement of the Cove Avenue property. He then argues that the defendant wilfully violated the court's property distribution orders by disposing of that property. We disagree with both contentions.

A

We begin with the question of whether the tools and equipment in the basement of the Cove Avenue property constitute personal property awarded to the plaintiff under the terms of the dissolution judgement. In that judgment, the court ordered in relevant part that "[t]he

parties shall agree upon reasonable dates and times for the plaintiff to have access to the Cove Avenue property to remove his personal property." At the same time, the court's orders regarding personal property are ambiguous as to whether the tools and equipment at issue were, in fact, the personal property of the plaintiff. Although the court specifically awarded the plaintiff other property; see footnote 2 of this opinion; it made no mention of tools or equipment located in the basement of the Cove Avenue property.

Moreover, the court's property distribution orders expressly contemplate the sale of any items of personal property located in the Cove Avenue property that the parties could not amicably divide. The court ordered: "Each party is awarded his or her own clothing, jewelry, and personal items such as photographs, books, and memorabilia. . . . The parties shall divide all . . . other personal property in the Cove Avenue property to their mutual satisfaction . . . . If the parties are not able to agree on the disposition of specific items, those items shall be sold at fair market value on or before the closing date. . . . [T]he net proceeds of such sale shall be shared equally between the parties."

At the February 7, 2023 evidentiary hearing, the defendant testified that the tools and equipment in the basement "were purchased with joint funds" during the parties' marriage and opined that "that machinery was jointly owned." For that reason, the defendant testified that she told the plaintiff that "he could retrieve all of his personal belongings" from the Cove Avenue property on September 11, 2020, and that, "after he retrieved his personal belongings," the parties then "could go into the basement and discuss" how the tools "would be disposed of." In its order on the plaintiff's motion for contempt, the court credited the defendant's testimony and found that she "reasonably believed that the items in the basement, particularly valuable tools, were not

the plaintiff's 'personal property,' but marital assets in which she had at least some financial interest." Moreover, the record indicates, and the plaintiff does not dispute, that the defendant allowed the plaintiff to retrieve other personal belongings from his office in the Cove Avenue property over the course of several hours on September 11, 2020, as well as a toolbox from the basement that had belonged to his father. In light of that evidence, the court found that the defendant's "objection to surrendering" the tools and equipment in the basement had been asserted in good faith.

We conclude that the court's property distribution orders are ambiguous as to whether the tools and equipment at issue were, in fact, the personal property of the plaintiff. Moreover, the record demonstrates that a dispute existed between the parties as to ownership of the tools and equipment in question. For that reason, the plaintiff's contention that the defendant violated the court's order to provide him access to the Cove Avenue property to remove "his personal property" is unavailing.

B

The plaintiff also claims that the defendant wilfully violated the court's orders by disposing of the tools and equipment from the basement of the Cove Avenue property. We do not agree.

In its property distribution orders, the court specifically contemplated the scenario in which the parties could not agree on the division of personal property located in the marital residence and ordered as follows: "The parties shall divide all . . . other personal property in the Cove Avenue property to their mutual satisfaction . . . . If the parties are not able to agree on the disposition of specific items, those items shall be sold at fair market value on or before the closing date. . . . [T]he net proceeds of such sale shall be shared equally between the parties." Because the parties did

not reach an agreement on how to divide the tools and equipment in the basement of the Cove Avenue property, they were required, pursuant to the clear and unambiguous language of that order, to sell those items at fair market value and share the proceeds equally. Accordingly, the first prong of the legal standard that governs our review of a contempt ruling is satisfied. See *In re Leah S.*, 284 Conn. 685, 693, 935 A.2d 1021 (2007).

The question, then, is whether the court abused its discretion in concluding that the plaintiff had not established wilful noncompliance on the part of the defendant with respect to that order. In considering that question, we are mindful that "[a] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful. . . . [A] contempt finding is not automatic and depends on the facts and circumstances underlying it. . . . [I]t is well settled that the inability of [a] defendant to obey an order of the court, without fault on his part, is a good defense to the charge of contempt . . . . The contemnor must establish that he cannot comply, or was unable to do so. . . . It is [then] within the sound discretion of the court to deny a claim of contempt when there is an adequate factual basis to explain the failure." (Internal quotation marks omitted.) *Scalora* v. *Scalora*, 189 Conn. App. 703, 727, 209 A.3d 1 (2019).

In denying the plaintiff's motion for contempt, the court made a number of factual findings relevant to the plaintiff's claim. The court found that "the defendant reasonably believed that the items in the basement . . . were not the plaintiff's 'personal property,' but marital assets in which she had at least some financial interest." The court further found that the defendant had asserted a good faith objection to surrendering the tools and equipment in the basement when the plaintiff visited the Cove Avenue property on September 11, 2020.

Following the filing of the plaintiff's October 29, 2020 motion for contempt, the tools and equipment at issue remained on the Cove Avenue property. The court found that, in the fall of 2021, as the Cove Avenue property "was being prepared for sale, the defendant invited the plaintiff to retrieve the tools [and other equipment from the basement]. She testified credibly that she had by that point abandoned any claim to the disputed items and simply wanted them removed." Those factual findings are supported by the evidence in the record and, therefore, are not clearly erroneous. See, e.g., *Powell-Ferri* v. *Ferri*, 326 Conn. 457, 464, 165 A.3d 1124 (2017). Moreover, we cannot disturb the court's credibility determination with respect to the defendant's testimony. See, e.g., *N. R.* v. *M. P.*, 227 Conn. App. 698, 730, 323 A.3d 1142 (2024) (appellate courts must defer to trier of fact's assessment of credibility). At the February 7, 2023 evidentiary hearing, the plaintiff acknowledged that the defendant had offered him the opportunity to retrieve the tools and equipment in the basement in the fall of 2021 and testified that he declined to do so.

In addition, the court found that the tools and equipment "were ultimately disposed of in October, 2021, by workmen clearing out the basement" in preparation for the sale of the Cove Avenue property and that the defendant "obtained no value for them." Those findings, too, are substantiated by the defendant's testimony at the evidentiary hearing, which the court, as trier of fact, was entitled to credit.[5] See, e.g., *Kammili* v. *Kammili*,

[5] At the evidentiary hearing, the defendant testified that, in the fall of 2021, she told the plaintiff that "he could . . . keep everything if he just wanted to come and move it out, and just leave the basement clean, and he declined my request. He said that he no longer wanted anything, and so I don't see how he can be claiming . . . any money from me because I did give him [the] opportunity to come and get his things [from the basement]."

In response, the court noted that the property distribution orders required the parties to sell any disputed items from the Cove Avenue property and inquired as to whether the tools and equipment in the basement had been sold. The defendant then testified: "[W]hen [the plaintiff] said that he didn't

197 Conn. App. 656, 672, 232 A.3d 102 ("the [trial] court, as the trier of fact and thus the sole arbiter of credibility, [is] free to accept or reject, in whole or in part, the testimony offered by either party" (internal quotation marks omitted)), cert. denied, 335 Conn. 947, 238 A.3d 18 (2020).

In reviewing a court's contempt ruling, "[t]his court will not disturb the trial court's orders unless it has abused its legal discretion or its findings have no reasonable basis in fact. . . . It is within the province of the trial court to find facts and draw proper inferences from the evidence presented. . . . [E]very reasonable presumption will be given in favor of the trial court's ruling, and [n]othing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference." (Internal quotation marks omitted.) *Brody* v. *Brody*, 145 Conn. App. 654, 662, 77 A.3d 156 (2013). Applying that deferential standard of review, we conclude that the court reasonably could have found, on the basis of the evidence adduced at the February 7, 2023 hearing, that the defendant did not wilfully violate the court's

want any of the equipment, I contacted . . . a contractor who recently moved in across the street . . . . I asked him to come over to evaluate the equipment and the value of the equipment. And to see if he was interested or anybody in . . . his industry would be interested in purchasing the equipment. He went over all of the tools [in the basement] and he said that they were so outdated that there was really no value to them. . . . [A]fter speaking to some of his colleagues [he confirmed] that they weren't really worth very much. He said . . . that the best I could do was to actually trade the work of . . . removing them from the house for payment to just removing them from the house. So, actually, I didn't make any money. I didn't sell them. I didn't make any money from them. If I had made money, I would have shared it with [the plaintiff]. But . . . I did offer this to [the plaintiff] to come and take it all away if you wanted first. I offered him to first to take it all away and just have it. Just take it, take it all out and to just leave [the] basement broom clean, that's all I asked and [the plaintiff] declined, so that's what I did. I found somebody to take all of the equipment out of the house, and leave the basement broom clean, and I did not make one dime from any of that."

property distribution orders when she disposed of the tools and equipment in the basement for no value in the fall of 2021. Accordingly, the court did not abuse its discretion in denying the plaintiff's motion for contempt.

II

The plaintiff also claims that the court improperly granted the defendant's November 4, 2020 motion for contempt regarding a court order that obligated him to escrow $15,000 with the defendant's counsel.[6] We disagree.

In its March 20, 2020 judgment of dissolution, the court found that the Cove Avenue property had various unfinished renovations. The court also noted that the parties had "agreed that it will cost approximately $30,000 to complete the repairs and improvements to the [Cove Avenue] property . . . before [it] can be sold. Each party has also agreed to contribute $15,000 toward the cost of the repairs and improvements [required] to enhance its marketability." The court thus ordered that, "[o]n or before April 15, 2020, the plaintiff

[6] The plaintiff alternatively argues that the court improperly granted the motion for contempt because the defendant "has unclean hands." In his April 6, 2021 objection to the defendant's motion for contempt, the plaintiff alleged, in a single sentence, that, "[a]s of September 25, 2020, the defendant had not funded her share of the 'escrow,' and so the 'clean hands' doctrine applies." The court never ruled on that objection and neither the doctrine of unclean hands nor the issue of the defendant's compliance with the escrow order were raised at the February 7, 2023 evidentiary hearing on the defendant's motion for contempt. The court likewise did not address the issue of unclean hands or make any factual findings with respect thereto in its June 7, 2023 order granting the defendant's motion for contempt. The plaintiff thereafter did not seek an articulation of that judgment, rendering the record inadequate for review. See *Rissolo* v. *Betts Island Oyster Farms, LLC*, 117 Conn. App. 344, 359, 979 A.2d 534 (2009) (record was inadequate to review special defense of unclean hands "[b]ecause the court's [ruling] is devoid of any findings or analysis on the issue, and because the petitioner did not seek an articulation" (internal quotation marks omitted)). We therefore decline to review that ancillary contention.

and the defendant shall each send $15,000 to counsel for the defendant . . . to be held in escrow pending the work on the Cove Avenue property."

That court order clearly and unambiguously required the plaintiff to tender payment of $15,000 to the defendant's counsel on or before April 15, 2020. It is undisputed that the plaintiff did not do so. At the February 7, 2023 evidentiary hearing, the plaintiff testified that he had declined to make any payment to the defendant's counsel because he believed that the court's escrow order was improper, arguing that the defendant's counsel did not qualify as an escrow agent under Connecticut law.[7] At that hearing, the following colloquy occurred between the court and the plaintiff:

"The Court: [Y]ou didn't have—you simply disagreed with the [propriety of the escrow] order, correct, you didn't have a misunderstanding as to what it meant?

[7] At the February 7, 2023 hearing, the plaintiff testified that, in his view, "there [is] a jurisdiction problem with [the escrow] order as written, and it's seeded in [contract] law. And the actual definition of escrow, and escrow agreement, and a bona fide escrow agent for which [the defendant's counsel] does not qualify according to the terms of those laws."

In his appellate brief, the plaintiff elaborated on the basis of his objection to the court's escrow order, stating in relevant part: "[The escrow order] did not adequately define the responsibilities of the escrow agent, and thus did not adequately protect his interest in making sure that the escrowed funds were actually spent on the repair of the [Cove Avenue property]. . . . [The escrow order] does not require the escrow agent to maintain *any* records regarding (1) how much money she has received from the parties, or (2) how much money the defendant has actually spent on repairs and improvements for the property. Nor does the [escrow order] require the escrow agent to show such records to the plaintiff upon request, or at any time. . . . In addition, the March 20 order does not include any instructions to the escrow agent regarding whether, or when, she is required to return any excess funds to the plaintiff. The consequences of this omission are obvious: the escrow agent, who is the defendant's attorney . . . could simply retain any excess funds immediately, causing substantial harm to the plaintiff." (Emphasis in original.) The plaintiff also asserted, without citation to any legal authority, that "Connecticut law [does not] recognize an escrow agreement in which a party both deposits and receives the same asset as a valid escrow agreement."

"[The Plaintiff]: [T]hat is correct. I believe that [the trial court lacked] the authority to force me into what is effectively a private contract with someone under terms that I had no control over."

The plaintiff also testified that his claim that the trial court lacked authority to enter the escrow order "was part of . . . the appeal that [he] filed in July of 2020." The record indicates that this court dismissed that appeal in September, 2020. Following that dismissal, the plaintiff did not make the payment required pursuant to the court's escrow order, as he did with respect to the court's alimony order. See footnote 1 of this opinion. Instead, the plaintiff paid $8000 to the defendant directly after she filed her November 4, 2020 motion for contempt and declined to make further payment unless the defendant presented him with invoices for the repair work performed on the Cove Avenue property.[8]

In light of the foregoing, we conclude that the evidence in the record substantiates the court's finding that the plaintiff wilfully ignored the court's escrow order that required him to pay $15,000 to the defendant's counsel on or before April 15, 2020. The court, therefore, did not abuse its discretion in granting the defendant's motion for contempt.

The judgment is affirmed.

In this opinion the other judges concurred.

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[8] Although the plaintiff filed a motion to modify the escrow order in March, 2021, he withdrew that motion prior to the hearing on the defendant's motion for contempt. Moreover, in that motion, the plaintiff did not raise any objection regarding the propriety of the escrow order or the legality of the defendant's counsel acting as an escrow agent; he simply requested that the escrow order be amended to prevent him from "losing any unspent funds."

ECR 2, LLC *v.* RASCHID THOMPSON
(AC 47702)

Alvord, Cradle and Westbrook, Js.*

Syllabus

The defendant tenant appealed from the trial court's judgment of possession for the plaintiff landlord in the plaintiff's summary process action. The defendant claimed, inter alia, that the court erred in rejecting his special defense in which he alleged that he had a right to cure his nonpayment of rent. *Held*:

The defendant's claim that the trial court violated his right to due process in denying his motion for a continuance of the trial and in refusing to consider his motion to preclude certain evidence was unavailing, as he failed to identify, either to the trial court or in his brief to this court, which of his due process rights were violated, his identification of those rights for the first time during oral argument to this court was improper, and the record was inadequate to review any challenge to the trial court's decision not to consider his proposed motion to preclude, as the defendant failed to preserve the record by filing the motion.

This court could not conclude that the trial court erred in relying on a legally correct definition of wilfulness in rejecting the defendant's special defense of equitable nonforfeiture, the defendant having presented no authority requiring the trial court to apply a specific definition.

The trial court properly rejected the defendant's claim that he had a right to cure his nonpayment of rent, as the unambiguous language of the parties' lease provided that the defendant's failure to pay his rent on the first of the month or within nine days thereafter would constitute a default under the lease and he would immediately forfeit all rights to occupy the apartment, clearly indicating that there was no right to cure once the defendant defaulted, and, once the notice to quit had been served on him, any payments he made were for use and occupancy only.

Argued February 18—officially released May 13, 2025

Procedural History

Summary process action, brought to the Superior Court in the judicial district of New Haven, Housing

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

Session, where the court, *Stone*, *J.*, denied the defendant's motions for summary judgment and for a continuance; thereafter, the case was tried to the court, *Stone*, *J.*; judgment for the plaintiff, from which the defendant appealed to this court. *Affirmed.*

Darren J. Pruslow, with whom was *Cyd O. Oppenheimer*, for the appellant (defendant).

Richard W. Callahan, for the appellee (plaintiff).

Opinion

CRADLE, J. In this summary process action, the defendant, Raschid Thompson, appeals from the judgment of possession, rendered after a court trial, in favor of the plaintiff, ECR 2, LLC. On appeal, the defendant claims that the court (1) violated his constitutional right to due process by denying his motion for a continuance of the trial date and refusing to consider his motion to preclude evidence and testimony that had not previously been disclosed by the plaintiff; (2) applied the wrong legal standard in rejecting his special defense of equitable nonforfeiture; and (3) erred in rejecting his special defense that he had a right to cure, and did cure, his nonpayment of rent. We affirm the judgment of the trial court.

The following facts, as set forth by the trial court, and procedural history are relevant to our consideration of the defendant's claims on appeal. "The defendant is a veteran who was honorably discharged after serving in the United States Air Force from 1993 to 1997. He receives [United States Department of] Veterans Affairs disability benefits as well as rental assistance and [the assistance of] a case management counselor through the [United States] Department of Housing and Urban Development-VA Supportive Housing (HUD-VASH) program.

"The plaintiff is the owner-landlord of 51 Whiting Street, unit 5, in Hamden (premises). The plaintiff entered into a written lease agreement with the defendant for the use and occupancy of the premises from December 15, 2023, until November 30, 2024. The total monthly rent is $1340 per month due on the first of the month with a nine day grace period. The defendant's portion is $93 per month, and HUD-VASH pays the balance.

"The defendant paid his portion of the prorated rent upon the signing of the lease in December but did not immediately move in due to a rodent and cockroach infestation. He informed the plaintiff's property manager, Christina Young, of the infestation, which was promptly remediated. In January, the defendant moved in and noticed additional issues with the apartment, including not having a mailbox key and a crack in the door that allows rodents to enter. As a result of these problems, the defendant did not pay rent in January. By February, the defendant still did not have a mailbox key, and so, did not pay February rent. When he was assessed a late fee, the defendant complained by phone to Young. Young told the defendant that he should make his complaint through the plaintiff's online portal and that she would remove the late fee. After the defendant used the portal to inform the plaintiff only about the mailbox key, he received a key within twenty-four to forty-eight hours. After the mailbox key issue was resolved, the plaintiff reissued the $50 late fee when the defendant still did not pay February rent.

"The relationship between the defendant and Young continued to deteriorate and broke down completely after the defendant called Young a vulgar name when she texted him about his late rent payments. Thereafter, Young decided that all communications regarding the premises would take place through the defendant's HUD-VASH counselor. The defendant's counselor did

communicate the continuing issues with the premises, including a clogged kitchen sink and dishwasher, and malfunctioning outlets, but the defendant did not use [the] online portal to notify the plaintiff about them, and no work orders were placed for those issues. Instead, the defendant contacted [the] Hamden Housing Authority and asked for an inspection. The inspection took place on May 9 and confirmed some of the defendant's complaints, requiring the plaintiff to correct them.

"The defendant was served a notice to quit by abode service on March 2, 2024, for 'nonpayment of rent within the grace period provided for residential property' with a quit date of April 7. The notice also indicated that any future payments would be accepted 'for reimbursement of costs and for use and occupancy only . . . .' A letter was also sent to the New Haven Housing Authority, as the section 8 rental assistance administrator, that a notice to quit had or would be served on the defendant. The defendant, however, did not receive the notice [to quit] until March 10, as he was out of town. Upon receipt, the defendant reached out to his HUD-VASH counselor for advice. At some point prior to April 3, Young communicated to the defendant and his HUD-VASH counselor that, in addition to the defendant's portion of the rent from January to April, he would also have to pay $375 to reimburse the plaintiff for the legal fees associated with serving the notice to quit. On April 3, the defendant purchased and mailed to the plaintiff's attorney four money orders for $93 each and indicated that they were for January through April rent. On April 5, Young emailed the defendant and [his] HUD-VASH counselor, informing them that she had received the money orders and indicating that they could only be accepted as use and occupancy payments. She further indicated that [the] $375 fee remained, which would increase to $1600 after April 7. The defendant agreed

to the payments being [for] use and occupancy but has not paid the $1600 legal fees or $50 late fee. He remains in possession of the premises."

On April 9, 2024, the plaintiff commenced this summary process action seeking immediate possession or occupancy of the premises. The plaintiff alleged that it had served on the defendant a notice to quit on the ground that he had failed to pay the rent when it was due or within the grace period provided in the lease, but, despite that notice, the defendant continued to remain in possession of the premises and had refused to vacate it.

On May 1, 2024, the defendant filed a notice with the court indicating that, on that date, he had served upon the plaintiff discovery requests for production and interrogatories pursuant to Practice Book § 13-2.

On May 6, 2024, the defendant filed an answer and special defenses to the plaintiff's complaint. As to the allegation that the defendant had failed to pay the full rent when it was due, the defendant left the plaintiff to its proof. By way of special defense, the defendant alleged that he had cured his failure to pay the rent for the premises on April 3, 2024, before the April 7, 2024 quit date, when he sent four money orders to the plaintiff in the amounts of $93 each for the months of January through April, 2024. The defendant also alleged that the defense of equitable nonforfeiture precluded eviction in this case. In support of that defense, the defendant alleged, inter alia, that his nonpayment of rent was based on a rodent and cockroach infestation of the premises, in addition to a failure by the plaintiff to provide him with a key to his mailbox, despite having requested one three times. He alleged that, if evicted, he would lose his housing voucher and that "[t]he plaintiff's choice to pursue this summary process action against a disabled veteran with case management, in

the face of payment of the full arrearage prior to the quit date, is unethical, immoral, unreasonable, and unkind." The plaintiff denied the defendant's special defenses.

Also on May 6, 2024, the defendant filed a motion for summary judgment. The defendant argued that there was no genuine issue of material fact that he had paid the arrearage owed to the plaintiff for his nonpayment of rent in full prior to the quit date and that the only outstanding amount due to the plaintiff was its claimed legal fees of $1600. The defendant argued that he was entitled to judgment as a matter of law on the basis of his special defenses—that he had cured his nonpayment of rent and that the doctrine of equitable nonforfeiture precluded eviction in this case. On May 7, 2024, the plaintiff filed an objection to the defendant's motion for summary judgment on the ground that a genuine issue of material fact existed.

On that same date, May 7, 2024, the court sent notices to the parties scheduling a hearing on the defendant's motion for summary judgment and the plaintiff's objection thereto, and trial on the summary process complaint for May 23, 2024.

On May 23, 2024, the court, *Stone*, *J.*, first heard argument on the defendant's motion for summary judgment. After hearing arguments from both parties, the court orally denied the motion for summary judgment on the ground that a genuine issue of material fact existed. The court explained: "I am going to deny the motion for summary judgment. I think there is a question of fact as to whether the nonpayment was cured or whether it could be cured. I also recognize that, you know, under the equitable relief, that findings of fact have to be made. I understand your position . . . that there is no question of fact, but as the trier, I am required to make factual findings regarding whether the equitable doctrine of [non]forfeiture is appropriate in this

action. So, I am going to deny the motion for summary judgment."[1]

After the court denied the defendant's motion for summary judgment, he filed a motion to "stay further proceedings in this action until three days from when the plaintiff has fully and fairly responded to the defendant's interrogatories and requests for production, which were mailed and emailed to the plaintiff on May 1, 2024, as per the notice of discovery concomitantly filed with this court."[2] The defendant argued that, "[i]n support of the motion, the defendant represents that the plaintiff's objection to the defendant's motion for summary judgment alleges that there is at least one issue of material fact in dispute in the instant case. . . . Given that all [of] the facts stated in the plaintiff's objection are in accord with the facts stated in the defendant's motion for summary judgment . . . one can only conclude that there are facts outside of the record upon which the plaintiff will rely." (Citations omitted.)

The court denied the motion for a continuance from the bench. The court explained: "Discovery is appropriate, but I think the issues in this case are relatively narrow, and I think all of the information that you need you can get during the trial today." In response, counsel for the defendant stated: "Your Honor, I just do want to put my objection to the denial on the record. This is a due process issue. In summary process, obviously, a person's housing is at stake. Due process is very

[1] The court issued the following written order as well: "After hearing the argument of counsel, the court finds that there remain questions of material fact, specifically, whether the nonpayment allegation was cured. Additionally, the court must make factual findings to determine any potential equitable relief sought."

[2] Although the defendant's motion was titled a motion to stay, and he purported to seek a stay of the proceedings, he actually sought a continuance of the trial date. We therefore refer to the defendant's motion as a motion for a continuance.

important. And I would just, again for the record, want to point out that, in our earlier discussion with the motion for summary judgment, [opposing] counsel did state that he plans to put on record of extensive interactions between the property manager and my client. My discovery motion was narrowly tailored and specifically asking about interactions between my client and the property manager or the property manager and the case manager, which seem very relevant to the trial. My client is entitled not to have a trial by surprise, and tend to anticipate what the testimony will be and to be able to respond, and I do feel that, by going forward without having that discovery, which again . . . was narrowly tailored, he had the opportunity to object to it, really disadvantages my client."

After the court denied the defendant's motion for a continuance, the defendant then sought permission from the court to file a motion to preclude undisclosed evidence and testimony. After counsel for the plaintiff expressed that he felt "sandbagged" by the defendant's motion in that it was being filed on the day of trial,[3]

[3] The following colloquy ensued:

"[The Defendant's Counsel]: Before we move forward, Your Honor, I do not mean to be overly litigious, but I do have one more motion that I would like to file prior to going to trial. It is a motion to preclude undisclosed evidence and testimony. I would ask that I be allowed to file that motion and, if you deny it, to have it on the record.

"The Court: Why didn't you file that?

"[The Defendant's Counsel]: Well, I was in—I have it prepared. . . . I did not feel this motion was appropriate, given the pending motion for summary judgment and then the pending motion for [a continuance]. . . .

"The Court: But, counsel, you did know that, if the motion for summary judgment was denied, that you were going to trial today.

"[The Defendant's Counsel]: Well, I did not know . . . because I had filed the motion for [a continuance] and that was pending.

"The Court: But you didn't file that until this afternoon.

"[The Defendant's Counsel]: Because there would not have been a need for a motion for [a continuance] if the motion for summary judgment was granted.

"The Court: Correct. But attorneys do it all the time in the abundance of caution if . . . my motion for whatever gets denied, I also have these other

the court declined to consider the motion due to its untimeliness.

The court then proceeded on the trial of the matter, at which the plaintiff introduced the testimony of its property manager, Young, and its maintenance manager, Eliyahu Katz.[4] The defendant testified on his own behalf.

On June 3, 2024, the court issued a memorandum of decision concluding that the plaintiff had proven the allegations of its complaint and rejecting the defendant's special defenses. As to his defense that he had the right to cure, and did cure, his nonpayment by sending payments for the outstanding rent to the plaintiff prior to the quit date, the court found that, pursuant to the lease agreement, the plaintiff was required to allow the defendant an opportunity to cure his nonpayments within nine days after the beginning of each month when his portion of the rent became due. The court further found that, "[o]nce the notice to quit, which stated that any future payments would be for use and occupancy only, was served, however, the defendant's opportunity to cure was extinguished." As to the defendant's second special defense of equitable nonforfeiture, the court found that the defendant did not act with clean hands and therefore that his nonpayment of rent was wilful. The court therefore rendered judgment of possession in favor of the plaintiff but stayed the execution of the judgment through July 31,

motions that could have been heard and at least considered, and [the] plaintiff's counsel could have had an opportunity to review them and respond to them or at least be able to say something today before trial started, but we're here right now. It is almost three o'clock on the day of trial."

The court concluded: "I mean, you had an opportunity, you knew that it was a possibility that your motion for summary judgment could be denied and that you were potentially going to go to trial today . . . and you chose not to file your motion to preclude. So, I'm not going to consider that at this time."

[4] Katz also was a principal of the plaintiff.

2024, and ordered the defendant to continue to make use and occupancy payments to the plaintiff.[5] This appeal followed.

I

The defendant first claims that the court violated his constitutional right to due process by denying his motion for a continuance of the trial and refusing to consider his motion to preclude evidence and testimony that had not previously been disclosed by the plaintiff.[6]

When the trial court denied his motion for a continuance, the defendant argued, inter alia, that "[t]his is a due process issue. In summary process, obviously, a person's housing is at stake. Due process is very important." The defendant essentially reiterates that argument to this court, arguing that he has a constitutional right to housing as a "welfare entitlement . . . ." Even if we were to credit the defendant's argument that he has a constitutional property interest in subsidized housing, he failed to identify, either to the trial court or in his brief to this court, which of his due process rights were violated. At oral argument before this court, the defendant asserted for the first time that his constitutional rights to confrontation and cross-examination had been violated. "[I]t is well settled that arguments cannot be raised for the first time at oral argument." (Internal quotation marks omitted.) *Vaccaro* v. *Shell Beach Condominium, Inc.*, 169 Conn. App. 21, 46 n.28,

[5] On July 18, 2024, the parties entered into a stipulation that the defendant would pay $93 each month for use and occupancy of the premises while this appeal is pending.

[6] The defendant argues, for the first time in his reply brief, that the court's denial of his motion for a continuance and failure to consider his motion to preclude constituted an abuse of discretion. "[I]t is . . . a well established principle that arguments cannot be raised for the first time in a reply brief." (Internal quotation marks omitted.) *Lewis* v. *Commissioner of Correction*, 211 Conn. App. 77, 101, 271 A.3d 1058, cert. denied, 343 Conn. 924, 275 A.3d 1213, cert. denied sub nom. *Lewis* v. *Quiros*, U.S. , 143 S. Ct. 335, 214 L. Ed. 2d 150 (2022).

148 A.3d 1123 (2016), cert. denied, 324 Conn. 917, 154 A.3d 1008 (2017). Additionally, the defendant did not file a motion to preclude previously nondisclosed evidence with the trial court.[7] The record is therefore inadequate to review on appeal any challenge to the court's decision not to consider the defendant's proposed motion. See *Nedder* v. *Nedder*, 226 Conn. App. 817, 822 n.2, 320 A.3d 180 (2024) ("[i]t is a well established principle of appellate procedure that the appellant has the duty of providing this court with a record adequate to afford review" (internal quotation marks omitted)). The defendant's claim that his right to due process was violated therefore fails.

II

The defendant next claims that the court applied the wrong legal standard in rejecting his special defense of equitable nonforfeiture. Specifically, the defendant argues that the court used an incorrect definition of "wilful." We are not persuaded.

"The doctrine of equitable nonforfeiture is a defense implicating the right of possession that may be raised in a summary process proceeding, and is based on the principle that [e]quity abhors . . . a forfeiture. . . . Equitable principles barring forfeitures may apply to summary process actions for nonpayment of rent if: (1) the tenant's breach was not [wilful] or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord's injury is reparable. . . . Regarding the first requirement, we have explained that [wilful] or

[7] We note that the record does not reflect, nor does the defendant argue, that the court prevented the defendant from filing his motion to preclude. The court simply declined to consider the defendant's proposed motion due to its untimeliness. The defendant should have filed his motion to properly preserve his claim on appeal. See Practice Book § 61-10 (a). He failed to do so.

gross negligence in failing to fulfill a condition precedent of a lease bars the application of the doctrine of equitable nonforfeiture. . . . In circumstances involving the nonpayment of rent, we have construed strictly this threshold requirement in deciding whether to grant equitable relief." (Citations omitted; internal quotation marks omitted.) *Boccanfuso* v. *Daghoghi*, 337 Conn. 228, 239–40, 253 A.3d 1 (2020).

In addressing the defendant's claim of equitable nonforfeiture, the court explained: "[The defendant] claims that his intentional withholding of rent was based on his housing conditions and his ignorance of the prohibition against self-help. The defendant further asserts that, once he received the notice to quit, he sought advice, and paid use and occupancy for January through April. He maintains that, as a disabled veteran with case management who will likely become homeless if evicted, the pursuit of summary process is unethical, immoral, unreasonable and unkind. The defendant has not established by a preponderance of the evidence that the court should exercise its equitable powers under these circumstances. . . .

"In the present case, the defendant has not produced any evidence that his intentional nonpayment of rent was accompanied by a good faith intent to comply with the lease or a good faith dispute over the meaning of the lease. The lease provides the procedure for reporting housing condition issues to the plaintiff. Section 3.2 of the lease agreement requires the defendant to 'report any damage or problem immediately upon discovery' and indicates that the plaintiff's compliance with or response to 'any oral request regarding security or nonsecurity matters doesn't waive the strict requirement for written notices under this Lease Contract. You must promptly notify us in writing of: water leaks; electrical problems; malfunctioning lights; broken or missing locks or latches; [and] other conditions that pose a

hazard to the property, or your health, or safety.' The defendant not only signed the lease containing this provision but actually used the procedure to resolve his mailbox key issue. The defendant told Young that he did not pay February rent and should not have a late fee because he had not yet received a mailbox key. She informed him that he needed to use the online portal to make a request and removed the late fee. Once the defendant did, the plaintiff resolved the mailbox key issue in twenty-four to forty-eight hours. But, even after the reason for the withholding, his lack of a mailbox key, was fully resolved, the defendant still did not pay his February rent. In fact, he did not pay February rent until after the notice to quit was issued. The defendant's actions do not demonstrate a good faith intent to comply with the lease. The defendant was well aware of the process for prompt remediation of any housing conditions, but he presented no evidence that he ever sought to engage in that process again. Instead, he waited another nearly [two and one-half] months, not to request redress of his housing problems through the online portal, but to file a complaint with the Hamden Housing Authority. . . .

"The defendant does not claim that he is not required to pay his portion of the rent, nor could he claim, or prove, that the plaintiff breached the lease agreement. The defendant chose not to use the plaintiff's official reporting system after the mailbox key issue was resolved, which would have triggered the plaintiff's obligations to fix any issues. He was so aggressive toward Young that she refused to interact with him directly. Even if the defendant and Young could not communicate with each other, due to the defendant's own actions, nothing prevented him from continuing to use the online portal to seek resolution of his housing condition issues. Such actions demonstrate that the defendant's nonpayment was wilful, and he was not acting with clean hands.

Therefore, the defendant's second special defense fails." (Citations omitted.)

The defendant contends that, in so ruling, the court applied an incorrect legal standard in determining whether his nonpayment of rent was wilful. "The plenary standard of review applies to the preliminary issue of whether the court applied the correct legal standard in evaluating [a defendant's] special defense."[8] (Internal quotation marks omitted.) *Milford Redevelopment & Housing Partnership* v. *Glicklin*, 228 Conn. App. 593, 616, 325 A.3d 971 (2024), cert. denied, 351 Conn. 902, 329 A.3d 239 (2025).

Our Supreme Court has held that "[a] court of equity will apply the doctrine of clean hands to a tenant seeking . . . equitable relief; thus, a tenant whose breach was [wilful] or grossly negligent will not be entitled to relief. . . . It is axiomatic that, [when] a [party] seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue." (Citation omitted; internal quotation marks omitted.) *Boccanfuso* v. *Daghoghi*, supra, 337 Conn. 245. "[A] tenant's intentional nonpayment of rent does not require a finding that the nonpayment is wilful under the equitable nonforfeiture doctrine if nonpayment is accompanied by a good faith intent to comply

[8] Ordinarily, "[w]e employ the abuse of discretion standard when reviewing a trial court's decision to exercise its equitable powers." (Internal quotation marks omitted.) *Boccanfuso* v. *Daghoghi*, supra, 337 Conn. 239. The defendant has made clear, however, that his challenge to the court's rejection of his equitable defense is limited to his claim that the court applied the incorrect legal standard. Specifically, in his appellate brief, the defendant states: "The defendant acknowledges that, when the question before the Appellate Court is whether the trial court's choice to withhold equitable relief was unreasonable or unjust, the proper standard of review is abuse of discretion. . . . However, this is *not* the question before this court. The question before this court is whether the [trial] court applied the correct legal standard in determining whether the defendant was entitled to equitable relief and, under such circumstances, plenary review is required." (Citation omitted; emphasis in original.)

with the lease or a good faith dispute over the meaning of a lease." (Internal quotation marks omitted.) Id., 241–42. "[W]e [also] have previously noted that wilful is a word of many meanings, and its construction [is] often . . . influenced by its context . . . ." (Citation omitted; internal quotation marks omitted.) Id., 246–47.

Consistent with the aforementioned principles, the court found that the defendant did not act with clean hands and did not demonstrate a good faith intent to comply with the lease in that he did not notify the plaintiff of his issues with the conditions of the premises in writing as required by the lease. The defendant contends that the court should have based its wilfulness determination on whether his nonpayment was " 'not without just cause or excuse' " or whether it constituted " 'mere neglect' " in that he relied on the advice of his HUD-VASH counselor. Although those may have been alternative measures of the defendant's wilfulness, the defendant has cited no authority, nor are we aware of any, that requires the trial court to apply a specific definition of wilfulness. Accordingly, we cannot conclude that the trial court's reliance on a recognized and legally correct definition of wilfulness constituted error.

III

The defendant finally claims that the court erred in rejecting his special defense that he had a right to cure, and did cure, his nonpayment of rent. We disagree.

In addressing the defendant's argument that he cured his nonpayment of rent, the court reasoned: "The defendant contends in his first special defense that he had the right to cure, and did cure, his nonpayment prior to the April 7 quit date when he sent four money orders to the plaintiff's counsel via certified mail for his portion of rent that was due for January through April. He argues that the court should apply the contract law principle articulated in *Centerplan Construction Co.*,

LLC v. *Hartford*, 343 Conn. 368, [412, 274 A.3d 51] (2022), that, when a contract is silent as to notice and cure rights, the right to cure is implied unless expressly waived.

"That principle is inapplicable to this case, as the lease agreement is not silent as to the defendant's notice and cure rights. Section 1.3 of the lease agreement states that the defendant 'must pay your rent on or before the 1st day of each month within 10 days of grace period. . . . If you don't pay rent on time, you'll be delinquent and all remedies under this Lease Contract will be authorized.' Similarly, section 4.2 of the lease agreement states: 'You'll be in default under this lease agreement if you do not make every rent payment by the tenth (10th) calendar day of the month when such payment is due or if you . . . [violate] any terms of this Lease Contract including but not limited to the following violations: failure to pay rent or other amounts that you owe when due . . . . If you are in default for any reason, we, at our option, pursue any and all remedies available to us pursuant to Connecticut law.' These provisions are consistent with General Statutes § 47a-15a,[9] which defines a grace period as the nine day time period after the first day that rent is due and unpaid.

"By the provisions of the lease agreement and state law, the plaintiff was required to allow the defendant an opportunity to cure his nonpayments within nine days after the beginning of each month when his portion of the rent payments became due. The plaintiff could have chosen to accept payment after the 10th day but before the notice to quit was served. Once the notice

[9] General Statutes § 47a-15a (a) provides: "If rent is unpaid when due and the tenant fails to pay rent within nine days thereafter or, in the case of a one-week tenancy, within four days thereafter, the landlord may terminate the rental agreement in accordance with the provisions of sections 47a-23 to 47a-23b, inclusive. For purposes of this section, 'grace period' means the nine-day or four-day time periods identified in this subsection, as applicable."

to quit, which stated that any future payments would be for use and occupancy only, was served, however, the defendant's opportunity to cure was extinguished. . . . Because the defendant did not pay his rent portion prior to service of the notice to quit, his special defense must fail." (Citation omitted; footnote added.)

The defendant claims that the court erroneously found that the lease agreement was not silent as to notice and cure rights and, therefore, erred in holding that he had no common-law right to cure. The defendant's claim "presents a question of contract interpretation because a lease is a contract, and, therefore, it is subject to the same rules of construction as other contracts. . . . Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a question of fact . . . [when] there is definitive contract language, the determination of what the parties intended by their . . . commitments is a question of law [over which our review is plenary]. . . .

"The intent of the parties as expressed in [writing] is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the [writing]." (Citation omitted; internal quotation marks omitted.) *Gateway Development/East Lyme, LLC* v. *Duong*, 227 Conn. App. 38, 46, 321 A.3d 489 (2024).

In arguing that the court erroneously found that the lease agreement was not silent as to the right to cure, the defendant asserts that the court erred in treating the nine day grace period contained in the lease agreement as a cure period. He contends that a grace period

is not a cure period. Because the defendant has provided no more than a conclusory statement in this regard, unaccompanied by any legal authority, we decline to address this argument. See *MacDermid, Inc.* v. *Leonetti*, 328 Conn. 726, 748, 183 A.3d 611 (2018) (actual analysis, not mere assertions, is required for briefing to be adequate).

Moreover, the unambiguous language of the lease agreement provided notice to the defendant that his failure to pay his rent on the first of each month or within nine days thereafter would constitute a default of the agreement and that, "if [his] rent [was] delinquent, [he] immediately forfeit[ed] all rights to occupy the apartment any longer . . . ." That language clearly indicates that, outside of the nine day grace period, there is no right to cure once a tenant defaults on his rent obligation. See *Gateway Development/East Lyme, LLC* v. *Duong*, supra, 227 Conn. App. 47–48 (plain and unambiguous language of sublease agreement made clear that pretermination notice and cure period were not required in context of default for nonpayment of rent where agreement provided that, "if the defendants fail to pay rent within ten days after it is due, the plaintiff may 'immediately initiate' legal action to recover possession of the premises, 'without prior notice' to the defendants"). We therefore conclude that the defendant's argument that he had a right to cure his nonpayment of rent is unavailing.[10]

The judgment is affirmed.

In this opinion the other judges concurred.

[10] The defendant argues in his reply brief that the provision of General Statutes § 47a-23 that requires a landlord to give a defaulting tenant three days notice in the notice to quit must be read to mean that "the time between the service of the notice [to quit] and the quit date is the mandatory reasonable time to cure said breach." Not only does this court not consider claims made for the first time in a reply brief; see *Lewis* v. *Commissioner of Correction*, 211 Conn. App. 77, 101, 271 A.3d 1058 (arguments cannot be raised for first time in reply brief), cert. denied, 343 Conn. 924, 275 A.3d

KENNETH LOMBARDI *v.* TOWN OF WESTPORT (AC 47490)

Alvord, Elgo and Seeley, Js.

Syllabus

The plaintiff, a retired firefighter who had been employed by the defendant town's fire department, appealed from the trial court's judgment for the defendant, rendered following its granting of the defendant's motion for summary judgment. The plaintiff claimed that the court improperly concluded that there was no genuine issue of material fact as to the plaintiff's breach of contract claim alleging that the defendant had breached the terms of a pension plan. *Held*:

The trial court properly granted the defendant's motion for summary judgment, as there was no genuine issue of material fact that the plaintiff was not entitled to a disability retirement pension on the basis that he did not have certifications from at least three physicians that he was disabled so as to be permanently disqualified from service of all duties as a regular full-time firefighter, which was required by the plain and unambiguous language of the pension plan.

Argued March 5—officially released May 13, 2025

Procedural History

Action to recover damages for breach of contract, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Clark*, *J.*, granted the defendant's motion for summary judgment and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Thomas W. Bucci, for the appellant (plaintiff).

Cindy M. Cieslak, with whom, on the brief, was *Michael J. Rose*, for the appellee (defendant).

Opinion

ALVORD, J. The plaintiff, Kenneth Lombardi, appeals from the summary judgment rendered by the trial court in favor of the defendant, the town of Westport. On

1213, cert. denied sub nom. *Lewis* v. *Quiros*, U.S. , 143 S. Ct. 335, 214 L. Ed. 2d 150 (2022); but this argument has no basis in the law.

appeal, the plaintiff claims that the court improperly concluded that there were no genuine issues of material fact as to the plaintiff's breach of contract claim alleging that the defendant breached the terms of a pension plan. We affirm the judgment of the trial court.[1]

The following procedural history is relevant to our resolution of this appeal. The plaintiff commenced the present action in October, 2022. In his single count complaint, filed on October 27, 2022, the plaintiff alleged in relevant part as follows. The plaintiff was employed by the defendant as a firefighter for thirty-seven years. On March 31, 2017, the plaintiff notified the defendant's personnel director, Ralph Chetcuti, that he would be retiring, effective May 1, 2017. The plaintiff requested a disability retirement pension on account of an ear injury, resulting in hearing loss, that he had sustained while performing his duties as a firefighter in 2004. Chetcuti subsequently informed the plaintiff that he did not qualify for a disability retirement pension. On April 30, 2017, the plaintiff rescinded his notice of retirement. However, following an exchange between the Westport Uniformed Firefighters Association and Chetcuti, the plaintiff reinstated his request for a disability retirement pension and retired effective June 1, 2017.

The plaintiff's entitlement to a disability retirement pension is set forth in a collective bargaining agreement between the defendant and the Westport Firefighter's Local 1081, International Association of Firefighters, AFL-CIO (pension plan), which is administered by the defendant's Fire Pension Board (board). Under the pension plan, a covered individual is entitled to a disability retirement pension "[u]pon certification by [at] least

[1] The plaintiff also claims that the court erred in concluding that the plaintiff was collaterally estopped from bringing the present action. Because we affirm the court's determination that there were no genuine issues of material fact with respect to the plaintiff's breach of contract claim, we need not address that alternative contention.

three (3) physicians appointed by the [board]" that he "is disabled so as to be permanently disqualified from service of all duties as a regular full time firefighter, such disability having occurred during actual performance of duty, or resulting from the effects of any injury received, disease contracted, or exposure endured while in the actual discharge of his duties . . . ." To aid in its determination of whether the plaintiff qualified for a disability retirement pension, the board accepted and considered medical evaluations from two physicians selected by the plaintiff, who opined that the plaintiff "suffered from permanent hearing disabilities rendering him unfit for duty as a firefighter." In addition, the board referred the plaintiff to Craig Hecht, a physician, for an independent examination. "Hecht's findings were consistent with the conclusions of [the other two physicians], except [for] Hecht's conclusion that the plaintiff could perform '90 percent of his job responsibilities' . . . ." In December, 2017, the board denied the plaintiff's request for a disability retirement pension.

In his complaint, the plaintiff asserted a claim of breach of contract. In support of his claim, the plaintiff alleged that the defendant, acting through the board, "wrongfully denied the plaintiff the disability retirement pension to which he was entitled under the [pension plan]." The defendant filed an answer and special defenses in December, 2022, and the plaintiff filed a reply thereafter.

In August, 2023, the defendant filed a motion for summary judgment arguing, inter alia, that the plaintiff had not established entitlement to a disability retirement pension under the terms of the pension plan. The motion was accompanied by a memorandum of law and exhibits, including the pension plan document. In its memorandum of law, the defendant argued that "the [board] is entitled to deference when it determined

that the plaintiff did not meet the requirements of the [pension] plan; to wit, that he failed to produce the requisite three [independent medical examinations] by board-appointed doctors all finding him disabled from all regular duties. This fact is not disputed, nor is it disputable, by the plaintiff. The plaintiff's failure to establish the necessary prerequisite to a disability pension is fatal to his claim." The plaintiff filed a memorandum of law in opposition to the defendant's motion for summary judgment, which was accompanied by exhibits, including the physicians' medical reports, and the plaintiff's affidavit. The defendant filed a reply.

The trial court, *Clark*, *J.*, held oral argument on the defendant's motion in November, 2023. On March 15, 2024, the court issued its memorandum of decision, granting the defendant's motion for summary judgment on two separate grounds; see footnote 1 of this opinion; one of which was that the plaintiff did not meet "the clear and unambiguous qualifying language that the [board] and/or [defendant] is bound by contractually." In making its decision, the court further recounted that "the evidence presented demonstrates that the qualifying language for a disability pension requires certain verification of the disability through an independent medical report ordered by the [board]" and "the action of the [board] and/or the [defendant] in not awarding a disability pension to the plaintiff is not arbitrary or some abuse of discretion or misapplication of the applicable contract/pension." This appeal followed.

On appeal, the plaintiff claims that the court erred in granting the defendant's motion for summary judgment. Specifically, the plaintiff contends that the court improperly concluded that no genuine issue of material fact existed as to the plaintiff's entitlement to a disability retirement pension. We disagree.

"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." (Internal quotation marks omitted.) *Waterbury* v. *Brennan*, 228 Conn. App. 206, 212, 325 A.3d 237, cert. denied, 350 Conn. 923, 325 A.3d 1094 (2024).

"It is axiomatic that a collective bargaining agreement is a contract. . . . For that reason, [p]rinciples of contract law guide our interpretation of collective bargaining agreements." (Citation omitted; internal quotation marks omitted.) Id., 215. "Although ordinarily the question of contract interpretation, being a question of the parties' intent, is a 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 . . . ." (Internal quotation marks omitted.) Id., 213–14.

The pension plan in the present case plainly and unambiguously provides that a participant is entitled to receive and will be granted a disability retirement pension: "Upon certification by [*at*] *least three (3) physicians* appointed by the [board] that a Participant is disabled so as to be *permanently disqualified from service of all duties as a regular full time firefighter*, such disability having occurred during actual performance of duty, or resulting from the effects of any injury received, disease contracted, or exposure endured while in the actual discharge of his duties . . . ." (Emphasis added.) In addition, it is undisputed that one of the three physicians, Hecht, determined that the plaintiff could perform 90 percent of his job responsibilities and did not certify that the plaintiff was disabled so as to be permanently disqualified from service of all duties as a regular full-time firefighter. Accordingly, there exists no genuine issue of material fact that the plaintiff was not entitled to a disability retirement pension on the basis that he did not have certifications from at least three physicians.[2] Therefore,

[2] In arguing that there existed a genuine issue of material fact, the plaintiff also asserts that the trial court erred in stating that "[t]he only evidence submitted by either party for consideration is the report of [Hecht] . . . ." In addition, the plaintiff argues that "the trial court erred in finding that there is no independent medical report ordered by the [board] which confirms

the trial court properly granted the defendant's motion for summary judgment.

The judgment is affirmed.

In this opinion the other judges concurred.

MEHDI H. SONTHONNAX *v.* LONGBAO XING (AC 47205)

Alvord, Suarez and Bear, Js.

Syllabus

The defendant appealed from the trial court's judgment dissolving her marriage to the plaintiff and issuing certain financial orders. The defendant claimed that the financial orders were based on a clearly erroneous factual finding with respect to the plaintiff's income. *Held*:

The trial court's finding as to the plaintiff's gross weekly income was without evidentiary support and thus clearly erroneous, as that finding was based on the plaintiff's financial affidavit, which significantly underreported his gross base income from one of his employers.

Because the trial court expressly considered its erroneous factual finding as to the plaintiff's income when issuing its alimony and child support orders, which were not severable from the court's property distribution orders, the judgment was reversed as to all financial orders and the case was remanded for a new trial on all financial issues, including the court's award of attorney's fees to the defendant's former counsel.

Argued March 18—officially released May 13, 2025

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendant filed a cross complaint; thereafter, the case was tried to the court, *Truglia, J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court. *Reversed in part*; *new trial.*

Janet A. Battey, for the appellant (defendant).

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the disability of the plaintiff." Regardless of any misstatements made by the trial court, there are no genuine issues of material fact as to the plaintiff's claim.

Opinion

ALVORD, J. The defendant, Longbao Xing, appeals from the judgment of the trial court dissolving her marriage to the plaintiff, Mehdi H. Sonthonnax.[1] On appeal, the defendant claims that the court improperly based its financial awards on a clearly erroneous factual finding with respect to the plaintiff's income. We agree and, accordingly, reverse in part the judgment of the trial court and remand the matter for a new trial on all financial orders.[2]

The record reveals the following relevant facts and procedural history. The parties were married in 2005 in France and are the parents of one minor child, who was born in 2008. The plaintiff initiated the underlying dissolution proceeding in December, 2020. The matter was tried to the court, *Truglia*, *J.*, over three days.[3] Both parties testified and presented documentary evidence.

In its November 9, 2023 memorandum of decision, the court made factual findings with respect to each party as follows. The plaintiff is employed by UBS Securities, LLC (UBS), as a quantitative analyst earning a base salary of $300,000 annually plus a discretionary bonus. His bonus in the year prior to the dissolution

[1] The plaintiff did not file a brief or otherwise participate in this appeal. As a result, on January 3, 2025, this court ordered "that the appeal shall be considered on the basis of the [defendant's] brief and the record, as defined by Practice Book § 60-4, and oral argument, if not waived by the [defendant] or the court. Pursuant to Practice Book § 70-4, oral argument by the [plaintiff] will not be permitted."

[2] The defendant also claims that the court improperly based its property division orders on a clearly erroneous factual finding with respect to the parties' real property. Because we agree with the defendant's claim that the court improperly based its financial awards on a clearly erroneous factual finding with respect to the plaintiff's income, we need not reach the defendant's claim with respect to the court's property division orders. See part II of this opinion.

[3] Although represented by counsel initially, the defendant was self-represented during the trial, after her counsel was granted permission to withdraw her appearance.

of the parties' marriage was $250,000 and was paid in cash and stock. The plaintiff also earns $3000 annually as a part-time adjunct professor. The defendant was not working outside of the home at the time of the dissolution, nor had she worked outside the home since the commencement of the dissolution action. The defendant is an accomplished martial artist and previously had worked as a physical education teacher and martial arts instructor. The defendant claimed at trial that she was vocationally disabled due to a serious injury to one of her legs. The court found the defendant not credible as to the extent of her injury and determined that she is not completely physically or vocationally disabled. The court found that the defendant has a light duty work capacity.

The court awarded the parties joint custody of the child, with primary physical custody with the defendant, and set a parenting schedule. The court ordered the plaintiff to pay the defendant child support in the amount of $428 weekly. With respect to property division, the court ordered that "each party should simply retain the assets now in his or her name, free and clear of claims of the other, as a full and final property settlement in this case." The court awarded the defendant alimony in the amount of $7500 monthly for ten years, modifiable as to amount but nonmodifiable as to duration. Finally, the court ordered the plaintiff to pay to the defendant's former counsel $32,128.67 in attorney's fees. Both parties filed motions to reargue, which were denied. This appeal followed.

I

The defendant claims on appeal that the court made a clearly erroneous factual finding with respect to the plaintiff's income. Specifically, she argues that the plaintiff's paystubs, which were introduced into evidence at trial, do not support the income as reported in the

plaintiff's financial affidavit and as found by the trial court. We agree.

We first set forth applicable legal principles and our standard of review. "In dissolution proceedings, the court must fashion its financial orders in accordance with the criteria set forth in [General Statutes] § 46b-81 (division of marital property), [General Statutes] § 46b-82 (alimony) and [General Statutes] § 46b-84 (child support). All three statutory provisions require consideration of the parties' amount and sources of income in determining the appropriate division of property and size of any child support or alimony award." (Internal quotation marks omitted.) *Mensah* v. *Mensah*, 145 Conn. App. 644, 652, 75 A.3d 92 (2013).

"The standard of review in family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) Id., 651.

In the present case, the court found in its memorandum of decision that the plaintiff "earns a base salary of $300,000 per year plus a discretionary bonus. Last

year, he received a gross bonus of $250,000 in cash and stock. He reports current earnings of $7099 per week, in base and bonus compensation (Defendant's Exs. N & Y). The plaintiff also has a part-time position as an adjunct professor at New York University, from which he earns approximately $3000 each year (Defendant's Ex. X)." In rendering its child support award, the court again stated that the plaintiff had a gross weekly income of $7099.

Following our thorough review of the record, we are left with the definite and firm conviction that a mistake has been committed with respect to the court's finding that the plaintiff earned $7099 per week. In making its finding as to the plaintiff's income, the court first stated that the plaintiff earned a base salary from UBS of $300,000 per year, which amounts to $5769 weekly.[4] That base salary was consistent with paystubs entered into evidence and the plaintiff's testimony. However, the court then found that the plaintiff had a total gross weekly income of $7099, which purported to include his base salary and bonus. In making that finding, the court relied on the income reported on the plaintiff's financial affidavit. That affidavit incorrectly reported a base salary of $4615 weekly from UBS. Because the plaintiff's financial affidavit significantly underreported his gross base income from UBS, the court's finding as to the plaintiff's gross income, made on the basis of the income reported on the affidavit, is clearly erroneous. In other words, the court's finding as to the plaintiff's weekly income cannot be reconciled with its finding as to the plaintiff's base salary, and, thus, its finding is without evidentiary support.[5] See *Ferraro* v. *Ferraro*,

[4] Although the plaintiff represented in his financial affidavit that he is paid biweekly by UBS, the paystubs entered into evidence reflect that he is paid semimonthly.

[5] The defendant additionally claims on appeal that the court abused its discretion in rendering its child support order when it used its finding that the defendant possessed a minimum wage earning capacity to calculate the presumptive support amount. We agree.

168 Conn. App. 723, 733, 147 A.3d 188 (2016) (court's finding as to defendant's net income was not supported by evidence and remand for new hearing was required).

II

We now consider the appropriate relief in light of our conclusion that the court's factual finding as to the plaintiff's income was clearly erroneous. "Individual financial orders in a dissolution action are part of the carefully crafted mosaic that comprises the entire asset reallocation plan. . . . Under the mosaic doctrine, financial orders should not be viewed as a collection of single disconnected occurrences, but rather as a seamless collection of interdependent elements. Consistent with that approach, our courts have utilized the mosaic doctrine as a remedial device that allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property distribution or child support awards. . . . Every improper order, however, does not necessarily merit a reconsideration of all of the trial court's financial orders. A financial order is severable when it is not in any way interdependent with other orders and is not improperly based

In its memorandum of decision, the court stated: "The court imputes a minimum wage income to the defendant based on the court's finding that she has a light duty work capacity. Assuming, therefore, a gross weekly income of $7099 for the plaintiff and $600 for the defendant, the presumptive weekly child support amount pursuant to the child support guidelines is $428, payable by the plaintiff to the defendant."

The court erred in calculating the presumptive support amount using the defendant's earning capacity rather than her actual earnings, which were zero. See, e.g., *C. D.* v. *C. D.*, 218 Conn. App. 818, 850–51, 293 A.3d 86 (2023) (child support award calculated on basis of earning capacity was improper where court failed to take mandatory initial step of determining presumptive support amount pursuant to child support guidelines); *Barcelo* v. *Barcelo*, 158 Conn. App. 201, 215, 118 A.3d 657 ("[a] party's earning capacity is a deviation criterion under the guidelines, and, therefore, a court must specifically invoke the criterion and specifically explain its justification for calculating a party's child support obligation by virtue of the criterion instead of by virtue of the procedures outlined in the guidelines" (internal quotation marks omitted)), cert. denied, 319 Conn. 910, 123 A.3d 882 (2015).

on a factor that is linked to other factors. . . . In other words, an order is severable if its impropriety does not place the correctness of the other orders in question. . . . Determining whether an order is severable from the other financial orders in a dissolution case is a highly fact bound inquiry." (Internal quotation marks omitted.) *C. D.* v. *C. D.*, 218 Conn. App. 818, 852–53, 293 A.3d 86 (2023).

In the present case, we have determined that the court made a clearly erroneous factual finding as to the plaintiff's income, which was expressly considered by the court in issuing its alimony order[6] and incorporated into its calculation of the plaintiff's child support obligation. Accordingly, the alimony and child support orders cannot stand. We further conclude that the court's errors with respect to those orders are not severable from the court's property distribution orders. This is particularly so given that the plaintiff's income was the primary source of support for the family.[7] See *Onyilogwu* v. *Onyilogwu*, 217 Conn. App. 647, 657–58, 289 A.3d 1214 (2023) ("[b]ecause the court's support orders, particularly its spousal support or alimony order, are informed by and reflective of the parties' incomes and assets, as affected by the court's other financial orders, the entirety of the mosaic must be refashioned whenever there is error in the entering of any such interdependent order" (internal quotation marks omitted)).

[6] The court's rationale for its alimony award centered on the parties' income: "[W]hile the defendant is not completely vocationally disabled . . . the plaintiff has provided most of the financial support for the family for virtually the entire marriage. . . . [W]hile the defendant may have been employed at various times during the marriage, the record is not clear as to amounts she earned, and when. The court also notes the disparity between what the plaintiff currently earns and the amounts the defendant is likely to earn if she chooses to return to working outside the home."

[7] In its memorandum of decision, the court noted that the defendant listed virtually no assets on her financial affidavit and that the plaintiff showed minimal assets on his financial affidavit.

Because it is uncertain whether the property distribution orders will remain intact after reconsidering the child support and alimony orders in a manner consistent with this opinion, we conclude that the entirety of the mosaic must be refashioned. Accordingly, on remand, the court must reconsider all of the financial orders, including the award of attorney's fees.[8]

The judgment is reversed only as to the financial orders, including the award of attorney's fees, and the case is remanded for a new trial on all financial issues; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

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[8] General Statutes § 46b-62 (a) governs the award of attorney's fees in dissolution proceedings and provides that "the court may order either spouse . . . to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82."

These criteria include "the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81 . . . ." General Statutes § 46b-82 (a).

"In making an award of attorney's fees under § 46b-82, [t]he court is not obligated to make express findings on each of [the] statutory criteria. . . . Courts ordinarily award counsel fees in divorce cases so that a party . . . may not be deprived of [his or] her rights because of lack of funds. . . . Where, because of other orders, both parties are financially able to pay their own counsel fees they should be permitted to do so. . . . An exception to th[is] rule . . . is that an award of attorney's fees is justified even where both parties are financially able to pay their own fees if the failure to make an award would undermine [the court's] prior financial orders . . . ." (Internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 556, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013).

Because the ordering of attorney's fees is dependent on the respective financial abilities of the parties, the attorney's fee award in the present case must also be reconsidered in light of the new mosaic of financial orders that the court will issue on remand in this case. See id.

MEMORANDUM DECISIONS

CONNECTICUT APPELLATE REPORTS

VOL. 232

HOWARD R. STARKS, SR. *v.* UNITED SERVICES AUTOMOBILE ASSOCIATION
(AC 47612)

Cradle, C. J., and Westbrook and Harper, Js.

Argued April 21—officially released May 13, 2025

Substitute plaintiff's appeal from the Superior Court in the judicial district of Waterbury, *D'Andrea*, *J.*

Per Curiam. The judgment is affirmed.

KERRIANN E. BELLUCCI *v.* CHRISTOPHER M. DUNN, SR.
(AC 47121)

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

Argued April 22—officially released May 13, 2025

Defendant's appeal from the Superior Court in the judicial district of New Haven, *Hon. Jon C. Blue*, judge trial referee.

Per Curiam. The judgment is affirmed.

S. R. *v.* H. R.
(AC 47993)

Elgo, Clark and Prescott, Js.

Argued March 27—officially released May 13, 2025

Defendant's appeal from the Superior Court in the judicial district of Hartford, *Larock*, *J.*

Per Curiam. The judgment is affirmed.

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NOTICE OF CONNECTICUT STATE AGENCIES

Notice to the Members of the Bar and the Public

Division of Criminal Justice

On June 30, 2025, the terms of the following will expire:

Jospeh T. Corradino
State's Attorney
Judicial District of Bridgeport

John P. Doyle, Jr.
State's Attorney
Judicial District of New Haven

Matthew C. Gedansky
State's Attorney
Judicial District of Tolland

Paul J. Narducci
State's Attorney
Judicial District of New London

David R. Shannon
State's Attorney
Judicial District of Litchfield

The Criminal Justice Commission invites any comments you may have with respect to the performance of these individuals. You may forward one (1) copy of such information in writing no later than May 21, 2025, to: Criminal Justice Commission, c/o Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Attn: HR; or via email: DCJ.HR.@ct.gov (preferred method).

The Honorable Andrew J. McDonald, Chair
Criminal Justice Commission

NOTICES

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar by Uniform Bar Examination score transfer in April 2025. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Services

Andreoni, Brianna Rose of Lincoln, RI
Anthony, Ralph Xavier of Danbury, CT
Bailin, Arthur Jordan of North Easton, MA
Barba, Salvatore Gerald of Ashland, MA
Biancuzzo, Martin R. of Barrington, RI
Calton, Brandon Robert of Rumford, RI
Capozza, Michael Joseph of Springfield, MA
Chang, Chin-Li of Flushing, NY
Chiota, Matthew Grayson of Fairfield, CT
Cohen, Robert Anthony of Ridgefield, CT
DeJesus, Tyler James of Danbury, CT
Dibbini, Sophia Julia of Bronxville, NY
Evangelista, Luis R. of Bedford, NY
Farbent Hill, Lindsay of Stamford, CT
Ferdman, Jack M. of Woodstock, CT
Friedrichs, Peter Ellis of Fairfield, CT
Goncalves, Clara of Lynnfield, MA
Hirkaler, Samantha Morgan of White Plains, NY
Hooker, Madison Leigh of Verona, NJ
Huang, Stephanie of New York, NY
Khan, Raymond Anthony of Brockton, MA
Lee, Jennifer Elizabeth of West Hartford, CT
Lite, Matthew of Weymouth, MA
McKillop, Carisa Lynn of East Meadow, NY
Petrowski, Michael of Totowa, NJ
Rousseau, Corey of Grantham, NH
Schwartz, Isabelle R. of Weston, CT
Siddiqi, Daanish Zia of Chevy Chase, MD
Stokes, Derrick Charles of Burlington, MA
Toikka, Toni Jaakkima of New York, NY
Wang, Cindy of New Britain, CT
Warden, Scott Andrew of Shelton, CT

CONNECTICUT BAR EXAMINING COMMITTEE

The following individuals applied for admission to the Connecticut bar without examination in April 2025. Written objections or comments regarding any candidate should be addressed to the Connecticut Bar Examining Committee, 100 Washington Street, 1st Floor, Hartford, CT 06106 as soon as possible.

Kathleen B. Harrington
Deputy Director, Attorney Service

Anderson, Russell James of Allen, TX
Antonecchia, Marc of White Plains, NY
Dodge, Peter Xavier of Stamford, CT
Handelsman, Lauren K. of Sherman, CT
Herman, Lisa of White Plains, NY
LeClair, Daniel Joseph of Chicopee, MA
Lindeman, Benjamin Leo of Florham Park, NJ
Maxwell-Wickett, Janet K. of Park Ridge, IL
McCarthy, Cornelius Patrick of Southbury, CT
Morgan, William of Glastonbury, CT
Pastuszak, Margaret Janina of Ashland, MA
Shanley, James Arthur of Foxborough, MA
Silva, Kevin E. of North Kingstown, RI
Simels, Alexandra of New York, NY
Yellen, Jordan of Wilton, CT

Notice of Reprimand of Attorney

Pursuant to Practice Book Section 2-54, notice is hereby given of the following reprimands ordered by the reviewing committee of the Statewide Grievance Committee:

Reviewing Committee Reprimand

February 14, 2025: Robert J. Sickinger – 409856

Copies of the full text of the decisions of the Statewide Grievance Committee are available through the Committee's offices at 999 Asylum Avenue, Fifth Floor, Hartford, Connecticut 06105. The fee for copies is $.25 (twenty-five cents) per page. The full text of the decision is also available on the Connecticut Judicial Branch website (www.jud.ct.gov).

Attest:

Christopher L. Slack
Statewide Bar Counsel

NOTICE

Public Hearing on Practice Book Revisions to the Rules of Appellate Procedure Being Considered by the Justices of the Supreme Court and Judges of the Appellate Court

On Tuesday, June 3, 2025, at 2 p.m., a public hearing will be conducted pursuant to General Statutes § 51-14 (c) in the Supreme Court courtroom, 231 Capitol Avenue, Hartford, for the purpose of receiving comments concerning revisions to the Rules of Appellate Procedure that are being considered by the Justices and Judges, as well as any proposed new rule or any change to an existing rule that any member of the public deems desirable. The revisions proposed by the Advisory Committee on Appellate Rules were printed in the May 6, 2025 issue of the Connecticut Law Journal and are posted on the Judicial Branch website at http://www.jud.ct.gov/pb.htm.

Each speaker will be allowed a maximum of five minutes to offer their remarks. Anyone who believes that they may need to exceed the five minute limit or who does not wish to speak at the public hearing but wishes to offer comments on the proposed revisions may submit their comments to the co-chairs of the Advisory Committee on Appellate Rules by email to AdvisoryCommAppellateRules@connapp.jud.ct.gov or by forwarding their comments to the co-chairs at the following address:

Co-Chairs of the Advisory Committee on Appellate Rules

Attn: Attorney Jill Begemann

Connecticut Appellate Court

75 Elm Street

Hartford, CT 06106

All comments should be received by Wednesday, May 28, 2025.

Wheelchair access is located in the rear of the Supreme Court building, and may be reached from the staff parking lot between Lafayette and Oak Streets. There are a limited number of handicap accessible parking spaces in the gated staff lot, which may be entered from Oak Street. Use the intercom at the gate to speak to security about the availability of parking. Once at the accessible door, use the intercom to request entry from security. If you would like to attend the meeting and need an accommodation under the Americans with Disabilities Act, please email ADA.Contact@connapp.jud.ct.gov or call (860) 757-2200, ext. 3141, before Wednesday, May 28, 2025.

Hon. Gregory T. D'Auria

Hon. Eliot D. Prescott

Co-Chairs, Advisory Committee on Appellate Rules