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Thursday, October 28, 2021
2:00-4:00 p.m.

Presented by: Judge Kenneth Shluger
Judge Karen Goodrow
Renee Saltzman, Family Relations Supervisor

Moderated by: Attorney Paige Quilliam

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RECENT CASES

RECENT CASES: NONMODIFIABLE ALIMONY *OUDHEUSDEN* V. *OUDHEUSDEN*, SC 203300 (APRIL 27, 2021).

- Upheld the Appellate Court's holding that the trial court's award of permanent, nonmodifiable alimony was an abuse of discretion.
- In awarding alimony, the trial court must take into account all of the statutory factors enumerated in General Statutes § 46b-82 (a), and failure to do so amounts to an abuse of discretion.
- As an exception to the general rule disfavoring nonmodifiable alimony, it is even more important that the trial court consider the statutory factors.
- "[W]e are obliged to conclude that the trial court either failed to consider the defendant's age, health, and future earning capacity, or failed to afford any significant weight to these factors." *Oudheusden* v. *Oudheusden*, supra, SC 203300.

RECENT CASES: NONMODIFIABLE ALIMONY
OUDHEUSDEN V. *OUDHEUSDEN*, SC 203300 (APRIL 27, 2021)

- "To support the nonmodifiable, lifetime award in this case, and reflect a proper consideration of the defendant's future income and ability to comply with the alimony award . . . the trial court must have concluded that the defendant's earnings will either remain static or continue to increase until his alimony obligation terminates due to the death of either party or the plaintiff's remarriage or cohabitation. Such a conclusion ignores, or certainly does not account for, the volatile nature of . . . personal circumstances that has led this court to disfavor [p]rovisions [that] preclude modification of alimony . . . and to conclude that the legislature has done the same." (Citations omitted; internal quotation marks omitted.) *Oudheusden* v. *Oudheusden*, supra, SC 203300.

RECENT CASES: CHILD SUPPORT CALCULATION *DAVIS* V. *DAVIS*, 200 CONN. APP. 180, 238 A.3D 46 (2020).

- Reversed the trial court's calculation of the defendant's child support arrearage because the court did not deduct a pro rata amount reflecting the time the minor child, pursuant to the court's order, was in the defendant's custody.
- Even in the absence of a motion for modification of child support, General Statutes § 46b-224 "requires that, upon the court's ordering a change of custody of the minor child from the plaintiff to the defendant - albeit temporarily – such custody order *shall operate* to suspend the child support order requiring the defendant to pay the plaintiff . . . . Thus, because the . . . order transferred custody of the minor child to the defendant, the court's child support order was suspended until the minor child returned to the plaintiff's custody pursuant to § 46b-224 (1). (Emphasis in original; internal quotation marks omitted.) *Davis* v. *Davis*, supra, 200 Conn. App. 204.

RECENT CASES: MOTION FOR MODIFICATION
FLOOD V. *FLOOD*, 199 CONN. APP. 67, 234 A.3D 1076 (2020).

- Upheld the trial court's granting of a motion for modification of child support based on a substantial change in the defendant's financial circumstances.
- The substantial change in question was predicated on the expiration of the defendant's obligation to pay the minor child's tuition.
- The principal basis for the trial court's finding "was not the mere termination of the defendant's obligation to pay for the child's private schooling, which had no automatic consequences under the parties' separation agreement or the judgment of dissolution, but the material improvement in the defendant's financial situation that resulted from the defendant's subsequent savings in annual private school tuition . . . ." (Internal quotation marks omitted.) *Flood* v. *Flood*, supra, 199 Conn. App. 79.

RECENT CASES: MOTION FOR MODIFICATION
FLOOD V. *FLOOD*, 199 CONN. APP. 67, 234 A.3D 1076 (2020).

- The increase in the defendant's available assets was not the result of his voluntary choices, which would not constitute a substantial change in circumstances, but rather "resulted from the termination of the defendant's obligation, under a binding court order, to make substantial payments of after-tax dollars for the child's private schooling. . . . When the order expired . . . the resulting encumbrance upon the defendant's assets was removed, making an additional $55,000 per year in after-tax dollars available to the defendant for all purposes, including the payment of child support. By gaining access to those previously encumbered assets, the defendant realized a substantial increase in his disposable wealth and a significant betterment of his financial condition just as surely as if he had received assets of the same value by the vesting of an inheritance . . . or the awarding of civil damages . . . ." *Flood* v. *Flood*, supra, 199 Conn. App. 81-82.

RECENT CASES: CUSTODY
COLEMAN V. *BEMBRIDGE*, 207 CONN. APP. 28, __ A.3D __ (2021).

- Affirmed the trial court's judgment awarding joint custody to the plaintiff who resided in Connecticut and the defendant who resided in Canada.
- The trial court's judgment provided for the minor child to reside primarily with the plaintiff until his second birthday; for his residence to alternate between the parties during the time from the child's second birthday until his commencing full-time school; and then for his primary residence to revert back to the plaintiff.
- The Appellate Court held that the trial court's orders were not an improper prospective modification of the child's physical custody. "[W]e reject the plaintiff's foundational premise that the court's physical custody orders result in future modifications of the child's physical custody. Instead, under the court's orders, no parent has sole physical custody of the child; rather, the child benefits from parenting by each of his parents, under the circumstances of this case, by alternating between his parents' residences." *Coleman* v. *Bembridge*, supra, 207 Conn. App. 37.

RECENT CASES: CUSTODY
COLEMAN V. *BEMBRIDGE*, 207 CONN. APP. 28, __ A.3D __ (2021).

- The Appellate Court interpreted the trial court's use of the term "joint custody" to encompass both joint legal and joint physical custody. "[W]e interpret the physical custody orders as assigning the parties joint physical custody - that is, a sharing of continued contact with both parents throughout the course of the child's minority, with a unique, fluid residential arrangement devised to promote the child's best interests and intended, as the court explained, to deal with a difficult situation [in which] the parents of a young child live in two very different and geographically diverse places . . . ." (Internal quotation marks omitted.) *Coleman* v. *Bembridge*, supra, 207 Conn. App. 38-39.
- The trial court did not lack statutory authority pursuant to General Statutes § 46b-56a to award joint physical custody in the absence of an agreement or a request by either party. Although the statute in question limits the court's authority to award joint *legal* custody under these circumstances, no "appellate authority of which we are aware interprets § 46b-56a to impose restrictions on a court's authority to award joint *physical* custody." (Emphasis in original.) Id., 44.

RECENT CASES: CUSTODY
COLEMAN V. *BEMBRIDGE*, 207 CONN. APP. 28, __ A.3D __ (2021).

- The trial court did not infringe on the plaintiff's due process rights in awarding joint physical custody absent a request by either party. The plaintiff did not lack fair notice when she testified and cross-examined witnesses at trial, and her "amended complaint requested not only that the primary residence of the parties' child be with the plaintiff but also *anything else the court deems fair.*" (Emphasis in original.) *Coleman* v. *Bembridge*, 207 Conn. App. 46-47.

Superior Court for Family Matters
Standing Orders – Management Order for Trials, Hearings, Case Dates, and Resolution Plan Dates
Effective July 1, 2021

These management orders shall apply to trials, hearings, Case Dates, and Resolution Plan Dates in family matters, whether pendente lite or postjudgment, unless:

(1) the requirements are waived or modified by the court in a particular case, or
(2) the hearing is on an application for, or a motion for extension, modification, or contempt of, a temporary restraining order pursuant to Section 46b-15 of the Connecticut General Statutes.

Section A applies to trials and hearings that are assigned to a date other than a Case Date. Section B applies to hearings on a Case Date. Section C applies to Resolution Plan Dates. Section D applies to all items to be filed or exchanged under this order.

A. **Trials and Hearings**. Counsel and self-represented parties are ordered to exchange with each other and file with the court, in the manner set forth in Section D, the following documents **not less than five (5) calendar days** before the assigned trial or hearing date.

1. Current sworn financial affidavits meeting the requirements of Practice Book Sec. 25-30(a), if any financial issues are involved.

2. A list of all pending motions, including motions to be decided before the start of the trial or hearing such as motions in limine and motions for protective order.

3. A fully completed child support guidelines worksheet as required by Practice Book Sec. 25-30(e), if applicable.

4. Written proposed orders in accordance with Practice Book Sec. 25-30(c) and (d).

5. A list of the names of all witnesses each party reasonably expects to call as part of the party's case in chief, as well as any reasonably anticipated rebuttal witnesses, including an identifier (that is, party, eyewitness, or expert) and stating any expected scheduling problems. **Note:** This order does not replace or change the requirements of Practice Book Sec. 13-4 about the manner and time for expert witness disclosure.

6. A list of exhibits each party reasonably expects to introduce in evidence, indexed by P plus a number for the plaintiff, and D plus a letter for the

defendant, with a brief description of each exhibit, indicating whether any party objects to the admission of the exhibit and if so, including a statement of the grounds for the objection if known.

7. Copies of the exhibits listed in the document required under Section A(6).

B. **Case Dates.** For Case Dates, counsel and self-represented parties are ordered to exchange with each other and file with the court, in the manner set forth in Section D, the following documents **not less than five (5) calendar days** before the Case Date.

1. If there is a pending motion that concerns financial issues, current sworn financial affidavits meeting the requirements of Practice Book Sec. 25-30(a); provided, that if a party has already filed a financial affidavit in the case, there has been no substantial change in the party's financial condition in the interim, and the party is prepared to so testify on the Case Date, no additional financial affidavit is required of the party at this time."

2. If there is a pending motion that concerns child support, a fully completed child support guidelines worksheet as required by Practice Book Sec. 25-30(e).

3. If a party has more than one motion that is pending at the time of the Case Date, the party shall provide:

a. A list of the motions the party intends to pursue on the Case Date by having a hearing on the Case Date or, if the estimated length of the hearing exceeds the time available, on a subsequent date assigned at the Case Date; provided, that the filing party must be prepared to commence the hearing of any motion on this list on the Case Date, even if completion of the hearing requires additional time at a later date. The list shall include an estimate of the amount of hearing time expected to be required for the hearing of each listed motion. Motions shall be listed in order of the priority in which the filing party believes the motions should be heard.

b. A list of the party's motions that are pending but which the party does **not** intend to pursue on the Case Date as set forth in Section(B)(3)(a). Unless otherwise ordered by the court, the motions on this list shall be deemed to be scheduled for the next Case Date, if any, and if none, then for the time of trial.

4. As to any motion that a moving party intends to pursue on the Case Date, such party shall provide copies of the party's proposed exhibits to the other party (and, if the Case Date is to be held by remote means, to the court) in accordance with the procedures described in Section D(2).

5. A party who intends to offer exhibits with respect to a motion filed by the opposing party must provide copies of such exhibits to the opposing party (and, if the Case Date is to be held by remote means, to the court) at least two business (2) days before the Case Date, notwithstanding the five-day requirement as to other Case Date compliance.

6. A party may (but is not required to) provide written proposed orders in accordance with Practice Book Sec. 25-30(c) and (d).

C. Resolution Plan Dates. If an action or motion that is the subject of a Resolution Plan Date involves any financial issues, then at least five (5) days before the Resolution Plan Date, the parties shall file current sworn financial affidavits meeting the requirements of Practice Book Sec. 25-30(a). The other provisions of this order shall not apply to Resolution Plan Dates.

D. Methods of Filing and Exchanging Items.

1. Except for the documents covered by Sections D(2) and (3), all documents to be exchanged under this order shall be placed in the court file, and the filing party shall serve copies of same upon each other appearing party in the manner prescribed by Practice Book Section 10-13.

2. Copies of exhibits shall be filed and exchanged as follows:

a. Where applicable court procedures require or allow the electronic submission of proposed exhibits, a party (the "submitter") shall be in compliance with the requirements of this order as to exhibits if, by the time required in this order, the submitter submits the exhibits to the court electronically and (i) gives written notice of such submission to each other appearing party who has the ability to view exhibits submitted electronically, and (ii) provides paper or digital copies to each other appearing party who does not have the ability to view exhibits submitted electronically. An attorney who appears for a party shall be presumed to have the ability to view exhibits electronically unless the attorney notifies the submitter at least ten (10) days before the proceeding of an inability to do so. A self-represented party shall be presumed **not** to have the ability to view exhibits electronically unless said party has also submitted exhibits for the proceeding electronically, or the submitter has received said party's written confirmation of the ability to view exhibits submitted electronically.

b. Except to the extent that Section D(2)(a) applies, paper or digital copies of exhibits shall be exchanged by the parties, independent of the court file, by the time required in this order. Parties shall not submit copies of proposed exhibits in advance to the court unless the proceeding is to be held by remote means, but shall report to the courtroom clerk at least fifteen (15) minutes before the assigned time for the proceeding in order to complete the marking of exhibits. If the proceeding is to be held by remote means, paper copies of proposed exhibits shall be submitted to the

Clerk's Office at least two (2) business days before the date of the proceeding.

c. If a party has both a current self-representation appearance and a current appearance by an attorney in a case, compliance with this order shall require only the exchange of proposed exhibits with the attorney.

If a party does not follow this order, the court may impose sanctions on the party, which may include a monetary sanction, exclusion of evidence, or the entry of a nonsuit, default or dismissal. On a Case Date, the court may in its discretion decline to hear a pending motion for which the moving party has not complied with the requirements of Section B.

The Honorable Michael A. Albis
Chief Administrative Judge
Family Division

Superior Court for Family Matters
Standing Orders re Discovery Motion
Effective July 1, 2021

These orders shall apply to motions relating to discovery in family matters, whether pendente lite or postjudgment, unless waived or modified by the court in a particular case. For purposes of these standing orders, "motions relating to discovery" shall mean any motion or request seeking compliance with a discovery request or order, sanctions (other than a finding of contempt) for noncompliance with a discovery request or order, an extension of time to comply with a discovery request or order, a motion to quash or issue a protective order with respect to a subpoena or notice of deposition, or the resolution of an objection to a discovery request.

When a party files a motion relating to discovery, the family presiding judge or the judge to whom the motion is assigned may, in the judge's discretion:

(1) Schedule a hearing for oral argument and/or testimony on the motion; or

(2) Wait a period of ten (10) days from the filing of the motion to afford the opposing party the opportunity to file a written objection or other response. Upon the expiration of said period, the judge may issue a decision on the motion and on any objection or other response, without oral argument or testimony. Alternatively, the judge may at that time schedule a hearing for oral argument and/or testimony on the motion and any objection or response.

Notwithstanding the foregoing, if an applicable statute or Practice Book rule requires that a hearing be held with respect to a particular motion relating to discovery, a hearing shall be held before the motion may be decided.

The Honorable Michael A. Albis
Chief Administrative Judge
Family Division

NEW LEGISLATION
COURT OPERATIONS BILL, PUBLIC ACT 21-104

Effective from the bill's passage, matters of child support, visitation, and custody may be included in an agreement to arbitrate; such agreements must be incorporated into a court order:

"The provisions of chapter 909 shall be applicable to any agreement to arbitrate in an action for dissolution of marriage under this chapter, provided an arbitration pursuant to such agreement may proceed only after the court has made a thorough inquiry and is satisfied that (1) each party entered into such agreement voluntarily and without coercion, and (2) such agreement is fair and equitable under the circumstances. An arbitration award in such action shall not be enforceable until it has been confirmed, modified or vacated in accordance with the provisions of chapter 909 and incorporated into an order or decree of court in an action for dissolution of marriage between the parties. If the arbitration award concerns child support, the court may enter such order or decree if the court finds that the award complies with section 46b-215b, as amended by this act. An arbitration award relating to a dissolution of marriage that is incorporated into an order or decree of the court shall be enforceable and modifiable to the same extent as an agreement of the parties that is incorporated into an order or decree of the court pursuant to subsection (c) of this section." Public Acts 2021, No. 104, § 21.

PRACTICE BOOK REVISIONS
PRACTICE BOOK § 25-6A

- Newly adopted provision: **Practice Book § 25-6A**, *Appearance by Self-Represented Party in Addition to Appearance by Attorney.*
- Effective January 1, 2022.
- Provides for self-represented individuals to file an appearance in matters for which an attorney already has an appearance on file.

PRACTICE BOOK REVISIONS
PRACTICE BOOK § 25-6A

(d) Unless and until a motion filed by a party with dual representation without the signature of the party's attorney is adopted by the attorney, disposed of, or withdrawn:

(1) The party with dual representation shall be solely responsible for the prosecution or litigation of the motion; and

(2) An attorney of record for any other party in the case may communicate directly with the party with dual representation, but only with respect to the subject matter of the motion.

(e) If two motions of a party with dual representation are scheduled for hearing at the same time, with one or more having been signed or adopted by the party's attorney and one or more not having been so signed or adopted, the court in its discretion may determine the most appropriate method of proceeding with the hearing of the multiple motions.

(f) If a party with dual representation files a pleading or paper, other than a motion, which is not signed by the party's attorney, the court may treat such filing in the same manner as it may treat a motion under this section or in such other manner as in its discretion it deems appropriate under the circumstances.

Sec. 46b-15. Relief from physical abuse, stalking or pattern of threatening by family or household member. Application. Court orders. Duration. Service of application, affidavit, any ex parte order and notice of hearing. Copies. Expedited hearing for violation of order. Other remedies. (a) Any family or household member, as defined in section 46b-38a, who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section. The court shall provide any person who applies for relief under this section with the information set forth in section 46b-15b.

(b) The application form shall allow the applicant, at the applicant's option, to indicate whether the respondent holds a permit to carry a pistol or revolver, an eligibility certificate for a pistol or revolver, a long gun eligibility certificate or an ammunition certificate or possesses one or more firearms or ammunition. The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order except that, if the application indicates that the respondent holds a permit to carry a pistol or revolver, an eligibility certificate for a pistol or revolver, a long gun eligibility certificate or an ammunition certificate or possesses one or more firearms or ammunition, and the court orders an ex parte order, the court shall order that a hearing be held on the application not later than seven days from the date on which the ex parte order is issued. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. In addition, at the time of the hearing, the court, in its discretion, may also consider a report prepared by the family services unit of the Judicial Branch that may include, as available: Any existing or prior orders of protection obtained from the protection order registry; information on any pending criminal case or past criminal case in which the respondent was convicted of a violent crime; any outstanding arrest warrant for the respondent; and the respondent's level of risk based on a risk assessment tool utilized by the Court Support Services Division. The report may also include information pertaining to any pending or disposed family matters case involving the applicant and respondent. Any report provided by the Court Support Services Division to the court shall also be provided to the applicant and respondent. Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. Such order may include provisions necessary to protect any animal owned or kept by the applicant including, but not limited to, an order enjoining the respondent from injuring or threatening to injure such animal. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. If a postponement of a hearing on the application is requested by either party and granted, the ex parte order shall not be continued except upon agreement of the parties or by order of the court for good cause shown. If a hearing on the application is scheduled or an ex parte order is granted and the court is closed on the scheduled hearing date, the hearing shall be held on the next day the court is open and any such ex parte order shall remain in effect until the date of such hearing. If the applicant is under eighteen years of age, a parent, guardian or responsible adult who brings the application as next friend of the applicant may not speak on the applicant's behalf at such hearing unless there is good cause shown as to why the applicant is unable to speak on his or her own behalf, except that nothing in this subsection shall

preclude such parent, guardian or responsible adult from testifying as a witness at such hearing. As used in this subsection, "violent crime" includes: (A) An incident resulting in physical harm, bodily injury or assault; (B) an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening; (C) verbal abuse or argument if there is a present danger and likelihood that physical violence will occur; and (D) cruelty to animals as set forth in section 53-247.

(c) If the court issues an ex parte order pursuant to subsection (b) of this section and service has not been made on the respondent in conformance with subsection (h) of this section, upon request of the applicant, the court shall, based on the information contained in the original application, extend any ex parte order for an additional period not to exceed fourteen days from the originally scheduled hearing date. The clerk shall prepare a new order of hearing and notice containing the new hearing date, which shall be served upon the respondent in accordance with the provisions of subsection (h) of this section.

(d) Any ex parte restraining order entered under subsection (b) of this section in which the applicant and respondent are spouses, or persons who have a dependent child or children in common and who live together, may include, if no order exists, and if necessary to maintain the safety and basic needs of the applicant or the dependent child or children in common of the applicant and respondent, in addition to any orders authorized under subsection (b) of this section, any of the following: (1) An order prohibiting the respondent from (A) taking any action that could result in the termination of any necessary utility services or necessary services related to the family dwelling or the dwelling of the applicant, (B) taking any action that could result in the cancellation, change of coverage or change of beneficiary of any health, automobile or homeowners insurance policy to the detriment of the applicant or the dependent child or children in common of the applicant and respondent, or (C) transferring, encumbering, concealing or disposing of specified property owned or leased by the applicant; or (2) an order providing the applicant with temporary possession of an automobile, checkbook, documentation of health, automobile or homeowners insurance, a document needed for purposes of proving identity, a key or other necessary specified personal effects.

(e) At the hearing on any application under this section, if the court grants relief pursuant to subsection (b) of this section and the applicant and respondent are spouses, or persons who have a dependent child or children in common and who live together, and if necessary to maintain the safety and basic needs of the applicant or the dependent child or children in common of the applicant and respondent, any orders entered by the court may include, in addition to the orders authorized under subsection (b) of this section, any of the following: (1) An order prohibiting the respondent from (A) taking any action that could result in the termination of any necessary utility services or services related to the family dwelling or the dwelling of the applicant, (B) taking any action that could result in the cancellation, change of coverage or change of beneficiary of any health, automobile or homeowners insurance policy to the detriment of the applicant or the dependent child or children in common of the applicant and respondent, or (C) transferring, encumbering, concealing or disposing of specified property owned or leased by the applicant; (2) an order providing the applicant with temporary possession of an automobile, checkbook, documentation of health, automobile or homeowners insurance, a document needed for purposes of proving identity, a key or other necessary specified personal effects; or (3) an order that the respondent: (A) Make rent or mortgage payments on the family dwelling or the dwelling of the applicant and the dependent child or children in common of the applicant and respondent, (B) maintain utility services or other necessary services related to the family dwelling or the dwelling of the applicant and the dependent child or children in common of the applicant and respondent, (C) maintain all existing health, automobile or homeowners

insurance coverage without change in coverage or beneficiary designation, or (D) provide financial support for the benefit of any dependent child or children in common of the applicant and the respondent, provided the respondent has a legal duty to support such child or children and the ability to pay. The court shall not enter any order of financial support without sufficient evidence as to the ability to pay, including, but not limited to, financial affidavits. If at the hearing no order is entered under this subsection or subsection (d) of this section, no such order may be entered thereafter pursuant to this section. Any order entered pursuant to this subsection shall not be subject to modification and shall expire one hundred twenty days after the date of issuance or upon issuance of a superseding order, whichever occurs first. Any amounts not paid or collected under this subsection or subsection (d) of this section may be preserved and collectible in an action for dissolution of marriage, custody, paternity or support.

STALKING O.C.P. upheld

C. A.

v.

G. L. *

(AC 43139)
Argued September 17, 2020
Officially released December 15, 2020

Synopsis

Background: Homeowner filed application for civil protection order against her neighbor in condominium association alleging he had threatened her. The Superior Court, Judicial District of New London, Kimberly A. Knox, J., granted the application, finding reasonable grounds existed to believe neighbor committed acts of stalking. Neighbor appealed.

Holding: The Appellate Court, Lavine, J., held that evidence was sufficient to conclude that homeowner reasonably feared for her physical safety, and thus, civil protection order was proper.

Affirmed.

West Headnotes (16)

Attorneys and Law Firms

***809** Cody A. Layton, with whom was Drzislav (Dado) Coric, New London, for the appellant (defendant).

Lavine, Elgo and Alexander, Js. **

Opinion

LAVINE, J.

***735** The defendant, G. L., appeals from the judgment of the trial court granting a civil protection order in favor of the plaintiff, C. A.[1] On appeal, the defendant claims that the trial court erred in finding that reasonable grounds existed to believe that he committed, and would continue to commit, acts of stalking constituting grounds for the issuance of a civil protection order. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties are longtime neighbors who live one floor apart in a condominium association

(association). For nearly two decades, they have had a contentious relationship. At all relevant times, the *736 defendant was engaged in litigation against the plaintiff and other members of the association. On May 1, 2019, the plaintiff filed an application for a civil protection order, pursuant to General Statutes § 46b-16a,[2] alleging that the defendant **810 had threatened her on April 22 and 23, 2019. She subsequently withdrew this application on May 13, 2019. On May 17, 2019, however, after speaking to the police, the plaintiff again filed an application for a civil protection order.

The court held an evidentiary hearing on the plaintiff's application on May 28, 2019.[3] At the conclusion of the hearing, the court granted the application and ordered that the defendant "not assault, threaten, harass, follow, interfere [with], or stalk" the plaintiff for a six month period.[4]

The court found that the parties had a difficult ongoing relationship and that the defendant was "not an easy neighbor to have," citing "the fact that some of [his] neighbors had to come testify." The court found that "every time that [the defendant is] present, [the plaintiff] feels threatened.... Whether it is how you raise your voice. Whether you're following her in the course of a communication. Whether she just appears and you engage her in an angry dialogue."

*737 The court further found that the defendant's aggressive behavior was "actually increasing and escalating with regard to [the plaintiff]." His "anger ... with regard to the litigation is escalating well beyond the litigation, in that, [the plaintiff] has cause to be concerned by [the defendant's] threatening behavior, which seems to be persisting over a course of time, but actually has persisted more recently ...." In finding that the defendant's threatening behavior was escalating recently, the court relied on several threatening statements that he had made to the plaintiff, as well as the fact that the plaintiff had called the police on May 17, 2019.

The court found that the defendant had threatened the plaintiff on April 23, 2019, by stating that he was "coming for" her.[5] The plaintiff installed security cameras around her condominium unit on May 1, 2019, to which the defendant objected. The defendant left notes and documents, concerning the litigation that he had initiated against the plaintiff, on the plaintiff's door on a daily basis. The plaintiff occasionally posted messages relating to the litigation on the defendant's door. In granting the motion, the court highlighted the fact that "[the plaintiff] actually called the police [on May 17, 2019], because of her concerns of [the defendant's] threatening behavior." The plaintiff filed her application for a civil protection order that day. On her return from the courthouse, the plaintiff overheard the defendant say that "[the plaintiff had been] harassing people for years with [her] tits and ... cocktail uniform." At that point, the plaintiff dreaded going home and began carrying Mace.

The day before the hearing, on May 27, 2019, the plaintiff overheard the defendant talking to a neighbor about "all the things **811 he was going to do to me ... *738 and one's going to be, I'm going to lose my job." The defendant did not know that the plaintiff could hear him when he made the statement. After the defendant made the statement, the plaintiff and the defendant had a heated exchange.

After the plaintiff rested at trial, the defendant moved to dismiss the case, arguing that the plaintiff had not established, pursuant to the definition of stalking set forth in § 46b-16a (a), "two or more wilful acts perform[ed in] a threatening predatory or disturbing matter," and characterizing the matter as "neighbors quibbling over issues ... with [the] condo association." The court denied the defendant's motion.

Ultimately, the court found that there were reasonable grounds to believe that the defendant had "committed acts constituting grounds for issuance of a protective order under [§ 46b-16a], and that [he would] continue to commit such acts or acts designed to intimidate or retaliate against the applicant." The court thereupon found that the plaintiff had met her burden and issued a civil order of protection pursuant to § 46b-16a for a period of six months, until November 28, 2019. This appeal followed.

The defendant argues that the evidence was insufficient to warrant the court's issuance of a civil order of protection against him. The defendant claims that his statements and messages to the plaintiff did not constitute "two or more wilful acts [performed] in a threatening, predatory, or disturbing manner that caused [the plaintiff] to reasonably fear for her physical safety." For that reason, the defendant claims that the court abused its discretion in granting the order of protection. We do not agree.

1 2 3 4 We begin our analysis by setting forth the relevant legal principles and applicable standard of review. "We apply the same standard of review to civil protection orders under § 46b-16a as we apply to civil **restraining** ***739* orders** under General Statutes § 46b-15. Thus, we will not disturb a trial court's orders 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 ... we allow every reasonable presumption in favor of the correctness of its action.... Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review.... A finding of fact is clearly erroneous when there is no evidence in the record to support it ... or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.... Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *Kayla M.* v. *Greene*, 163 Conn. App. 493, 504, 136 A.3d 1 (2016).

5 6 7 "The court's discretion, however, is not unfettered; it is a legal discretion subject to review. ... [D]iscretion imports something more than leeway in [decision making]. ... It means a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice ...." (Internal quotation marks omitted.) *Harris* v. *Neale*, 197 Conn. App. 147, 157, 231 A.3d 357 (2020). "We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached ... as [t]he conclusions which we might reach, were we sitting as the trial court, are irrelevant." (Citations omitted; ***812* internal quotation marks omitted.) *Rostain* v. *Rostain*, 214 Conn. 713, 715–16, 573 A.2d 710 (1990).

Section 46b-16a provides in relevant part: "Any person who has been the victim of ... stalking may make an application to the Superior Court for relief under ***740* this section .... If the court finds that there are reasonable grounds to believe that the respondent has committed acts constituting grounds for issuance of an order under this section and will continue to commit such acts or acts designed to intimidate or retaliate against the applicant, the court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant."

Section 46b-16a (a) defines stalking as "two or more wilful acts, performed in a threatening, predatory or disturbing manner of: Harassing, following, lying in wait for, surveilling, monitoring or sending unwanted gifts or messages to another person

directly, indirectly or through a third person, by any method, device or other means, that causes such person to reasonably fear for his or her physical safety."

8 "The standard to be applied in determining the reasonableness of the victim's fear in the context of the crime of stalking is a subjective-objective one. ... As to the subjective test, the situation and the facts must be evaluated from the perspective of the victim, i.e., did she in fact fear for her physical safety. ... If so, that fear must be objectively reasonable, i.e., a reasonable person under the existing circumstances would fear for his or her physical safety." (Citations omitted; internal quotation marks omitted.) *State* v. *Russell*, 101 Conn. App. 298, 319, 922 A.2d 191, cert. denied, 284 Conn. 910, 931 A.2d 934 (2007).

9 10 11 12 "[A]n applicant for a civil protection order on the basis of stalking is required to prove only that there are reasonable grounds to believe that a defendant stalked and will continue to stalk ...." *Kayla M.* v. *Greene*, supra, 163 Conn. App. at 503, 136 A.3d 1.[6] A finding of reasonable grounds to believe stalking occurred is equivalent to a finding of probable cause that stalking occurred. ***741** Id., at 506, 136 A.3d 1. "While probable cause ****813** requires more than mere suspicion ... the line between mere suspicion and probable cause necessarily must be drawn by an act of judgment formed in light of the particular situation and with account taken of all the circumstances. ... The existence of probable cause does not turn on whether the defendant could have been convicted on the same available evidence. ... In dealing with probable cause ... as the very name implies, we deal with probabilities." (Internal quotation marks omitted.) Id., at 506–507, 136 A.3d 1.

13 14 15 Applying the aforementioned principles, the trial court found that there was sufficient evidence reasonably to conclude that there were grounds to issue a civil protection order. On appeal, the defendant's arguments all center on the assertion that none of his conduct could cause the plaintiff to reasonably fear for her safety.[7] He first argues that his statements to the plaintiff did not ***742** constitute stalking because he had never used or threatened physical force against the plaintiff. He further argues that both his comment about the plaintiff losing her job and his comment about "coming for" the plaintiff could only be construed by the plaintiff as relating to the litigation, rather than as physical threats.[8] Similarly, he argues that the documents and the notes he left on the plaintiff's door related solely to the litigation between them and it was thus reasonable for him to do so as a means of communicating in regard to the lawsuit.[9] We do not agree that the court abused its discretion when it decided that, under these facts, the defendant had stalked the plaintiff.

In considering the defendant's statements and the pattern of conduct in the month prior to the hearing, the court found that the plaintiff and the defendant had a contentious relationship and that the circumstances indicated that the defendant's anger was increasing. The court's conclusion must be evaluated with the nature and the history of this troubled relationship in mind. ***743** Context is important. The court cited the defendant's April 23, 2019 statement that he was "coming for" the plaintiff, his May 17, 2019 statement that "[the plaintiff had been] harassing people for years with [her] tits and ... cocktail uniform," and his May 28, 2019 ****814** statement that the plaintiff would lose her job.[10] The court also cited the fact that the plaintiff had called the police on May 17, 2019, to report the defendant's leaving notes on her door daily. Given these findings, which the defendant does not challenge, the court acted well within its discretion to find the defendant's anger had "persisted more recently" and was "escalating well beyond the litigation." Consequently, the court reasonably could

conclude that the plaintiff reasonably feared for her physical safety as a result of the defendant's stalking, as required by § 46b-16a (a).[11]

16 The defendant argues that the trial court could not conclude that the statutory element that a person reasonably fear for her physical safety was met when there *744 was no threat or suggestion of physical harm. He points to the evidence that he had never used or explicitly threatened physical force against the plaintiff. At the outset, we note that the court could have reasonably construed the defendant's April 23 statement that he was "coming for" her as a physical threat under the statute. Even if we were to accept the defendant's contextual argument that this statement could not be construed as a threat due to the litigation between the parties, however, the statute does not require that there be prior threats or instances of physical violence for a party to reasonably fear for her physical safety. Our conclusion is consistent with previous decisions of this court.[12] For example, in *Stacy B.* v. *Robert S.*, 165 Conn. App. 374, 388, 140 A.3d 1004 (2016), the defendant contended that "there was not a scintilla of evidence presented to the court that the defendant is or ever has been physically dangerous to anyone." (Internal quotation marks omitted.) Nonetheless, this court concluded that, after two days of testimony, the trial court had a sufficient basis on which to conclude that "a reasonable person in the plaintiff's **815 position would have cause to fear for his own or a third person's physical safety, even if the plaintiff did not produce evidence of past physical violence committed by the defendant." Id. (Footnote omitted.) In *Kayla M.* v. *Greene*, supra, 163 Conn. App. at 506, 136 A.3d 1, this court held, with regard to the objective prong of the test, that "[t]o establish a stalking violation, [p]roof of verbal threats or harassing gestures is not essential .... [D]efendants' obsessive behaviors, *even in the absence of threats of physical violence*, [may] reasonably [cause] their victims to fear for their *745 physical safety." (Emphasis added; citations omitted; internal quotation marks omitted.)

In the present case, the court found that the defendant had "anger ... with regard to the litigation," raised his voice, "engage[d] [the plaintiff] in ... angry dialogue ... follow[ed] the plaintiff in the course of ... communication[s]," and generally was known to be a difficult neighbor. The court found that this anger was persisting and escalating. The court was entitled to credit the testimony of the plaintiff's witnesses in reaching its conclusion that there was a reasonable basis for the plaintiff to feel harassed and fearful of physical harm.

The defendant further contends that the statements he made, as well as his conduct of leaving notes on the plaintiff's door, must be viewed in the context of the litigation between him and the plaintiff. In his brief and at oral argument, he argued that his statements that the plaintiff would lose her job, and that he was coming for her, can *only* be interpreted as relating to the legal proceedings between the two parties. Thus, he contends that it was unreasonable for the court to infer either that he intended to cause the plaintiff to fear for her physical safety, or that any such fear actually was reasonable on her part. We do not agree that the trial court abused its discretion by concluding that the plaintiff reasonably feared for her physical safety.[13] Taken together with the testimonial evidence of the parties' contentious relationship and the defendant's temper, which the court found to be escalating, the court reasonably found that the defendant's statements could be interpreted in such a way as to cause the plaintiff to fear for her physical safety. In *Princess Q. H.* v. *Robert H.*, 150 Conn. App. 105, 116, 89 A.3d 896 (2014), this court concluded that, although the defendant's conduct "might have been completely unrelated to stalking the *746 plaintiff ... [t]he court, however, was not presented with evidence of such a benign explanation, but heard ample evidence about the parties' stormy relationship and the fact that the

plaintiff and the defendant were adverse parties in a civil action at the time of this occurrence."

In the present case, the court found, and the record demonstrates, that the parties had a toxic relationship, were locked in adversarial litigation, and the defendant had left messages on the plaintiff's door on a frequent basis. The court also found that the defendant's anger was "well beyond the litigation." The court therefore had an adequate basis on which to find that the defendant's escalating aggressive behavior met the statutory criteria to issue a civil order of protection. We therefore conclude that the court did not abuse its discretion in concluding that the defendant sent messages in an unwanted and harassing manner or that the defendant's statements ***816** could be interpreted as threats to the plaintiff's physical safety.

The judgment is affirmed.

In this opinion the other judges concurred.

All Citations

201 Conn.App. 734, 243 A.3d 807

Footnotes

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a **restraining order** that was issued or applied for, or others through whom that party's identity may be ascertained.

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

1 The plaintiff did not file a brief in this court. We therefore decide the appeal on the basis of the defendant's brief and the record.

2 General Statutes § 46b-16a (a) provides in relevant part that "[a]ny person who has been the victim of ... stalking may make an application to the Superior Court for relief under this section, provided such person has not obtained any other court order of protection arising out of such abuse, assault or stalking and does not qualify to seek relief under section 46b-15...."

3 The hearing considered only the application filed on May 17, 2019, which, alone, is the subject of the present appeal.

4 Although the civil protection order has since expired, the defendant's appeal is not moot. See *Ellen S.* v. *Katlyn F.*, 175 Conn. App. 559, 561 n.2, 167 A.3d 1182 (2017) ("The expiration of a six month domestic violence **restraining order** issued pursuant to General Statutes § 46b-15 does not render an appeal from that order moot due to adverse collateral consequences. *Putman* v. *Kennedy*, 279 Conn. 162, 164–65, 900 A.2d 1256 (2006). We apply that principle to the order of civil protection here [under § 46b-16a].").

5 In addition to this statement, the plaintiff contended in her May 17, 2019 application that, on April 22, 2019, "I was threatened by [the defendant] in

the hallway of my condo association. He said my days are done. I'm all done. I'm going down."

6 We note that *Kayla M.* was decided in 2016 when the statute still contained its previous definition of stalking. General Statutes (Rev. to 2015) § 46b-16a (a) provides in relevant part: "Any person who has been the victim of ... stalking, *as described in sections 53a-181c, 53a-181d and 53a-181e*, may make an application to the Superior Court for relief under this section ...." (Emphasis added.) General Statutes (Rev. to 2015) § 53a-181d (b) sets forth the statutory definition of stalking, providing in relevant part: "A person is guilty of stalking in the second degree when ... (1) Such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's physical safety or the physical safety of a third person ...." In 2017, subsection (a) of § 46b-16a was amended to replace the references to General Statutes §§ 53a-181c, 53a-181d, and 53a-181e with its current definition of stalking. See Public Acts 2017, No. 17-99, § 1. The statutory change merely modifies the definition of stalking itself, and did not affect the applicable language of subsection (b), which provides in relevant part: "If the court finds that there are reasonable grounds to believe that the respondent has committed acts constituting grounds for issuance of an order under this section and will continue to commit such acts or acts designed to intimidate or retaliate against the applicant, the court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant. ..." General Statutes § 46b-16a (b). Thus, *Kayla M.* is still applicable with respect to the general standard of proof § 46b-16a (b) requires, namely, that an applicant for a civil protection order "prove only that there are reasonable grounds to believe that a defendant stalked and will continue to stalk." *Kayla M.* v. *Greene*, supra, 163 Conn. App. at 503, 136 A.3d 1.

7 The defendant also claims that the court could not have found that he had intended the plaintiff to fear for her physical safety. His argument misses the point. The statute makes no mention of the defendant's *intent* with respect to the element that he caused the plaintiff to fear for her physical safety. Rather, the statutory language refers to "two or more *wilful acts*," which cause a person to reasonably fear for his or her own physical safety. See General Statutes § 46b-16a (a).

8 With respect to his statement that the plaintiff would lose her job, the defendant also argues that because it references employment, it is not relevant to her physical safety on its face. The court, however, referenced this statement as support for its conclusion that the defendant's overall pattern of behavior was persisting. Moreover, the defendant's other statement, that he was "coming for" her, could indeed be reasonably construed as relevant to her physical safety.

9 The fact that a lawsuit was pending does not inoculate the defendant against the issuance of a civil order of protection. It is the fact of leaving the notes, not their content, that makes the conduct objectionable. Although the defendant had a right to communicate with the plaintiff, who was self-represented, regarding the litigation, that right does not extend to communications that are harassing or otherwise unlawful conduct. "[T]he mere existence of such a right or privilege does not automatically mean that an individual is permitted to exercise that right entirely unfettered and

without adhering to reasonable legal restrictions." *S. A.* v. *D. G.*, 198 Conn. App. 170, 189, 232 A.3d 1110 (2020).

10 The defendant argues that he made the May 17 and 27, 2019 statements to third parties and that he did not direct them to the plaintiff. The plaintiff, however, heard them. She additionally alleged statements that the defendant made directly to her in her application, including the April 23, 2019 statement. Whether made directly to the plaintiff or not, these statements all support the court's conclusion that the plaintiff's fear was objectively reasonable.

11 The defendant argues that the plaintiff's engagement with him undercuts this conclusion. He notes that the plaintiff left occasional notes on his door, and that following the defendant's statement that the plaintiff would lose her job, the parties had a "heated discussion." These two points go to the weight of the evidence and do not preclude the court's conclusion. *See Kayla M.* v. *Greene*, supra, 163 Conn. App. at 510, 136 A.3d 1 (rejecting husband's argument that plaintiff did not fear for her physical safety because she continued to interact with him, because there was sufficient evidence in record to support court's issuance of protective order).

The defendant also argues in his brief that "it cannot be overlooked that the plaintiff willingly withdrew her previous application for a civil order of protection, wherein these claims served as its basis. This act alone is conclusive evidence that the plaintiff did not fear for her safety." We find this argument unpersuasive. The plaintiff refiled her application, and the trial court reasonably could conclude, within its discretion, that she still reasonably feared for her safety on the basis of the defendant's conduct prior to withdrawing the initial application.

12 We note that the cases discussed subsequently in this opinion were decided under a previous revision of the statute. See footnote 6 of this opinion. However, these cases all apply an objective standard of reasonableness for stalking which is sufficient to fulfill the current subjective-objective statutory threshold. See *Kayla M.* v. *Greene*, supra, 163 Conn. App. at 510, 136 A.3d 1 (discussing purely objective standard of fear in General Statutes (Rev. to 2015) § 53a-181d).

13 As previously discussed, we reject the defendant's attempt to read an intent requirement into the statute. See footnote 7 of this opinion.

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S. B-R. *v.* J. D.*
(AC 43256)

Alvord, Alexander and Eveleigh, Js.

Syllabus

The plaintiff, a college student, obtained an order of civil protection as to the defendant, a fellow student. The trial court found that the plaintiff, who had been subjected to disturbing comments by the defendant via e-mail and text messages as well as in person, including that he wanted to jump on her back in rage, had a reasonable fear for her physical safety. Accordingly, the court issued the order of civil protection as to the defendant pursuant to statute (§ 46b-16a). On the defendant's appeal to this court, *held* that the trial court abused its discretion in issuing the order of civil protection: the court failed to conduct the necessary analysis when it applied only the subjective standard to the plaintiff's apprehension of fear, rather than the required subjective-objective standard of reasonable fear, and improperly determined that the plaintiff's subjective apprehension was sufficient to make the necessary determination for stalking pursuant to § 46b-16a; moreover, there was insufficient evidence for the court to conclude that the defendant would continue to stalk or to commit acts designed to intimidate or retaliate against the plaintiff, as the plaintiff testified that there had been no communications between the defendant and her for several months preceeding the hearing, the defendant testified that he had withdrawn from the college for a semester and had walked away without approaching or speaking with the plaintiff the only time he saw her, and the testimony that both students would be returning as students to the college did not alone establish reasonable grounds to find that the defendant would continue to stalk the plaintiff.

(*One judge dissenting*)

Argued April 7—officially released October 19, 2021

Procedural History

Application for an order of civil protection, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Edward R. Karazin, Jr.*, judge trial referee, rendered judgment granting the application, from which the defendant appealed to this court. *Reversed; judgment directed.*

Stephen A. Lebedevitch, for the appellant (defendant).

Harold R. Burke, for the appellee (plaintiff).

Opinion

ALEXANDER, J. The defendant, J. D., appeals from the judgment of the trial court granting the application for an order of civil protection for the plaintiff, S. B-R. On appeal, the defendant claims that the court erred in finding that there were reasonable grounds to believe that he committed acts of stalking and would continue to stalk the plaintiff. We agree with the defendant that the court abused its discretion when it issued the order of civil protection because (1) it did not apply an objective standard in its determination of "reasonable fear" on the first element of stalking, and (2) there was insufficient evidence on the second element to conclude that the defendant would continue to stalk or to commit acts designed to intimidate or retaliate against the plaintiff. Accordingly, we reverse the judgment of the trial court and remand this case with direction to vacate the order of civil protection.

The following facts and procedural history are relevant to this appeal. The parties were classmates at a community college. Text messages and e-mails between the plaintiff and the defendant, sent between February 28 and March 3, 2019, demonstrate the relationship between the parties prior to late February, 2019. In an e-mail sent to the plaintiff during this period, the defendant wrote that, "[i]n the fall when you asked me to help you study I poured in hours many into preparation." In a text message sent from the plaintiff to the defendant she indicated, "I'm sorry [J. D.] but I think you just blew the friendship we had." After the defendant responded with multiple text messages to the plaintiff, apologizing, the defendant wrote, "I hate myself for this sorry. I'm shit. Good luck on your exams." When the plaintiff sent another text where she again indicated that she did not want to be "friends," the defendant responded to this text: "[Okay]. I didn't think you'd read the e-mails. We are done. Please read the cheat sheet I sent you."

Between February 28 and March 3, 2019, the defendant made disturbing comments to the plaintiff in person, over e-mail, and through text messages. Specifically, on February 28, 2019, the defendant made a comment to the plaintiff regarding her breasts, and, on March 1, 2019, the defendant sent an e-mail to the plaintiff stating: "Honestly I want to jump on your back a little a rage and that would be dumb." Thereafter, the plaintiff falsely told the defendant that she was going to get married so that he would stop communicating with her. On March 3, 2019, the defendant sent the plaintiff an "absurd amount of e-mails," complaining, in part, about how the plaintiff's marriage would "interfere between us"[1] and also a text message wherein he expressed suicidal thoughts. After March 3, 2019, there were no communications of any nature between the parties.

On or about July 8, 2019, the plaintiff filed an application for an order of civil protection, pursuant to General Statutes § 46b-16a.[2] A hearing on the application was held on July 22, 2019. At the conclusion of the hearing, the court issued an oral decision granting the order of civil protection. The court's decision reads:

"The Court: Okay. I remember in law school—and I'll date myself when I give you this example—but the question was, could Whistler's Mother assault Muhammad Ali? He was our golden person, Olympic champion heavyweight boxer, and, Whistler's Mother was a little old [lady] in a portrait, rocking in a chair. And, the quick answer was how could that be? And, the test of an assault did not require physical contact, the apprehension was enough. So, if there was apprehension by Muhammad Ali from her then, that would be an assault. And, the test here [is] not what [the defendant's] thoughts are and his actions, but rather [the plaintiff's] apprehension.

"Statute is very clear that indicates that such person causes reasonable fear—the conduct of the defendant causes reasonable fear for the physical safety. So she's made it very clear she's very apprehensive, her conduct on the stand indicated she's reliving some of these things. *Things which depending on your level of threshold and thickness of skin become more or less significant.* But, it's very clear that this is very upsetting to her, and it's affected her ability to carry on life's activities.

"So the court finds that a restraining order will issue. The [defendant] shall not assault, threaten, abuse, harass, follow, interfere with, or stalk her. The [defendant] shall stay away from her home or wherever she shall reside. The [defendant shall] not contact in any matter, including written, electronic, or telephone contact. And not contact home, workplace, or others with whom the contact would likely cause annoyance or alarm to her. I'm going to order the [defendant] stay 100 [yards] away from her." (Emphasis added.)

On July 29, 2019, the defendant filed a motion to reargue pursuant to Practice Book § 11-12. The court summarily denied the defendant's motion. This appeal followed.[3]

On appeal, the defendant argues that the court abused its discretion in issuing the order of civil protection because "the [c]ourt failed to find that the actions of the defendant met the elements of the stalking statute" and because the court "failed to find that [the defendant's] actions were likely to continue in the future." In particular, the defendant argues that the court improperly focused on the plaintiff's "apprehension," while ignoring the continuation requirement set out in § 46b-16a (b). We agree with the defendant that the court abused its discretion in issuing the order of civil protection because the court did not apply an objective

standard in finding that the plaintiff's fear was reasonable and because there was insufficient evidence to conclude that the defendant would continue to stalk or to commit acts designed to intimidate or retaliate against the plaintiff.

"We begin our analysis by setting forth the relevant legal principles and applicable standard of review. We apply the same standard of review to civil protection orders under § 46b-16a as we apply to civil restraining orders under General Statutes § 46b-15. Thus, we will not disturb a trial court's orders 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 . . . we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Internal quotation marks omitted.) *C. A.* v. *G. L.*, 201 Conn. App. 734, 738–39, 243 A.3d 807 (2020).

Section 46b-16a provides in relevant part: "(a) Any person who has been the victim of . . . stalking may make an application to the Superior Court for relief under this section . . . . (b) . . . If the court finds that there are reasonable grounds to believe that the respondent has committed acts constituting grounds for issuance of an order under this section and will continue to commit such acts or acts designed to intimidate or retaliate against the applicant, the court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant. . . ."

In order for a court to issue an order of civil protection under § 46b-16a on the basis of stalking, it must find that there are reasonable grounds to believe that the defendant both stalked the plaintiff and will continue to commit such acts. See *C. A.* v. *G. L.*, supra, 201 Conn. App. 740; see also *Kayla M.* v. *Greene*, 163 Conn. App. 493, 506, 136 A.3d 1 (2016) ("an applicant for a civil protection order on the basis of stalking pursuant to § 46b-16a must prove only that there are reasonable grounds to believe that every element is met and that such conduct will continue" (internal quotation marks omitted)). If a court issues an order without a proper finding or without sufficient evidence to support such a finding, as to either stalking or the continuation of such acts, it will constitute an abuse of discretion.

See *C. A.* v. *G. L.*, supra, 739.

We begin with the trial court's determination on the first element of the statute, specifically, that the defendant's conduct caused the plaintiff to reasonably fear for her safety. We conclude, after a thorough review of the record, that the court failed to conduct the necessary analysis when it applied only the subjective standard of apprehension of fear, taken from a definition of assault, rather than the required subjective-objective standard of reasonable fear.

Section 46b-16a (a) defines stalking as "two or more wilful acts, performed in a threatening, predatory or disturbing manner of: Harassing, following, lying in wait for, surveilling, monitoring or sending unwanted gifts or messages to another person directly, indirectly or through a third person, by any method, device or other means, that causes such person to reasonably fear for his or her physical safety." "The standard to be applied in determining the reasonableness of the victim's fear in the context of the crime of stalking is a subjective-objective one. . . . As to the subjective test, the situation and the facts must be evaluated from the perspective of the victim, i.e., did she in fact fear for her physical safety. . . . If so, that fear must be objectively reasonable, i.e., a reasonable person under the existing circumstances would fear for his or her personal safety."[4] (Citations omitted; internal quotation marks omitted.) *C. A.* v. *G. L.*, supra, 201 Conn. App. 740.

In its analysis, the court began with an anecdote, asking, "could Whistler's Mother assault Muhammad Ali?" The court provided the hypothetical analogy in order to set up a test of subjective apprehension in relation to the defendant's actions, rather than applying the subjective-objective standard required by § 46b-16a (a). See *C. A.* v. *G. L.*, supra, 201 Conn App. 740. In applying this logic, the court diluted the necessary finding that the "reasonable fear" be both subjectively and objectively reasonable and, instead, determined that the plaintiff's subjective "apprehension" was sufficient to make the necessary determination for stalking. The court continued to use only a subjective standard wherein it expressly found that "it's very clear that this is very upsetting to her." Further, that use was apparent when the court stated that the plaintiff's apprehension is dependent "on [a person's] level of threshold and thickness of skin . . . ."

Although the trial court's discussion can be construed as finding that the plaintiff was subjectively in fear for her safety, the trial court failed to determine whether the plaintiff's "apprehension" was *objectively* reasonable. As a result of the court's failure to apply the correct standard, it abused its discretion in issuing the protective order.

In addition to applying an improper analysis on the

reasonable fear prong, the court failed to make a finding that the defendant would continue to commit acts of stalking against the plaintiff. At the hearing on the plaintiff's application for an order of civil protection in July, 2019, the plaintiff presented no evidence that the defendant would continue to stalk her. The plaintiff testified that there had been no communications between the defendant and her since March 3, 2019. The defendant testified that at some point after March 3, 2019, he dropped all of his classes and withdrew from the community college for that semester. He further testified that in mid-April, 2019, he saw the plaintiff from a distance on the campus and walked away without contacting or communicating with her. Moreover, the defendant clearly conveyed to the plaintiff by both text messages and e-mails that he understood that their friendship was over and that he would cease communication with her. Although there was testimony that both parties would be returning as students to the community college in the fall of 2019, this evidence alone does not establish reasonable grounds for the court to find that the defendant would continue to commit such acts of stalking or acts designed to intimidate or retaliate against the plaintiff.

Although we recognize that "the court is presumed to know the law and apply it correctly to its legal determinations"; *Iacurci* v. *Sax*, 139 Conn. App. 386, 396, 57 A.3d 736 (2012), aff'd, 313 Conn. 786, 99 A.3d 1145 (2014); the court's decision is devoid of the necessary finding that the defendant would continue to stalk the plaintiff. Moreover, the court made no reference to any testimony or exhibits in support of its findings. The court's singular mention of "statute" relates only to whether the defendant's actions caused the plaintiff "reasonable fear." Thus, the court's analysis is limited to only the first element of whether the defendant "stalked" the plaintiff and does not reveal that the court considered the second element, as required by the relevant statute.

In *Kayla M.* v. *Greene*, supra, 163 Conn. App. 506, this court explained that "an applicant for a civil protection order on the basis of stalking pursuant to § 46b-16a must prove only that there are '*reasonable grounds to believe' that every element is met and that such conduct will continue.*" (Emphasis added.) In the present case, the court failed to make the requisite findings pursuant to the statute by limiting its analysis to "reasonable fear"—an analysis that was itself incorrect.

The dissent concludes that "[the defendant's] testimony that he never thought about hurting anyone else is not credible" and that this overall lack of credibility supports a finding of continuing conduct. The dissent makes this credibility determination even though the trial court made no findings as to the credibility of the defendant. Rather, the trial court was clear that "the

test [it applied] here [was] not what [the defendant's] thoughts are and his actions, but rather [the plaintiff's] apprehension." The trial court, therefore, made no determination as to the defendant's thoughts, actions, or credibility and found such considerations to be irrelevant.

Given the dearth of evidence on the critical factual question of whether the defendant would continue to stalk the plaintiff, we conclude that the court could not reasonably find that the continuing conduct element of § 46b-16a was proven. We therefore conclude that the court abused its discretion in issuing an order of civil protection for the plaintiff against the defendant.

The judgment is reversed and the case is remanded with direction to vacate the order of civil protection.

In this opinion, ALVORD, J., concurred.

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

[1] The e-mail from the defendant to the plaintiff reads: "I'm sorry. I didn't mean to act rude. I'm sorry for being a bad friend. I was self-conscious because I wasn't a great friend for you, which is my fault. I believed our friendship would've ended anyways, because maybe marriage would've separated us."

[2] The plaintiff had attempted twice prior to serve the defendant with notice of the application for a civil protection order, however, those attempts failed because the defendant could not be located. The plaintiff was able to serve the defendant on her third attempt with the assistance of a private investigator.

[3] Following the filing of this appeal, the defendant filed a motion requesting the court to enforce an automatic stay. On August 23, 2019, after hearing arguments from both the defendant and the plaintiff, the court terminated the stay. On August 27, 2019, the defendant filed a motion for review of the termination of the stay with this court, which granted review but denied the requested relief. On August 27, 2019, the defendant filed a motion for articulation, which the trial court denied on December 9, 2019. The defendant filed a motion for review of the denial of his motion for articulation with this court, which granted review but denied the requested relief.

[4] A previous revision of § 46b-16a had no subjective requirement, only requiring that a defendant's conduct cause a "reasonable person to fear." See *C. A.* v. *G. L.*, supra, 201 Conn. App. 740 n.6.

189 Conn.App. 448
Appellate Court of Connecticut.

MARGARITA O.

v.

FERNANDO I. *

(AC 42118)
Argued January 22, 2019
Officially released April 23, 2019

Synopsis

Background: Former wife filed action against former husband, seeking relief from abuse and petitioning for restraining order. The Superior Court, Truglia, J., entered judgment granting application and issuing restraining order. Former husband appealed.

Holdings: The Appellate Court, Alvord, J., held that:
1 trial court did not abuse its discretion in granting former wife's application for protection order, but
2 trial court abused its discretion in entering additional protection order prohibiting former husband from being within 100 yards of former wife except when both of their children were present.

Reversed in part and affirmed in part.

West Headnotes (14)

Attorneys and Law Firms

***551** Fernando I., self-represented, the appellant (defendant).

Kevin F. Collins, Stamford, for the appellee (plaintiff).

Lavine, Alvord and Elgo, Js.

Opinion

ALVORD, J.

1 ***449** The self-represented defendant, Fernando I., appeals from the judgment of the trial court granting the application of the plaintiff, Margarita O., for relief from abuse and issuing a restraining order pursuant to General Statutes § 46b-15. The defendant claims that the court erroneously (1) determined that he had subjected the plaintiff to a recent pattern of threatening, and (2) ordered the defendant to stay 100 ***450** yards away from the plaintiff except "when both children are present."[1] We conclude that

there was no evidence to support the court's order requiring the defendant to "stay 100 yards away from the [plaintiff]" with an exception "for the 100 yard stay away when both children are present." Accordingly, we reverse in part the judgment of the court as to the "stay 100 yards away" order and remand the case for a new hearing with respect to any order of protection, if proven necessary by the plaintiff, in situations where the defendant seeks interaction with his children and the plaintiff is present. We otherwise affirm the judgment of the trial court.

The following facts and procedural history are relevant to our analysis of the defendant's claims. On August 29, 2018, the plaintiff, in a self-represented capacity, filed an ex parte application for relief from abuse, seeking immediate relief against her former spouse, the defendant.[2] In her application, the plaintiff ***451*** averred under oath that the defendant had "consistently sent [her] very distressing communications for the past years but in the last few months and weeks (particularly the last [forty-eight] hours) his aggressive electronic communication has been mounting to the point that [she was] very concerned about [her] physical safety." In addition, the plaintiff stated that "[she is] a single woman, [she] work[s] in [New York City] and many nights [she] come[s] back late from work and feel[s] that [she is] exposed [to] potential harm from [the defendant]" ****552*** and that "[t]he [defendant] has his residence in [New York City] but spends almost every day in Greenwich," which is the town where she resides. The court, *Sommer, J.*, denied the plaintiff's application and scheduled a hearing for September 12, 2018, in accordance with § 46b-15 (b).

2 The parties appeared for the hearing before the court, *Truglia, J.*, on September 12, 2018. At the hearing, the court heard testimony from both parties.[3] The plaintiff ***452*** testified in relevant part: "[The defendant] keeps on blaming me for everything that is going on in his life; whether he loses a job, whether he cannot get a job, his life has been destroyed by me. And the reason I'm asking for this order now is because he's more agitated. I think the situation has deteriorated for him quite a bit. He doesn't have a job. He doesn't have any money. Still he blames me for everything that is happening to [him].... In the course of [thirty-six] or [forty-eight] hours, I received three different communications, very disturbing, from him in which some of them he clearly said, you know, like there are implied threats in those communications." The plaintiff also testified that, nine years earlier, the defendant had been arrested twice, "[once] for domestic abuse and [once] for death threats ...."[4] The defendant did not dispute the fact of the arrests. The plaintiff explained that she requested relief under § 46b-15 on the basis of a pattern of threatening by the defendant and stated that she believed that she was in physical danger.

3 The defendant testified in relevant part: "I've been [in the Superior Court] [ten] years, and I lost everything in my life here.... [B]ut the good part of it is that her claims were considered false, insufficient, unsubstantiated and rejected by the civil court in the divorce trial, by the criminal court twice, by the Department of Children and Families from the state of Connecticut. I was accused of abuse against ****553*** my own children. So, I was accused of being mentally insane. I had to undergo ***453*** ten evaluations with independent psychiatrists and psychologists. One was appointed by the court. They all expressed on the record that I'm not a violent man. I never had any history of violence in my life.... Furthermore, it was proven ... and I have all the records. Unfortunately it's [ten] years and maybe a snippet could be portrayed as something lethal, but is, again, false.... [T]he plaintiff has a history of deceit, fraud, entrapment, [and] provocations that it goes for years."[5]

In addition to the foregoing testimony, the plaintiff submitted several exhibits, including copies of text messages and e-mails that the defendant had sent her. The text messages and one of the e-mails had been written in Spanish. The plaintiff, therefore, in addition to providing copies of the original communications, submitted as an exhibit during the hearing a certified translation of these communications.

First, on March 29, 2018, the defendant had sent the plaintiff an e-mail, written in English, which stated in relevant part: "I had your associates in [G]reenwich all over me, from firefighters, police officers, public ***454*** employees .... So I refrained myself from confronting the scene, the last thing I wanted was to make a different sort of scene in front of our kids' doctor .... But [I'm] telling you for you to think before you and your attorney speak, what our kids should have experienced and must experience is their parents together, in front of them, telling them the very same message, absolutely in sync, with love, clarity and support, and this has not happened because of you, and it's still not happening because of you. You have prevented this from happening for almost [ten] years, against the law, common sense and their [well-being].... And the reason for that to be the case, as I see it, it's that you don't understand that our relationship only exists due to them, as a result of them, because of them. If they were not in this world, after what you've done in my life until now, I wouldn't even know anything about you, whether you exist or not ... your conduct is irresolute, without changing tracks in anything, without firing the unethical lawyer only you decided to retain, without giving back to me, reimbursing me, what you must in the name of decency and justice .... You don't get it. This is inconceivable to me, the fact you don't even understand what sort of man I am. You do what I tell you, and you have a positive response from me. Period. Why? Because what I tell you is no other thing than what you should have done and should do under the law and what's right in itself. And so happens that it is me saying it. Is there some feminist and related ****554*** belief against it? Stupidities about control and inconveniences. They can go and dominate themselves ... we've got [ten] years of this already. There's a law to be obeyed, giving me control over what I must control for being a father (natural law and rights), an outstanding father as you said, and a loving one per the opinion of the court. Yet, one who has lost any and all authority because of you, my parental rights have been curtailed and undermined by you, in detriment of our kids ...."

455 On April 27, 2018, the defendant sent the plaintiff another e-mail. The certified translation reads in relevant part: "On Monday I met with a group of friends to pray, etc., and before I had prayed to God, and I was thinking about what your attorney said: 'you lose ...', after accusing me of being a Nazi, crazy and an abuser .... I have God, and the fact that you have cheated me, robbed me, and swindled me in that way and with that type of people, as well as everything that that brought with it in my life for many years already, it is what it is.

"The fact that you have destroyed my life by accusing me of being an abuser and crazy, the inherited good name that your own children bear already stained forever, their father vilified by riffraff of all types, etc., and my own family harmed to an unthinkable extreme .... Lack of intelligence and pure evil....

"You lack a minimum conscience to understand that decent people don't do what you did and have been doing, they don't hire attorneys and a certain type of them at that—especially, when it was not necessary, it never was ... nor do they similarly use the police, firemen, schools and ideologized social structures (in a society fragmented by hate due of concepts of race, social class, origin, religion, and questions of identity) in order to harass and destroy the life of the father of their children. Only someone morally and spiritually sick can do such a thing. It's already been almost ten years of

this craziness, exclusively carried on by you, even though several groups have done their part due to their respective motivations. You have decided not to change your course, staying firm in the error, the ignominy and the cheating ... and as if this were not enough, counter to your legal representations and commitments.

"The only thing I asked for from the beginning was co-parenting, even after you refused to buy my part of ***456*** the house and consent to that, and it is specifically what you have refused even until today. And we have all lost so much, but especially on the human level our children, who have not seen their parents greet each other and interact civilly in almost ten years already due to your own decision ... all their infancy, to the point that it no longer has relevance ... while at times, for moments and reciprocally you became tired of stupidities like little smiles and that sort of thing in churches and public sites ... something frankly lunatic. You robbed your children of the opportunity to grow up with two parents, separated but acting civilly toward each other, as ordered by the law according to your own legal representatives.

"What were you expecting? Smiles, welcoming and nothing happened here ... the subject for me has always been our children, not my relationship with you after everything I lived through. And I find it incomprehensible that you don't understand it. My entire investment of love, time, effort, professional decisions, deprivations of all types and resources provided for our children, you have destroyed. You have robbed and defrauded me. Of course, it is important that such injustices cannot remain unpunished. But the curious thing of everything is that someone could think ****555*** that they could destroy me and dominate me through my relationship with you, something sincerely demented and an exclusive recipe for tragedy. In this sense, I thanked you and I thank God for the good sense that you have given me.

"It has not been nor is it easy for me, but my greatest success is being happy in spite of this craziness. Contemplating the possibility of my death many years ago, I understood that the only one who loses here, if I allow this to affect me, is me and those who love me. This would be losing and allowing the bad things to mortify me. I chose to be happy, and although I am very tired ***457*** and exhausted (deeply exhausted), I am a happy person. The uncertainness of not knowing where I will live tomorrow, in what country, not having a relationship with my daughters and not living with my children as much as I would wish ... losing contact with them over time ... having doubts, or if I'm out of work and a roof to live or die under, I don't lose sleep. In one way or another, justice will come, in this life or in the next one. Contemplating eternity, our temporary stay here on earth is ephemeral ... and we are almost [fifty] years old. Statistically speaking we have less time left than we have lived....

"On the other hand, for the professional that I am, beyond the destruction of my career. And in your case, you only decided to be it seriously—support through the subject of identity policies, which makes me happy for my children-—after destroying my life, professional and in general, not when we were married and the family needed it more than ever. You didn't do more than complain that you had to work part-time, and weren't worth anything at home or as a mother.... Finally, a very serious mistake, for which I have paid with interest in this world. And what have you gained? Destroying the father of your children, robbing him, and a job that you hate. Not even a mentally retarded person acts that way. As I said, injustices will be paid for. And I hope that you can do it for yourself in time, because otherwise your debt will be eternal before God."

On August 28, 2018, the defendant sent the plaintiff a series of text messages. With respect to the first message, the certified translation reads in relevant part: "Sometimes I wonder how it is possible that a person goes up to receive the Host after what you

have been doing and continue doing. For me it's incomprehensible. You have no conscience, that has been the big problem.... I don't have a job, I have to assume debts to live ***458*** (if I can) and probably I have to do with nothing after your thefts, fraud, social, judicial, and litigious persecutions—litigations that I will continue until justice is done, until I die if necessary. On the other hand, if you knew the garbage that I have had to live with of harassment and the like by the groups connected to your riffraff lawyer, whom I told you that you have to get rid of in order to do things right, so even someone like you would be surprised. You must think that that short time is all it takes, that time heals and stupidities like that. It's been almost [ten] years, since I made you a roadmap of what you would have to do or not do justly, what is right and is correct among good people. That is the only thing that matters. And now the only thing that helps is to return to me what is mine with interest, that you make right all the harm you have done in the proper way, and return to me my relationship with my daughters, in addition to being sorry and asking for forgiveness. You, as you have wrongly taught our daughters, do not know how to ask for forgiveness, something transcendental in life to be a good person, which also means amending the harm caused. I cannot get over my astonishment on seeing you walk to the altar ****556*** and receive the body of Christ. And you have been doing it for over [ten] years. For me it's something incredible."

In a subsequent text message, the defendant stated in relevant part: "If you don't intend to do what's right, we'll continue in the courts—in one way or another, for my children, I will have justice. And if I have to go, I won't hesitate, I'll go.... It seems to me that you and those who advise you don't manage to understand the type of man with which you are dealing with and the consequences of what has been done here."

That same day, the defendant also sent the plaintiff an e-mail, which stated in relevant part: "Despite the fact I am currently forced to leave the country (as things ***459*** stand right now) because of you and your lawyer, since I have no employment and savings (only debts, after living paycheck to paycheck) as a result of what you've been doing to me for years, it seems surreal to me. Why don't you do coparenting with me, knowing with full certainty that this is the only path and way for us to have any contact whatsoever in life? Instead, you keep violating the law and generating deep frustration and negativity in me. You tell me post facto of the issues that arise in our children due to your lack of coparenting .... It's not only that you can't see it, but you don't seem to comprehend the everlasting irreparable damage in our relationship for it, beyond the defamation, slander and libel that completely destroyed my life because of criminal charges and outrageous allegations of all sorts against me before the police/judiciary and elsewhere. You destroyed my life ... and severely hurt your own children as well. My power, authority and control as a father over my children have always been reasonable and loving, but you have taken them away from me against court orders and due to the misdeeds uncovered before the judiciary. If you wanted for me to hate you, let me tell you that [you] have done all the right things for that to be the case. Time does not heal anything, it only aggravates things. You need to do what's right. But you don't hear what I say, much less understand the impact of what you do."

4 At the conclusion of the hearing, the court orally rendered its decision.[6] The court told the defendant: "Sir, I am very sympathetic to your situation. I can see ***460*** that things have been very difficult. It's been a long, high conflict divorce situation." The court stated that the plaintiff had "carried her burden of proof that she has been subjected to a recent pattern of threats. I think some of the language here does imply ... does carry implied threats that could be unsettling." When the defendant asked which statement was considered a threat, the court explained: "Plaintiff's Exhibit 2; as I

said, injustices will be paid for. Destroying ... and what you have gained? Destroying the father of your children, robbing [him], and a job that you hate. Not even a mentally retarded person acts that way. As I said, injustices will be paid for."[7] Thereafter, the court explained ****557** the various limitations[8] on the rights and privileges of the defendant that were part of its restraining order, which, by its terms, expires on September 12, 2019. In addition, the court ordered the defendant to stay 100 yards away from the plaintiff, except when "both children are present." This appeal followed. Additional facts and procedural history will be set forth as necessary.

***461**

5 The defendant first claims that the trial court erroneously determined that he had subjected the plaintiff to a pattern of threatening. Specifically, he argues that the court erroneously "deemed one single out of context opinion, unsettling or not per third-party views, as an implied threat," and "found no valid allegation of physical abuse, stalking and/or a direct threat of any kind as a result of the plaintiff's spurious application for relief from abuse. Therefore, there is no possibility of arguing a pattern of threats under applicable law." We disagree.

6 7 8 We begin by setting forth the standard of review and legal principles that guide our analysis of the defendant's claim. "[T]he 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." (Footnote omitted; internal quotation marks omitted.) *Princess Q.H.* v. *Robert H.*, 150 Conn. App. 105, 111–12, 89 A.3d 896 (2014). "It is within the province of the trial court to find facts and draw proper inferences from the evidence 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." (Internal quotation marks omitted.) *Powell-Ferri* v. *Ferri*, 326 Conn. 457, 464, 165 A.3d 1124 (2017).

9 10 11 12 13 "In pursuit of its fact-finding function, [i]t is within the province of the trial court ... to weigh the evidence presented and determine the credibility and effect to be given the evidence.... Credibility must be assessed ... not by reading the cold printed record, ***462** but by observing firsthand the witness' conduct, demeanor and attitude.... An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] ... [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences ****558** therefrom." (Internal quotation marks omitted.) *Brown* v. *Brown*, 132 Conn. App. 30, 40, 31 A.3d 55 (2011). "Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review.... A finding of fact is clearly erroneous when there is no evidence in the record to support it ... or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.... Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Citation omitted; internal quotation marks omitted.) *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 112, 89 A.3d 896.

Section 46b-15 (a), which governs this case, provides in relevant part: "Any family or household member as defined in section 46b-38a,[9] who has been subjected to ... a pattern of threatening, including, but not limited to, a pattern of threatening, as

described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section...." (Footnote added.)

To the extent that the defendant argues that the court erred because its conclusion was based on a *single* statement, namely, his statement that "injustices will ***463*** be paid for," we are unpersuaded. Although the court responded to the defendant's question with just one example from the evidence in support of its conclusion,[10] the court had before it several written threatening communications that the defendant had sent to the plaintiff, including three e-mails and two text messages.

The defendant also argues that his statements were taken "out of context" and that he had been referring to justice within the legal system and within the context of his religious beliefs. Specifically, he argues that he was "manifesting his longing for justice within the legal system for himself and his children."[11] In addition, he argues that he was referring to "[his] belief in eternal justice, as long as such e-mail was sent after a weekly Christian gathering of men where each of the participants provides his life testimony, and all pray together for themselves and their families in the context of eternal life and justice before the Creator."

We repeat the well established linchpin of our role on appeal: "[W]e do not retry the facts or evaluate the credibility of witnesses." (Internal quotation marks omitted.) *Krystyna W.* v. *Janusz W.*, 127 Conn. App. 586, 591, 14 A.3d 483 (2011). Moreover, as our Supreme Court has repeatedly noted, "trial courts have a distinct advantage over an appellate court in dealing with domestic relations, where all of the surrounding circumstances and the appearance and attitude of the parties are so significant." (Internal quotation marks ****559*** omitted.) ***464*** *Brody* v. *Brody*, 315 Conn. 300, 306, 105 A.3d 887 (2015); see also *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 116, 89 A.3d 896.

In *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 116, 89 A.3d 896, this court viewed the trial court's decision in light of the surrounding circumstances and context of all the evidence presented to the trial court. This court determined that the plaintiff was entitled to a restraining order pursuant to § 46b-15, on the ground of stalking, when the defendant, her former spouse, drove past her house two times.[12] Id., at 116–17, 89 A.3d 896. The trial court in *Princess Q.H.*, like the trial court in the present case, "heard ample evidence about the parties' stormy relationship and the fact that the plaintiff and the defendant were adverse parties in a civil action at the time of [the conduct giving rise to relief pursuant to § 46b-15]."[13] Id., at 116, 89 A.3d 896.

This court concluded: "In light of the evidence and the surrounding circumstances, we conclude that the court did not abuse its discretion in concluding in the context of all of the evidence presented to it that the defendant's conduct in driving past her home, turning around, and immediately driving past her home a second time constituted an act of stalking. The [trial] court found after consideration of the evidence that shortly ***465*** before the plaintiff sought relief under § 46b-15, the defendant acted in a manner that constituted stalking as that term is commonly defined and applied. The defendant did not testify as to any contrary explanation for his presence near her home. In light of the foregoing, the court's decision does not contain unsupported findings or reflect a misapplication of the law." Id., at 116–17, 89 A.3d 896.

In the present case, although the defendant did, in his communications to the plaintiff, refer back to the parties' legal proceedings and his religious beliefs, the defendant also expressed, untethered, his negative feelings, of hatred and anger, toward the

plaintiff.[14] Moreover, he repeatedly emphasized, at length, how he felt that the plaintiff had "completely destroyed his life" and was to blame for the hardships he was facing.[15] Thus, in light of ***560** the lengthy, repetitive and hostile nature of the defendant's communications, and the trial court's ability to supplement the written exhibits with its observation of the demeanor of the parties at the hearing,[16] ***466** the trial court reasonably could have concluded that the defendant's written threatening communications constituted a pattern of threatening.

Because the record establishes that there was sufficient evidence to support a finding that the defendant subjected the plaintiff to a pattern of threatening, we conclude that the court did not abuse its discretion in granting the plaintiff's application for relief from abuse and issuing a restraining order against the defendant.

II

14 The defendant also claims that the court erroneously ordered him to stay 100 yards way from the plaintiff except "when both children are present." The defendant, in essence, claims that the effect of the court's order on his desire to have a relationship with his children is to burden unreasonably that relationship in that *both children*[17] have to be present with the plaintiff in order for the exception to apply. Specifically, he argues that "the terms of his restraining order do not allow [him] to attend school events if 'both children' are not present jointly with the plaintiff, namely: curriculum night—standard for children not to be there, sports and school sponsored events, high school graduation, concerts, church, and others. The only exception to the restraining order applies when 'both children are present'—both U.S. students. It is also unclear whether [he] can pick up one, both or none of his children from their home." In other words, if only one, but not both, of his children are with, or within 100 yards of, the plaintiff, he may not have contact with that child. We conclude that there is nothing in the record to support ***467** the court's additional order of protection as modified by the exception requiring the presence of both children.

The record reveals the following additional facts and procedural history. The parties have three children together. At the time that the restraining order was imposed, on September 12, 2018, one of the parties' children attended college in Spain, and two of the children attended high school and lived with the plaintiff. At the hearing, the defendant explained that, although the plaintiff was not requesting that the restraining order extend to the parties' children, a court order to stay 100 yards away from the plaintiff would affect his ability to see his children: "I could not kiss my children if I happened to be in church. I cannot pick up, still, my children from my own house .... I cannot attend ***561** my son's high school graduation if she's there. I cannot attend the high school barbecue if she's there." The court responded: "I can always make an exception for that." The court, at the conclusion of the hearing, explained its additional orders of protection that it was going to impose as a result of the restraining order: "The [defendant] is to stay at least 100 yards away from [the plaintiff] at all time[s], however an exception is to be made when the parties are in the presence of both children. So, in other words, the order does not apply [for] pickup and drop-off for the minor child or when you are also in the presence of the minor child, say at a family gathering or church or something like that." In its written additional orders of protection, the court provided that the defendant must stay 100 yards away from the plaintiff, except when "both children are present."

As previously stated, "[i]n determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action.... Appellate review of a trial court's findings of fact

is governed by **468* the clearly erroneous standard of review.... A finding of fact is clearly erroneous when there is no evidence in the record to support it ... or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 111–12, 89 A.3d 896.

First, we find ambiguity in the court's additional order of protection. Furthermore, we discern no evidence, set forth in the plaintiff's application or provided at the hearing on September 12, 2018, to support such an order, as modified by the exception requiring the presence of both children. The plaintiff did not request that her restraining order extend to the parties' children. Moreover, she did not testify that she felt as though she was in physical danger except in the presence of "both children." At the hearing, when the court explained that "the order does not apply [for] pickup and drop off for the minor child or when you are also in the presence of the minor child," with no mention of an additional child being present, the plaintiff did not object or express any concern. Accordingly, the court's order requiring the defendant to stay 100 yards away from the plaintiff, and providing an exception only when "both children" are present, has no evidentiary basis.

The judgment is reversed only as to the order requiring the defendant to stay 100 yards away from the plaintiff with an exception when both children are present, and the case is remanded for a new hearing with respect to any order of protection, if proven necessary by the plaintiff, in situations where the defendant seeks interaction with his children and the plaintiff is present. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

All Citations

189 Conn.App. 448, 207 A.3d 548

Footnotes

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

1 The defendant also claims that the trial court "should have exercised judicial restrain[t]" and that the restraining order infringes on his parental rights, his right to freedom of speech, and his right to freedom of religion. We decline to review these claims, however, because they are inadequately briefed. See *Tonghini* v. *Tonghini*, 152 Conn. App. 231, 239, 98 A.3d 93 (2014) ("It is well settled that [w]e are not required to review claims that are inadequately briefed.... We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly.... [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.... [A]ssignments of error which are merely mentioned but not briefed beyond a statement of the

claim will be deemed abandoned and will not be reviewed by this court." [Internal quotation marks omitted.]).

The defendant additionally claims that the trial court erred by ignoring "the plaintiff's [pattern of] advancing civil claims illegally" and violating his right to due process. Those claims, however, are not supported by the record. See footnotes 3, 5, and 7 of this opinion.

2 The parties had been divorced since September, 2010. They have three children together, one of whom is a minor.

3 On appeal, the defendant claims that, with respect to this hearing, the trial court violated his right to due process. Specifically, he argues that (1) "[he] was not allowed to ponder the veracity, accuracy and completeness of the exhibits admitted by the ... court, which gave no consideration to the context, timing of the allegation, history of the case, fraud, deceit, false allegations, defamation, and falsehoods of all sorts by the plaintiff," (2) "[he] could not submit any evidence to make his case ... or to question the [plaintiff] under oath," (3) "[j]udgment was rendered from the bench without proper analysis of [his] timely provided prehearing memorandum," and (4) "[he] was not allowed to review and compare [the plaintiff's] Spanish-English translation ... and did not even receive copies of the exhibits." The defendant's contentions, however, are not supported by the record.

First, the court specifically asked the defendant whether he had any evidentiary objection to the documents submitted by the plaintiff. The defendant objected on the grounds that the exhibits were selective and that the contents were not relevant. The court responded that the exhibits were relevant and that he would have an opportunity to supplement the copies of the communications provided by the plaintiff. Moreover, the defendant did not, at any point in time, attempt to submit any evidence, nor did he seek to question the plaintiff under oath. The court, therefore, did not deprive him of an opportunity to do so. In addition, with respect to the defendant's prehearing memorandum, the record reflects that the trial court reviewed this document before rendering its decision. Finally, the record reflects that the defendant did receive copies of the exhibits and was afforded the opportunity to view the certified translation. See footnote 7 of this opinion.

4 The defendant refers to these incidents as "past false allegations," "false criminal charges" and "illegal arrests," and states that he had been arrested for strangulation, or attempted murder, but the charges "never came to fruition after various witnesses interviewed by the police at the time of [his] arrest corroborated that there never was any violence or threats of any sort from [him] toward the plaintiff."

5 On appeal, the defendant claims that the court erred by ignoring "the plaintiff's [pattern of] advancing civil claims illegally ...." There is, however, nothing in the record to support this claim.

At the beginning of the hearing, the defendant provided the court with a copy of his thirty-five page prehearing memorandum, with attached exhibits. The defendant explained that the exhibits included copies of sworn testimony of the parties from previous proceedings and that the memorandum was intended to provide the court with "the full picture of why this is happening right now; what is the timing, the context, and the

falsehood behind it." Moreover, at the hearing, the defendant testified, at length, about what he characterizes as the plaintiff's "modus operandi of advancing civil claims through extortion in the way of false criminal charges and overall defamation ...."

Nothing in the record supports the defendant's assertion that the court ignored his testimony or failed to consider his prehearing memorandum. See footnote 3 of this opinion. Rather, at the conclusion of the hearing, the court stated that it had "listened very carefully to the testimony of both parties in this case," and "carefully reviewed the prehearing memorandum submitted by the defendant."

6 The record does not reflect that the trial court created a signed memorandum of decision in compliance with Practice Book § 64-1 (a) or that the defendant took measures to perfect the record in accordance with Practice Book § 64-1 (b). The defective record does not hamper our ability to review the issues presented on appeal because we are able adequately to ascertain the basis of the court's decision from the trial transcript of the court's oral decision. See *Princess Q.H.* v. *Robert H.*, 150 Conn. App. 105, 109 n.2, 89 A.3d 896 (2014).

7 The defendant challenges the accuracy of the translation with respect to his single statement "injusticias se pagan" which had been translated into English as "injustices will be paid for." The defendant argues, on appeal, that the correct translation is "injustices *are* paid." (Emphasis altered.) He argues that because "there is no future tense in it," it supports his contention that he made the statement in the context of his religious beliefs.

The defendant argues that "[he] was not allowed to review and compare [the plaintiff's] Spanish-English translation ... and did not even receive copies of the exhibits," which violated his right to due process. The record, however, reflects that, at the hearing, the defendant was given a copy of the certified translation and provided with the opportunity to review the plaintiff's exhibits.

Moreover, to the extent that the defendant argues that he did not receive advance notice of the plaintiff's certified translation, he does not cite any legal authority that entitles him to such notice nor does he explain how the lack of such prehearing notice amounted to a deprivation of due process. Therefore, we decline to review such a claim. See footnote 1 of this opinion.

8 As the terms and conditions of protection, the court ordered that the defendant must (1) surrender or transfer all firearms and ammunition, (2) not assault, threaten, abuse, harass, follow, interfere with, or stalk [the plaintiff], and (3) stay away from the home of [the plaintiff] and wherever [the plaintiff] shall reside.

9 General Statutes § 46b-38a (2) defines a "[f]amily or household member" to include "[s]pouses or former spouses."

10 As previously stated, the defendant, at the hearing, asked the court which of his statements constituted a threat, at which point the court stated: "Plaintiff's Exhibit 2; as I said, injustices will be paid for. Destroying ... and what you have gained? Destroying the father of your children, robbing

[him], and a job that you hate. Not even a mentally retarded person acts that way. As I said, injustices will be paid for."

11 At the hearing before the trial court, the defendant testified in relevant part: "[I]n other communications simultaneously at the same time that you don't have, what I said is that I'm looking for justice within the legal system. There is no threat of any nature whatsoever."

12 The trial court had granted the plaintiff relief based, in part, on a pattern of threatening, but, on appeal, this court did not reach the issue of whether the defendant's conduct constituted a pattern of threatening under § 46b-15.

13 Specifically, in her application, the plaintiff averred under oath that "the defendant had contacted her on the telephone on several occasions in 2012; that over the past several weeks, she had received prank calls from an unknown caller; that the defendant put his hands around her neck 'at one time'; that, when she was married to the defendant, he once told her that 'he can protect himself if he had to'; and that she was fearful that the defendant would try to hurt her or her daughter." *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 107, 89 A.3d 896. The trial court recognized that "[t]his is not a case where [the plaintiff] is telling me about a physical threat, or physical pain or physical injury ...." (Internal quotation marks omitted.) Id., at 110, 89 A.3d 896.

14 For example, as previously stated, he told the plaintiff: "If you wanted for me to hate you, let me tell you that [you] have done all the right things for that to be the case. Time does not heal anything, it only aggravates things." In addition, he told her that she was "generating deep frustration and negativity in [him.]" He also told the plaintiff that "[her] conduct is irresolute," that she had a "[l]ack of intelligence and [was] pure evil," that "[she] lack[s] a minimum conscience to understand that decent people don't do what [she] did," and implied that she was "morally and spiritually sick."

15 In addition to stating, several times, that the plaintiff had destroyed his life, the defendant also told the plaintiff that he "had lost any and all authority because of [her]," that she had "cheated [him], robbed [him], and swindled [him]," "defrauded [him]," and had destroyed his career. Moreover, the defendant blamed the plaintiff for his being "forced to leave the country," which he describes, on appeal, as "self-deportation."

At the hearing before the trial court, the defendant's testimony, in a similar fashion, focused on what he viewed to be the plaintiff's "history of deceit, fraud, entrapment, [and] provocations." On appeal, the defendant likewise dedicated a significant portion of his brief to summarizing, what he views to be, the plaintiff's "threats, abuse, deceit, concealment, fraud, and other misdeeds ... which also include perjury [and] false documentation," as well as the plaintiff's "ulterior motives," and "defamation."

16 At the hearing, the defendant acknowledged that he may have sounded "frustrated or emotional."

17 Although the parties have three children together, their oldest daughter attends college in Spain. Accordingly, the court's order, referring to "both children," presumably refers to the two children who live in the United States with the plaintiff.

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199 Conn.App. 11
Appellate Court of Connecticut.

D. S.

v.

R. S. *

(AC 43109)
Argued March 12, 2020
Officially released July 14, 2020

Synopsis

Background: Mother filed ex parte application on behalf of herself, her minor child, and child's grandmother against child's grandfather seeking relief from abuse, and seeking a domestic violence restraining order against grandfather. The Superior Court, Judicial District of Danbury, Sidney Axelrod, Judge Trial Referee, granted application for restraining order, and entered order mandating that grandfather would not harass, follow, interfere with, or stalk mother and child, and that grandfather remain 100 feet away from mother, child, her home, and child's bus stop. Following a hearing, the Superior Court continued restraining order as to child. Grandfather appealed.

Holdings: The Appellate Court, Harper, J., held that:
1 evidence supported trial court's finding that grandfather's conduct rose to the level of common-law stalking;
2 trial court incorrectly referred to definition of "stalking" contained in criminal statute defining the crime of stalking in the second degree; and
3 trial court's error, if any, in admitting mother's testimony regarding child's fear of grandfather was harmless.

Affirmed.

West Headnotes (14)

Attorneys and Law Firms

***1152** Norman J. Voog, Ridgefield, for the appellant (defendant).

Bright, Devlin and Harper, Js.

Opinion

HARPER, J.

***13** The defendant, R. S., appeals from the judgment of the trial court granting the application of the self-represented plaintiff, D. S., for relief from abuse and issuing a

domestic violence restraining order pursuant to General Statutes § 46b-15.[1] On appeal, the defendant claims that the court incorrectly based its decision on (1) the wrong definition of stalking and (2) testimony of the plaintiff given on behalf of her minor child (child). We affirm the judgment of the trial court.[2]

The record reveals the following relevant facts and procedural history. On May ***1153*** 29, 2019, the plaintiff filed an ex parte application for relief from abuse against the defendant, pursuant to § 46b-15, on behalf of herself, her child, and her mother. The defendant is the plaintiff's father and the former husband of the plaintiff's mother. In her application, the plaintiff averred under oath that the defendant engaged in threatening behavior, stalking, and harassment. Specifically, she alleged that the defendant had continued to try to make contact with the child (1) by showing up at the child's school bus stop, school, summer camp, and Cub Scout meetings, and by watching him from a distance, (2) by trespassing onto the plaintiff's property, and (3) by using ***14*** the "Find My iPhone"[3] application on the child's iPad in order to locate the plaintiff's new home. The plaintiff further alleged that the child is afraid of the defendant and, more specifically, afraid that the defendant will try to take him away from the plaintiff. According to the plaintiff, the child gets "extremely upset" whenever the defendant arrives at the bus stop, school, and other events, and the child wants no further contact with the defendant. Additionally, the plaintiff alleged that the defendant sent harassing text messages to the plaintiff's mother and sent threatening letters, e-mails, and text messages to the plaintiff.

On May 29, 2019, the court issued an ex parte restraining order that the defendant, among other things, not harass, follow, interfere with, or stalk the plaintiff and her child. The court further ordered that the defendant stay away from the plaintiff's home, that he stay 100 yards away from the plaintiff and her child, and that he stay 100 yards away from the child's bus stop. The court set a hearing date of June 7, 2019, in order to determine whether to extend the order.

At the hearing, both the defendant and the self-represented plaintiff appeared, testified, and submitted evidence on the issue of the plaintiff's application for relief from abuse. During the hearing, the plaintiff's testimony, in large part, mirrored the statements she had made in her application. More specifically, she testified that the child did not want the defendant at his bus stop; the child was always looking over his shoulder, afraid that the defendant was following him; the defendant appeared at the child's new bus stop, despite not ***15*** having been told previously about the new bus stop location; the child, once at the bus stop, was afraid to exit the car until the bus arrived; the child has told the plaintiff that he does not want to be around the defendant; the defendant showed up uninvited to the child's Cub Scout meeting and was asked to leave because his presence upset the child; the defendant's actions are affecting the child's behavior and schoolwork; and the defendant, despite the plaintiff's instructions to cease and desist, continued to stand near the bus stop to wave at and speak to the child. The plaintiff also testified that one of her child's friends, during a sleepover at her house, told her that her child was afraid that the defendant was going to take him away and was crying about it. She further testified that her mother told her that, when the plaintiff was not at home, her child would close the shades because he was afraid that the defendant would show up at the house. The plaintiff also testified that since the issuance of the restraining order, the child is the calmest ***1154*** he has ever been but that he still closes the window shades.

The defendant also testified at the hearing. Specifically, he admitted to going to the area across the street from the bus stop, with balloons, two to three times per week.

According to the defendant, he waves and says "hello" as the child enters and exits the bus. The defendant further testified that he stands out in the open as he waits for and waves at the child, and sometimes parks his car and stands on the property of a neighbor, with the neighbor's permission.

Gail Howard, the plaintiff's landlord, also testified at the hearing. According to Howard, the defendant waits at the bottom of the driveway for the child to get off the bus. She further testified that when the child sees the defendant, the child does not smile and he "behav[es] in a tense fashion." Howard also testified that she has seen the child "rush away from the defendant."

***16** The plaintiff also entered into evidence several exhibits, including a series of text messages from the defendant to the plaintiff's mother, exhibit 1, and a report she filed with the Redding Police Department, exhibit 4. The text messages show the defendant's efforts to gain information surreptitiously from the plaintiff's mother about the child's travels to school. Additionally, the text messages show that the defendant gave the plaintiff's mother $1400 for that information. The report filed by the plaintiff sets forth that the child does not want to see the defendant, that the child refuses to acknowledge the defendant, and that the defendant's conduct "ha[s] become emotionally draining and damaging to my child."

At the conclusion of the evidence, the court bifurcated final arguments and its decision regarding the extension of the restraining order into two parts: the application of the order as it applied to the plaintiff, and the order as it applied to the child. After the court heard argument with regard to the restraining order as it applied to the plaintiff, the court denied the continuation of the order as it applied to her. Prior to hearing argument about the restraining order as it applied to the child, the court stated that it was not using the dictionary definition of stalking but, rather, the statutory definition set forth in General Statutes § 53a-181d, which defines the crime of stalking in the second degree.[4] Specifically, the court stated that stalking ***17** means "follows, lies in wait for, observes, surveils, communicates with or sends unwanted gifts to a person that results in suffering emotional distress."

The court then heard argument with regard to the restraining order as it applied to the child. At the conclusion of oral argument, the court stated: "I'm continuing the order insofar as it relates to the minor child on the grounds that there's been stalking as a result of the course of conduct by the defendant in which two or ****1155** more times he has laid in wait for, observed or surveilled, or sent unwanted gifts, and [that] has resulted in emotional distress to the child. ... [O]ne, [the defendant is] to stay 100 yards away from the bus stop of the minor child; two, he's to stay 100 yards away from the minor child; three, he's not to stalk the minor child." This appeal followed. Additional facts will be set forth as necessary.

I

1 The defendant claims that the trial court erred when it issued a domestic violence restraining order pursuant to the definition of stalking provided in § 53a-181d and not the definition provided by this court in *Princess Q.H.* v. *Robert H.*, 150 Conn. App. 105, 115, 89 A.3d 896 (2014). We agree that the court relied on the statutory definition of stalking rather than the common meaning of the word; however, following our careful review of the record, we cannot conclude that the court erred in concluding that the defendant engaged in stalking as to the child.

2 3 4 5 We first set forth the well settled standard of review in family matters, along with other relevant legal principles. "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 ***18** reasonably conclude as it did, based on the facts presented. ... In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. ... Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. ... A finding of fact is clearly erroneous when there is no evidence in the record to support it ... or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. ... Our deferential standard of review, however, does not extend to the court's interpretation of and application of the law to the facts. It is axiomatic that a matter of law is entitled to plenary review on appeal." (Citation omitted; internal quotation marks omitted.) Id., at 111–12, 89 A.3d 896.

6 7 8 9 Additionally, as we often have noted, "[w]e do not retry the facts or evaluate the credibility of witnesses." (Internal quotation marks omitted.) *Margarita O.* v. *Fernando I.*, 189 Conn. App. 448, 463, 207 A.3d 548, cert. denied, 331 Conn. 930, 207 A.3d 1051, cert. denied, —— U.S. ——, 140 S. Ct. 72, 205 L. Ed. 2d 130 (2019). Rather, "[i]n pursuit of its fact-finding function, [i]t is within the province of the trial court ... to weigh the evidence presented and determine the credibility and effect to be given the evidence. ... Credibility must be assessed ... not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude. ... An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] ... [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom." (Internal quotation marks omitted.) *Kathrynne S.* v. *Swetz*, 191 Conn. App. 850, 857, 216 A.3d 858 (2019).

***19** Furthermore, given the nature of this appeal, it is important to underscore that "[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.) *Geremia* v. *Geremia*, 159 Conn. App. 751, 779, 125 A.3d 549 (2015); see also ****1156** *Flagg Energy Development Corp.* v. *General Motors Corp.*, 244 Conn. 126, 151, 709 A.2d 1075 (1998) (appellate court not required to reverse trial court ruling that reached correct result but for wrong reason), overruled in part on other grounds by *Ulbrich* v. *Groth*, 310 Conn. 375, 412 n.32, 78 A.3d 76 (2013).

Stalking is not defined in § 46b-15. In *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 105, 89 A.3d 896, this court analyzed § 46b-15(a). This court reasoned: "The legislature did not provide a definition of stalking as that word is used in § 46b-15(a). Although it could have done so, it did not incorporate by reference the definitions of stalking that are contained in the Penal Code, specifically, § 53a-181d ...." (Footnotes omitted; internal quotation marks omitted.) Id., at 114–15, 89 A.3d 896. This court further stated that "[w]e interpret the statute in accordance with these commonly accepted definitions, satisfied that the plain meaning of the statute does not yield an unworkable or absurd result. We reject ... reliance on the narrower definitions of stalking codified in our Penal Code. In so doing, we are mindful that our legislature reasonably may have chosen to rely on a narrower definition of stalking in delineating criminal liability, while deciding that a broader definition of stalking was appropriate in the dissimilar context of affording immediate relief to victims under § 46b-15." Id., at 115, 89 A.3d 896. As a result, this court looked to and provided the commonly approved usage of the word and defined stalking as follows: "[T]he act or an instance of following another by stealth. ... The offense of following or loitering near another,

often surreptitiously, to annoy or harass ***20*** that person or to commit a further crime such as assault or battery. Black's Law Dictionary (9th Ed. 2009). To loiter means to remain in an area for no obvious reason. Merriam-Webster's Collegiate Dictionary (11th Ed. 2011)." (Internal quotation marks omitted.) *Princess Q.H.* v. *Robert H.*, supra, 115, 89 A.3d 896.

Employing the aforementioned legal principles along with the definition of stalking as it is commonly defined and applied, this court held, in *Princess Q.H.*, that the trial court did not abuse its discretion when it concluded "that the defendant's conduct in driving past [the plaintiff's] home, turning around, and immediately driving past [the plaintiff's] home a second time constituted an act of stalking." Id., at 116, 89 A.3d 896. With *Princess Q.H.* and our standard of review in mind, we now turn to the defendant's claim.

At the § 46b-15 hearing in the present case, the court stated that it would use the definition of stalking set forth in § 53a-181d. In its oral decision, the court found, consistent with the plaintiff's testimony, that the defendant "two or more times ... has laid in wait for, observed or surveilled, or sent unwanted gifts, and [that] has resulted in emotional distress to the child."

10 Consistent with this court's decision in *Princess Q.H.*, we note that the trial court's reference to the statutory definition of stalking was incorrect. The narrower statutory definition set forth in § 53a-181d, however, is not inconsistent with the common understanding of stalking relied on by this court in *Princess Q.H.* We further note that, in *Princess Q.H.*, this court intentionally articulated a broader standard of stalking in the civil protection order context than the one employed in the criminal context. See *Princess Q.H.* v. *Robert H.*, supra, 150 Conn. App. at 115, 89 A.3d 896. Accordingly, evidence establishing that the defendant's conduct met the criminal standard of stalking is more than sufficient to satisfy ***21*** the civil standard. In other words, in proving the requisite elements of the criminal definition, the elements of the civil definition necessarily are satisfied.

1157 It is clear from the record that the court credited the plaintiff's testimony that the defendant had surveilled her and her child, perhaps surreptitiously, in order to ascertain the location of the plaintiff's new home and the child's new bus stop, despite the plaintiff's having told the defendant to leave the child alone. The court also credited the testimony of the plaintiff and Howard that the defendant stood across the street from the bus stop, two to three times a week, in order to see and attempt to interact with the child, who did not want the same with the defendant. The evidence also shows the defendant's surreptitious attempts to gather information from the plaintiff's mother about the child's travels to school. We see little difference between the defendant's actions of surveilling the child from near the plaintiff's home and the defendant's actions in *Princess Q.H.* of repeatedly driving past the plaintiff's home. Consequently, we conclude that the defendant's actions, as specifically found by the trial court, constituted stalking as that term is commonly defined and applied.

In light of the foregoing, including the court's findings and the breadth afforded the definition of stalking espoused in *Princess Q.H.*, we cannot conclude that the court erred when it continued the restraining order against the defendant as it pertains to the child.

II

11 The defendant also claims that the court erroneously based its decision on testimony that the plaintiff gave on behalf of the child. The defendant's claim is

evidentiary in nature and, because he did not properly preserve his objection at the hearing, we decline to review it. ***22** Furthermore, in light of the other evidence submitted to the trial court, without objection, the court's admission of the limited testimony to which the defendant did object, even if in error, was harmless.

Our Supreme Court has held that "[o]ur rules of practice make it clear that when an objection to evidence is made, a succinct statement of the grounds forming the basis for the objection must be made in such form as counsel desires it to be preserved and included in the record. ... This court reviews rulings solely on the ground on which the party's objection is based. ... In objecting to evidence, counsel must properly articulate the basis of the objection so as to apprise the trial court of the *precise nature of the objection and its real purpose, in order to form an adequate basis for a reviewable ruling*.... The purpose of such a requirement is apparent since we have consistently stated that we will not consider ... evidentiary rulings ... where no claim of error was preserved for review on appeal by proper objection and exception. ... Moreover, once the authority and the ground for an objection is stated, our review of the trial court's ruling is limited to the ground asserted." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *Braman*, 191 Conn. 670, 684–85, 469 A.2d 760 (1983).

12 13 Additionally, if there were an erroneous evidentiary ruling, "[b]efore a party is entitled to a new trial ... he or she has the burden of demonstrating that the error was harmful. ... The harmless error standard in a civil case is whether the improper ruling would likely affect the result." (Internal quotation marks omitted.) *Iino* v. *Spalter*, 192 Conn. App. 421, 431, 218 A.3d 152 (2019).

The following additional facts are relevant to our review. Early in the plaintiff's testimony, while testifying that her child fears that the defendant will take ***23** him away, the defendant's counsel objected, stating, "how does she know—if the son has fears; doesn't the son have to say he ****1158** has some type of fear?" Counsel further argued that the defendant did not "want his grandson to be quoted without any way of verifying it." Following the objection, the court stated that if the defendant wanted the child brought to court to testify, the court would arrange to do so. The defendant declined the court's invitation. The court then overruled the defendant's objection. The plaintiff resumed her testimony without any further objections by the defendant specific to this claim, during direct examination and cross-examination. Consequently, as previously noted, the plaintiff testified, without objection, that her child told her that he did not want the defendant at his bus stop, that her mother told her that the child closed the shades because he is afraid of the defendant, that the child's friend told the plaintiff that her child was afraid that the defendant would take him away, that the child was upset that the defendant showed up at his Cub Scout meeting, and that the defendant's actions were affecting the child's schoolwork and behavior. The defendant also did not object to the admission of exhibit 4, in which the plaintiff also described the negative effects that the defendant's conduct was having on the child. Additionally, the defendant did not object to Howard's testimony regarding the child's efforts to avoid interacting with the defendant at the bus stop. Furthermore, during oral argument before this court, the defendant's counsel conceded that he did not object to the plaintiff's testimony beyond his initial objection.

The defendant's objection, and subsequent argument in support of that objection, is not a model of clarity—he did not state the precise nature of his objection. Although, in support of this claim, the defendant's ***24** appellate brief sets forth several arguments sounding in hearsay, the defendant did not object to the testimony of the plaintiff on hearsay grounds and, therefore, makes this argument for the first time on appeal. The

question of whether the limited testimony of the plaintiff to which the defendant objected constituted hearsay is not a matter properly before this court because "to review [a] defendant's [hearsay] claim, which has been articulated for the first time on appeal and not before the trial court, would result in a trial by ambuscade of the trial judge. ... We ... do not address the merits of [such a claim]." (Citation omitted; internal quotation marks omitted.) *State* v. *Braman*, supra, 191 Conn. at 685, 469 A.2d 760.

14 Furthermore, as noted, the court had before it substantial evidence, to which the defendant did not object, that separately established that the child fears the defendant. Thus, even if the court erred in overruling the defendant's objection to the plaintiff's testimony that her child told her that he fears the defendant, any such error was harmless. See *Iino* v. *Spalter*, supra, 192 Conn. App. at 438–44, 218 A.3d 152 (any error in admitting testimony was harmless where defendant did not object to similar testimony).

Accordingly, because the defendant did not state the specific reason for his objection to the plaintiff's testimony, we conclude that his claim is unpreserved and, thus, unreviewable. We further conclude that any error was harmless.

The judgment is affirmed.

In this opinion the other judges concurred.

All Citations

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Footnotes

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

Moreover, in accordance with federal law; see 18 U.S.C. § 2265(d)(3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

1 General Statutes § 46b-15 provides in relevant part: "Any family or household member ... who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening ... by another family or household member may make an application to the Superior Court for relief under this section. ..."

2 The plaintiff did not file a brief in this appeal. We, therefore, decide the appeal on the basis of the defendant's brief and the record. See *Murphy* v. *Murphy*, 181 Conn. App. 716, 721 n.6, 188 A.3d 144 (2018).

3 "Find My iPhone" is a preinstalled smart phone application that utilizes cell phone tower and satellite technology to track the location of a particular iPhone when that phone is powered on. See *A. A. C.* v. *Miller-Pomlee*, 296 Or. App. 816, 820 n.2, 440 P.3d 106 (2019); see also *Jones* v. *United States*, 168 A.3d 703, 735 (D.C. App. 2017) (Thompson, J., dissenting)

("case law is replete with references to iPhone owners ... locating ... iPhones by using the Find My iPhone app").

4 General Statutes § 53a-181d provides in relevant part: "(a) For the purposes of this section, 'course of conduct' means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media, (1) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates with or sends unwanted gifts to, a person, or (2) interferes with a person's property, and 'emotional distress' means significant mental or psychological suffering or distress that may or may not require medical or other professional treatment or counseling.

"(b) A person is guilty of stalking in the second degree when:

"(1) Such person knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for such person's physical safety or the physical safety of a third person, or (B) suffer emotional distress ...."

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foreign jurisdiction; (16) dissolution, legal separation or annulment of a civil union performed in a foreign jurisdiction; (17) custody proceedings brought under the provisions of chapter 815p;[2] and (18) all such other matters within the jurisdiction of the Superior Court concerning children or family relations as may be determined by the judges of said court.

(b) As used in this title, "domestic violence" means: (1) A continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b–38a, as amended by this act; (2) stalking, including but not limited to, stalking as described in section 53a–181d, of such family or household member; (3) a pattern of threatening, including but not limited to, a pattern of threatening as described in section 53a–62, of such family or household member or a third party that intimidates such family or household member; or (4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. "Coercive control" includes, but is not limited to, unreasonably engaging in any of the following:

(A) Isolating the family or household member from friends, relatives or other sources of support;

(B) Depriving the family or household member of basic necessities;

(C) Controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services;

(D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue;

(E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or

(F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.

Sec. 2. Section 46b–15 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021):

<< CT ST § 46b–15 >>

(a) Any family or household member, as defined in section 46b–38a, **as amended by this act**, who ~~has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a–62, by another family or household member~~ **is the victim of domestic violence, as defined in section 46b–1, as amended by this act, by another family or household member** may make an application to the Superior Court for relief under this section. The court shall provide any person who applies for relief under this section with the information set forth in section 46b–15b.

Substitute Senate Bill No. 1091

Public Act No. 21-78

AN ACT CONCERNING THE DEFINITION OF DOMESTIC VIOLENCE, REVISING STATUTES CONCERNING DOMESTIC VIOLENCE, CHILD CUSTODY, FAMILY RELATIONS MATTER FILINGS AND BIGOTRY OR BIAS CRIMES AND CREATING A PROGRAM TO PROVIDE LEGAL COUNSEL TO INDIGENTS IN RESTRAINING ORDER CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Matters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving: (1) Dissolution of marriage, contested and uncontested, except dissolution upon conviction of crime as provided in section [46b-47] 46b-48; (2) legal separation; (3) annulment of marriage; (4) alimony, support, custody and change of name incident to dissolution of marriage, legal separation and annulment; (5) actions brought under section 46b-15, as amended by this act; (6) complaints for change of name; (7) civil support obligations; (8) habeas corpus and other proceedings to determine the custody and visitation of children; (9) habeas corpus brought by or on behalf of any mentally ill person except a person charged with a criminal offense; (10) appointment of a commission to inquire whether a person is wrongfully confined as provided by section 17a-523; (11) juvenile

matters as provided in section 46b-121; (12) all rights and remedies provided for in chapter 815j; (13) the establishing of paternity; (14) appeals from probate concerning: (A) Adoption or termination of parental rights; (B) appointment and removal of guardians; (C) custody of a minor child; (D) appointment and removal of conservators; (E) orders for custody of any child; and (F) orders of commitment of persons to public and private institutions and to other appropriate facilities as provided by statute; (15) actions related to prenuptial and separation agreements and to matrimonial and civil union decrees of a foreign jurisdiction; (16) dissolution, legal separation or annulment of a civil union performed in a foreign jurisdiction; (17) custody proceedings brought under the provisions of chapter 815p; and (18) all such other matters within the jurisdiction of the Superior Court concerning children or family relations as may be determined by the judges of said court.

(b) As used in this title, "domestic violence" means: (1) A continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b-38a, as amended by this act; (2) stalking, including but not limited to, stalking as described in section 53a-181d, of such family or household member; (3) a pattern of threatening, including but not limited to, a pattern of threatening as described in section 53a-62, of such family or household member or a third party that intimidates such family or household member; or (4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. "Coercive control" includes, but is not limited to, unreasonably engaging in any of the following:

(A) Isolating the family or household member from friends, relatives or other sources of support;

(B) Depriving the family or household member of basic necessities;

(C) Controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services;

(D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue;

(E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or

(F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.

Sec. 2. Section 46b-15 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) Any family or household member, as defined in section 46b-38a, as amended by this act, who [has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member] is the victim of domestic violence, as defined in section 46b-1, as amended by this act, by another family or household member may make an application to the Superior Court for relief under this section. The court shall provide any person who applies for relief under this section with the information set forth in section 46b-15b.

(b) The application form shall allow the applicant, at the applicant's option, to indicate whether the respondent holds a permit to carry a pistol or revolver, an eligibility certificate for a pistol or revolver, a long gun eligibility certificate or an ammunition certificate or possesses one

or more firearms or ammunition. The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order except that, if the application indicates that the respondent holds a permit to carry a pistol or revolver, an eligibility certificate for a pistol or revolver, a long gun eligibility certificate or an ammunition certificate or possesses one or more firearms or ammunition, and the court orders an ex parte order, the court shall order that a hearing be held on the application not later than seven days from the date on which the ex parte order is issued. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. In addition, at the time of the hearing, the court, in its discretion, may also consider a report prepared by the family services unit of the Judicial Branch that may include, as available: Any existing or prior orders of protection obtained from the protection order registry; information on any pending criminal case or past criminal case in which the respondent was convicted of a violent crime; any outstanding arrest warrant for the respondent; and the respondent's level of risk based on a risk assessment tool utilized by the Court Support Services Division. The report may also include information pertaining to any pending or disposed family matters case involving the applicant and respondent. Any report provided by the Court Support Services Division to the court shall also be provided to the applicant and respondent. Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the

applicant; or (3) entering the family dwelling or the dwelling of the applicant. Such order may include provisions necessary to protect any animal owned or kept by the applicant including, but not limited to, an order enjoining the respondent from injuring or threatening to injure such animal. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. If a postponement of a hearing on the application is requested by either party and granted, the ex parte order shall not be continued except upon agreement of the parties or by order of the court for good cause shown. If a hearing on the application is scheduled or an ex parte order is granted and the court is closed on the scheduled hearing date, the hearing shall be held on the next day the court is open and any such ex parte order shall remain in effect until the date of such hearing. If the applicant is under eighteen years of age, a parent, guardian or responsible adult who brings the application as next friend of the applicant may not speak on the applicant's behalf at such hearing unless there is good cause shown as to why the applicant is unable to speak on his or her own behalf, except that nothing in this subsection shall preclude such parent, guardian or responsible adult from testifying as a witness at such hearing. As used in this subsection, "violent crime" includes: (A) An incident resulting in physical harm, bodily injury or assault; (B) an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening; (C) verbal abuse or argument if there is a present danger and likelihood that physical violence will occur; and (D) cruelty to animals as set forth in section 53-247.

(c) If the court issues an ex parte order pursuant to subsection (b) of this section and service has not been made on the respondent in conformance with subsection (h) of this section, upon request of the applicant, the court shall, based on the information contained in the original application, extend any ex parte order for an additional period

not to exceed fourteen days from the originally scheduled hearing date. The clerk shall prepare a new order of hearing and notice containing the new hearing date, which shall be served upon the respondent in accordance with the provisions of subsection (h) of this section.

(d) Any ex parte restraining order entered under subsection (b) of this section in which the applicant and respondent are spouses, or persons who have a dependent child or children in common and who live together, may include, if no order exists, and if necessary to maintain the safety and basic needs of the applicant or the dependent child or children in common of the applicant and respondent, in addition to any orders authorized under subsection (b) of this section, any of the following: (1) An order prohibiting the respondent from (A) taking any action that could result in the termination of any necessary utility services or necessary services related to the family dwelling or the dwelling of the applicant, (B) taking any action that could result in the cancellation, change of coverage or change of beneficiary of any health, automobile or homeowners insurance policy to the detriment of the applicant or the dependent child or children in common of the applicant and respondent, or (C) transferring, encumbering, concealing or disposing of specified property owned or leased by the applicant; or (2) an order providing the applicant with temporary possession of an automobile, checkbook, documentation of health, automobile or homeowners insurance, a document needed for purposes of proving identity, a key or other necessary specified personal effects.

(e) At the hearing on any application under this section, if the court grants relief pursuant to subsection (b) of this section and the applicant and respondent are spouses, or persons who have a dependent child or children in common and who live together, and if necessary to maintain the safety and basic needs of the applicant or the dependent child or children in common of the applicant and respondent, any orders entered by the court may include, in addition to the orders authorized

under subsection (b) of this section, any of the following: (1) An order prohibiting the respondent from (A) taking any action that could result in the termination of any necessary utility services or services related to the family dwelling or the dwelling of the applicant, (B) taking any action that could result in the cancellation, change of coverage or change of beneficiary of any health, automobile or homeowners insurance policy to the detriment of the applicant or the dependent child or children in common of the applicant and respondent, or (C) transferring, encumbering, concealing or disposing of specified property owned or leased by the applicant; (2) an order providing the applicant with temporary possession of an automobile, checkbook, documentation of health, automobile or homeowners insurance, a document needed for purposes of proving identity, a key or other necessary specified personal effects; or (3) an order that the respondent: (A) Make rent or mortgage payments on the family dwelling or the dwelling of the applicant and the dependent child or children in common of the applicant and respondent, (B) maintain utility services or other necessary services related to the family dwelling or the dwelling of the applicant and the dependent child or children in common of the applicant and respondent, (C) maintain all existing health, automobile or homeowners insurance coverage without change in coverage or beneficiary designation, or (D) provide financial support for the benefit of any dependent child or children in common of the applicant and the respondent, provided the respondent has a legal duty to support such child or children and the ability to pay. The court shall not enter any order of financial support without sufficient evidence as to the ability to pay, including, but not limited to, financial affidavits. If at the hearing no order is entered under this subsection or subsection (d) of this section, no such order may be entered thereafter pursuant to this section. Any order entered pursuant to this subsection shall not be subject to modification and shall expire one hundred twenty days after the date of issuance or upon issuance of a superseding order, whichever occurs first. Any amounts not paid or collected under this subsection or

subsection (d) of this section may be preserved and collectible in an action for dissolution of marriage, custody, paternity or support.

(f) (1) Every order of the court made in accordance with this section shall contain the following language: [(1)] (A) "This order may be extended by the court beyond one year. In accordance with section 53a-107 of the Connecticut general statutes, entering or remaining in a building or any other premises in violation of this order constitutes criminal trespass in the first degree. This is a criminal offense punishable by a term of imprisonment of not more than one year, a fine of not more than two thousand dollars or both."; and [(2)] (B) "In accordance with section 53a-223b of the Connecticut general statutes, any violation of subparagraph (A) or (B) of subdivision (2) of subsection (a) of section 53a-223b constitutes criminal violation of a restraining order which is punishable by a term of imprisonment of not more than five years, a fine of not more than five thousand dollars, or both. Additionally, any violation of subparagraph (C) or (D) of subdivision (2) of subsection (a) of section 53a-223b constitutes criminal violation of a restraining order which is punishable by a term of imprisonment of not more than ten years, a fine of not more than ten thousand dollars, or both.".

(2) Each applicant who receives an order of the court in accordance with this section shall be given a notice that contains the following language: "If a restraining order has been issued on your behalf or on behalf of your child, you may elect to give testimony or appear in a family court proceeding remotely, pursuant to section 46b-15c. Please notify the court in writing at least two days in advance of a proceeding if you choose to give testimony or appear remotely, and your physical presence in the courthouse will not be required in order to participate in the court proceeding.".

(g) No order of the court shall exceed one year, except that an order may be extended by the court upon motion of the applicant for such additional time as the court deems necessary. If the respondent has not

appeared upon the initial application, service of a motion to extend an order may be made by first-class mail directed to the respondent at the respondent's last-known address.

(h) (1) The applicant shall cause notice of the hearing pursuant to subsection (b) of this section and a copy of the application and the applicant's affidavit and of any ex parte order issued pursuant to subsection (b) of this section to be served on the respondent not less than three days before the hearing. A proper officer responsible for executing such service shall accept all documents in an electronic format, if presented to such officer in such format. The cost of such service shall be paid for by the Judicial Branch.

(2) When (A) an application indicates that a respondent holds a permit to carry a pistol or revolver, an eligibility certificate for a pistol or revolver, a long gun eligibility certificate or an ammunition certificate or possesses one or more firearms or ammunition, and (B) the court has issued an ex parte order pursuant to this section, the proper officer responsible for executing service shall, whenever possible, provide in-hand service and, prior to serving such order, shall (i) provide notice to the law enforcement agency for the town in which the respondent will be served concerning when and where the service will take place, and (ii) send, or cause to be sent by facsimile or other means, a copy of the application, the applicant's affidavit, the ex parte order and the notice of hearing to such law enforcement agency, and (iii) request that a police officer from the law enforcement agency for the town in which the respondent will be served be present when service is executed by the proper officer. Upon receiving a request from a proper officer under the provisions of this subdivision, the law enforcement agency for the town in which the respondent will be served may designate a police officer to be present when service is executed by the proper officer.

(3) Upon the granting of an ex parte order, the clerk of the court shall provide two copies of the order to the applicant. Upon the granting of

an order after notice and hearing, the clerk of the court shall provide two copies of the order to the applicant and a copy to the respondent. Every order of the court made in accordance with this section after notice and hearing shall be accompanied by a notification that is consistent with the full faith and credit provisions set forth in 18 USC 2265(a), as amended from time to time. Immediately after making service on the respondent, the proper officer shall (A) send or cause to be sent, by facsimile or other means, a copy of the application, or the information contained in such application, stating the date and time the respondent was served, to the law enforcement agency or agencies for the town in which the applicant resides, the town in which the applicant is employed and the town in which the respondent resides, and (B) as soon as possible, but not later than two hours after the time that service is executed, input into the Judicial Branch's Internet-based service tracking system the date, time and method of service. If, prior to the date of the scheduled hearing, service has not been executed, the proper officer shall input into such service tracking system that service was unsuccessful. The clerk of the court shall send, by facsimile or other means, a copy of any ex parte order and of any order after notice and hearing, or the information contained in any such order, to the law enforcement agency or agencies for the town in which the applicant resides, the town in which the applicant is employed and the town in which the respondent resides, within forty-eight hours of the issuance of such order. If the victim, or victim's minor child protected by such order, is enrolled in a public or private elementary or secondary school, including a technical education and career school, or an institution of higher education, as defined in section 10a-55, the clerk of the court shall, upon the request of the victim, send, by facsimile or other means, a copy of such ex parte order or of any order after notice and hearing, or the information contained in any such order, to such school or institution of higher education, the president of any institution of higher education at which the victim, or victim's minor child protected by such order, is enrolled and the special police force established pursuant to

section 10a-156b, if any, at the institution of higher education at which the victim, or victim's minor child protected by such order, is enrolled, if the victim provides the clerk with the name and address of such school or institution of higher education.

(i) A caretaker who is providing shelter in his or her residence to a person sixty years or older shall not be enjoined from the full use and enjoyment of his or her home and property. The Superior Court may make any other appropriate order under the provisions of this section.

(j) When a motion for contempt is filed for violation of a restraining order, there shall be an expedited hearing. Such hearing shall be held within five court days of service of the motion on the respondent, provided service on the respondent is made not less than twenty-four hours before the hearing. If the court finds the respondent in contempt for violation of an order, the court may impose such sanctions as the court deems appropriate.

(k) An action under this section shall not preclude the applicant from seeking any other civil or criminal relief.

(l) For purposes of this section, "police officer" means a state police officer or a sworn member of a municipal police department and "law enforcement agency" means the Division of State Police within the Department of Emergency Services and Public Protection or any municipal police department.

Sec. 3. Section 46b-15c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) In any court proceeding in a family relations matter, as defined in section 46b-1, as amended by this act, the court [may, within available resources] shall, upon [motion] the written request of a party or the attorney for any party made not less than two days prior to such proceeding, order that the testimony of a party or a child who is a subject

of the proceeding be taken outside the physical presence of any other party if a protective order, restraining order or standing criminal protective order has been issued on behalf of the party or child, and the other party is subject to the protective order, restraining order or standing criminal protective order. Such order may provide for the use of alternative means to obtain the testimony of any party or child, including, but not limited to, the use of a secure video connection for the purpose of conducting hearings by videoconference. Such testimony may be taken in a room other than the courtroom or at another location outside the courthouse or outside the state. The court shall provide for the administration of an oath to such party or child prior to the taking of such testimony in accordance with the rules of the Superior Court.

(b) Nothing in this section shall be construed to limit any party's right to cross-examine a witness whose testimony is taken in a room other than the courtroom pursuant to an order under this section.

(c) An order under this section may remain in effect during the pendency of the proceedings in the family relations matter.

(d) A notice describing the provisions of subsection (a) of this section shall be (1) posted on the Internet web site of the Judicial Branch, (2) included in any written or electronic form that describes the automatic orders in cases involving a dissolution of marriage or legal separation under section 46b-40, and (3) included in any written or electronic form provided to a person who receives a protective order under section 46b-38c, as amended by this act, a standing criminal protective order under section 54a-40e, as amended by this act, or a restraining order, under section 46b-15, as amended by this act.

Sec. 4. Subdivision (3) of section 46b-38a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(3) "Family violence crime" means a crime as defined in section 53a-24, other than a delinquent act, as defined in section 46b-120, which, in addition to its other elements, contains as an element thereof an act of family violence to a family or household member. "Family violence crime" includes any violation of section 53a-222, 53a-222a, 53a-223, 53a-223a or 53a-223b when the condition of release or court order is issued for an act of family violence or a family violence crime. "Family violence crime" does not include acts by parents or guardians disciplining minor children unless such acts constitute abuse.

Sec. 5. Subdivision (5) of subsection (g) of section 46b-38b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(5) (A) On and after July 1, [2010] 2021, each law enforcement agency shall designate at least one officer with supervisory duties to expeditiously process, upon request of a victim of family violence or other crime who is applying for U Nonimmigrant Status [(A)] (i) a certification of helpfulness on Form I-918, Supplement B, or any subsequent corresponding form designated by the United States Department of Homeland Security, confirming that the victim of family violence or other crime has been helpful, is being helpful [,] or is likely to be helpful in the investigation or prosecution of the criminal activity, and [(B)] (ii) any subsequent certification required by the victim. As used in this subparagraph, "expeditiously" means not later than sixty days after the date of receipt of the request for certification of helpfulness, or not later than fourteen days after the date of receipt of such request if (I) the victim is in federal immigration removal proceedings or detained, or (II) the victim's child, parents or siblings would become ineligible for an immigration benefit by virtue of the victim or the sibling of such victim attaining the age of eighteen years, or the victim's child attaining the age of twenty-one years.

(B) By signing a certification of helpfulness, the officer or agency is

not making a determination of eligibility for U Nonimmigrant Status. The officer or agency is solely providing information required by the United States Department of Homeland Security on such form as is required by said department and certifying that: (i) The requesting individual or his or her family member is a victim of one of the enumerated crimes eligible for U Nonimmigrant Status, (ii) the victim possesses or possessed information regarding that crime, (iii) the victim has been, is being or is likely to be helpful in an investigation of that crime, and (iv) the victim has not failed or refused to provide reasonably requested information or assistance. A current or ongoing investigation, filing of criminal charges, prosecution or conviction is not required for a victim to request and obtain certification under this subdivision.

Sec. 6. Subsection (e) of section 46b-38c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(e) (1) A protective order issued under this section may include provisions necessary to protect the victim from threats, harassment, injury or intimidation by the defendant, including, but not limited to, an order enjoining the defendant from [(1)] (A) imposing any restraint upon the person or liberty of the victim, [(2)] (B) threatening, harassing, assaulting, molesting or sexually assaulting the victim, or [(3)] (C) entering the family dwelling or the dwelling of the victim. A protective order issued under this section may include provisions necessary to protect any animal owned or kept by the victim including, but not limited to, an order enjoining the defendant from injuring or threatening to injure such animal. Such order shall be made a condition of the bail or release of the defendant and shall contain the following notification: "In accordance with section 53a-223 of the Connecticut general statutes, any violation of this order constitutes criminal violation of a protective order which is punishable by a term of imprisonment of not more than ten years, a fine of not more than ten thousand dollars, or both.

Additionally, in accordance with section 53a-107 of the Connecticut general statutes, entering or remaining in a building or any other premises in violation of this order constitutes criminal trespass in the first degree which is punishable by a term of imprisonment of not more than one year, a fine of not more than two thousand dollars, or both. Violation of this order also violates a condition of your bail or release, and may result in raising the amount of bail or revoking release." Every order of the court made in accordance with this section after notice and hearing shall be accompanied by a notification that is consistent with the full faith and credit provisions set forth in 18 USC 2265(a), as amended from time to time. The information contained in and concerning the issuance of any protective order issued under this section shall be entered in the registry of protective orders pursuant to section 51-5c.

(2) Each person who receives an order of the court in accordance with this subsection shall be given a notice that contains the following language: "If a protective order has been issued on your behalf or on behalf of your child, you may elect to give testimony or appear in a family court proceeding remotely, pursuant to section 46b-15c. Please notify the court in writing at least two days in advance of a proceeding if you choose to give testimony or appear remotely, and your physical presence in the courthouse will not be required in order to participate in the court proceeding.".

Sec. 7. Section 53a-40e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) If any person is convicted of (1) a violation of section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, or subdivision (1) or (2) of subsection (a) of section 53-21, section 53a-59, 53a-59a, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-181c, 53a-181d, 53a-181e, 53a-182b or 53a-183, subdivision (2) of subsection (a) of section 53a-192a, section 53a-

223, 53a-223a or 53a-223b or attempt or conspiracy to violate any of said sections or section 53a-54a, or (2) any crime that the court determines constitutes a family violence crime, as defined in section 46b-38a, as amended by this act, or attempt or conspiracy to commit any such crime, the court may, in addition to imposing the sentence authorized for the crime under section 53a-35a or 53a-36, if the court is of the opinion that the history and character and the nature and circumstances of the criminal conduct of such offender indicate that a standing criminal protective order will best serve the interest of the victim and the public, issue a standing criminal protective order which shall remain in effect for a duration specified by the court until modified or revoked by the court for good cause shown. If any person is convicted of any crime not specified in subdivision (1) or (2) of this subsection, the court may, for good cause shown, issue a standing criminal protective order pursuant to this subsection.

(b) Such standing criminal protective order may include, but need not be limited to, provisions enjoining the offender from (1) imposing any restraint upon the person or liberty of the victim; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the victim; or (3) entering the family dwelling or the dwelling of the victim. If the victim is enrolled in a public or private elementary or secondary school, including a technical high school, or an institution of higher education, as defined in section 10a-55, the clerk of the court shall, upon the request of the victim, send, by facsimile or other means, a copy of such standing criminal protective order, or the information contained in any such order, to such school or institution of higher education, the president of any institution of higher education at which the victim is enrolled and the special police force established pursuant to section 10a-142, if any, at the institution of higher education at which the victim is enrolled, if the victim provides the clerk with the name and address of such school or institution of higher education.

(c) (1) Such standing criminal protective order shall include the following notice: "In accordance with section 53a-223a of the Connecticut general statutes, violation of this order shall be punishable by a term of imprisonment of not less than one year nor more than ten years, a fine of not more than ten thousand dollars, or both.".

(2) Upon issuance of a standing criminal protective order under subsection (a) of this section, each victim protected by such order shall be given a notice that contains the following language: "If a standing criminal protective order has been issued on your behalf or on behalf of your child, you may elect to give testimony or appear in a family court proceeding remotely, pursuant to section 46b-15c. Please notify the court in writing at least two days in advance of a proceeding if you choose to give testimony or appear remotely, and your physical presence in the courthouse will not be required in order to participate in the court proceeding.".

(d) For the purposes of this section and any other provision of the general statutes, "standing criminal protective order" means (1) a standing criminal restraining order issued prior to October 1, 2010, or (2) a standing criminal protective order issued on or after October 1, 2010.

Sec. 8. Subsection (f) of section 46b-54 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(f) When recommending the entry of any order as provided in subsections (a) and (b) of section 46b-56, as amended by this act, counsel or a guardian ad litem for the minor child shall consider the best interests of the child, and in doing so shall consider, but not be limited to, one or more of the following factors: (1) The physical and emotional safety of the child; (2) the temperament and developmental needs of the child; [(2)] (3) the capacity and the disposition of the parents to

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

Sec. 9. Section 46b-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.

(b) In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.

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

or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and [(16)] (17) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision.

(d) Upon the issuance of any order assigning custody of the child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the best interests of the child, including the child's health and safety.

(e) In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84.

(f) When the court is not sitting, any judge of the court may make any order in the cause which the court might make under this section, including orders of injunction, prior to any action in the cause by the court.

(g) A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child, unless otherwise ordered by the court for good cause shown.

(h) Notwithstanding the provisions of subsections (b) and (c) of this section, when a motion for modification of custody or visitation is pending before the court or has been decided by the court and the

investigation ordered by the court pursuant to section 46b-6 recommends psychiatric or psychological therapy for a child, and such therapy would, in the court's opinion, be in the best interests of the child and aid the child's response to a modification, the court may order such therapy and reserve judgment on the motion for modification.

(i) As part of a decision concerning custody or visitation, the court may order either parent or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided such participation is in the best interests of the child.

Sec. 10. (NEW) (*Effective October 1, 2021*) In any family relations matter described in section 46b-1 of the general statutes, as amended by this act, if the court finds that a pattern of frivolous and intentionally fabricated pleadings or motions are filed by one party, the court shall sanction such party in an appropriate manner so as to allow such matter to proceed without undue delay or obstruction by the party filing such pleadings or motions.

Sec. 11. Section 51-27h of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

The Chief Court Administrator shall provide in each court where family matters or family violence matters are heard or where a domestic violence docket, as defined in section 51-181e, is located a secure room for victims of family violence crimes and advocates for victims of family violence crimes which is separate from any public or private area of the court intended to accommodate the respondent or defendant or the respondent's or defendant's family, friends, attorneys or witnesses and separate from the office of the state's attorney, provided <u>that in courthouses constructed prior to July 1, 2021,</u> such a room is available and the use of such room is practical.

Sec. 12. Section 51-27i of the general statutes is repealed and the

following is substituted in lieu thereof (*Effective July 1, 2021*):

(a) As used in this section:

(1) "Domestic violence agency" means any office, shelter, host home or agency offering assistance to victims of domestic violence through crisis intervention, emergency shelter referral and medical and legal advocacy, and which meets the Department of Social Services' criteria of service provision for such agencies.

(2) "Family violence victim advocate" means a person (A) who is employed by and under the control of a direct service supervisor of a domestic violence agency, (B) who has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of domestic violence, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice and civil family court systems and information about state and community resources for victims of domestic violence, (C) who is certified as a counselor by the domestic violence agency that provided such training, and (D) whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, victims of domestic violence.

(b) The Chief Court Administrator shall permit one or more family violence victim advocates to provide services to victims of domestic violence in (1) the Family Division of the Superior Court in [one or more judicial districts] each judicial district, and (2) each geographical area court in the state.

(c) Notwithstanding any provision of the general statutes restricting the disclosure of documents, upon request, a family violence victim advocate providing services in the Family Division of the Superior Court or a geographical area court shall be provided with a copy of any police report in the possession of the state's attorney, the Division of

State Police within the Department of Emergency Services and Public Protection, any municipal police department or any other law enforcement agency that the family violence victim advocate requires to perform the responsibilities and duties set forth in subsection (b) of this section.

Sec. 13. Subsection (a) of section 17b-112g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(a) The Commissioner of Social Services shall offer immediate diversion assistance designed to prevent certain families who are applying for monthly temporary family assistance from needing such assistance. Diversion assistance shall be offered to families that (1) upon initial assessment are determined eligible for temporary family assistance, (2) demonstrate a short-term need that cannot be met with current or anticipated family resources, and (3) with the provision of a service or short-term benefit, would be prevented from needing monthly temporary family assistance. Within resources available to the Department of Social Services, a person who requests diversion assistance on the basis of being a victim of domestic violence, as defined in section 17b-112a, shall be deemed to satisfy subdivision (2) of this subsection and shall not be subject to the requirements of subdivision (3) of this subsection. In determining whether the family of such a victim of domestic violence satisfies the requirements of subdivision (1) of this subsection and the appropriate amount of diversion assistance to provide, the commissioner shall not include as a member of the family the spouse, domestic partner or other household member credibly accused of domestic violence by such victim, nor shall the commissioner count the income or assets of such a spouse, domestic partner or other household member. For purposes of this subsection, allegations of domestic violence may be substantiated by the commissioner pursuant to the provisions of subsection (b) of section 17b-112a.

Sec. 14. Section 17b-191 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2021*):

(a) Notwithstanding the provisions of sections 17b-190, 17b-195 and 17b-196, the Commissioner of Social Services shall operate a state-administered general assistance program in accordance with this section and sections 17b-131, 17b-193, 17b-194, 17b-197 and 17b-198. Notwithstanding any provision of the general statutes, on and after October 1, 2003, no town shall be reimbursed by the state for any general assistance medical benefits incurred after September 30, 2003, and on and after March 1, 2004, no town shall be reimbursed by the state for any general assistance cash benefits or general assistance program administrative costs incurred after February 29, 2004.

(b) The state-administered general assistance program shall provide cash assistance of (1) two hundred dollars per month for an unemployable person upon determination of such person's unemployability; (2) two hundred dollars per month for a transitional person who is required to pay for shelter; and (3) fifty dollars per month for a transitional person who is not required to pay for shelter. The standard of assistance paid for individuals residing in rated boarding facilities shall remain at the level in effect on August 31, 2003. No person shall be eligible for cash assistance under the program if eligible for cash assistance under any other state or federal cash assistance program. The standards of assistance set forth in this subsection shall be subject to annual increases, as described in subsection (b) of section 17b-104.

(c) To be eligible for cash assistance under the program, a person shall (1) be (A) eighteen years of age or older; (B) a minor found by a court to be emancipated pursuant to section 46b-150; or (C) under eighteen years of age and the commissioner determines good cause for such person's eligibility, and (2) not have assets exceeding two hundred fifty dollars or, if such person is married, such person and his or her spouse shall not have assets exceeding five hundred dollars. In determining eligibility,

the commissioner shall not consider as income Aid and Attendance pension benefits granted to a veteran, as defined in section 27-103, or the surviving spouse of such veteran. No person who is a substance abuser and refuses or fails to enter available, appropriate treatment shall be eligible for cash assistance under the program until such person enters treatment. No person whose benefits from the temporary family assistance program have terminated as a result of time-limited benefits or for failure to comply with a program requirement shall be eligible for cash assistance under the program.

(d) Prior to or upon discontinuance of assistance, a person previously determined to be a transitional person may petition the commissioner to review the determination of his or her status. In such review, the commissioner shall consider factors, including, but not limited to: (1) Age; (2) education; (3) vocational training; (4) mental and physical health; and (5) employment history and shall make a determination of such person's ability to obtain gainful employment.

(e) Notwithstanding any other provision of this section or section 17b-194, a victim of domestic violence, as defined in section 17b-112a, who is not eligible for diversion assistance under the provisions of section 17b-112g, as amended by this act, shall be eligible for a one-time assistance payment under the state-administered general assistance program within resources available to the Department of Social Services. Such payment shall be equivalent to that which such victim would be entitled to receive as diversion assistance if such victim and his or her family, if any, were eligible for diversion assistance. In determining whether and in what amount a victim of domestic violence and his or her family are eligible for a one-time assistance payment pursuant to this subsection, the commissioner shall not include as a member of such victim's family the spouse, domestic partner or other household member credibly accused of domestic violence by such victim, nor shall the commissioner count the income or assets of such a

spouse, domestic partner or other household member. For purposes of this subsection, allegations of domestic violence may be substantiated by the commissioner pursuant to the provisions of subsection (b) of section 17b-112a, and "family" has the same meaning as used in section 17b-112, except as otherwise provided in this subsection.

Sec. 15. (NEW) (*Effective from passage*) (a) There is established a grant program to provide individuals who are indigent with access to legal assistance at no cost when making an application for a restraining order under section 46b-15 of the general statutes, as amended by this act. The grant program shall be administered by the organization that administers the program for the use of interest earned on lawyers' clients' funds accounts pursuant to section 51-81c of the general statutes. Funds appropriated to the Judicial Branch for the purpose of the grant program shall be transferred to the organization administering the program.

(b) Not later than three months after receiving funding in any year from the state, the organization administering the program shall issue a request for proposals from nonprofit entities whose principal purpose is providing legal services at no cost to individuals who are indigent, for the purpose of awarding grants to provide counsel to indigent individuals who express an interest in applying for a restraining order pursuant to section 46b-15 of the general statutes, as amended by this act, and, to the extent practicable within the funding awarded, representing such individuals throughout the process of applying for such restraining order, including at prehearing conferences and at the hearing on an application. A nonprofit entity responding to the request for proposals may partner with law schools or other non-profit entities or publicly funded organizations that are not governmental entities, for the provision of services pursuant to a grant. Each response to the request for proposals shall specify the judicial district courthouse, or courthouses, for which services will be provided.

(c) The organization administering the program may only award a grant (1) to provide services in the judicial districts of Fairfield, Hartford, New Haven, Stamford-Norwalk or Waterbury, and (2) in an amount not to exceed two hundred thousand dollars, except that a grant to provide services in the judicial district with the highest average number of applications for restraining orders under section 46b-15 of the general statutes, as amended by this act, over the previous three fiscal years may receive a grant of not more than four hundred thousand dollars. Grants may not be used to provide services to individuals who are not indigent.

(d) The organization administering the program may only award a grant to a nonprofit entity whose principal purpose is providing legal services to individuals who are indigent, if such nonprofit entity demonstrates the ability to:

(1) Verify at the time of meeting with an individual that such potential client is indigent and meets applicable household income eligibility requirements set by the entity;

(2) Arrange for at least one individual who has the relevant training or experience and is authorized to provide legal counsel to eligible indigent individuals who express an interest in applying for a restraining order, to be present in the courthouse or courthouses identified in response to the request for proposals or be available to meet remotely during all business hours;

(3) To the greatest extent practicable within the funding awarded, provide continued representation to eligible indigent individuals throughout the restraining order process, including in court for the hearing on the restraining order, when such individuals request such continued representation after receiving assistance with a restraining order application;

(4) Provide any individual in the courthouse who expresses an interest in applying for a restraining order with all applicable forms that may be necessary to apply for a restraining order; and

(5) Track and report to the organization administering the program on the services provided pursuant to the program, including (A) the procedural outcomes of restraining order applications filed, (B) the number of instances where legal counsel was provided prior to the filing of an application but not during the remainder of the restraining order process, and the reasons limiting the duration of such representation, and (C) information on any other legal representation provided to individuals pursuant to the program on matters that were ancillary to the circumstances that supported the application for a restraining order.

(e) In awarding grants, the organization administering the program shall give preference to nonprofit entities (1) that demonstrate the ability to provide legal representation to clients regarding matters ancillary to the circumstances that supported the application for a restraining order; (2) with experience offering legal representation to individuals during the restraining order process; or (3) that can provide quality remote services should courthouses be closed to the public.

(f) The Chief Court Administrator shall:

(1) Provide each grant recipient with office space, if available, in the judicial district courthouse or courthouses served by such recipient under the grant program to conduct intake interviews and assist clients with applications for restraining orders;

(2) Require court clerks at such courthouses, prior to accepting an application for a restraining order pursuant to section 46b-15 of the general statutes, as amended by this act, to (A) inform each individual filing such application, or inquiring about filing such an application, that pro bono legal services are available from the grant recipient for

income-eligible individuals and, if office space has been provided to the grant recipient, where the grant recipient is located in the courthouse, and (B) if cards or pamphlets containing information about pro bono legal services have been provided to the courthouse by the grant recipient, provide such a card or pamphlet to the individual; and

(3) If a poster of reasonable size containing information about pro bono legal services has been provided to a courthouse served by a grant recipient, require the display of such poster in a manner that is visible to the public at or near the location where applications for a restraining order are filed in such courthouse.

(g) The Chief Court Administrator shall post on the Internet web site of the Judicial Branch where instructions for filing a restraining order pursuant to section 46b-15 of the general statutes, as amended by this act, are provided, information on the pro bono legal services available from grant recipients for income-eligible individuals at the applicable courthouses.

(h) For each year that funding is provided for the program under this section, the organization administering the program shall either conduct, or partner with an academic institution or other qualified entity for the purpose of conducting, an analysis of the impact of the program, including, but not limited to, (1) the procedural outcomes for applications filed in association with services provided by grant recipients under the program, (2) the types and extent of legal services provided to individuals served pursuant to the program, including on matters ancillary to the restraining order application, and (3) the number of cases where legal services were provided before an application was filed but legal representation did not continue during the restraining order process and the reasons for such limited representations. Not later than July first of the year following any year in which the program received funding, the organization administering the program shall submit a report on the results of such analysis in

accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary.

(i) Up to five per cent of the total amount received by the organization administering the grant program may be used for the reasonable costs of administering the program, including the completion of the analysis and report required by subsection (h) of this section.

Sec. 16. Subsections (a) and (b) of section 54-64a of the general statutes are repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) (1) Except as provided in subdivision (2) of this subsection and subsection (b) of this section, when any arrested person is presented before the Superior Court, said court shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient to reasonably ensure the appearance of the arrested person in court: (A) Upon execution of a written promise to appear without special conditions, (B) upon execution of a written promise to appear with nonfinancial conditions, (C) upon execution of a bond without surety in no greater amount than necessary, (D) upon execution of a bond with surety in no greater amount than necessary, but in no event shall a judge prohibit a bond from being posted by surety. In addition to or in conjunction with any of the conditions enumerated in subparagraphs (A) to (D), inclusive, of this subdivision the court may, when it has reason to believe that the person is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such person.

(2) If the arrested person is charged with no offense other than a

misdemeanor, the court shall not impose financial conditions of release on the person unless (A) the person is charged with a family violence crime, as defined in section 46b-38a, as amended by this act, or (B) the person requests such financial conditions, or (C) the court makes a finding on the record that there is a likely risk that (i) the arrested person will fail to appear in court, as required, or (ii) the arrested person will obstruct or attempt to obstruct justice, or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, or (iii) the arrested person will engage in conduct that threatens the safety of himself or herself or another person. In making a finding described in this subsection, the court may consider past criminal history, including any prior record of failing to appear as required in court that resulted in any conviction for a violation of section 53a-172 or any conviction during the previous ten years for a violation of section 53a-173 and any other pending criminal cases of the person charged with a misdemeanor.

(3) The court may, in determining what conditions of release will reasonably ensure the appearance of the arrested person in court, consider the following factors: (A) The nature and circumstances of the offense, (B) such person's record of previous convictions, (C) such person's past record of appearance in court, (D) such person's family ties, (E) such person's employment record, (F) such person's financial resources, character and mental condition, [and] (G) such person's community ties, and (H) in the case of a violation of 53a-222a when the condition of release was issued for a family violence crime, as defined in section 46b-38a, as amended by this act, the heightened risk posed to victims of family violence by violations of conditions of release.

(b) (1) When any arrested person charged with the commission of a class A felony, a class B felony, except a violation of section 53a-86 or 53a-122, a class C felony, except a violation of section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive,

section 53a-72a, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or a family violence crime, as defined in section 46b-38a, as amended by this act, is presented before the Superior Court, said court shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient to reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered: (A) Upon such person's execution of a written promise to appear without special conditions, (B) upon such person's execution of a written promise to appear with nonfinancial conditions, (C) upon such person's execution of a bond without surety in no greater amount than necessary, (D) upon such person's execution of a bond with surety in no greater amount than necessary, but in no event shall a judge prohibit a bond from being posted by surety. In addition to or in conjunction with any of the conditions enumerated in subparagraphs (A) to (D), inclusive, of this subdivision, the court may, when it has reason to believe that the person is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such person.

(2) The court may, in determining what conditions of release will reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered, consider the following factors: (A) The nature and circumstances of the offense, (B) such person's record of previous convictions, (C) such person's past record of appearance in court after being admitted to bail, (D) such person's family ties, (E) such person's employment record, (F) such person's financial resources, character and mental condition, (G) such person's community ties, (H) the number and seriousness of charges pending against the arrested person, (I) the weight of the evidence against the arrested person, (J) the arrested person's history of violence,

(K) whether the arrested person has previously been convicted of similar offenses while released on bond, [and] (L) the likelihood based upon the expressed intention of the arrested person that such person will commit another crime while released, and (M) the heightened risk posed to victims of family violence by violations of conditions of release and court orders of protection.

(3) When imposing conditions of release under this subsection, the court shall state for the record any factors under subdivision (2) of this subsection that it considered and the findings that it made as to the danger, if any, that the arrested person might pose to the safety of any other person upon the arrested person's release that caused the court to impose the specific conditions of release that it imposed.

Sec. 17. Subsection (a) of section 53a-181j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) A person is guilty of intimidation based on bigotry or bias in the first degree when such person maliciously, and with specific intent to intimidate or harass another person [because of] motivated in whole or in substantial part by the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person, causes physical injury to such other person or to a third person.

Sec. 18. Subsection (a) of section 53a-181k of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) A person is guilty of intimidation based on bigotry or bias in the second degree when such person maliciously, and with specific intent to intimidate or harass another person or group of persons [because of] motivated in whole or in substantial part by the actual or perceived race,

religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person or group of persons, does any of the following: (1) Causes physical contact with such other person or group of persons, (2) damages, destroys or defaces any real or personal property of such other person or group of persons, or (3) threatens, by word or act, to do an act described in subdivision (1) or (2) of this subsection, if there is reasonable cause to believe that an act described in subdivision (1) or (2) of this subsection will occur.

Sec. 19. Subsection (a) of section 53a-181*l* of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) A person is guilty of intimidation based on bigotry or bias in the third degree when such person, with specific intent to intimidate or harass another person or group of persons **[**because of**]** motivated in whole or in substantial part by the actual or perceived race, religion, ethnicity, disability, sex, sexual orientation or gender identity or expression of such other person or persons: (1) Damages, destroys or defaces any real or personal property, or (2) threatens, by word or act, to do an act described in subdivision (1) of this subsection or advocates or urges another person to do an act described in subdivision (1) of this subsection, if there is reasonable cause to believe that an act described in said subdivision will occur.

Sec. 20. (NEW) (*Effective October 1, 2021*) (a) Upon the request of a tenant, a landlord shall change the locks or permit the tenant to change the locks to a tenant's dwelling unit when: (1) The tenant is named as a protected person in (A) a protective or restraining order issued by a court of this state, including, but not limited to, an order issued pursuant to sections 46b-15, 46b-16a, 46b-38c, 53a-40e and 54-1k of the general statutes, as amended by this act, that is in effect at the time the tenant makes such request of the landlord, or (B) a foreign order of protection that has been registered in this state pursuant to section 46b-15a of the

general statutes, as amended by this act, that is in effect at the time the tenant makes such request of the landlord; (2) the protective order, restraining order or foreign order of protection requires the respondent or defendant to (A) stay away from the home of the tenant, or (B) stay a minimum distance away from the tenant; and (3) the tenant provides a copy of such protective order, restraining order or foreign order of protection to the landlord. A landlord who is required to change a tenant's locks or permit the tenant to change a tenant's locks under this subsection shall, not later than six hours after receipt of the request, inform the tenant whether the landlord will change the locks or permit the tenant to change the locks. If the landlord agrees to change the locks, the landlord shall do so not later than forty-eight hours after the date that the tenant makes such request.

(b) If a landlord has informed the tenant that the tenant is responsible for changing the locks, fails to change the locks, or fails to permit a tenant to change the locks within the timeframe prescribed under subsection (a) of this section, the tenant may proceed to change the locks. If a tenant changes the locks, the tenant shall ensure that the locks are changed in a workmanlike manner, utilizing locks of similar or improved quality as compared to the original locks. The landlord may replace a lock installed by or at the behest of a tenant if the locks installed were not of similar or improved quality or were not installed properly. If a tenant changes the locks to his or her dwelling unit under this subsection, the tenant shall provide a key to the new locks to the landlord not later than two business days after the date on which the locks were changed, except when good cause prevents the tenant from providing a key to the landlord within the prescribed time period.

(c) When a landlord changes the locks to a dwelling unit under subsection (a) or (b) of this section, the landlord (1) shall, if using a professional contractor or locksmith, be responsible for payment to such contractor or locksmith, (2) shall, at or prior to the time of changing such

locks, provide a key to the new locks to the tenant, and (3) may charge a fee to the tenant not exceeding the actual reasonable cost of changing the locks. If the tenant fails to pay the fee, such cost may be recouped by suit against the tenant or as a deduction from the security deposit when the tenant vacates the dwelling unit, but shall not be the basis for a summary process action under chapter 832 of the general statutes. For purposes of this subsection, "actual reasonable cost" means the cost of the lock mechanism, as well as the fee paid by the landlord for professional contractor or locksmith services.

(d) A landlord may reprogram a digital or electronic lock with a new entry code to comply with the provisions of this section.

(e) If a tenant residing in the dwelling unit is named as the respondent or defendant in an order described in subsection (a) of this section and under such order is required to stay away from the dwelling unit, the landlord shall not provide a key to such tenant for the new locks. Absent a court order permitting a tenant who is the respondent or defendant in such order to return to the dwelling unit to retrieve his or her possessions and personal effects, the landlord has no duty under the rental agreement or by law to allow such tenant access to the dwelling unit once the landlord has been provided with a court order requiring such tenant to stay away from the dwelling unit, and the landlord shall not permit such tenant to access the dwelling unit. Any tenant excluded from the dwelling unit under this section remains liable under the rental agreement with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(f) A landlord may not require a tenant who is named as a protected person under an order described in subsection (a) of this section to pay additional rent or an additional deposit or fee because of the exclusion of the tenant who is named as the respondent or defendant in such order.

(g) Any landlord or agent of such landlord who denies a tenant named as a respondent or defendant in an order described in subsection (a) of this section access to the dwelling unit pursuant to this section shall be immune from any civil liability arising from such denial, provided the landlord or agent complies with the provisions of this section and any applicable court order.

Sec. 21. Section 47a-1 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

As used in this chapter and sections 47a-21, as amended by this act, 47a-23 to 47a-23c, inclusive, 47a-26a to 47a-26g, inclusive, 47a-35 to 47a-35b, inclusive, 47a-41a, 47a-43 and 47a-46 and section 20 of this act:

(a) "Action" includes recoupment, counterclaim, set-off, cause of action and any other proceeding in which rights are determined, including an action for possession.

(b) "Building and housing codes" include any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(c) "Dwelling unit" means any house or building, or portion thereof, which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons.

(d) "Landlord" means the owner, lessor or sublessor of the dwelling unit, the building of which it is a part or the premises.

(e) "Owner" means one or more persons, jointly or severally, in whom is vested (1) all or part of the legal title to property, or (2) all or part of the beneficial ownership and a right to present use and enjoyment of the premises and includes a mortgagee in possession.

(f) "Person" means an individual, corporation, limited liability company, the state or any political subdivision thereof, or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(g) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(h) "Rent" means all periodic payments to be made to the landlord under the rental agreement.

(i) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under section 47a-9 or subsection (d) of section 21-70 embodying the terms and conditions concerning the use and occupancy of a dwelling unit or premises.

(j) "Roomer" means a person occupying a dwelling unit, which unit does not include a refrigerator, stove, kitchen sink, toilet and shower or bathtub and one or more of these facilities are used in common by other occupants in the structure.

(k) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit or has a common parking facility, it is a single-family residence if it has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment or any other essential facility or service with any other dwelling unit.

(l) "Tenant" means the lessee, sublessee or person entitled under a rental agreement to occupy a dwelling unit or premises to the exclusion of others or as is otherwise defined by law.

(m) "Tenement house" means any house or building, or portion thereof, which is rented, leased or hired out to be occupied, or is arranged or designed to be occupied, or is occupied, as the home or residence of three or more families, living independently of each other, and doing their cooking upon the premises, and having a common right in the halls, stairways or yards.

Sec. 22. Subsection (a) of section 47a-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

As used in this chapter:

(1) "Accrued interest" means the interest due on a security deposit as provided in subsection (i) of this section, compounded annually to the extent applicable.

(2) "Commissioner" means the Banking Commissioner.

(3) "Escrow account" means any account at a financial institution which is not subject to execution by the creditors of the escrow agent and includes a clients' funds account.

(4) "Escrow agent" means the person in whose name an escrow account is maintained.

(5) "Financial institution" means any state bank and trust company, national bank, savings bank, federal savings bank, savings and loan association, and federal savings and loan association that is located in this state.

(6) "Forwarding address" means the address to which a security deposit may be mailed for delivery to a former tenant.

(7) "Landlord" means any landlord of residential real property, and includes (A) any receiver; (B) any successor; and (C) any tenant who

sublets his premises.

(8) "Receiver" means any person who is appointed or authorized by any state, federal or probate court to receive rents from tenants, and includes trustees, executors, administrators, guardians, conservators, receivers, and receivers of rent.

(9) "Rent receiver" means a receiver who lacks court authorization to return security deposits and to inspect the premises of tenants and former tenants.

(10) "Residential real property" means real property containing one or more residential units, including residential units not owned by the landlord, and containing one or more tenants who paid a security deposit.

(11) "Security deposit" means any advance rental payment, or any installment payment collected pursuant to section 47a-22a, except an advance payment for the first month's rent or a deposit for a key or any special equipment.

(12) "Successor" means any person who succeeds to a landlord's interest whether by purchase, foreclosure or otherwise and includes a receiver.

(13) "Tenant" means a tenant, as defined in section 47a-1, as amended by this act, or a resident, as defined in section 21-64.

(14) "Tenant's obligations" means (A) the amount of any rental or utility payment due the landlord from a tenant; [and] (B) a tenant's obligations under the provisions of section 47a-11; and (C) the actual reasonable cost of changing the locks of the dwelling unit pursuant to section 20 of this act, if the tenant has not paid such cost.

Approved June 28, 2021

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

The act changes General Statutes § 46b-1 (b) to update the definition of domestic violence and include coercive control:

"As used in this title, 'domestic violence' means: (1) a continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b-38a . . . (2) stalking, including but not limited to, stalking as described in section 53a-181d, of such family or household member; (3) a pattern of threatening, including but not limited to, a pattern of threatening as described in section 53a-62, of such family or household member or a third party that intimidates such family or household member; or (4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty." Public Acts 2021, No. 78, § 1.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

General Statutes § 53a-181d, referenced in the new definition of domestic violence, has been amended by Public Act 21-56, effective October 1, 2021. It now provides in relevant part:

(a) For the purposes of this section:

(1) "Course of conduct" means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media, (A) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates about or with or sends unwanted gifts to, a person, or (B) interferes with a person's property;

(2) "Emotional distress" means significant mental or psychological suffering or distress that may or may not require medical or other professional treatment or counseling; and

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

(3) "Personally identifying information" means:

(A) Any information that can be used to distinguish or trace an individual's identity, such as name, prior legal name, alias, mother's maiden name, Social Security number, date or place of birth, address, telephone number or biometric data;

(B) Any information that is linked or linkable to an individual, such as medical, financial, education, consumer or employment information, data or records; or

(C) Any other sensitive private information that is linked or linkable to a specific identifiable individual, such as gender identity, sexual orientation or any sexually intimate visual depiction.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

(b) A person is guilty of stalking in the second degree when:

(1) Such person knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to (A) fear for such specific person's physical safety or the physical safety of a third person; (B) suffer emotional distress; or (C) fear injury to or the death of an animal owned by or in possession and control of such specific person;

(2) Such person with intent to harass, terrorize or alarm, and for no legitimate purpose, engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where (A) such conduct consists of the actor telephoning to, appearing at or initiating communication or contact to such other person's place of employment or business, including electronically, through video-teleconferencing or by digital media, provided the actor was previously and clearly informed to cease such conduct, and (B) such conduct does not consist of constitutionally protected activity; or

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

(3) Such person, for no legitimate purpose and with intent to harass, terrorize or alarm, by means of electronic communication, including, but not limited to, electronic or social media, discloses a specific person's personally identifiable information without consent of the person, knowing, that under the circumstances, such disclosure would cause a reasonable person to:

(A) Fear for such person's physical safety or the physical safety of a third person; or

(B) Suffer emotional distress.

(c) For the purposes of this section, a violation may be deemed to have been committed either at the place where the communication originated or at the place where it was received. Public Acts 2021, No. 56, § 2.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- "Family or household member," referenced in the revised definition of domestic violence, is defined as "any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship." General Statutes § 46b-38a (2).
- General Statutes § 53a-62, referred to in the revised definition, describes threatening in relevant part as "when: (1) By physical threat, [a] person intentionally places or attempts to place another person in fear of imminent serious physical injury, (2) (A) [a] person threatens to commit any crime of violence with the intent to terrorize another person, or (B) [a] person threatens to commit such crime of violence in reckless disregard of the risk of causing such terror . . . ."

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

The act also updates § 46b-1 (b) to further define coercive control:

"'Coercive control' includes, but is not limited to, unreasonably engaging in any of the following:

(A) Isolating the family or household member from friends, relatives or other sources of support;

(B) Depriving the family or household member of basic necessities;

(C) Controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services;

(D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue;

(E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or

(F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images." Public Acts 2021, No. 78, § 1.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- The updated definition of domestic violence was effective at passage. The update to General Statutes § 46b-15 that incorporates the new definition into the restraining order statute does not take effect until October 1, 2021.
- Does the updated definition apply to restraining order applications alleging acts that occurred prior to October 1, 2021?

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

"In considering the question of whether a statute may be applied retroactively, we are governed by certain well settled principles, [pursuant to] which our ultimate focus is the intent of the legislature in enacting the statute. . . . [O]ur point of departure is . . . § 55-3 . . . . Section 55-3 provides: No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new obligation on any person or corporation, shall be construed to have a retrospective effect. [W]e have uniformly interpreted § 55-3 as a rule of presumed legislative intent that statutes affecting substantive rights shall apply prospectively only. . . . In civil cases, however, unless considerations of good sense and justice dictate otherwise, it is presumed that procedural statutes will be applied retrospectively. . . . [Although] there is no precise definition of either [substantive or procedural law], it is generally agreed that a substantive law creates, defines and regulates rights while a procedural law prescribes the methods of enforcing such rights or obtaining redress. . . . Procedural statutes . . . therefore leave the preexisting scheme intact." (Citations omitted; internal quotation marks omitted.) *Maghfour* v. *Waterbury*, SC 20502, 2021 WL 3376527, *4 (August 3, 2021). ("legislation which limits or increases statutory liability has generally been held to be substantive in nature").

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

QUERY: what, if any, is the impact upon retroactivity of the fact that the new definition of domestic violence was made effective as of 7/1/2021, even though it was not incorporated into General Statutes § 46b-15 until 10/1/2021?

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

Restraining order applicants now may choose to appear remotely rather than filing a motion subject to the court's discretion. General Statutes § 46b-15 (f) (2) has been added to provide:

"Each applicant who receives an order of the court in accordance with this section shall be given a notice that contains the following language: 'If a restraining order has been issued on your behalf or on behalf of your child, you may elect to give testimony or appear in a family court proceeding remotely, pursuant to section 46b-15c. Please notify the court in writing at least two days in advance of a proceeding if you choose to give testimony or appear remotely, and your physical presence in the courthouse will not be required in order to participate in the court proceeding.'" Public Acts 2021, No. 78, § 2.

- General Statutes §§ 46b-38c and 53a-40e have been amended to provide the above notice to recipients of family violence protective orders and standing criminal protective orders, respectively.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- General Statutes § 46b-15c (a), referred to in the previous statutes, allows for the testimony of a party or child that has had a restraining order or criminal protective order issued on their behalf to be taken outside the presence of the party who is the subject of the order. Section 46b-15c (a) provides for such testimony to be taken "in a room other than the courtroom or at another location outside the courthouse or outside the state."
- Effective October 1, 2021, General Statutes § 46b-15c is amended to provide that the court shall, rather than may, upon written request order such remote testimony. Public Acts 2021, No. 78, § 3.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- Section 46b-15c (d) is further amended to provide that a notice describing the provisions in section (a) allowing for remote testimony shall be posted on the Judicial Branch website; included in any written or electronic form that describes the automatic orders in dissolution and separation matters; and included in any written or electronic form provided to individuals who receive a protective order, a standing criminal protective order, or a restraining order. Public Acts 2021, No. 78, § 3.
- Effective October 1, 2021, a new section is enacted providing that, in family relations matters, "if the court finds that a pattern of frivolous and intentionally fabricated pleadings or motions are filed by one party, the court shall sanction such party in an appropriate manner so as to allow such matter to proceed without undue delay or obstruction by the party filing such pleadings or motions." Public Act 21-78, § 10.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- Effective October 1, 2021, a new section is enacted providing that landlords, at the request of a tenant who is named as a protected person in a protective or restraining order or foreign order of protection requiring the respondent to stay away from the defendant, shall change the locks or permit the tenant to change the locks to the tenant's dwelling unit. A landlord who is required to change locks must notify the tenant within six hours whether the landlord will change them or permit the tenant to change them; The landlord must change the locks within forty-eight hours of the tenant's request if the landlord agrees to change them. Public Acts 2021, No. 78, § 20 (a).

- If a tenant residing in the dwelling unit is named as the respondent in a protective order or restraining order and is required to stay away from the dwelling unit, the landlord shall not provide the tenant with a key to the new locks. Absent a court order allowing the respondent tenant to return to the dwelling unit to retrieve personal effects, the landlord has no duty to allow the tenant access to the dwelling unit and shall not permit such access. Public Act 21-78, § 20 (e).

- A landlord may not require a tenant named as a protected person to pay additional rent, deposit, or fee because of the exclusion of a respondent tenant. Public Act 21-78, § 20 (f).

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- Effective October 1, 2021, marshals must accept restraining order applicants' papers in an electronic format. Public Acts 2021, No. 78, § 2.
- Effective July 1, 2021, family violence victim advocates must be provided copies of any police reports they require to perform their duties. Public Act 21-78, § 12.
- Effective July 1, 2021, individuals that request diversion assistance pursuant to General Statutes § 17b-112g on the basis of being a victim of domestic violence need only demonstrate that they are eligible for temporary family assistance to qualify. In determining initial eligibility for temporary family assistance, and the amount of diversion assistance to provide, the individual credibly accused of domestic violence by the victim shall not be considered a member of the family, and that individual's income and assets shall not be counted. Public Act 21-78, § 13.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- Effective July 1, 2021, victims of domestic violence who are not eligible for diversion assistance shall be eligible for a one-time assistance payment under the general assistance program provided for under General Statutes § 17b-191 that is the equivalent of what the victim would have received as diversion assistance. In determining eligibility for this payment, the individual credibly accused of domestic violence shall not be considered a member of the family and that individual's income and assets shall not be counted. Public Acts 2021, No. 78, § 14.
- Effective at the bill's passage, a grant program is established to provide no-cost legal assistance to indigent individuals that apply for restraining orders in the judicial districts of Fairfield, Hartford, New Haven, Stamford, and Waterbury. Public Act 21-78, § 15.

NEW LEGISLATION
JENNIFER'S LAW, PUBLIC ACT 21-78

- Effective October 1, 2021, General Statutes § 46b-54 is amended to provide that a counsel or guardian ad litem for a minor child, when recommending the entry of a custody, care, visitation, or support order, is to consider as a factor the physical and emotional safety of the child. Public Acts 2021, No. 78, § 8.
- Similarly, effective October 1, 2021, General Statutes § 46b-56 is amended to provide that the court, when making or modifying an order concerning the custody, care, education, visitation, or support of minor children shall consider the physical and emotional safety of the child as a factor. Public Act 21-78, § 9.

Revised Form
JD-FM-137

APPLICATION FOR RELIEF FROM ABUSE

JD-FM-137 Rev. 10-21
C.G.S. §§ 29-28, 29-32, 29-33, 46b-15, 52-231a, 46b-38a, 46b-38c; P.A. 21-78

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For information on ADA accommodations, contact a court clerk or go to: www.jud.ct.gov/ADA.

Judicial District of | Court location (number, street, town, zip code) | Docket number

Your name (Age can't) (Last, first, middle initial) | Date of birth (mm/dd/yyyy) | Sex (M/F) | Race

Your mailing address (Number, street)* (See Note below) | Town | State | Zip Code

Your home/residence address* (See Note below) ☐ Same as mailing address | Town | State | Zip Code

Your work address* (See Note below) | Town | State | Zip Code

***Note:** Any addresses you provide will be included in the court file and will be provided to the Respondent. These addresses will also tell the court which law enforcement agencies must be notified if the court issues a restraining order. If you believe that giving out your home, work, or school address would put you and/or your children's health, safety or liberty in danger, you may use a mailing address that is different from your home or work address, including the address for the Safe at Home address confidentiality program, if applicable, but it is important to note that doing so may limit which law enforcement agencies receive notice of the order. You may also file a Request for Nondisclosure of Location Information form JD-FM-188 (which requires a mailing address) with the Clerk's Office.*

Information About the Respondent (Person the application is filed against)

Respondent's name (Last, first, middle initial) | Date of birth (mm/dd/yyyy) | Sex (M/F) | Race

Respondent's address (Number, street) | (Town) | (State) | (Zip Code)

Respondent's telephone number | Other identifiers (If available include height, weight and approximate age)

Respondent is *(select all that apply)*

- ☐ My spouse or a person I have a civil union with
  - ☐ If you are seeking additional orders of maintenance, *check here*
    (If you check this box, you must complete JD-FM-233, Request for Orders of Maintenance and submit it as part of your application)
- ☐ Someone I have cohabited with as an intimate partner (romantic, spousal, or sexual relationship while living together)
- ☐ Parent of my child
- ☐ My parent
- ☐ My child
- ☐ A person who is also the parent of my dependent child or children in common and we all live together.
  - ☐ If you are seeking additional orders of maintenance, *check here*
    (If you check this box, you must complete JD-FM-233, Request for Orders of Maintenance and submit it as part of your application)
- ☐ A person related to me by blood or marriage
- ☐ A person I reside or resided with
- ☐ A caretaker who is providing shelter in his or her residence to a person 60 years of age or older
- ☐ A person I have (or recently had) a dating relationship with

☐ Select here if you know about any other Protective Order or Restraining Order that exists involving you or the Respondent.
(Give the docket number and court location, if known)
Docket number | Court location

☐ Select here if a dissolution of marriage (divorce), dissolution of civil union, custody or visitation action exists involving you and the Respondent.
(Give the docket number and court location, if known)
Docket number | Court location

Optional to Applicant *(If you choose to answer, select the appropriate boxes below)*

1. Does the Respondent hold a permit to carry a pistol or revolver?	☐ Yes	☐ No	☐ Unknown
2. Does the Respondent hold an eligibility certificate for a pistol or revolver, a long gun eligibility certificate, or an ammunition certificate?	☐ Yes	☐ No	☐ Unknown
3. Does the Respondent possess one or more firearms?	☐ Yes	☐ No	☐ Unknown
4. Does the Respondent possess ammunition?	☐ Yes	☐ No	☐ Unknown

If you think you need more security when you are in court for your relief from abuse hearing, contact the Clerk's Office or the Court Service Center in the court where your hearing is scheduled.

Print Form

Reset Form

Applicant's name | Respondent's name | Docket number

Application for Relief From Abuse

I have been subjected to a continuous threat of present physical pain or physical injury, stalking, a pattern of threatening, and/or coercive control by the Respondent named above as explained more fully in my attached Affidavit.

☐ **1. I ask that the court order the following conditions:** *(select all that apply)*

CT01 ☐ The Respondent not assault, threaten, abuse, harass, follow, interfere with, or stalk me. (CT01)
CT03 ☐ The Respondent stay away from my home or wherever I shall reside. (CT03)
CT05 ☐ The Respondent not contact me in any manner, including by written, electronic or telephone contact, and not contact my home, workplace or others with whom the contact would be likely to cause annoyance or alarm to me. (CT05)
CT14 ☐ The Respondent may return to the home one time with police to retrieve belongings. (CT14)
CT15 ☐ If I have moved out of the home of the Respondent, the Respondent shall permit me to return to the Respondent's home on one occasion, with police, to retrieve my belongings. (CT15)
CT16 ☐ The Respondent stay 100 yards away from me. (CT16)
CT19 ☐ That the order protect my minor children. (CT19)

	Name (Last, first, middle initial)	Sex (M/F)	Date of birth (mm/dd/yyyy)		Name (Last, first, middle initial)	Sex (M/F)	Date of birth (mm/dd/yyyy)
1				4			
2				5			
3				6			

CT31 ☐ That the order protect animals owned or kept by me. (CT31)

☐ **2. I ask that the court make the following temporary child custody and visitation orders:**

CT20 ☐ Award me temporary custody of the following minor child(ren) who is (are) also the child(ren) of the Respondent:

	Name (Last, first, middle initial)	Sex (M/F)	Date of birth (mm/dd/yyyy)		Name (Last, first, middle initial)	Sex (M/F)	Date of birth (mm/dd/yyyy)
1				4			
2				5			
3				6			

CT21 ☐ With visitation as follows:

CT22 ☐ Without visitation rights to the Respondent.

☐ **3. I ask that the court order the following: (further order)**

☐ **4. I am in school and I ask that a copy of the restraining order, if it is granted, be sent to my school**

Name of school | Fax number of school
Address of school (Number, street) | Town | State | Zip Code

☐ **5. My minor child or children for whom I am also asking for protection is/are in school and I ask that a copy of the restraining order, if it is granted, be sent to my child's or children's school (attach additional sheets if necessary).**

Name of school | Fax number of school
Address of school (Number, street) | Town | State | Zip Code

Request For Ex Parte (Immediate) Relief *(Select if this applies)*

☐ **6. I ask that the court order Ex Parte (immediate) relief because I believe there is an immediate and present physical danger to me and/or my minor children and/or animals owned or kept by me.**

I certify that the statements above are true to the best of my knowledge and belief. | Signature | Print name (if person signing)

Subscribed and sworn to before me (Assistant Clerk, Commissioner of Superior Court, Notary Public) | Date signed

Print Form

Reset Form

Our Role in the Triage Process

Resolution Plan Date Screening

- Change to our historical role- front loading our resources-Initial Screening for every CASE (not motion) that is filed

- It must be a ONE TIME court event – the design calls for it to be the first meeting for a family entering the system

- Cases **should not** have multiple Screenings – which become an additional negotiation with Family Services or a catch all for future court events (more like Short Calendar)

- Each motion filed also should not get a new RPD- those motions should be addressed by the Court at a scheduled event on a TRACK

Our Role in the Triage Process

Resolution Plan Date Screening Process

- The Screening is the initial meeting for a family entering the system

- It is the forum for parents to obtain information about the process and the most effective pathway to resolution

- The role of the FRC is to explore the areas of a particular filing in a global fashion. The screenings are an opportunity to see where the parties stand as it relates to the resolution of the issues early in the case

Our Role in the Triage Process

Resolution Plan Date Screening

- As part of the Screening, the FRC leads a global and educational discussion with the litigants relative to the case/filing and whether the parties have communicated about the major components of the case

- The Screening process also includes but is not limited to: 1) a discussion with the parties regarding the current filing, 2) a review of the historical parenting relationship, 3) areas of common ground, and 4) the nature of the pending parenting and/or financial disputes

Our Role in the Triage Process

Resolution Plan Date Screening

- At the conclusion of the screening, the FRC educates the litigants as it relates to the different pathways/TRACK placement
- The ultimate recommendation to the Court regarding a specific Track is based on the level of dispute/complexity of the case
- The FRC also recommends any services necessary to resolve the parenting/financial dispute

GLAD LEGAL ADVOCATES & DEFENDERS for the LGBTQ Community

Yale Law School

Connecticut Parentage Act (CPA): Frequently Asked Questions

What is the Connecticut Parentage Act?

The Connecticut Parentage Act (CPA) is a new set of state laws that comprehensively updates Connecticut parentage law and aims to ensure each child has a clear path to secure their legal parentage. The majority of the CPA goes into effect January 1, 2022.

Specifically, the CPA ensures greater protections and equal treatment for children of LGBTQ parents. The law allows many LGBTQ parents to establish parentage through a simple form, an Acknowledgment of Parentage, ensuring LGBTQ parents are able to establish their legal relationship to their child immediately at birth. The CPA also extends an accessible path to parentage for children born through assisted reproduction and strengthens protections for children born through surrogacy. The bill was signed into law on May 26, 2021 and goes into effect in 2022.

What does parentage mean?

"Parentage" means that you are a legal parent of a child for all purposes. Parentage comes with a host of rights (e.g., decision making for medical care or education, parenting time in the event of separation from your child's other parent) as well as responsibilities (e.g., providing health insurance, providing for basic needs, payment of child support). A secure legal parent-child relationship is core to a child's long-term stability and well-being.

Why was the CPA passed now?

For years, countless Connecticut families struggled under a legal system that failed to extend parentage protections to LGBTQ and non-LGBTQ families equally. In response, the WE CARE Coalition (law.yale.edu/cpa), a broad coalition of families and organizations pushing for parentage reform in Connecticut led by Yale Law School Professor Douglas NeJaime (law.yale.edu/douglas-nejaime) and GLBTQ Legal Advocates & Defenders, or GLAD (GLAD.org), advocated for modernizing the state's parentage laws. With the lead sponsorship of Rep. Jeff Currey and Sen. Alex Kasser, the coalition's hard work paid off.

When does it go into effect? Who will be impacted?

The CPA goes into effect January 1, 2022, with the exception of the provisions on de facto parentage, which go into effect July 1, 2022. All families are impacted, but the legislation is especially important to Connecticut's LGBTQ families.

Why is it important to establish parentage quickly?

Establishing parentage soon after birth ensures that a child is secured to their parents for all purposes and increases clarity for all involved in a child's life. For example, established parentage will allow a parent to make any early medical decisions in a child's life, ensure that a child will receive insurance benefits or inheritance rights, and protect parents' parental rights if they separate.

How can Connecticut families establish parentage under the CPA?

The CPA provides that Connecticut parents can establish their parentage in the following ways:

- **Giving birth (except for people acting as surrogates)**
- **Adoption**
- **Acknowledgment (by signing an Acknowledgment of Parentage)**
- **Adjudication (an order from a court)**
- **Presumption (including the marital presumption)**
- **Genetic connection (except for sperm or egg donors)**
- **De facto parentage**
- **Intended parentage through assisted reproduction**
- **Intended parentage through a surrogacy agreement**

How does the CPA help people conceiving through assisted reproduction?

The CPA provides important clarity and protections for children born through assisted reproduction. The CPA confirms that a gamete donor (e.g., sperm or egg donor) is not a parent of a child conceived through assisted reproduction. Also, the CPA affirms that a person who consents to assisted reproduction with the intent to be a parent of the resulting child is a legal parent.

What if I am a nonbiological parent? How can I establish myself as a legal parent?

The CPA has many provisions that protect nonbiological parents. If you are your child's presumed parent, or if you are the intended parent of a child born through assisted reproduction other than surrogacy, you can establish parentage by signing an Acknowledgement of Parentage.

All parents can establish parentage through a court order. A presumed parent or an intended parent of a child conceived through assisted reproduction can seek a judgment declaring the person a parent of the child.[1] Some nonbiological parents can establish parentage through the CPA's de facto parent provisions, which require a court to adjudicate the person to be the child's de facto parent.

Who is an intended parent?

An intended parent is a person who consents to assisted reproduction with the intent to be a parent of the child. The CPA addresses intended parents in the context of surrogacy separately from intended parents in the context of other forms of assisted reproduction. Ideally, a person who consents to assisted reproduction with the intent to be a parent will memorialize that intent in writing, but the law does allow other ways to prove intent to be a parent.

Who is a presumed parent?

A presumed parent is a non-birth parent that the law recognizes because of certain circumstances or relationships. A presumed parent is established as a legal parent through the execution of a valid Acknowledgement of Parentage, by an adjudication, or as otherwise provided in the CPA.
You are a presumed parent if any of the below are true:

- **You are married to the child's birth parent when the child is born**
- **You were married to the child's birth parent, and the child is born within 300 days of the marriage being terminated by death, annulment, or divorce**
- **You, jointly with another parent, resided in the same household with the child and held out the child as your child for at least two years from the time the child was born or adopted**

1 *A presumed parent who seeks to establish parentage in situations in which the other parent is not the child's birth parent, e.g., the child was adopted by the other parent, must establish parentage through an adjudication and cannot establish parentage through an Acknowledgement of Parentage.*

How do I establish my parentage through an Acknowledgment of Parentage?

You can voluntarily acknowledge the parentage of a child by signing a form from the Connecticut Department of Public Health known as an Acknowledgement of Parentage. An Acknowledgement of Parentage must be signed by the birth parent and the other parent (i.e., the person establishing parentage through the Acknowledgment of Parentage). The other parent can be the genetic parent, an intended parent of a child born through assisted reproduction other than surrogacy, or a presumed parent (i.e., the spouse of the birth parent at the time of the child's birth, or a person who resided with the child and held out the child as the person's child for at least the first two years of the child's life[2]).

Signing an Acknowledgement of Parentage form is voluntary, and it can be done at the hospital soon after birth or at another time. An Acknowledgement of Parentage form must be notarized or witnessed and signed by at least one other person in addition to the parents. If either the birth parent or the non-birth parent does not want to sign this form to establish parentage for the non-birth parent, then either of them can try to have a court determine parentage.

If you have any questions about whether to sign an Acknowledgement of Parentage form, you should consult with a lawyer before signing. An Acknowledgement of Parentage is the equivalent of a court judgment of parentage, and parentage is a considerable, life-long responsibility. An Acknowledgement of Parentage can be rescinded by either party for any reason within 60 days after its signing or prior to an administrative or judicial proceeding relating to the child in which the signatory is a party, whichever is earlier. A signatory may rescind an Acknowledgment of Parentage by filing a rescission—signed in the presence of either a notary or witness—with the Connecticut Department of Public Health. If the form is not rescinded within that 60-day time frame, an Acknowledgment of Parentage can be challenged only on the basis of fraud, duress, or material mistake of fact. At this stage, the Acknowledgment of Parentage can only be challenged in court.

2 *A person who is establishing parentage based on residing with the child and holding out the child as the person's child for the first two years of the child's life cannot establish parentage through an Acknowledgment of Parentage until the child is two.*

If I am a parent who has signed an Acknowledgement of Parentage, do I also need to do a co-parent adoption?

No. A parent who has signed an Acknowledgement of Parentage does not need to do a co-parent adoption to establish parentage. An Acknowledgement of Parentage establishes legal parentage under state law, is the equivalent of a judgment of parentage under state law, and gives you all the rights and duties of a parent. Under federal law, an Acknowledgement of Parentage is the equivalent of a judicial decree of parentage and should be recognized in all states.

As of August 2021, ten states have clearly expanded access to acknowledgments of parentage to intended parents through assisted reproduction. Since expanded access to acknowledgments of parentage is an emerging development, some parents might feel more comfortable also completing a co-parent adoption. To understand what is best for your family, individualized legal advice is recommended.

Who is a de facto parent?

A de facto parent is a parent based on their relationship with the child. Establishing de facto parentage requires a judgment from a court. You can petition a court to establish your own de facto parentage by demonstrating, with clear and convincing evidence, all of the following:

1. You lived with the child as a regular member of the household for at least one year
2. You consistently took care of the child
3. You took full and permanent responsibility for the child without expectation of financial compensation
4. You held the child out as your child
5. You established a bonded and dependent relationship which is parental in nature
6. You had a parental relationship with the child that was supported by another parent
7. Continuing a relationship with the child is in the child's best interest

How does the CPA address surrogacy?

Connecticut law already authorized courts to recognize intended parents who have children through a gestational surrogacy arrangement as the child's legal parents. The CPA provides much more comprehensive regulation of surrogacy, including guidance about how to establish parentage through surrogacy agreements. The CPA includes

both gestational surrogacy, in which the person acting as the surrogate is not genetically connected to the child, and genetic surrogacy, in which the person acting as the surrogate is genetically connected to the child. Before starting any medical procedures to conceive a child through a surrogacy process, you must have a written and signed agreement. This agreement is between you, any other intended parents, the person acting as the surrogate, and that person's spouse (if applicable). This agreement will establish that you are the parent(s) of the child and that the surrogate and their spouse (if applicable) do not have parental rights or duties. If you are entering a genetic surrogacy agreement, you must also have the agreement validated by a probate court before any medical procedure takes place.

To enter into a surrogacy agreement, all of the following must be true:

- **All intended parents and the person acting as the surrogate must be at least 21**
- **All intended parents and the person acting as the surrogate must have completed a mental health evaluation, and the person acting as the surrogate must also have completed a medical evaluation**
- **The person acting as the surrogate must have previously given birth to at least one child**
- **The person acting as the surrogate must have health insurance or some other form of medical coverage**
- **The intended parent(s) and the person acting as the surrogate must be represented by separate lawyers for the purposes of the agreement, and the attorney for the person acting as the surrogate must be paid for by the intended parent(s)**

The law requires surrogacy agreements to incorporate several terms to be valid, such as allowing a person acting as a surrogate to make their own health and welfare decisions during pregnancy and requiring the intended parent(s) to pay all related healthcare costs.

What if I am not married?

The CPA explicitly provides that every child has the same rights as any other child without regard to the marital status of the parents, or the circumstances of the child's birth. By not differentiating between parents based on their marital status, the CPA aims to treat all Connecticut families equally.

What if I am transgender or non-binary?

The CPA explicitly provides that every child has the same rights as any other child without regard to the gender of the parents or the circumstances of the child's birth. The CPA, by not including gendered terms such as mother or father, is inclusive of all genders. By not differentiating between parents based on their gender, the CPA aims to treat all Connecticut families equally.

Can a child have more than two legal parents?

Yes. Under the CPA, a court may determine that a child has more than two legal parents if the failure to do so would be detrimental to the child. To determine detriment to the child, courts will consider factors such as the nature of the potential parent's relationship with the child, the harm to the child if the parental relationship is not recognized, the basis for each person's claim of parentage of the child, and other equitable factors.

What protections are there for survivors of domestic violence so that they are not pressured into establishing legal parentage?

The CPA aims to ensure that the establishment of parentage is fair, clear, efficient, and child-centered. Some legal parentage–such as the nonmarital presumption[3] and de facto parentage–can arise by consent. No one should ever be pressured to consent to parentage. The CPA contains provisions that allow parents to challenge another person's parentage if the other person claims to be a presumed parent or a de facto parent but satisfied the requirements for parentage through duress, coercion, or threat of harm.

Where can I go if I need help resolving a parentage issue?

As with any family law issue, individualized legal advice is recommended. GLAD Answers, GLAD's legal information line, can provide information as well as referrals to local practitioners. If you have questions about how to protect your family, contact GLAD Answers (www.GLADAnswers.org) or 800.455.GLAD.

3 *This relates to the presumption of parentage in which a person may establish parentage based on, jointly with another parent, residing with the child and holding out the child as the person's child for the first two years of the child's life.*

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Yale Law School

Connecticut Acknowledgment of Parentage: Frequently Asked Questions

What is an Acknowledgment of Parentage?

Federal law requires states to provide a simple civil process for acknowledging parentage upon the birth of a child. That simple civil process is the Acknowledgment of Parentage program.

Federal regulations require states to provide an Acknowledgment of Parentage program at hospitals and state birth record agencies. Acknowledgment of Parentage forms themselves are short affidavits in which the person signing affirms that they wish to be established as a legal parent with all of the rights and responsibilities of parentage. The person who gave birth to the child must also sign the form, and both parents have to provide some demographic information about themselves.

By signing an Acknowledgment of Parentage, a person is established as a legal parent, and the child's birth certificate is issued or amended to reflect that legal parentage. Properly executed, an Acknowledgment of Parentage has the binding force of a court order and should be treated as valid in all states.

Who can sign an Acknowledgment of Parentage?

An Acknowledgment of Parentage must be signed by the birth parent and the other parent (i.e., the person establishing parentage through the Acknowledgment of Parentage). The other parent can be a genetic parent, an intended parent of a child born through assisted reproduction other than surrogacy, or a presumed parent (i.e., the spouse of the birth parent at the time of the child's birth, or a person who resided with the child and held out the child as the person's child for the first two years of the child's life[1]). A parent does not need to be over the age of 18 to sign an Acknowledgment of Parentage.

When can a parent sign an Acknowledgment of Parentage?

Acknowledgments of Parentage can be signed after the birth of a child, up until the child's 18th birthday. An Acknowledgment of Parentage can also be completed before the child's birth but will not take effect until the child is born.

1 A person who is establishing parentage based on residing with the child and holding out the child as the person's child cannot establish parentage through an Acknowledgment of Parentage until the child is two.

What is the process for signing an Acknowledgment of Parentage?

Prior to the signing of an Acknowledgment of Parentage, the signatories must be given oral and written notice explaining the legal consequences, rights, and responsibilities that arise from signing an Acknowledgment of Parentage. These include:

- **That signatories to the acknowledgment have the right to rescind the acknowledgment, for any reason, within 60 days of signing**
- **That the acknowledgment may not be rescinded after 60 days, except in cases of fraud, duress, or material mistake of fact**
- **That the acknowledgment may result in custody and visitation rights for the person establishing parentage through the acknowledgment**
- **That the person establishing parentage through the acknowledgment will be liable for the child's financial and medical support at least until the child's 18th birthday**
- **If the person establishing parentage through the acknowledgment is doing so on the basis of being a genetic parent, that genetic testing is available to establish genetic parentage with a high degree of accuracy and that the person has the legal right to contest parentage**

The CPA also mandates, at signing, the presence of either a notary or a witness. The Acknowledgment of Parentage takes effect once the child is born or once the form is filed with the Connecticut Department of Public Health, whichever comes later. The Acknowledgement of Parentage form is not available online. Because oral and written notice is required before signing a valid Acknowledgment of Parentage, the form must be completed at the hospital where the child is born, or at a later date at the Department of Public Health or a local Department of Social Services Office.

Can a signed Acknowledgment of Parentage be rescinded or challenged?

Connecticut law requires that a signatory be able to rescind the form for any reason within 60 days after its signing or prior to an administrative or judicial proceeding relating to the child in which the signatory is a party, whichever is earlier. A signatory may rescind an Acknowledgment of Parentage by filing a rescission—signed in the presence of either a notary or witness—with the Connecticut Department of Public Health.

If the form is not rescinded within that 60-day time frame, an Acknowledgment of Parentage can be challenged only on the basis of fraud, duress, or material mistake of fact. At this stage, the Acknowledgment of Parentage can only be challenged in court.

GLAD LEGAL ADVOCATES & DEFENDERS for the LGBTQ Community

Yale Law School

Connecticut Parentage Act (CPA): Frequently Asked Questions
What you need to know before January 1, 2022

When does the CPA go into effect?

The Connecticut Parentage Act (CPA) goes into effect January 1, 2022, with the exception of the provisions on de facto parentage, which go into effect July 1, 2022.

What does the CPA do?

The CPA creates clear and accessible methods for establishing legal parentage of children in Connecticut, which is particularly important for LGBTQ parents who often have children through assisted reproduction.

For children born through assisted reproduction, the CPA ensures that parentage can be established easily after birth. The CPA makes available a simple administrative form, called an Acknowledgment of Parentage, to establish legal parentage for married and unmarried parents. The Acknowledgment of Parentage requires the consent and signatures of the birth parent and non-birth parent, and affirms that both agree they are the legal parents of the child and that the child does not have another parent.[1]

The Acknowledgment of Parentage can be completed in the hospital before or after the birth of the child, or at a later date,[2] and functions as a decree of parentage that is recognized in Connecticut and should be recognized throughout the United States. If completed before the child's birth, the acknowledgment will not take effect until the child is born.

What if I/we are expecting a child before January 1, 2022?

If you are expecting a child before January 1, 2022, you will still be able to complete an Acknowledgment of Parentage to establish your legal parentage once the new law goes into effect.

Currently in Connecticut, LGBTQ parents can establish parentage through the marital presumption, a surrogacy agreement,[3] or through a co-parent adoption. For information or referrals to lawyers to consult on what option is best for your family, contact GLAD Answers (GLADAnswers.org).

What if I/we already have a child or children but haven't undergone a co-parent adoption? Can we still use an Acknowledgment of Parentage to ensure we are both legally parents?

Yes. If you currently have a child or children, you can still sign an Acknowledgment of Parentage when the law goes into effect in January. While the Acknowledgment of Parentage can be completed at birth, it can also be completed after birth.

What if I/we are already in the process of completing a co-parent adoption?

If you are already in the process of completing a co-parent adoption, consult with your attorney on the new law and what next steps make sense for your family.

If you have specific questions, contact GLAD Answers (GLADAnswers.org) for additional information or lawyer referrals.

1 Specifically, the signatories are attesting that the person establishing parentage through the acknowledgment qualifies under law as a parent and that no other person has completed an acknowledgment, has been determined by a court to be the child's parent, or is an intended parent of the child if the child was conceived through assisted reproduction, and the child does not have a birth certificate identifying as a parent someone other than the signatories to the acknowledgment.

2 If a person is establishing parentage based on residing with the child and holding out the child as the person's child for the first two years of the child's life, the Acknowledgment of Parentage cannot be signed until the child is two.

3 Parents of a child born through a surrogacy arrangement must use a court adjudication process to establish parentage, not an acknowledgment of parentage.

CONNECTICUT PARENTAGE ACT

Prof. Doug NeJaime, Yale Law School

CT Parentage Act – Public Act 21-15

- Ensures gender equality in parentage
- Protects LGBTQ couples and their children
- Secures families formed through assisted reproduction
- Provides methods of establishing parentage for nonbiological parents, including methods that are clear and simple
- *Effective date Jan. 1, 2022 (except §§ 38-39, de facto parentage, is July 1, 2022)*

CT Parentage Act – Public Act 21-15

§§ 1-15: definitions, jurisdiction, venue, standing, notice, temp. orders
§§ 16-23: lists parentage paths, nondiscrimination, competing claims
§§ 24-35: acknowledgments of parentage
§§ 36-37: presumptions of parentage
§§ 38-39: de facto parentage
§§ 40-50: genetic parentage
§§ 51-59: non-surrogacy assisted reproduction
§§ 60-77: surrogacy
§§ 78-83: regulation of gamete donation in assisted reproduction
§§ 84-86: uniformity, application
§§ 87-149: amend or repeal existing statutes to accord with CPA

Jurisdiction over parentage actions (§ 5)

Petitions to adjudicate parentage shall be filed in the Family Division of the Superior Court, except:

- petitions by an alleged genetic parent seeking to establish the alleged genetic parent's parentage (Probate Court)
- petitions to determine parentage after the death of the child or the person whose parentage is to be determined (Probate Court)
- petitions for orders in cases of assisted reproduction (Probate Court)
- petitions by the IV-D agencies in IV-D cases (Family Support Magistrate Division)

Jurisdiction over parentage actions (§ 5)

A petition filed in the Superior Court or the Family Support Magistrate Court to adjudicate parentage may be brought any time prior to the child's eighteenth birthday, provided liability for support of such child shall be limited to the three years next preceding the date of the filing of any such petition.

Venue for parentage actions (§ 9)

Generally, venue for a proceeding to adjudicate parentage is in the judicial district in which:

- (1) The child resides; or
- (2) If the child shall not reside in this state, the petitioner or respondent resides.

In IV-D cases, venue is in the Family Support Magistrate Division serving the judicial district where the parent who gave birth or the alleged parent resides.

Who is a parent? (§ 19)

- Adoption (not addressed by CPA)
- Giving birth (except not person acting as surrogate)
- Genetics (brought in Probate Court by alleged genetic parent of child born to unmarried birth parent)
- Presumptions (marital and nonmarital)
- De facto parent
- Intended parent through assisted reproduction (Probate Court)
- Intended parent through surrogacy agreement (Probate Court)

How to establish parentage?

- Operation of law
- Acknowledgment of Parentage
  - *Alleged genetic parents*
  - *Presumed parents*
  - *Intended parents (using non-surrogacy assisted reproduction)*
- Adjudication
  - *De facto parentage requires adjudication*
  - *Nonmarital presumption may also require adjudication*

Giving birth

The individual gives birth to the child (unless the individual is acting as a surrogate).

Acknowledgments of Parentage (§§ 24-35)

- A birth parent may sign an acknowledgment of parentage with the genetic parent, presumed parent, or intended parent through non-surrogacy assisted reproduction to establish the second person's parentage.
- Valid acknowledgments have the force of an adjudication of parentage.
- If not rescinded within 60-day period, can only be challenged based on fraud, duress, of material mistake of fact.

Challenges to Acknowledgments (§ 31)

- After the rescission period, an acknowledgment can be challenged only on the basis of fraud, duress or material mistake of fact which, in cases in which the acknowledgment has been signed by the birth parent and an alleged genetic parent, may include evidence that the alleged genetic parent is not the genetic parent.
- If the the challenger has met their burden, the acknowledgment can be set aside only if the court determines that doing so is in the best interest of the child (under § 23).

Genetic parentage (§§ 40-50)

The individual is a genetic parent of the child (but gamete donors cannot establish parentage based on genetics).

Presumptions (§§ 36-37)

The individual is a presumed parent.

- When a married person gives birth to a child, their spouse is presumed to be a parent.
- A person who, jointly with the other parent, resides with the child and openly holds out the child as the person's child from the time the child was born or adopted for at least two years, is presumed to be the parent of the child.
  - To actually establish parentage, this person must sign an acknowledgment of parentage or obtain a judgment of parentage (and can only do so after the two-year period).

Adjudication (§ 37)

(1) If no party challenges the presumption, the court shall adjudicate the presumed parent to be a parent.

(2) If the presumed parent is identified as a genetic parent and that identification is not successfully challenged, the court shall adjudicate the presumed parent to be a parent.

(3) If the presumed parent is not identified as a genetic parent and the presumed parent or the birth parent challenges the presumption, the court shall adjudicate parentage based on the child's best interest (under § 23).

De Facto Parents (§§ 38-39)

Provides path to parentage for individual who, with the support of an existing parent, becomes a parent of the child through their parental conduct and care, demonstrated through a seven-factor standard.

De facto parentage (§ 39)

- (a) A proceeding to establish parentage of a child under this section may be commenced only by a person who: (1) is alive when the proceeding is commenced; and (2) claims to be a de facto parent of the child.
- (b) A person seeking to be adjudicated a de facto parent of a child shall file a petition with the court before the child reaches eighteen years of age. The child is required to be alive at the time of the filing.

De facto parentage (§ 38)

(1) resided with the child as a regular member of the child's household for at least one year, unless the court finds good cause to accept a shorter period;

(2) engaged in consistent caretaking of the child;

(3) undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) held out the child as the person's child;

(5) established a bonded and dependent relationship with the child that is parental in nature;

(6) Another parent of the child fostered or supported that bonded and dependent relationship; and

(7) Continuing the relationship is in the child's best interest.

* *Clear and convincing evidentiary standard.*

Assisted Reproduction

- Assisted reproduction means, broadly speaking, any form of reproduction that does not involve sexual intercourse.
- Assisted reproduction is a broad term that can include vaginal insemination, in vitro fertilization, and surrogacy.
- Assisted reproduction often involves embryos or gametes (egg or sperm) from a third party.

Intended Parents through Assisted Reproduction (§§ 51-59) (Probate Court)

The individual consents to assisted reproduction with the intent to be a parent of the resulting child.

Assisted reproduction other than surrogacy.

Intended Parents through Surrogacy Agreement (§§ 60-77) (Probate Court)

- Surrogacy Arrangements
  - *Updates CT law by:*

providing greater guidance and clarity about surrogacy arrangements and parentage;

supplying clear protections for the person acting as a surrogate; and

covering both gestational and genetic surrogacy.

Other important provisions

- Addressing competing claims to parentage through best interest standard with enumerated considerations (§ 23(a)).
- Allows a court to find that a child has more than two parents if not doing so would be detrimental to the child (§ 23(c)).

Competing Claims (§ 23)

Except as provided in this act, in a proceeding to adjudicate competing claims of parentage of a child by two or more persons, the court shall adjudicate parentage in the best interest of the child, based on:

- (1) The age of the child;
- (2) The length of time during which each person assumed the role of parent of the child;
- (3) The nature of the relationship between the child and each person;
- (4) The harm to the child if the relationship between the child and each person is not recognized;
- (5) The basis for each person's claim to parentage of the child;
- (6) Other equitable factors arising from the disruption of the relationship between the child and each person, or the likelihood of other harm to the child; and
- (7) Any other factor the court deems relevant to the child's best interests.

More than 2 parents (§ 23)

- The court may adjudicate a child to have more than two parents under sections 1 to 86, inclusive, of this act if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child shall not require a finding of unfitness of any parent or person seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with a person who has fulfilled the child's physical needs and psychological needs for care and affection and has assumed the role for a substantial period.

Questions and Resources

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CPA, Public Act 21-15
https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00015-R00HB-06321-PA.PDF

glad.org/cpa
law.yale.edu/cpa

GLAD Answers
glad.org/know-your-rights/glad-answers/