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EDWARD JAKOBOWSKI, ADMINISTRATOR (ESTATE OF MELINDA JAKOBOWSKI) *v.* STATE OF CONNECTICUT (AC 45088)

Cradle, Seeley and DiPentima, Js.

Syllabus

The plaintiff, E, the administrator of the estate of M, sought to recover damages for the alleged negligence of the defendant, the state of Connecticut, in referring M, while under the care of the Department of Mental Health and Addiction Services, to a certain institute in Florida, whose staff allegedly committed multiple policy and protocol violations resulting in M's death. E filed a notice of claim with the Office of the Claims Commissioner in February, 2012. The state moved to dismiss the notice of claim in August, 2013. In December, 2016, the claims commissioner sent a letter to E asking if he would stipulate to an extension of time until March 31, 2017 for resolution of the claim, to which E agreed. In March, 2017, E notified the claims commissioner that he intended to serve a certain expert witness report by April 22, 2017, asking the claims commissioner to reserve judgment on any motion until the report was filed. On April 22, 2017, following the filing of the report, the claims commissioner denied the state's motion to dismiss and granted E permission to sue the state. After E filed the present action against the state, the state moved to dismiss E's complaint, claiming that sovereign immunity had not been waived because E did not comply with the statutory requirements ((Rev. to 2017) § 4-160 (b) and § 52-190a) pertaining to medical malpractice claims, and that the claims commissioner did not have jurisdiction over the matter as she did not issue her decision within the applicable two year statute of limitations (§ 4-159a). The trial court denied the state's motion to dismiss. On the state's appeal to this court, *held*:

1. The state could not prevail on its claim that sovereign immunity barred E's claims because the claims commissioner exceeded her statutory authority in granting permission to sue:

   a. The trial court properly held that the claims commissioner's grant of permission was sufficiently broad and clear to grant permission for E to bring the present claim for failure to provide informed consent: E sought to bring a claim based on lack of informed consent rather than medical malpractice, and, although E's notice of claim stated that he sought to bring a claim for negligence in the care and treatment of M, the specific allegations of negligence all involved the transfer of M to the institute without providing E with sufficient information to make an informed decision regarding the transfer, and E's notice of claim did not contain any allegations related to the medical treatment by the state; moreover, even though the claims commissioner referenced statutes related to medical malpractice, §§ 4-160 (b) and 52-190a, those references did not undermine the grant of permission to sue for failure to provide informed consent.

   b. The state could not prevail on its claim that the authorization to sue granted to E was invalid because the claims commissioner did not hold a hearing, develop a factual record, or make a determination that E's claim was just and equitable under § 4-160 (a): after reviewing the plain and unambiguous text of § 4-160 (a) and its relationship to other statutes, this court determined there is no requirement that the claims commissioner hold a hearing prior to granting permission to sue the state, and requiring the claims commissioner to hold an evidentiary hearing prior to authorizing an action against the state would lead to unnecessary duplication and delay and a backlog of claims in the Office of the Claims Commissioner, as the claimant can file an action in the Superior Court, where the matter will be fully adjudicated on the merits; moreover, an expert letter submitted by E to the claims commissioner provided sufficient information to support the claims commissioner's conclusion that it would be just and equitable to authorize suit against the state.

2. The state could not prevail on its claim that the trial court erred in

concluding that the claims commissioner's failure to act on E's claim within the two year limitation period set forth in § 4-159a did not deprive the claims commissioner of authority to act: the plain and unambiguous language of § 4-159a did not expressly set forth a deadline for the claims commissioner to render a decision; moreover, that statute requires that, not later than five days after the General Assembly convenes each regular session, the claims commissioner must notify the General Assembly of all claims that have not been disposed within two years of the date of filing and in which the parties have not agreed to an extension, and, because regular sessions of the General Assembly are held only during certain periods of the year and the claims commissioner renders decisions all year long, the claims commissioner could render a decision beyond two years from the date of the filing of the claim but before the convening of the next regular session of the General Assembly, as she did in the present case.

Argued November 10, 2022—officially released June 13, 2023

Procedural History

Action to recover damages for the defendant's alleged negligence, brought to the Superior Court in the judicial district of Hartford, where the court, *Sicilian*, *J.*, denied the defendant's motion to dismiss, and the defendant appealed to this court. *Affirmed*.

Jennifer S. Das, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, *Joshua Perry*, solicitor general, and *Clare Kindall*, former solicitor general, for the appellant (defendant).

Gregory A. Jones, with whom, on the brief, was *Patrick Tomasiewicz*, for the appellee (plaintiff).

Opinion

SEELEY, J. The defendant, the state of Connecticut, appeals from the judgment of the trial court denying its motion to dismiss the claims asserted against it by the plaintiff, Edward Jakobowski, administrator of the estate of Melinda Jakobowski, on the basis of sovereign immunity.[1] The defendant claims that the court improperly denied its motion to dismiss because the claims commissioner authorized only a medical malpractice claim pursuant to General Statutes (Rev. to 2017) § 4-160 (b),[2] and the plaintiff did not comply with the mandatory requirements of that statute. Alternatively, the defendant contends that if the claims commissioner authorized the plaintiff to sue the defendant for negligence based on lack of informed consent pursuant to § 4-160 (a), any waiver of immunity was invalid because the claims commissioner did not develop a factual record, hold a hearing, or make a finding that the plaintiff's claim was just and equitable. Finally, the defendant claims than the trial court erred in concluding that the claims commissioner's failure to act on the plaintiff's claim within the two year period set forth in General Statutes § 4-159a[3] did not deprive the claims commissioner of authority to act.[4] We affirm the judgment of the trial court.

The following facts and procedural history are necessary for the resolution of this appeal. On February 8, 2012, the plaintiff filed a notice of claim with the Office of the Claims Commissioner, alleging that his daughter, Melinda S. Jakobowski, the decedent in this case, died on February 10, 2011, while under the care of the Connecticut Department of Mental Health and Addiction Services (department), amid multiple "policy/protocol violations" by the staff at the Florida Institute of Neurological Rehabilitation (institute) where she was a client at the time. He alleged that the decedent was committed to the care of the department in 1993 for "chronic self-destructive thinking and behavioral disorders," and, years later, on September 8, 2010, she was discharged from Connecticut Valley Hospital (hospital) and admitted to the institute based on a referral from the department "and/or [hospital]."

In the notice of claim, the plaintiff alleged that the department, the hospital, and the hospital's employee, Robert M. Pierro, the principal psychiatrist responsible for the decedent's discharge plan, "knew or should have known of a serious history of protocol and human rights violation complaints against [the institute]." He further alleged that the department and the hospital, through their "agents, servants and/or employees," failed to fully disclose to him or the decedent the nature of the treatment to be provided by the institute, the risks and hazards of treating with the institute, alternatives to admission to the institute, and the anticipated benefits of treatment at the institute. The plaintiff indicated in the

notice of claim that, as a result of these allegations, he was seeking to bring a claim against the department, the hospital, and Pierro "for their negligence in the care and treatment of the [plaintiff's] decedent . . . ." The plaintiff subsequently filed an amended notice of claim dated August 13, 2012, in which he added allegations that the decedent was physically abused and threatened while under the care and custody of the institute.

On August 9, 2013, the defendant moved to dismiss the amended notice of claim on the basis that adding a new cause of action was barred by the one year statute of limitations. On October 16, 2013, the plaintiff filed an objection to the defendant's motion to dismiss. On March 20, 2014, the parties appeared before the claims commissioner for a hearing on the motion to dismiss during which the claims commissioner requested supplemental briefing by the parties regarding whether the plaintiff's claim qualified as a medical malpractice claim for which sovereign immunity could be waived pursuant to § 4-160 (b), or whether it was a claim for negligence pursuant to § 4-160 (a). In accordance with the commissioner's request, the parties filed supplemental briefs on this issue.

On December 9, 2016, the claims commissioner, not yet having issued a decision on the motion to dismiss, sent a letter to the plaintiff asking if he would stipulate to an extension of time until March 31, 2017, for the resolution of this claim, which the plaintiff agreed to on December 15, 2016. On March 22, 2017, the plaintiff notified the claims commissioner by letter that he intended to serve a second expert witness report relating to the issue of informed consent by April 22, 2017, and he asked the claims commissioner to reserve judgment on any motion until the report was filed.[5] On April 19, 2017, the plaintiff provided a letter from Alfred Herzog, emeritus medical director, professional programs, with the Institute of Living/Hartford Hospital. After reviewing various records pertaining to the decedent and the institute, Herzog stated in his letter that "it [was his] opinion, with reasonable medical probability, that the transfer of [the decedent] [constituted] an act of negligence on the part of [the department]."

On April 22, 2017, the claims commissioner denied the defendant's motion to dismiss and granted the plaintiff permission to sue the state "for alleged medical negligence by discharging the [plaintiff's] decedent to [the institute] and allegedly failing to provide sufficient information concerning [the institute], which they knew or should have known, for the [plaintiff] and the decedent to give informed consent to the transfer."[6] On July 14, 2017, the defendant filed a motion to vacate the decision of the claims commissioner, arguing that, because this decision was rendered more than two years from the date the claim was filed, and all extensions of time had expired, the claims commissioner had

lost jurisdiction over the claim pursuant to § 4-159a. The defendant also indicated in a footnote, without providing any analysis or argument, that § 4-160 (b) did not provide authority for the claims commissioner's order granting the plaintiff permission to sue.

Approximately one year later, on April 5, 2018, while the defendant's motion to vacate the decision of the claims commissioner was still pending, the plaintiff filed the present action against the defendant, alleging that the decedent's death was caused by the failure of the defendant, through its agents, servants and/or employees, to meet the standard of care in the treatment of the decedent. The plaintiff asserted in his complaint the same allegations as he did in his notice of claim, namely, that the defendant "knew or should have known of a serious history of protocol and human rights violation complaints against [the institute]" and "failed to fully disclose to the [plaintiff] . . . or to the decedent, the nature of the treatment to be provided by [the institute], the risks and hazards of treating with [the institute], alternatives to admission to [the institute] and the anticipated benefits of treatment at [the institute]." Citing to General Statutes § 52-190a, the plaintiff attached to his complaint a certificate of good faith and the written opinions of Herzog and Nelson.

On May 29, 2018, the defendant filed a motion to dismiss the plaintiff's complaint along with a memorandum of law in which it argued, inter alia, that sovereign immunity had not been waived because the plaintiff did not comply with the requirements of § 4-160 (b) or § 52-190a, the statutes pertaining to medical malpractice claims. The defendant also argued that the claims commissioner did not have jurisdiction over this matter as she did not issue her decision within the two year period required by § 4-159a. On August 24, 2018, the plaintiff filed an objection to the defendant's motion to dismiss, along with a memorandum of law in which he argued, inter alia, that the claim before the claims commissioner sounded in lack of informed consent rather than medical malpractice and, thus, that compliance with the statutes regarding medical malpractice claims was not required. The plaintiff also argued that the claims commissioner had complied with § 4-159a as the parties, by their conduct, had agreed to extend the jurisdiction of the commissioner to act. On January 4, 2019, the trial court stayed the matter until the claims commissioner ruled on the pending motion to vacate before it.

On April 15, 2021, the claims commissioner denied the defendant's motion to vacate its decision granting the plaintiff authorization to sue the state. In her decision, the claims commissioner concluded that she did not lose authority to render a decision on the plaintiff's claim after March 31, 2017, the date that the plaintiff had stipulated to for the resolution of the claim. The claims commissioner also concluded, in part, that "the

claim of lack of informed consent presents an issue of law or fact under which the state, were it a private person, could be liable, and that the just and equitable resolution [was] to permit the informed consent claim to be adjudicated with the medical malpractice claim, with which it is legally and factually intertwined."

Thereafter, on September 8, 2021, the court denied the defendant's motion to dismiss. In its decision, the trial court (1) concluded that the claims commissioner's grant of permission was sufficiently broad and clear for the plaintiff to bring the present action for failure to provide informed consent pursuant to § 4-160 (a), and that to the extent the claims commissioner incorrectly referred to §§ 4-160 (b) and 52-190a, the statutes pertaining to medical malpractice actions, those references did not undermine the grant of permission to sue for failure to provide informed consent, and (2) rejected the defendant's claim that the claims commissioner lacked authority over the claim pursuant to § 4-159a because the decision granting permission to sue was not issued before the expiration of the stipulated extension of time.[7] Following the denial of the defendant's motion for reargument, the defendant filed the present appeal.

I

On appeal, the defendant first claims that sovereign immunity bars the plaintiff's claims because the claims commissioner exceeded her statutory authority in granting permission to sue. According to the defendant, the claims commissioner authorized suit only on a medical malpractice claim under § 4-160 (b), and that authorization was invalid because the plaintiff did not comply with the requirements of §§ 4-160 (b) and 52-190a. The plaintiff counters that the claims commissioner's consent to sue included a claim for lack of informed consent under § 4-160 (a) and, therefore, the trial court properly concluded that it retained subject matter jurisdiction over this claim for lack of informed consent. We agree with the plaintiff.

We first set forth the applicable standard of review. "The standard of review for a court's decision on a motion to dismiss is well settled. A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss will be de novo. . . . In addition, [s]overeign immunity relates to a court's subject matter jurisdiction over a case, and therefore [also] presents a question of law over which we exercise de novo review. . . . In so doing, we must decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record. . . . The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general,

finding its origin in ancient common law. . . . Not only have we recognized the state's immunity as an entity, but [w]e have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the officer represents the state is, in effect, against the state. . . . Exceptions to this doctrine are few and narrowly construed under our jurisprudence." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Chief Information Officer* v. *Computers Plus Center, Inc.*, 310 Conn. 60, 79–80, 74 A.3d 1242 (2013).

"[A] litigant that seeks to overcome the presumption of sovereign immunity [pursuant to a statutory waiver] must show that . . . the legislature, either expressly or by force of a necessary implication, statutorily waived the state's sovereign immunity . . . . In making this determination, [a court shall be guided by] the well established principle that statutes in derogation of sovereign immunity should be strictly construed. . . . [When] there is any doubt about their meaning or intent they are given the effect [that] makes the least rather than the most change in sovereign immunity." (Internal quotation marks omitted.) *Feliciano* v. *State*, 336 Conn. 669, 674–75, 249 A.3d 340 (2020). "In the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring an action against the state for monetary damages without authorization from the claims commissioner to do so." *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 351, 977 A.2d 636 (2009).

We next set forth the relevant statutory provisions. Section 4-160 (a) provides: "Whenever the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable." This section governs claims sounding in common-law negligence that are brought against the state. *Levin* v. *State*, 329 Conn. 701, 708, 189 A.3d 572 (2018). Section 4-160 (b) provides: "In any claim alleging malpractice against the state . . . the attorney or party filing the claim may submit a certificate of good faith to the Office of the Claims Commissioner in accordance with section 52-190a. If such a certificate is submitted, the Claims Commissioner shall authorize suit against the state on such claim."[8] Section 52-190a, in turn, sets forth the requirements for the filing of a certificate of good faith and accompanying opinion of a similar health care provider, conditions required for the filing of a medical malpractice action.[9] Section 52-190a does not apply to a claim of lack of informed consent because a claim of lack of informed consent is not a medical negligence claim. *Shortell* v. *Cavanagh*, 300 Conn. 383, 385, 15 A.3d 1042 (2011). "Unlike a medical malpractice claim, a claim for lack of informed consent is determined by a

lay standard of materiality, rather than an expert medical standard of care which guides the trier of fact in its determination." Id., 388.[10]

A

In the present case, the parties disagree whether the claims commissioner's grant of permission to sue, which referenced §§ 4-160 (b) and 52-190a, the statutes pertaining to medical malpractice claims, was, as the trial court found, sufficiently broad and clear to grant permission for the plaintiff to bring the present action based on the defendant's failure to provide informed consent under § 4-160 (a). Our Supreme Court considered a similar issue in *Levin* v. *State*, supra, 329 Conn. 701, and we, therefore, look to that case for guidance.

In *Levin*, the plaintiff, the administratrix of the estate of a woman who was fatally stabbed by her son, filed a notice of claim with the Office of the Claims Commissioner, seeking permission to bring an action against the defendant, the state of Connecticut, for medical malpractice based on mental health services and treatment given to the decedent's son. Id., 703–704. At the time of the incident in question, the decedent's son was on an approved home visit from River Valley Services, a mental health-care facility operated by the department. Id., 704. The claims commissioner granted permission to the plaintiff to bring a malpractice action against the defendant under § 4-160 (b). Id. The order specified that the grant of permission to sue was "limited to that portion of the claim alleging malpractice against the [defendant] . . . ." (Internal quotation marks omitted.) Id. The plaintiff thereafter brought an action against the defendant alleging that River Valley Services was negligent in its diagnosis, care, treatment, and custody of the decedent's son, and that its level of care was below that of a reasonably prudent health-care provider. Id., 705. The trial court granted the defendant's motion to strike the complaint, concluding that, pursuant to *Jarmie* v. *Troncale*, 306 Conn. 578, 587, 50 A.3d 802 (2012), a medical malpractice action can be brought only by a patient against a health-care provider. *Levin* v. *State*, supra, 329 Conn. 705. The trial court further noted that, even if the complaint could be construed as a common-law negligence action, it would lack subject matter jurisdiction because there was no basis for finding that the claims commissioner authorized a negligence claim. Id.

On appeal, our Supreme Court considered whether an action authorized by the claims commissioner, limited to medical malpractice, could survive a motion to strike where the plaintiff was not a patient of the defendant. Id., 705–706. The plaintiff argued that *Jarmie* did not control because she was not alleging medical malpractice but, rather, " 'medical negligence' " resulting from the care, treatment, and custody of a patient, and from the failure to warn the decedent of the patient's

dangerous propensities. Id., 703. The plaintiff also argued that there was no meaningful difference between her negligence claim and the medical malpractice claim presented to, and authorized by, the claims commissioner. Id. In affirming the judgment of the trial court granting the defendant's motion to strike the complaint, our Supreme Court noted that the claim presented to, and authorized by, the claims commissioner was solely one of medical malpractice, which was barred by *Jarmie*, and that, therefore, the trial court would have lacked subject matter jurisdiction to consider a negligence claim because it would have been beyond the scope of the action authorized by the claims commissioner under § 4-160 (b). Id., 708–10.

In the present case, by contrast, the plaintiff sought to bring a claim based on lack of informed consent rather than medical malpractice.[11] Although the plaintiff's notice of claim stated that "[t]he [plaintiff] seeks to bring a claim against [the department], [the hospital], and . . . Pierro . . . for their negligence in the care and treatment of the [plaintiff's] decedent," the specific allegations of negligence all involved the department's transfer of the plaintiff's decedent to the institute without providing the plaintiff with sufficient information to make an informed decision regarding the transfer. Specifically, the notice stated: "The [plaintiff] . . . alleges that [the department] and [the hospital], through their agents, servants and/or employees, failed to fully disclose to the [plaintiff], who was the father of the decedent, or to the decedent, the nature of the treatment to be provided by [the institute], the risks and hazards of treating with [the institute], alternatives to admission to [the institute], and the anticipated benefits of treatment at [the institute]." Neither the plaintiff's notice of claim nor the plaintiff's amended notice of claim contained any allegations related to the medical *treatment* by the defendant.

Moreover, the memorandum of decision granting permission to sue indicates that the claims commissioner understood the plaintiff to be alleging a claim for lack of informed consent. Specifically, the decision states: "The [plaintiff] alleges that the [defendant's] agents knew or should have known of a serious history of complaints of protocol and human rights violations against the [institute] when it developed its discharge plan to transfer the decedent to the [institute] and that *the* [*defendant's*] *agents failed to provide sufficient information concerning the* [*institute*] *to obtain the informed consent of the* [*plaintiff*] *and the decedent to the transfer*." (Emphasis added.) Notwithstanding the fact that the plaintiff's claim was based on a lack of informed consent rather than medical malpractice, the claims commissioner also referenced §§ 4-160 (b) and 52-190a, pertaining to medical malpractice claims. Specifically, the claims commissioner referenced the letter from Herzog and noted that, although the plaintiff's

attorney had not submitted a certificate of good faith pursuant to § 52-190a, the plaintiff was in substantial compliance with the requirements of that statute.[12]

The trial court, discussing the decision of the claims commissioner, stated that "[t]he claims commissioner's references to medical malpractice §§ 4-160 (b) and 52-190a are understandable in light of the record before her. The plaintiff submitted letters from doctors containing medical opinions and his notice of claim referenced the defendant's 'negligence in the care and treatment of the claimant's decedent . . . .' Nevertheless, the notice of claim did not refer expressly to medical malpractice or to § 4-160 (b). In addition, the claims commissioner's decision, although granting permission to sue 'for alleged medical negligence' describes that negligence as 'discharging the [plaintiff's] decedent to the [institute] and allegedly failing to provide sufficient information concerning the [institute], which they knew or should have known, for the [plaintiff] and the decedent to give informed consent to the transfer.' " In light of the foregoing, the trial court concluded that the claims commissioner's grant of permission was sufficiently broad and clear to grant permission for the plaintiff to bring the present claim for failure to provide informed consent and that, to the extent the claims commissioner included references to §§ 4-160 (b) and 52-190a, those references did not undermine the grant of permission to sue for failure to provide informed consent.

The defendant argues in its brief that "the trial court effectively transformed and rewrote the [claims] commissioner's decision to reflect what the trial court believed the [claims] commissioner *should* have authorized, not what she actually *did* authorize." (Emphasis in original.) We disagree with the defendant's interpretation of the trial court's decision. Unlike in *Levin* v. *State*, supra, 329 Conn. 708–709, in which "the claim presented to, and authorized by, the claims commissioner was solely one of medical malpractice," the trial court in the present case correctly concluded that the claim presented to the claims commissioner was based on lack of informed consent, and that the decision of the claims commissioner granting permission to sue encompassed a claim of lack of informed consent.[13] Although we agree with the defendant that the trial court "does not have the authority to waive sovereign immunity on behalf of the state"; (internal quotation marks omitted) id., 709; we disagree that, in denying the defendant's motion to dismiss, the court substituted its judgment for that of the claims commissioner and permitted the case to proceed based on a claim not authorized by the claims commissioner. We conclude, rather, that the trial court properly held that the claims commissioner's grant of permission was sufficiently broad and clear to grant permission for the plaintiff to bring the present claim for failure to provide informed

consent.

B

Having concluded that the claims commissioner's grant of permission to sue encompassed a claim of lack of informed consent under § 4-160 (a), we next consider the defendant's claim that any such authorization was invalid because the claims commissioner did not hold a hearing, develop a factual record, or make a determination that the plaintiff's claim was just and equitable, as required by § 4-160 (a). The plaintiff counters that the relevant statutory framework does not require the claims commissioner to hold a hearing or develop a factual record or make an explicit finding that the claim is just and equitable. We agree with the plaintiff that a hearing was not required in the present case, and, further, that the letter from Herzog provided sufficient facts from which the claims commissioner could have concluded that it would be just and equitable to authorize suit.[14]

Whether the claims commissioner had statutory authority to waive sovereign immunity without holding a hearing and developing a factual record and without making a determination that the plaintiff's claim was just and equitable raises a question of statutory interpretation. See *Nelson* v. *Dettmer*, 305 Conn. 654, 662, 46 A.3d 916 (2012). As such, we are guided by the principles of General Statutes § 1-2z, which provides that "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

We next set forth the relevant statutory provisions. At the time of the claims commissioner's decision, § 4-160 (a) provided that, "[w]henever the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit against the state on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable." By its terms, this statute does not mandate that a hearing take place or set forth what is required of the claims commissioner to determine that a claim is, in fact, just and equitable. The defendant argues, however, that the statutory scheme unambiguously requires that the claims commissioner's "just and equitable" determination be made on a developed factual record following a hearing. In support of this argument, the defendant points to General Statutes § 4-142 (a), which provides that "[t]here shall be an Office of the Claims Commissioner which shall hear and determine all claims against the state," and General Statutes § 4-151 (a), which provides that "[c]laims shall be heard as soon as practicable after

they are filed. . . .”[15] Further, General Statutes § 4-151a provides that the claims commissioner may waive the *hearing* of any claim for $10,000 or less.[16] Finally, General Statutes § 4-157 provides that the claims commissioner “shall adopt rules of procedure . . . governing the proceedings of the Office of the Claims Commissioner. . . .” Pursuant to these rules, the claims commissioner “shall make full inquiry into all facts at issue and shall obtain a full and complete record of all facts necessary for a fair determination of the issues.” Regs., Conn. State Agencies § 4-157-10.

We disagree with the defendant that any of these statutes *required* the claims commissioner to hold a hearing prior to determining that it would be just and equitable to allow suit against the state. The plain language of the provisions cited by the defendant contains no such requirement. We are mindful “that, in the absence of ambiguity, courts cannot read into statutes, by construction, provisions which are not clearly stated . . . .” (Internal quotation marks omitted.) *Nelson* v. *Dettmer*, supra, 305 Conn. 669. Moreover, “[i]t is a well settled principle of statutory construction that the legislature knows how to convey its intent expressly . . . or to use broader or limiting terms when it chooses to do so. . . . [O]ur case law is clear . . . that when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent . . . .” (Citations omitted; internal quotation marks omitted.) *Rutter* v. *Janis*, 334 Conn. 722, 734, 224 A.3d 525 (2020). In this regard, we observe that, prior to 2005, General Statutes (Rev. to 2003) § 4-159, a related statute regarding the submission of certain claims to the legislature, provided that the claims commissioner was required to make his recommendations to the General Assembly “[a]fter hearing”; the “[a]fter hearing” language was deleted in 2005.[17] We consider this indicative of the fact that the legislature would have expressly stated that a hearing was required if it intended to do so.

Thus, after reviewing the plain and unambiguous text of § 4-160 (a) and its relationship to other statutes, we conclude that the claims commissioner is not required to hold a hearing before authorizing suit against the state. This conclusion is consistent with the rules governing proceedings of the claims commissioner, which are intended to “avoid formal and technical requirements” and “provide a simple, uniform, expeditious and economical procedure for the presentation and disposition of claims.” General Statutes § 4-157. Consistent with this intent, the only requirement contained in § 4-160 (a) is that the claims commissioner deem it “just and equitable” before authorizing suit against the state “on any claim which, in the opinion of the Claims Commissioner, presents an issue of law or fact under which the state, were it a private person, could be liable.” Once the claims commissioner authorizes suit pursuant to this section, the claimant can file an action in Supe-

rior Court, where the matter will be fully adjudicated on the merits. Requiring the claims commissioner to hold an evidentiary hearing prior to authorizing the action against the state will lead to unnecessary duplication, as well as delay and a backlog of claims in the Office of the Claims Commissioner. We decline to read such a requirement into this statute.[18] See *Casey* v. *Lamont*, 338 Conn. 479, 493, 258 A.3d 647 (2021) (" '[i]n construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended' ").

The defendant nonetheless argues that the claims commissioner cannot authorize suit pursuant to § 4-160 (a) without determining that the claim "presents an issue of law or fact under which the state, were it a private person, could be liable," and that the claims commissioner cannot determine whether there is a genuine "issue of law or fact" until she sees the parties' evidence and legal arguments through a hearing conducted in accordance with §§ 4-142 and 4-151. Contrary to the defendant's claim, we conclude that, in the present case, the letter from Herzog provided sufficient information from which the claims commissioner could have concluded that it would be just and equitable to permit the plaintiff to seek redress against the state. After reviewing the decedent's history and treatment at the institute, Herzog stated: "Given [the] publicly available information, and some of it very locally available via [the Department of Children and Families], it is surprising that [the institute] was a consideration for transferring [the decedent] to [the institute]. Furthermore, it is my understanding that this information about [the institute] was never discussed with [the decedent's] father . . . to help him, as her legal representative, make an informed decision about [the decedent's] transfer and admission to [the institute]. After receiving these records, it is my opinion, with reasonable medical probability, that the transfer of [the decedent] [constituted] an act of negligence on the part of [the department]."

Because § 4-160 (a) contains no requirement that the claims commissioner hold a hearing prior to granting permission to sue the state, and because Herzog's letter provided sufficient information to support the claims commissioner's conclusion that it would be just and equitable to authorize suit against the state, the defendant cannot prevail on this claim.

II

The defendant next argues that the trial court erred in concluding that the claims commissioner's failure to act on the plaintiff's claim within the two year limitation period set forth in § 4-159a did not deprive the claims commissioner of the authority to act.[19] We disagree.

As stated previously in this opinion, the plaintiff's initial notice of claim in this case was filed on February

8, 2012. It is undisputed that the claims commissioner sought and obtained several extensions of time to render a decision on the plaintiff's claim. As relevant to the claim on appeal, on December 15, 2016, the plaintiff agreed to an extension of time until March 31, 2017, for the resolution of the claim. On March 22, 2017, the plaintiff notified the claims commissioner that he expected to serve a second expert witness report by April 22, 2017, and stated that he "would greatly appreciate if [the claims commissioner] would reserve judgment on any motion until [this] report is filed." On April 19, 2017, the plaintiff filed the second expert witness report. On April 22, 2017, the claims commissioner granted the plaintiff's request for authorization to sue the state. This decision was sent to the parties on July 10, 2017. Because the last written extension expired on March 31, 2017, and the decision of the claims commissioner is dated April 22, 2017, the defendant argues that the claims commissioner did not have authority to waive sovereign immunity. We disagree.

We initially note that whether the claims commissioner had statutory authority to act pursuant to § 4-159a raises a question of statutory interpretation for which we are guided by the principles of statutory construction contained in § 1-2z. Section 4-159a (a) provides in relevant part that "(1) [n]ot later than five days after the convening of each regular session, the Claims Commissioner shall report to the General Assembly on all claims that have been filed with the Office of the Claims Commissioner pursuant to section 4-147 and have not been disposed of by the Office of the Claims Commissioner within two years of the date of filing or within any extension thereof . . . except claims in which the parties have stipulated to an extension of time for the Office of the Claims Commissioner to dispose of the claim. . . ."[20] Section 4-159a (b) provides that "[t]he Office of the Claims Commissioner shall give notice to all claimants whose claims are the subject of a report as provided in subsection (a) of this section that their claims will be considered at the next regular session of the General Assembly pursuant to subsection (c) of this section." Further, § 4-159a (c) provides that, "[w]ith respect to any claim that is the subject of a report as provided in subsection (a) of this section the General Assembly may (1) grant the Office of the Claims Commissioner an extension for a period specified by the General Assembly to dispose of such claim, (2) grant the claimant permission to sue the state, (3) grant an award to the claimant, or (4) deny the claim."

The defendant argues that the "simple and unambiguous reading of . . . § 4-159a (a) and (c) is that the General Assembly intended to deprive the claims commissioner of [authority] to act on stale claims beyond the two year period, and to instead reserve power [to] itself to resolve such claims in one of the four manners set forth in the statute . . . ." In its decision denying

the defendant's motion to dismiss, the trial court stated that, "[u]nder the defendant's interpretation of § 4-159a (a), the failure of the claims commissioner to timely dispose of a claim or to make the required report would, for no other reason [than] the claims commissioner's failings, defeat the claim. Nothing in the text of the statute suggests that the legislature intended such a result." We agree with the court's interpretation of the statute.

The plain and unambiguous language of § 4-159a does not expressly set forth a deadline for the claims commissioner to render a decision.[21] By its terms, § 4-159a (a) (1) requires that, *not later than five days after the convening of each regular session*, the claims commissioner must notify the General Assembly of all claims that have not been disposed within two years of the date of filing and in which the parties have not agreed to an extension. Regular sessions of the General Assembly are held from January to June in odd numbered years, and from February to May in even numbered years. Conn. Const., art. III, § 2. The claims commissioner, however, renders decisions all year long and could render a decision, as she did in the present case, beyond two years from the date of the filing of the claim but before the convening of the next regular session of the General Assembly.

Under the defendant's interpretation of § 4-159a, the claims commissioner would be required to cease work on a claim at the two year mark, even though it may be several months before the convening of the next regular session of the General Assembly. As the claims commissioner noted in her decision denying the defendant's motion to vacate, "[a]lthough a written stipulation could expire at any point in the year, the report to the legislature is made only once per year, within five days of the convening of the regular session. . . . Thus, a claim could conceivably be forced into inactivity for a full year or more depending on the timing of the expiration of the stipulation and the resolution by the legislature." (Citation omitted.) We decline to interpret § 4-159a in a manner that would lead to such an unwarranted delay in the resolution of claims before the claims commissioner. See *Fairlake Capital, LLC* v. *Lathouris*, 214 Conn. App. 750, 765, 281 A.3d 1240 (2022) (declining to interpret statute in manner that would lead to absurd consequences or bizarre results). The defendant, therefore, cannot prevail on this claim.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] "Although the denial of a motion to dismiss generally is an interlocutory ruling that does not constitute an appealable final judgment, the denial of a motion to dismiss filed on the basis of a colorable claim of sovereign immunity is an immediately appealable final judgment." (Internal quotation marks omitted.) *Dudley* v. *Commissioner of Transportation*, 191 Conn. App. 628, 630 n.3, 216 A.3d 753, cert. denied, 333 Conn. 930, 218 A.3d 69 (2019).

[2] We note that § 4-160 has been amended by the legislature since the

events underlying the present case. See Public Acts 2019, No. 19-182, § 4; Public Acts 2021, No. 21-91, § 6; Public Acts 2022, No. 22-37, §§ 3, 4. Pursuant to the 2021 amendments, subsection (b) of § 4-160 is now subsection (f). In this opinion, our references to § 4-160 are to the 2017 revision of the statute.

[3] Although § 4-159a was the subject of an amendment in 2022; see Public Acts 2022, No. 22-79, § 2; that amendment has no bearing on this appeal. For simplicity, we refer to the current revision of the statute.

[4] The plaintiff contends that this court lacks subject matter jurisdiction to consider any claim related to the claims commissioner's procedures in waiving sovereign immunity because the claims commissioner performs a legislative function reviewable only by the General Assembly. Although we agree that the claims commissioner "performs a legislative function directly reviewable only by the General Assembly"; (internal quotation marks omitted) *D'Eramo* v. *Smith*, 273 Conn. 610, 618, 872 A.2d 408 (2005); the defendant in the present case "is not attempting to appeal from a decision by the claims commissioner and is not asking the court to substitute its views for the claims commissioner's discretionary legislative determination as to whether sovereign immunity should be waived." Id., 619. The issues raised by the defendant, rather, require this court to interpret the relevant statutes to determine whether the claims commissioner was authorized to grant the plaintiff permission to sue. "Statutory interpretation is a quintessentially judicial function and this court has never hesitated to construe a statute to determine whether it constitutes a waiver of sovereign immunity." Id. We conclude, therefore, that we have jurisdiction to consider the defendant's claims.

[5] The plaintiff previously had provided a letter from Stephen J. Nelson, the District (Chief) Medical Examiner for the Tenth Judicial Circuit of Florida, opining that the actions of the staff at the institute contributed causally to the decedent's death.

[6] Although the claims commissioner's decision is dated April 22, 2017, the decision was not sent to the parties until July 10, 2017.

[7] The trial court also rejected the defendant's claim that the Middletown Probate Court did not have jurisdiction to appoint the plaintiff as administrator of the decedent's estate because the decedent was not domiciled in Connecticut at the time of her death. The defendant does not challenge this portion of the trial court's decision on appeal.

[8] Section 4-160 (b) was enacted in 1998; Public Acts 1998, No. 98-76, § 1; and "[presented] a marked departure from the discretion afforded to the claims commissioner under § 4-160 (a). Indeed, the effect of § 4-160 (b) was to deprive the claims commissioner of his broad *discretionary* decision-making power to authorize suit against the state in cases where a claimant has brought a medical malpractice claim and filed a certificate of good faith. Instead, § 4-160 (b) *requires* the claims commissioner to authorize suit in all such cases. In other words, the effect of the statute was to convert a limited waiver of sovereign immunity to medical malpractice claims, subject to the discretion of the claims commissioner, to a more expansive waiver subject only to the claimant's compliance with certain procedural requirements." (Emphasis in original; internal quotation marks omitted.) *Levin* v. *State*, supra, 329 Conn. 708 n.3.

[9] General Statutes § 52-190a (a) provides in relevant part: "No civil action . . . shall be filed to recover damages [for medical malpractice] . . . unless the attorney or party filing the action . . . has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider . . . that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . ."

[10] "[T]he focus of a medical malpractice case is often a dispute involving the correct medical standard of care and whether there has been a deviation therefrom. Conversely, the focus in an action for lack of informed consent is often a credibility issue between the physician and the patient regarding whether the patient had been, or should have been, apprised of certain risks

prior to the medical procedure." *Shortell* v. *Cavanagh*, supra, 300 Conn. 389.

[11] In its memorandum of decision denying the defendant's motion to dismiss, the trial court noted that the parties were in agreement that the claim submitted to the claims commissioner was for lack of informed consent, not medical malpractice.

[12] In her ruling denying the state's motion to vacate the decision granting the plaintiff permission to sue the state, the claims commissioner concluded that, under the circumstances of this case, it would be just and equitable to permit the informed consent claim to be adjudicated with the medical malpractice claim. Specifically, the claims commissioner stated that "[t]he amended notice of claim alleges the negligent care and treatment of the decedent by the [defendant's] agents and employees when they developed and implemented the discharge plan transferring her to the [institute], which is a claim of medical negligence. In addition, the claim of lack of informed consent, while not a malpractice claim, is inextricably intertwined with the decedent's medical care and the corresponding claim of medical negligence. In order to prove both claims, the [plaintiff] must establish that the [defendant's] agents and employees knew or should have known of the history of the [institute] and the potential risks involved with the transfer of the decedent there. Separating the medical negligence and the informed consent claims would require trial of the same case twice, resulting in both the waste of judicial resources and the possibility of inconsistent outcomes, results that would be neither just nor equitable. Section 4-160 (a) authorizes the commissioner to grant permission to sue the state whenever the commissioner 'deems it just and equitable' and the claim 'presents an issue of law or fact under which the state, were it a private person, could be liable.' In these unusual circumstances, in which the claims are virtually inseparable, the commissioner concludes that the record establishes that the claim of lack of informed consent presents an issue of law or fact under which the state, were it a private person, could be liable, and that the just and equitable resolution is to permit the informed consent claim to be adjudicated with the medical malpractice claim, with which it is legally and factually intertwined."

[13] Citing *Downs* v. *Trias*, 306 Conn. 81, 90–91, 49 A.3d 180 (2012), the defendant argues that the claims commissioner's references to informed consent do not indicate an intent to authorize a separate negligence cause of action because evidence regarding lack of informed consent is relevant to the medical malpractice claim that the claims commissioner authorized, and that the plaintiff pursued. As previously stated in this opinion, we disagree with the defendant that the claims commissioner authorized only a medical malpractice claim.

We also disagree with the defendant's characterization of the present action as a medical malpractice action rather than an action for lack of informed consent. We first note that "[t]he interpretation of pleadings is always a question of law for the court . . . ." (Internal quotation marks omitted.) *BNY Western Trust* v. *Roman*, 295 Conn. 194, 210, 990 A.2d 853 (2010). Although the plaintiff alleged in the complaint that the defendant, by and through its agents, servants and/or employees, had failed "to meet the standard of care in its treatment of the decedent," the plaintiff specifically alleged that they "knew or should have known of a serious history of protocol and human rights violation complaints against [the institute]" and "failed to fully disclose to the [plaintiff] . . . or to the decedent, the nature of the treatment to be provided by [the institute], the risks and hazards of treating with [the institute], alternatives to admission to [the institute], and the anticipated benefits of treatment at [the institute]." These allegations are consistent with an action for lack of informed consent. See *Sherwood* v. *Danbury Hospital*, 278 Conn. 163, 180, 896 A.2d 777 (2006).

[14] We note that it is unclear from the record whether either party requested a hearing before the claims commissioner. The record reveals that, on December 9, 2016, the claims commissioner asked the plaintiff if he would agree to an extension of time until March 31, 2017, for a resolution of the claim. On December 15, 2016, the plaintiff agreed to such an extension. On March 22, 2017, the plaintiff notified the claims commissioner that he intended to serve a second expert witness report by April 22, 2017, relating to the issue of informed consent, and he asked the claims commissioner to "reserve judgment on any motion" until that report was filed. On April 22, 2017, after the plaintiff provided this report, the claims commissioner granted the plaintiff permission to sue the state. The defendant did not argue that the authorization was invalid due to the failure of the claims commissioner to hold a hearing either in its motion to vacate the commissioner's decision or in its motion to dismiss before the trial court. Indeed, the defendant first

made this argument in a footnote in the defendant's memorandum of law in support of its motion to reargue the trial court's decision denying its motion to dismiss.

[15] Subsections (b), (c) and (d) of § 4-151 further provide, respectively, that that the claims commissioner may "call witnesses, examine and cross-examine any witness, require information not offered by the claimant or the Attorney General and stipulate matters to be argued," "administer oaths, cause depositions to be taken, issue subpoenas and order inspection and disclosure of books, papers, records and documents," and, if any person fails to respond to a subpoena, "may issue a capias . . . ."

[16] At the time of the claims commissioner's decision, this amount was $5000. It was increased to $10,000 in 2019. See Public Acts 2019, No. 19-182, § 1.

[17] Prior to 2005, General Statutes (Rev. to 2003) § 4-159 provided in relevant part: "*After hearing*, the Claims Commissioner shall make his recommendations to the General Assembly for the payment or rejection of amounts exceeding seven thousand five hundred dollars. . . ." (Emphasis added.)

Number 05-170, § 2, of the 2005 Public Acts replaced the requirement that the claims commissioner, after a hearing, make his recommendation to the General Assembly for the payment or rejection of amounts exceeding $7500 with the requirement that the claims commissioner submit all claims where payment in an amount exceeding $7500 was recommended and all claims for which a request for review had been filed. As so revised, General Statutes (Supp. 2006) § 4-159 provided in relevant part: "(a) Not later than five days after the convening of each regular session and at such other times as the speaker of the House of Representatives and president pro tempore of the Senate may desire, the Claims Commissioner shall submit to the General Assembly (1) all claims for which the Claims Commissioner recommended payment of a just claim in an amount exceeding seven thousand five hundred dollars . . . and (2) all claims for which a request for review has been filed . . . together with a copy of the Claim[s] Commissioner's findings and the hearing record of each claim so reported. . . ."

We note that § 4-159 currently requires the claims commissioner to submit to the General Assembly all claims for which the recommended payment of a just claim exceeds $35,000 and all claims for which a request for review has been filed. See Public Acts 2019, No. 19-182, § 3.

[18] In 2019, § 4-160 (a) was amended to include the following language: "Whenever a person files a claim that exclusively seeks permission to sue the state, the Claims Commissioner may hold a hearing on the sole issue of the state's liability. During such hearing, the state may present as an affirmative defense the claimant's lack of damages. The Claims Commissioner may prescribe rules pursuant to section 4-157 concerning a hearing that is held solely to address the state's liability under this subsection." Public Acts 2019, No. 19-182, § 4.

This language was amended again in 2021 to provide in relevant part: "The Claims Commissioner may grant permission to sue for a claim that exclusively seeks permission to sue the state based solely on the notice of claim or any supporting evidence submitted pursuant to section 4-147 . . . or both, without holding a hearing, upon the filing by the attorney or pro se claimant of (1) a motion for approval to assert a claim without a hearing, requesting a ruling based solely on the notice of the claim and any supporting evidence submitted under the provisions of this chapter, and (2) an affidavit attesting to the validity of a claim. . . ." Public Acts 2021, No. 21-91, § 6.

In light of the 2021 amendment, the defendant argues that a hearing was required under the language of § 4-160 (a) in effect when this case was filed, and that the 2021 amendment clarifies that a hearing is not required as long as the motion and affidavit are filed. We disagree. Although we agree that the 2021 amendment provides clarity regarding when the claims commissioner may hold a hearing pursuant to § 4-160 (a), we disagree with the defendant, for the reasons previously stated, that a hearing was required pursuant to the earlier revision of the statute.

[19] In its brief, the defendant argues that the claims commissioner's failure to comply with the two year time period specified in § 4-159a deprived the claims commissioner of jurisdiction to act. The court's decision, however, framed the issue in terms of whether the claims commissioner had authority to waive sovereign immunity because the decision was rendered outside the time specified in § 4-159a. The court indicated that in the absence of a valid waiver of sovereign immunity, it would lack subject matter jurisdiction over the action. We agree with the trial court's framing of this issue. See *Nelson* v. *Dettmer*, supra, 305 Conn. 662 ("[r]esolution of the issue concern-

ing the trial court's subject matter jurisdiction requires us to determine whether the commissioner had statutory authority to act"); see generally *Reinke* v. *Sing*, 328 Conn. 376, 382, 179 A.3d 769 (2018) (discussion regarding court's subject matter jurisdiction and authority to act).

[20] We note that in 2022, § 4-159a (a) was amended to include the following language: "(2) The report submitted by the Claims Commissioner . . . shall minimally include (A) an explanation as to why the claim has not been disposed of, and (B) the date by which a decision will be rendered on the claim in the event the General Assembly were to grant the Office of the Claims Commissioner an extension of time to dispose of the claim." See Public Acts 2022, No. 22-79, § 2.

[21] By contrast, however, General Statutes § 4-154 (a) provides in relevant part that, "[n]ot later than ninety days after hearing a claim, the Claims Commissioner shall render a decision as provided in subsection (a) of section 4-158. . . ."