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ERICA LAFFERTY ET AL. *v.* ALEX EMRIC JONES ET AL.

WILLIAM SHERLACH *v.* ALEX JONES ET AL.

WILLIAM SHERLACH ET AL. *v.* ALEX EMRIC JONES ET AL.

(AC 45401)

Elgo, Suarez and Seeley, Js.

Syllabus

The plaintiffs, a first responder, school staff, and certain family members of those killed in the mass shooting at Sandy Hook Elementary School, commenced separate actions, which the trial court consolidated, seeking to recover damages for, inter alia, invasion of privacy, arising out of statements made by the defendant J on his radio show that advanced certain conspiracy theories about the shooting. The trial court entered a default against J as a sanction for failing to fully and fairly comply with the plaintiffs' discovery requests, and the cases proceeded to a trial for a hearing in damages. Prior to the hearing in damages, the plaintiffs properly noticed a videotaped deposition of J. On the day prior to the first scheduled deposition day, J filed a motion for a protective order, asserting that he was under the care of a physician for medical conditions, which required immediate testing, and that, in his physician's opinion, he should not sit for the scheduled deposition. On the same day, the trial court held an emergency hearing on J's motion, which J did not attend, and his counsel submitted a letter from a physician, under seal, for an in camera review. After the trial court conducted an in camera review of the letter, the trial court stated that the letter was "bare bones" and lacked many elements typical of similar medical letters from physicians. The trial court also noted that the letter stated that J was remaining home under the doctor's supervision. The plaintiffs' counsel argued that J was not, in fact, at home under his physician's care but, instead, was broadcasting his radio program live during the hearing. Thereafter, the trial court denied J's motion for a protective order and ordered J's counsel to disclose the location of J's radio programming broadcast that was aired during the court's hearing of the motion for a protective order. The next day, J's counsel filed a notice with the trial court that J had conducted his live radio broadcast from his studio, which was not located in his home. The plaintiffs then filed an emergency motion for an order to require J to appear for the second day of the scheduled deposition on penalty of civil contempt and requested an order for a capias. The trial court held a hearing on the plaintiffs' motion on the same day, allowing J to file an opposition to the plaintiffs' emergency motion and to submit additional medical documents by the end of the day. J's counsel responded by filing an objection to the plaintiffs' emergency motion and a renewed motion for a protective order with an attached affidavit from a physician and a letter from another physician, recommending that J not attend the deposition. Subsequently, the trial court declined to issue a capias, but ordered J to appear at the second scheduled day of deposition and denied J's renewed motion for a protective order, reasoning that J had not demonstrated that his alleged medical conditions were serious enough to excuse his attendance. Despite the trial court's order, J did not attend the deposition, and the plaintiffs thereafter filed a motion for civil contempt against J, to which he filed an objection. After a hearing, the trial court granted the plaintiffs' motion, finding, by clear and convincing evidence, that J, wilfuly and in bad faith, violated, without justification, several court orders requiring his presence at the scheduled depositions. The trial court ordered J to pay conditional daily fines until he attended the deposition and further ordered that J had the ability to purge the contempt when he completed two full days of depositions. Thereafter, J attended two days of deposition and the court granted his motion for

an order declaring that he be purged of contempt and for the clerk to return the fines he had paid. On J's appeal to this court, *held*:

1. The trial court did not abuse its discretion in holding J in contempt of court for failing to appear at the scheduled deposition: although J's counsel provided the trial court with an affidavit and two letters from his physicians attesting that he was too ill to attend the deposition, the court, contrary to J's claim, did not improperly substitute its judgment regarding J's health for that of his physicians, as the undisputed fact that J chose to host a radio broadcast from his studio at the time of the scheduled hearing on his motion for a protective order significantly undercut his claim that he was too ill to attend the deposition; moreover, the court reasonably inferred, on the basis of the facts before it, that J's failure to attend his scheduled deposition was wilful.
2. J could not prevail on his unpreserved claim that the trial court violated his due process rights by not requesting additional information from his physicians regarding his medical condition prior to holding him in contempt of court: J failed to provide this court with any persuasive authority to support his argument that, once the trial court found the representations of his physicians to be lacking or tendered in bad faith, it was obligated to affirmatively seek additional evidence concerning his medical condition prior to making a determination as to whether he wilfully disregarded the court's orders to attend a deposition; moreover, the record sufficiently demonstrated that J was provided with sufficient due process of law regarding the court's contempt finding, as he was allowed a meaningful opportunity to be heard during the contempt hearing, was represented by counsel during the proceeding, and was given the opportunity to submit additional evidence, which he failed to do, and the court did not preclude J from seeking review of additional information under seal in an in camera review.

Argued September 18—officially released December 19, 2023

Procedural History

Action, in the first case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield, action, in the second case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Bellis*, *J.*, granted the plaintiff's motion to add Robert Parker as a plaintiff, and action, in the third case, to recover damages for, inter alia, invasion of privacy, and for other relief, brought to the Superior Court in the judicial district of Fairfield; thereafter, the cases were consolidated and transferred to the Complex Litigation Docket, judicial district of Waterbury, where, in the first case, Jennifer Hensel, executrix of the estate of Jeremy Richman, was substituted as a plaintiff and withdrew her claims against the defendants; thereafter, in the first case, Richard Coan, trustee of the bankruptcy estate of the named plaintiff, was substituted as a plaintiff; subsequently, the court, *Bellis*, *J.*, granted the plaintiffs' motion for civil contempt against the named defendant in each case and rendered judgment thereon, from which the named defendant et al. in each case appealed to this court; thereafter, this court dismissed the appeal as to the defendant Infowars, LLC, et al. *Affirmed.*

Norman A. Pattis, for the appellants (named defendant in each case).

Alinor C. Sterling, for the appellees (plaintiff David Wheeler et al. in the first case, named plaintiff in the

second case, and named plaintiff et al. in the third case).

Opinion

SUAREZ, J. The defendant Alex Jones appeals from the judgments of the trial court, *Bellis*, *J.*, granting the joint motion for contempt filed by the plaintiffs[1] for the defendant's violation of the court's orders to attend a deposition scheduled on March 23 and 24, 2022. On appeal, the defendant claims that the court (1) abused its discretion by holding him in contempt of court for failing to appear at his deposition after the court was provided an affidavit and two letters from his physicians attesting that he was too ill to attend the deposition, and (2) violated his due process rights by not requesting additional information from his physicians regarding his medical condition prior to holding him in contempt.[2] We affirm the judgments of the trial court.

The following facts, as found by the court or otherwise undisputed in the record, and procedural history are relevant to this appeal. On December 14, 2012, Adam Lanza entered Sandy Hook Elementary School (Sandy Hook), and thereafter shot and killed twenty first-grade children and six adults, in addition to wounding two other victims who survived the attack. In the underlying consolidated actions, the plaintiffs, consisting of a first responder, who was not a victim of the Sandy Hook shooting but was depicted in the media following the shooting, and the immediate family members of five of the children, one educator, the principal of Sandy Hook, and a school psychologist who were killed in the shooting, brought these separate actions against the defendant. See footnote 1 of this opinion.

In the complaints, the plaintiffs alleged that the defendant hosts a nationally syndicated radio program and owns and operates multiple Internet websites that hold themselves out as news and journalism platforms. The plaintiffs further alleged that the defendant began publishing content related to the Sandy Hook shooting on his radio and Internet platforms and circulated videos on his YouTube channel. Specifically, the plaintiffs alleged that, between December 19, 2012 and June 26, 2017, the defendant used his Internet and radio platforms to spread the message that the Sandy Hook shooting was a staged event to the millions of his weekly listeners and subscribers. The complaints each consisted of five counts, including causes of action sounding in invasion of privacy by false light, defamation and defamation per se, intentional infliction of emotional distress, negligent infliction of emotional distress, and a violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq. On November 15, 2021, the court entered a default against the remaining defendants as a sanction for failing to fully and fairly comply with the plaintiffs' discovery requests. The cases proceeded to trial for a hearing in damages, and, during the pendency of this appeal, a verdict was reached and a judgment was rendered in each case in

favor of the plaintiffs.[3]

On March 11, 2022, prior to the hearing in damages, the plaintiffs properly noticed a videotaped deposition of the defendant to take place in his hometown of Austin, Texas. By agreement of the parties, the deposition was to be conducted on March 23 and 24, 2022. On March 22, 2022, the defendant filed a motion for a protective order, asserting that he was under the care of a physician for medical conditions that required immediate testing and that, in his physician's opinion, he should not sit for the scheduled deposition. On the same day, the court held an emergency hearing on the defendant's motion, during which the defendant's counsel, on behalf of the defendant who was not present for the hearing, submitted a letter from a physician, under seal, for an in camera review.[4] After the court conducted an in camera review of the letter, the court stated, on the record, that it had "never seen [a medical letter] as bare bones as this one. This [letter] does not have any letterhead. It had no address on it. . . . It doesn't indicate what kind of doctor it is. . . . The letter fails to address the length of the patient/physician relationship. It does not say that the physician examined [the defendant] or evaluated [him]. . . . [T]his is not actually a medical record, it is just this bare bones note." In addition, the court also noted that the physician's letter, dated March 21, 2022, stated that the defendant " 'is remaining home' under the doctor's supervision." However, during the court proceeding, the plaintiffs' counsel argued that the defendant was not, in fact, at home under his physician's care but, instead, "[the defendant] appears to be on the air right now broadcasting his live show . . . ." The court subsequently denied the defendant's motion for a protective order and issued an order for the defendant's attorney to disclose where the defendant's March 22, 2022 broadcast took place. The defendant's counsel later conceded that this denial of the defendant's motion for a protective order constituted a court order for the defendant to appear for the March 23 and 24, 2022 deposition.

On March 23, 2022, the defendant's attorney filed a notice with the court stating that, while the March 22, 2022 hearing on his motion for a protective order was taking place, the defendant simultaneously conducted his March 22, 2022 broadcast live at his studio in Austin, Texas. The defendant's attorney also represented that the defendant's studio was not located at his home. The plaintiffs further filed an emergency motion for an order to require the defendant to appear for the March 24, 2022 deposition on penalty of civil contempt and requested an order for a capias.[5] On the same day, the court held a hearing and allowed the defendant to file an opposition to the plaintiffs' emergency motion and to submit additional medical documents by the end of the day. The defendant responded, that day, by filing an objection to the plaintiffs' emergency motion, and a

renewed motion for a protective order with an attached affidavit from Dr. Benjamin Marble and a letter from Dr. Amy Offutt,[6] recommending that the defendant not attend the deposition.[7]

At the conclusion of the hearing, the court issued two orders on the plaintiffs' motion. The court declined to issue a capias but ordered the defendant to appear at the March 24, 2022 deposition. The court also denied the defendant's renewed motion for a protective order and reasoned that the defendant had not demonstrated that his alleged medical conditions were serious enough to excuse his attendance at his deposition. The court explained that "the [defendant's] medical issues, while potentially serious, are not currently serious enough to either require his hospitalization, or convince him to stop engaging in his broadcasts. [The defendant] cannot unilaterally decide to continue to engage in his broadcasts but refuse to participate in a deposition. . . . [If the defendant] develops escalating symptoms such that he is hospitalized, that change in circumstances would excuse his attendance at the court-ordered deposition."

On March 24, 2022, the plaintiffs filed a notice with the court indicating that the defendant did not attend the deposition scheduled for that day. On March 25, 2022, the plaintiffs filed a motion for civil contempt against the defendant.[8] On March 28, 2022, the defendant filed an objection to the plaintiffs' motion for contempt. On March 30, 2022, the court held a hearing on the plaintiffs' motion for contempt and, in an oral decision, granted the plaintiffs' motion, stating that "the court finds by clear and convincing evidence that the defendant . . . wilfully and in bad faith violated, without justification, several clear court orders requiring his attendance at his depositions on March [23] and March [24]. That is, the court finds that [the defendant] intentionally failed to comply with the orders of the court and that there was no adequate factual basis to explain his failures to obey the orders of the court." The court further ordered that the defendant "has the ability to purge the contempt . . . when [he] completes two full days of depositions at the office of [the] plaintiffs' counsel in Bridgeport. [The defendant] is to pay conditional fines of $25,000 each weekday beginning on Friday, April 1st, increasing by $25,000 per weekday . . . and it will be suspended on each day that [the defendant] successfully completes a full day's deposition . . . ."

On March 31, 2022, pursuant to General Statutes § 52-265a, the defendant filed a petition for an expedited public interest appeal of the trial court's contempt finding with our Supreme Court and an emergency motion to stay the court's order holding him in contempt until after our Supreme Court ruled on his petition.[9] This appeal followed. On March 31, 2022, the defendant also filed an emergency motion to stay the trial court's

orders, which the trial court denied. On April 1, 2022, the defendant filed, with this court, an emergency motion for review of the trial court's denial of his request to stay the trial court's orders pursuant to Practice Book § 61-14. On April 4, 2022, this court denied the defendant's emergency motion for review of the trial court's denial of his request for a stay. On April 5 and 6, 2022, the defendant appeared for a deposition at the offices of the plaintiffs' counsel in Bridgeport, Connecticut. On April 6, 2022, the defendant filed a motion for an order declaring that he be purged of contempt and for the clerk to return the paid fines he had deposited at the clerk's office. On April 14, 2022, the court granted the defendant's motion and directed the clerk to return $75,000 in fines to the defendant.[10]

I

The defendant claims that the court abused its discretion by holding him in contempt of court for failing to appear at his deposition after his counsel provided the court with an affidavit and two letters from his physicians attesting that he was too ill to attend the deposition.[11] Specifically, the defendant argues that the court improperly substituted its judgment about his health for that of his physicians. We are not persuaded.

"We begin by setting forth the legal principles relevant to this claim. Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. . . . If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Internal quotation marks omitted.) *Scott* v. *Scott*, 215 Conn. App. 24, 38–39, 282 A.3d 470 (2022). "Under the abuse of discretion standard, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the

questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks omitted.) *Mazza* v. *Mazza*, 216 Conn. App. 285, 297–98, 285 A.3d 90 (2022), cert. granted, 346 Conn. 904, 287 A.3d 600 (2023).

The defendant does not challenge the court's findings that its orders requiring him to attend the March 23 and 24, 2022 deposition were clear and unambiguous, or that he did not attend the deposition.[12] Therefore, we focus our analysis on the sole issue of whether the court abused its discretion in determining that the defendant's violation of the court's orders was wilful.

"Whether a party's violation was wilful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court. . . . Without a finding of wilfulness, a trial court cannot find contempt and, it follows, cannot impose contempt penalties." (Internal quotation marks omitted.) *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 69, 290 A.3d 825 (2023).

In the present case, the court denied the defendant's motions for a protective order after reviewing, among other evidence, a letter and an affidavit from Dr. Marble, and a letter from Dr. Offutt, recommending that the defendant not attend the deposition due to a medical condition. The initial letter from Dr. Marble indicated that the defendant was "remaining home" under the care of his physician. The plaintiffs' counsel, however, alerted the court that the defendant was broadcasting his radio program live from his studio on March 22, 2022, when he purportedly was at home under the care of his physician. After the court issued an order requiring the defendant's attorney to disclose where the defendant's March 22 broadcast took place, the defendant's attorney confirmed that the defendant was, in fact, engaging in his live broadcasts from his studio at the same time his attorney was arguing in court that he was too ill to attend his deposition. In its denial of the defendant's motion for a protective order, the court reasoned that "the [defendant's] medical issues, while potentially serious, are not currently serious enough to either require his hospitalization, or convince him to stop engaging in his broadcasts. [The defendant] cannot unilaterally decide to continue to engage in his broadcasts, but refuse to participate in a deposition." We agree with the trial court that the undisputed fact that the defendant chose to host a live radio broadcast from his studio at the time of the scheduled hearing on his motion for a protective order significantly undercuts his claim that he was too ill to attend the deposition. We conclude that the court reasonably inferred, on the basis of the facts before it, that the defendant's failure to attend his deposition on March 23 and March 24, 2022, was wilful. Accordingly, the court did not abuse

its discretion in finding the defendant in contempt of its orders.

II

The defendant next claims, for the first time on appeal, that the court violated his due process rights by not requesting additional information from his physicians regarding his medical condition prior to holding him in contempt.[13] Specifically, the defendant argues that, if the court suspected that his physicians' letters were tendered in bad faith, "the [c]ourt has a responsibility absent exigent circumstances to tread with caution" when evaluating a party's health and a court should not make a determination as to whether a party's failure to abide by a court order was wilful "without [making a] further inquiry." We are not persuaded.

The defendant's claim that he did not receive the process that he was due focuses on his belief that the court improperly discredited the medical opinions of Dr. Marble and Dr. Offutt "on their face, ascribing the general disdain it felt toward [the defendant]—as evidenced by its prior rulings on sanctions—to his physicians. In any other context, the result would be, and should be even in this context, regarded as a shocking departure from judicial norms." The defendant's argument is not a model of clarity, but he appears to suggest that the court improperly rejected the "medical evidence [that he] tendered in the face of exigency" without having conducted a deeper inquiry. He argues that, "[i]f the [medical] letters were tendered in bad faith, the court could take what steps were necessary to vindicate the authority of the court in [an] orderly process and by the use of competent evidence." The defendant states that, "[i]f the trial court had reasons for stating that Dr. Marbles' instructions were not in fact made, or were not legitimate . . . then the trial court should have, and could have, requested additional information from the physicians. . . . The defendant would then have been in familiar territory sculp[t]ed by such cases as *State* v. *Esposito*, [192 Conn. 166, 179–80, 471 A.2d 949 (1984)], which provide interested parties the opportunity either to disclose otherwise confidential medical information, or face consequences."[14]

Initially, we note that the defendant's constitutional claim is unpreserved, as he did not adequately raise the claim before the trial court. Although he has adequately briefed the constitutional claim in his principal brief, he has failed to provide this court with any analysis of the reviewability of the unpreserved claim to invoke any extraordinary type of review, including review under the bypass doctrine set forth in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). The defendant's failure to include any analysis of the reviewability of his unpreserved constitutional claim in his brief, however, does not bar our review of

his claim under *Golding*.[15] See *State* v. *Elson*, 311 Conn. 726, 755, 91 A.3d 862 (2014). Further, we are persuaded that the defendant's analysis of his due process claim satisfies the first two prongs of *Golding* because the record is adequate for our review and a constitutional right is involved. Therefore, we turn to the third prong of *Golding* and consider whether he has satisfied his burden of demonstrating that a constitutional violation exists and deprived him of a fair trial.

"It is beyond question that due process of law . . . requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. . . . Adjudication of a motion for civil contempt implicates these constitutional safeguards." (Internal quotation marks omitted.) *Barr* v. *Barr*, 195 Conn. App. 479, 484, 225 A.3d 972 (2020). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (Internal quotation marks omitted.) *Mathews* v. *Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

The defendant has not provided us with any persuasive authority to support his argument that, because the court found the representations of his physicians to be lacking, it was obligated to affirmatively seek additional evidence concerning the defendant's medical condition prior to making a determination as to whether he wilfully disregarded the court's orders to attend the deposition. We conclude that the defendant's novel claim requires scant analysis.[16]

In the present case, the court held a hearing on the plaintiffs' motion for contempt and provided the defendant with an opportunity to be heard. The defendant was represented by counsel at the contempt hearing. Because of the recent prior hearings concerning the defendant's duty to attend his deposition, the court had evidence before it that was relevant to the contempt hearing. At the beginning of the contempt hearing, however, the court gave the defendant an opportunity to provide additional evidence when it asked the defendant's attorney, "Are you presenting any new evidence today or are we proceeding on what's been submitted to date?" The defendant's attorney stated that "as far as what [we are] prepared to do today, we were proceeding on [what has] been submitted." During the contempt hearing, the defendant's attorney requested additional time to gather evidence and to decide whether to prepare a witness for the hearing, which the court addressed by noting, "[this hearing] was scheduled one week ago. . . . I never received any motion for continuance, formally or informally, from any party indicating that more time was needed to arrange for witness testi-

mony or . . . other evidence." The defendant's attorney thereafter did not ask the court for a continuance and did not suggest that the defendant wished to submit any further evidence beyond what had been submitted.

Therefore, the record reflects that the defendant was provided sufficient due process of law regarding the court's contempt finding, as he was allowed a meaningful opportunity to be heard during the contempt hearing, was represented by counsel during the proceeding, and was given the opportunity to submit additional evidence. The court did not in any way preclude the defendant from presenting additional medical information to the court or from asking the court to review such information under seal in an in camera review, if he wished to do so. Instead, the defendant, who had notice that the court was considering the plaintiffs' motion for contempt, chose not to submit any additional evidence. As stated by the United States Supreme Court, "we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw* v. *United States*, 554 U.S. 237, 243, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008). Thus, our adversarial system places the responsibility on the parties and their counsel, rather than on the court, to frame the issues and to submit additional information on behalf of their client if they deem it necessary.[17]

As we stated in part I of this opinion, the court reasonably exercised its discretion by concluding that the undisputed evidence established that the defendant, by going to work, disregarded the medical opinions that he had submitted to the court, and, therefore, his failure to comply with the court's orders to attend his deposition reflected a wilful disregard for the court's authority. The defendant's due process claim fails the third prong of *Golding* because the constitutional violation does not exist.

The judgments are affirmed.

In this opinion the other judges concurred.

[1] There are three underlying actions. In the first action, the plaintiffs are Erica Lafferty, David Wheeler, Francine Wheeler, Jacqueline Barden, Mark Barden, Nicole Hockley, Ian Hockley, Jennifer Hensel, Jeremy Richman, Donna Soto, Carlee Soto-Parisi, Carlos Soto, Jillian Soto, and William Aldenberg. On November 29, 2018, the plaintiffs moved to consolidate the second and third cases; *Sherlach* v. *Jones*, Superior Court, judicial district of Waterbury, Docket No. CV-18-6046437-S, and *Sherlach* v. *Jones*, Superior Court, judicial district of Waterbury, Docket No. CV-18-6046438-S; with their action pursuant to Practice Book § 9-5. William Sherlach is a plaintiff in the second and third cases and Robert Parker is a plaintiff in the third case. On December 17, 2018, the court granted the motion to consolidate the cases. Jeremy Richman died while this action was pending, and, on June 7, 2021, the court granted the plaintiffs' motion to substitute Jennifer Hensel, executrix of the estate of Jeremy Richman, as a plaintiff in his place; however, on June 8, 2021, Jennifer Hensel, in her capacity as executrix of estate of Jeremy Richman, withdrew her claims against the defendants. On October 20, 2021, the court granted Erica Lafferty's motion to substitute Richard Coan, trustee of the bankruptcy estate of Erica L. Garbatini, in her place as a plaintiff in this case. All references in this opinion to the plaintiffs are to the remaining plaintiffs and do not include Erica Lafferty, Jeremy Richman, or Jennifer

Hensel, as executrix of the estate of Jeremy Richman.

In the underlying actions, the plaintiffs originally named the following persons and entities as defendants: Alex Emric Jones, Wolfgang Halbig, Cory T. Sklanka, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC, Prison Planet TV, LLC, Genesis Communications Network, Inc., and Midas Resources, Inc. Throughout the course of the litigation, the plaintiffs have withdrawn their underlying actions against Wolfgang Halbig, Cory T. Sklanka, Genesis Communications Network, Inc., and Midas Resources, Inc., and, therefore, they are not participating in this appeal. On May 31, 2022, this court, sua sponte, ordered the parties to file memoranda giving reasons, if any, as to why this appeal should not be dismissed for lack of aggrievement as to any remaining defendant except Jones. On June 16, 2022, after reviewing the memoranda submitted by the parties, this court dismissed the appeal for all remaining defendants, except Jones, for lack of aggrievement. All references to the defendant in this opinion are to Jones only.

[2] We note that the defendant briefed his claim on appeal as "whether the trial court abused its discretion and relied on clearly erroneous findings of fact when, after reviewing sworn statements from his physicians attesting that [the defendant] was too ill to attend a deposition, the trial court ordered [the defendant] to appear nonetheless; when [the defendant] obeyed his doctor's order, the court held [the defendant] in contempt absent any real findings of fact?" We interpret his claim to be twofold: the first claim being that the court abused its discretion in determining that his violation of the court's orders to attend the deposition was wilful, and the second claim raising a due process violation due to the court not requesting additional information from his physicians at the contempt hearing. We will address these claims in that order.

[3] The present appeal relates to the plaintiffs' joint motion for contempt only. A separate appeal on the merits of the consolidated cases is currently pending before this court.

[4] The letter submitted under seal was a note from the defendant's physician, Benjamin Marble. The court marked the sealed letter as an exhibit and conducted an in camera review of it. The defendant has not authorized the letter to be part of the court's open file. We have reviewed the contents of the letter, in camera, as part of our review of the record.

[5] "A capias is a vehicle to compel attendance at a judicial proceeding. See *Pembaur* v. *Cincinnati*, 475 U.S. 469, 472 n.1, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986) ('[a] capias is a writ of attachment commanding [an] official to bring a subpoenaed witness who has failed to appear before the court to testify and to answer for civil contempt'); *DiPalma* v. *Wiesen*, 163 Conn. 293, 298, 303 A.2d 709 (1972) ('[i]f one is not warranted in refusing to honor a subpoena and it is clear to the court that his absence will cause a miscarriage of justice, the court [is permitted to] issue a capias to compel attendance'). As one court has noted, 'it is an extraordinary measure' . . . that involves the arrest of the witness in question. See General Statutes § 52-143 (e)." (Citation omitted.) *State* v. *Shawn G.*, 208 Conn. App. 154, 176–77, 262 A.3d 835, cert. denied, 340 Conn. 907, 263 A.3d 822 (2021).

[6] The defendant represents that Dr. Offutt's letter was a sworn statement, signed under oath. Dr. Offutt's letter, however, only includes the notary's stamp of acknowledgement and is not a verification that the letter is a sworn statement. "[A]n acknowledgement is a public declaration or a formal statement of the person . . . that the [signing of the document] was his free act and deed. . . . A verification, on the other hand, is a sworn statement of the truth of the facts stated in the [document] verified. It always involves the administration of an oath." (Internal quotation marks omitted.) *Stone-Krete Construction, Inc.* v. *Eder*, 280 Conn. 672, 680, 911 A.2d 300 (2006); see also General Statutes § 3-94a (1) and (3). Dr. Offutt's letter does not contain a jurat; see General Statutes § 3-94a (1) and (3); or a verification that the notary administered an oath; see General Statutes § 3-94a (1), (3) and (4); and, therefore, the letter is not a sworn statement.

[7] The affidavit from Dr. Marble, dated March 23, 2022, which also includes information on his background and credentials, states in relevant part: "On March 21, 2022, I was so alarmed by my personal observations of [the defendant's] physical health that I conducted a physical examination of him. . . . Based on that assessment, I immediately advised [the defendant] to go to an [e]mergency [r]oom or call 911. . . . [The defendant] refused to do so. . . . I then advised him to stay at home and rest until further medical testing could be conducted. It is my understanding that [the defendant] has not remained home as advised. . . . I then arranged for [the defendant] to have a comprehensive medical workup, to be conducted by Dr. Amy Offutt—of Marble Falls, Texas. . . . [The defendant's] medical testing with Dr.

Offutt was scheduled for this morning—March 23, 2022. . . . Based on my communications with Dr. Offutt's office, subsequent to [the defendant's] initial evaluation and testing, I stand by my recommendation that [the defendant] neither attend a deposition nor return to work until the test results are completed and returned. . . . In my opinion [the defendant] stands at serious risk of harm if he submits to stressors."

In a letter, dated March 23, 2022, Dr. Offutt made the following representations: "This morning, I had a medical visit with [the defendant] for acute medical issues that were time-sensitive and potentially serious. We started a comprehensive medical evaluation and he has labs that are pending to assess his . . . status. I have asked him to avoid too much stress until we have results from the blood tests this morning. I also gave him [emergency room] precautions if he develops escalating symptoms. As a result of these findings, I am advising him not to attend court proceedings for now."

[8] We note that, in the plaintiffs' motion for contempt, they alleged that, on March 25, 2022, the defendant went back on the air from his studio and told his audience that he had been suffering from an emergent medical condition that turned out to be "a blockage in his sinus," and now that the blockage has cleared, he "feels like a new person."

[9] The record reflects that, on the day the defendant filed the petition at the Supreme Court, the clerk returned his petition without consideration of its merits. The defendant did not subsequently file anything further regarding this public interest appeal.

[10] We do not consider this appeal to be moot even though the defendant has been purged of contempt and the fines have been returned because the contempt finding may have collateral consequences for the defendant in the future. See *Medeiros* v. *Medeiros*, 175 Conn. App. 174, 196, 167 A.3d 967 (2017) ("[w]e recognize that an appeal challenging the validity of a court's finding of contempt, even when purged by making payments, is not moot because a contempt finding has collateral consequences in that it may impact the contemnor's future status in the action").

[11] The defendant also argues that the court "relied on clearly erroneous findings of fact" when it found him in contempt after reviewing medical evidence from his physicians. Although it is unclear exactly what erroneous findings of fact the defendant believes the court relied on when making its contempt finding, we consider this to be in reference to the court's conclusion that his noncompliance was wilful.

[12] At oral argument before this court, the defendant's appellate counsel acknowledged that the trial court's orders were clear and unambiguous and that the defendant did not attend the deposition.

[13] In his appellate brief to this court, the defendant specifically describes the gravamen of his due process claim to be that the trial court cannot "run roughshod over the unrebutted advice of a physician," and to do so "places litigants in the uncomfortable position of having to choose between their health and a judge's ire." Further, "[b]efore a judge makes a decision that countermands a doctor's orders, minimal due process requires that something more than what took place here occur."

[14] In *Esposito*, our Supreme Court held that, "in certain circumstances, the privileged psychiatric records of a witness testifying for the state are subject to in camera review by the trial court so that the court can determine whether the accused's constitutional right of confrontation entitles him to access to those records; if the witness refuses to authorize such review, the witness' testimony generally must be stricken." *State* v. *Fay*, 326 Conn. 742, 744, 167 A.3d 897 (2017).

[15] "Under *Golding*, a party can prevail on a claim of constitutional error not preserved at trial only if all of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail. [We are] free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances. . . . The test set forth in *Golding* applies in civil as well as criminal cases." (Internal quotation marks omitted.) *Tilsen* v. *Benson*, 347 Conn. 758, 787 n.15, 299 A.3d 1096 (2023). "The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail." (Internal quotation marks omitted.) *State* v. *Armadore*, 338

Conn. 407, 437, 258 A.3d 601 (2021).

[16] We note that the defendant's disparaging remarks concerning the fairness of the trial court, namely, the court's "high-handed rejection of [the] medical evidence" and its transfer of its "general disdain" of the defendant to his physicians, lack any support in the record.

[17] Our Supreme Court has articulated that "[t]he American legal system historically has been considered more adversarial than most, and its basic principle is that the parties, not the judge, have the major responsibility for and control over the definition of the dispute. . . . The justifications for the adversarial system are that self-interested adversaries will uncover and present more useful information and arguments to the decision maker than would be developed by the judicial officers in an inquisitorial system . . . the system preserves individual autonomy and dignity by allowing a person the freedom to make his case to the court . . . and a party who is intimately involved in the adjudicatory process and feels that he has been given a fair opportunity to present his case . . . is likely to accept the results whether favorable or not . . . . In addition, requiring parties to frame the issues promotes judicial economy, efficient resolution of disputes, and finality . . . . Finally, it has been argued that the adversarial system promotes judicial neutrality and the integrity of the adjudicative process itself . . . ." (Citations omitted; internal quotation marks omitted.) *Blumberg Associates Worldwide, Inc.* v. *Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 146–47, 84 A.3d 840 (2014). Indeed, the defendant's claim would subvert the adversarial process, by imposing an affirmative duty on the court to buttress evidence proffered by one party that it found inadequate.