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C. M. *v.* R. M.*
(AC 44911)

Bright, C. J., and Cradle and Seeley, Js.

Syllabus

The defendant father, whose marriage to the plaintiff mother previously had been dissolved, appealed to this court from the judgment of the trial court granting his postdissolution motion to move the parties' minor children from Greenwich to New York City. After a hearing, the court granted the defendant's motion on a temporary basis, pending a full evidentiary hearing. On appeal, the defendant argued that the trial court erred in finding that the proposed move constituted a relocation under the statute (§ 46b-56d) governing relocations because the move would not have a significant impact on the existing parenting plan, and, therefore, the motion should have been granted pursuant to the statute (§ 46b-56) governing typical modifications of parenting orders. *Held* that the defendant's appeal was dismissed for lack of subject matter jurisdiction as the defendant was not aggrieved by the order permitting him to move to New York City with his children: the defendant received the very relief sought in his motion, and, following a full hearing on his motion, the defendant will still not be aggrieved if the trial court permits him to relocate with the minor children to New York City on a permanent basis, pursuant to either § 46b-56 or § 46b-56d; moreover, the defendant would be aggrieved only if, at the conclusion of the full hearing and final resolution of his motion, the trial court determines that the defendant failed to meet his burden under either § 46b-56 or § 46b-56d; furthermore, under the facts and circumstances presented in this case, a trial court, after a full hearing, will not be bound by the court's previous determination when granting the motion on a temporary basis that this was a relocation case pursuant to § 46b-56d.

Argued January 5—officially released April 25, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Stanley Novack*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *Hon. Michael E. Shay*, judge trial referee, granted the defendant's motion to relocate on a temporary basis, and the defendant appealed to this court. *Appeal dismissed.*

Jon T. Kukucka, with whom, on the brief, were *Stacie L. Provencher* and *Campbell D. Barrett*, for the appellant (defendant).

Alexander J. Cuda, for the appellee (plaintiff).

Louise Truax, guardian ad litem, for the minor children.

Opinion

SEELEY, J. The defendant father, R. M., appeals from the granting of his postdissolution motion to move to New York City with the parties' two minor children, over the objection of the plaintiff mother, C. M. Despite obtaining the relief requested, the defendant filed the present appeal, claiming that the court improperly concluded that the move to New York City constituted a relocation under General Statutes § 46b-56d and that this determination requires that, in a future proceeding, the defendant satisfy a more difficult burden as compared to a motion to modify the parties' parenting plan filed pursuant to General Statutes § 46b-56. We dismiss the defendant's appeal for lack of aggrievement.

The record reveals the following factual and procedural history. On September 18, 2018, the plaintiff commenced an action to dissolve the parties' marriage of approximately ten years. On January 30, 2019, the court approved the parties' parenting plan, providing for joint legal custody of the two children of the marriage, who would reside primarily with the defendant. With respect to the plaintiff's parenting time with the children, the parenting plan required alcohol testing of the plaintiff and the imposition of certain conditions in the event of a positive test. Paragraph 20 of the parenting plan provided: "During the children's minority, in the event that any party wishes to relocate his or her residence, such party shall give the other at least ninety (90) days written notice of the intent to relocate, the address and/or specific locale of the new location, and the reason(s) for the move. Nothing herein shall be deemed to be an agreement for the children to relocate any particular distance, but rather is intended to allow the issue of relocation to be left to the time it becomes an issue." On July 17, 2019, the court rendered a judgment of dissolution, which incorporated the parties' separation agreement, which, in turn, adopted the terms of the parenting plan, subject to minor modification.

On February 11, 2020, the defendant filed a motion to modify the parenting plan. He alleged therein that the plaintiff had not participated in the required alcohol testing since at least October 24, 2019, she had failed to exercise her scheduled parenting time with little or no notice to the defendant, she had disparaged the defendant to the children, and there had been an increase of issues relating to the plaintiff's "serious mental health and substance abuse issues." The defendant further claimed that the plaintiff had been arrested on numerous felony and misdemeanor charges and had fled the country. The defendant requested, inter alia, that the court issue an order that any contact between the plaintiff and the children occur in the presence of a professional supervisor. On February 25, 2020, the court ordered that the plaintiff was not to have any contact with the children outside the presence of pro-

fessional supervision.

On February 16, 2021, the defendant filed a motion requesting that the minor children be permitted to relocate with him from Greenwich, Connecticut, to the Upper East Side of Manhattan, New York, pursuant to §§ 46b-56[1] and 46b-56d.[2] He claimed that the plaintiff had returned to Connecticut, posted bail with respect to her pending criminal charges, and presently resided in Bedford, New York. The defendant also stated that, on January 11, 2021, pursuant to paragraph 20 of the parenting plan, he had sent the plaintiff a letter indicating his intention to relocate to Manhattan. In his motion, the defendant stated: "The letter contained the specific reasons for the move. The letter stated that the proposed relocation was to foster the general well-being of the children, including but not limited to [the defendant's] belief that the parties' son would benefit from being in a more diverse environment. [The defendant] also indicated that he believes that both children would benefit from the rich cultural environment that New York City offers. On January 12, 2021, counsel for the plaintiff responded indicating that the plaintiff did not agree to the relocation." The defendant further stated in his motion that it would be in the best interests of the children to relocate to Manhattan. The defendant then requested the following relief: "(1) that the court grant his motion and determine that his move to the Upper East Side, New York, is not a relocation under . . . § 46b-56d; or, in the alternative (2) grant the motion to relocate and permit him to move to the Upper East Side of New York City; and (3) to enter such other and further relief that the court deems appropriate under the circumstances." Following the agreement of the parties, the court ordered the appointment of a guardian ad litem on February 22, 2021.

On July 20, 2021, the plaintiff filed a motion for contempt. She claimed that, at that time, she lived in Pound Ridge, New York, while the children lived and attended a private school in Connecticut. In her motion, the plaintiff alleged that on April 27, 2021, she received an email from a school located in New York City that provided information for the upcoming 2021–2022 school year. In May, 2021, the children informed the plaintiff that they would be moving to New York City and attending a new school. In July, 2021, the defendant's counsel sent an email confirming the defendant's intention to move to Manhattan and that the children had been enrolled in a school there. The plaintiff argued that the defendant had submitted an application for the children to attend the Manhattan school in April, 2021, while his February 16, 2021 motion remained pending before the court, and that his conduct regarding this move and enrollment constituted "a wilful and intentional violation of the clear and unambiguous provisions of the parties' parenting plan . . . ." She sought, inter alia, a finding of contempt and an order that the defendant

be prohibited from having the children attend the Manhattan school until the adjudication of the defendant's February 16, 2021 motion.[3]

On August 5, 2021, the court, *Hon. Michael E. Shay*, judge trial referee, held a hearing on the defendant's motion. At the outset, the guardian ad litem recounted the procedural history and identified the present issue before the court as whether the defendant's proposed move to New York City constituted a relocation for purposes of § 46b-56d.[4] The defendant's counsel argued that this move would not have a significant impact on the parenting plan and, therefore, did not implicate that statute. During a discussion with counsel, the court observed that the start of the school year was approaching and that, in order to provide stability for the children with respect to their education, a need existed for an immediate but temporary decision with respect to the school issue.

The guardian ad litem agreed with the defendant's counsel that § 46b-56d was not implicated by the defendant's proposed move to New York City and further opined that the move was in the best interests of the children. The guardian ad litem also acknowledged that the court might choose to issue a temporary order at the conclusion of the hearing, subject to a "fuller hearing down the road." The court subsequently stated: "Well, as far as [the children] are concerned . . . one of the things that, again, looking at the calendar, you know, the education is probably front and center. You know, in terms of your impression *of their best interests on a going forward basis even if it's on a short-term, you know, temporary circumstance*." (Emphasis added.)

After hearing from the guardian ad litem, both counsel presented argument, but no witnesses testified. The court stated that it was "convinced that this is in fact a relocation case" and then determined that, "in the short run," it was in the best interests of the children to remain with the defendant in New York City and attend school there.[5] The court further stated that "we're going to revisit this because [the plaintiff] has a right to reengage on a more substantial basis with these children in the long run. [The plaintiff] has that right. And I think we need to accord her that right, and the only way we do that is not, you know, making unilateral decisions. We do that certainly in this particular forum." The court referred the matter to family services for a full evaluation and observed that there could be a hearing scheduled at some point in the future.[6] The court also issued a written order stating: "Parties are referred to family services for a full evaluation. Children to go to school in Manhattan and live with [the defendant] *on a temporary basis*." (Emphasis added.)

Although he received permission from the court to move to New York City with the children, the defendant

filed the present appeal on August 24, 2021.[7] The next day, the plaintiff filed a motion to reargue pursuant to Practice Book § 11-11, which the court denied on September 6, 2021, stating, inter alia: "Although the court admonished the defendant for his unilateral action, it found that it was in the BEST INTERESTS of the minor children ON A TEMPORARY BASIS to leave undisturbed the defendant's decision to relocate with the children to New York City and to enroll the children in school there. The court finds that it had sufficient information before it to make its finding[s] that: (a) the defendant's move to New York City was a relocation within the meaning of . . . [§] 46b-56d, and (b) it was appropriate to refer the matter to Family Relations to conduct an evaluation prior to conducting a full hearing at which time, at a minimum, both parties and the guardian ad litem can have input. Among its considerations were the fact that the defendant has been the primary caregiver for the children; that the plaintiff currently resides in New York State; and that the plaintiff has had virtually no significant role in the day to day lives of the children and, in fact, has supervised visitation with them, which will not be adversely affected by the move." (Emphasis in original.)

On appeal, the defendant argues that the court's determination that the move from Greenwich to New York City constituted a relocation under § 46b-56d was improper because the existing parenting plan was not substantially impacted. He further argues that the court's determination of a relocation, as set forth in § 46b-56d, will adversely prejudice him in future hearings, as the application of § 46b-56d implicates "a different, steeper burden than a motion to modify parenting orders." The plaintiff contends, inter alia, that the appeal should be dismissed for lack of aggrievement. Specifically, she maintains that the defendant prevailed in the proceedings below in that he received the relief sought in his motion—permission to live with the minor children in Manhattan pending a full hearing—and therefore this court lacks subject matter jurisdiction to consider his appeal. In his reply brief, the defendant responds that he is aggrieved because he "is presently bound by the higher standard imposed by the relocation statute in future proceedings. . . . This is a much higher burden than a typical modification of the parenting orders pursuant to . . . § 46b-56, which only requires [the defendant] to demonstrate that the new proposed parenting plan is in the best interests of the minor children."

We begin with the question of aggrievement, as it implicates the jurisdiction of this court. See *Healey* v. *Mantell*, 216 Conn. App. 514, 523–24, 285 A.3d 823 (2022). Issues of aggrievement implicate the subject matter jurisdiction of this court and present questions of law subject to plenary review. See *In re Ava W.*, 336 Conn. 545, 553, 248 A.3d 675 (2020). Our Supreme Court

has instructed that aggrievement is essential to appellate jurisdiction and must be resolved as a threshold matter. See *Carraway* v. *Commissioner of Correction*, 317 Conn. 594, 601, 119 A.3d 1153 (2015). "It is well settled that [i]n the appellate context, aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Watts* v. *Commissioner of Correction*, 194 Conn. App. 558, 568, 221 A.3d 829 (2019), cert. denied, 334 Conn. 919, 222 A.3d 514 (2020). "General Statutes § 52-263 grants the right of appeal to a party who is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial . . . . Aggrievement, in essence, is appellate standing. . . . It is axiomatic that aggrievement is a basic requirement of standing, just as standing is a fundamental requirement of jurisdiction. . . . There are two general types of aggrievement, namely, classical and statutory; either type will establish standing, and each has its own unique features. . . . The test for determining [classical] aggrievement encompasses a well settled twofold determination: first, the party claiming aggrievement must demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest shared by the community as a whole; second, the party claiming aggrievement must establish that this specific personal and legal interest has been specially and injuriously affected by the decision." (Citations omitted; internal quotation marks omitted.) *V. V.* v. *V. V.*, 215 Conn. App. 737, 740, 283 A.3d 1045 (2022); see also *In re Ava W.*, supra, 554–55. With respect to statutory aggrievement, which exists by legislative fiat rather than judicial analysis of the particular facts of a case, "particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *State Marshal Assn. of Connecticut, Inc.* v. *Johnson*, 198 Conn. App. 392, 402, 234 A.3d 111 (2020). We conclude that the defendant was neither classically nor statutorily aggrieved by the August 5, 2021 order of the trial court finding that it was in the best interests of the children to leave undisturbed, on a temporary basis, the defendant's decision to relocate with the children to New York City.

The defendant received the relief sought in his February 16, 2021 motion. In its August 5, 2021 oral decision, the court found that it was in the children's "best interests that they follow [the defendant]; that they go to school in New York in the short run."[8] The defendant, therefore, prevailed with respect to his motion because he received the relief requested: the court permitted him to move to New York City with the children pending a full hearing. "As a general rule, a party that prevails in the trial court is not aggrieved. . . . Moreover, [a] party cannot be aggrieved by a decision that grants the

very relief sought. . . . Such a party cannot establish that a specific personal and legal interest has been specially and injuriously affected by the decision . . . [see] 5 Am. Jur. 2d 47, Appellate Review § 276 (1995) (One who has received in the trial court all the relief that he or she has sought therein is not aggrieved by the judgment and has no standing to appeal. In particular, a litigant has no right to appeal a judgment in his favor merely for the purpose of having the judgment based on a different legal ground than that relied upon by the trial court . . . .). [A] prevailing party . . . can be aggrieved [however] if the relief awarded to that party falls short of the relief sought." (Citations omitted; internal quotation marks omitted.) *In re Allison G.*, 276 Conn. 146, 158, 883 A.2d 1226 (2005); see *Avon* v. *Freedom of Information Commission*, 210 Conn. App. 225, 237–38, 269 A.3d 852 (2022).

The defendant contends, however, that he has been aggrieved by the court's statement that the case constituted a relocation pursuant to § 46b-56d and, furthermore, that the present appeal is necessary to preserve his ability to challenge this determination. In support of this contention, he cites to *Bauer* v. *Bauer*, 308 Conn. 124, 60 A.3d 950 (2013), and *Fazio* v. *Fazio*, 199 Conn. App. 282, 235 A.3d 687, cert. denied, 335 Conn. 963, 239 A.3d 1213 (2020). Specifically, the defendant argues that, pursuant to these cases, if he did not challenge the determination of a relocation pursuant to § 46b-56d at this time, he would be precluded from doing so in the future. We disagree.

Both *Bauer* and *Fazio* are distinguishable from the present case. In *Bauer* v. *Bauer*, supra, 308 Conn. 126–27, the court dissolved the marriage of the parties, but the financial orders section of its memorandum of decision did not include the notation made earlier in that decision indicating that they had agreed to split equally the pension accounts of the defendant husband. Neither party appealed from the dissolution judgment, which was rendered in 2005. Id. In 2009, the plaintiff wife filed a motion for clarification asking the court to "reconfirm its previous order" with respect to the equal sharing of these pension accounts. Id., 127. The court issued the requested clarification. Id., 127–28.

On appeal, this court reversed the judgment granting the plaintiff's requested clarification, concluding that the court's decision constituted a modification of the dissolution judgment. Id., 128–29. Our Supreme Court disagreed. Id., 129. It further noted that, if the defendant disagreed with the court's factual finding that the parties had agreed to split the pension accounts equally, he should have raised this issue in an appeal taken from the dissolution judgment, when the finding was made. Id., 135–37. The defendant husband, therefore, was aggrieved by the court's initial decision awarding the plaintiff wife an equal share of his pension accounts,

but he elected not to challenge that finding until years later, after the plaintiff wife sought and obtained a confirmation of the court's earlier financial orders. Id., 126–28.

Our decision in *Fazio* likewise is distinguishable from the present case. In that case, the court dissolved the marriage of the parties in 2006. *Fazio* v. *Fazio*, supra, 199 Conn. App. 284. The separation agreement provided that the plaintiff wife would receive unallocated alimony and child support unless she cohabited as defined by General Statutes § 46b-86 (b). Id. In 2012, the defendant husband filed a motion to modify or terminate the unallocated alimony and child support on the basis of cohabitation by the plaintiff. Id., 285. The trial court found that the plaintiff had cohabitated and that the terms of the separation agreement were clear and unambiguous. Id., 286. In accordance with the separation agreement, the court terminated the defendant's alimony obligation. Id. The plaintiff appealed, challenging the trial court's interpretation of the separation agreement that a finding of cohabitation resulted in an automatic termination of alimony. Id. The plaintiff did not, however, appeal the court's finding of cohabitation. Id. This court determined that the separation agreement was ambiguous and that additional findings of fact were needed and remanded the case to the trial court. Id., 286–87. Following our remand, the trial court again terminated the defendant's alimony obligation. Id., 287.

The plaintiff filed another appeal, claiming that the second trial court improperly concluded that it was bound by the finding of cohabitation made by the first trial court. Id. We concluded that our initial remand was limited to a consideration of the parties' intent with respect to the separation agreement. Id., 289. "Moreover, the plaintiff did not challenge [the first trial court's] finding that she had cohabitated, which, certainly, was a finding necessary to the judgment. It is well established that when a party brings a subsequent appeal, it cannot raise questions which were or could have been answered in its former appeals. . . . Failure to raise an issue in an initial appeal to this court constitutes a waiver of the right to bring the claim." (Citation omitted; internal quotation marks omitted.) Id. Thus, the plaintiff was aggrieved by the first trial court's finding of cohabitation, a necessary component of that court's ultimate determination to terminate the alimony obligation of the defendant pursuant to the parties' separation agreement. Id., 286. She chose not to challenge that finding during the initial appeal and instead focused on the court's interpretation of the separation agreement. Id. By waiting until her second appeal to challenge the cohabitation finding, she had waived the opportunity to do so. Id., 289.

Unlike *Bauer* and *Fazio*, the defendant in the present case was not aggrieved by the order issued by the trial

court permitting him to relocate to New York City with the children at this time. First, as discussed earlier in this opinion, the defendant received the relief requested in his motion. Furthermore, following a full hearing on his motion, the defendant will remain not aggrieved if the trial court permits him to move to New York City on a permanent basis, whether pursuant to § 46b-56 or § 46b-56d. He would become aggrieved only if the court, at the conclusion of the hearing and final resolution of his motion, determines that the defendant failed to meet his burden under either statute. At that point, he may file an appeal to challenge the court's decision denying such a move and, if necessary, its conclusion regarding the applicability of § 46b-56d. Finally, we emphasize that, under the facts and circumstances present in this case, a court, after a full hearing, will not be bound by Judge Shay's determination that "this is . . . a relocation case" pursuant to § 46b-56d.[9] That determination was made at a hearing in which the court recognized that it needed to act expeditiously given the imminent start of the school year.[10] We therefore conclude that the defendant has not been aggrieved, and, therefore, we lack subject matter jurisdiction over his appeal.

The appeal is dismissed.

In this opinion the other judges concurred.

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

[1] General Statutes § 46b-56 provides in relevant part that "[i]n any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . [and] [i]n making or modifying any [such] order . . . the rights and responsibilities of both parents shall be considered and *the court shall enter orders accordingly that serve the best interests of the child* and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests." (Emphasis added.) See generally *Dolan* v. *Dolan*, 211 Conn. App. 390, 398–99, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022).

[2] General Statutes § 46b-56d provides: "(a) In any proceeding before the Superior Court arising after the entry of a judgment awarding custody of a minor child and involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) *the relocation is for a legitimate purpose*, (2) *the proposed location is reasonable in light of such purpose*, *and* (3) *the relocation is in the best interests of the child*.

"(b) In determining whether to approve the relocation of the child under subsection (a) of this section, the court shall consider, but such consideration shall not be limited to: (1) Each parent's reasons for seeking or opposing the relocation; (2) the quality of the relationships between the child and each parent; (3) the impact of the relocation on the quantity and the quality of the child's future contact with the nonrelocating parent; (4) the degree to which the relocating parent's and the child's life may be enhanced economically, emotionally and educationally by the relocation; and (5) the feasibility of preserving the relationship between the nonrelocating parent and the child through suitable visitation arrangements." (Emphasis added.) See generally *O'Neill* v. *O'Neill*, 209 Conn. App. 165, 182–83, 268 A.3d 79 (2021).

[3] On July 26, 2021, the plaintiff filed an application for an emergency ex parte order of custody. The court, *Heller*, *J.*, denied this application on the

same day.

[4] The guardian ad litem was not sworn in as a witness at this hearing.

[5] On August 10, 2021, Judge Shay signed the transcript from the August 5, 2021 hearing in accordance with Practice Book § 64-1 (a).

[6] The full evidentiary hearing on the defendant's February 16, 2021 motion to relocate has not yet occurred.

[7] We note that a complete resolution of this matter appears to have been delayed for an extended period of time. We take this opportunity to repeat the statement from our Supreme Court that "it is the sacrosanct obligation of both the courts and the parties to these types of disputes to take all necessary steps to resolve such matters promptly." *DiGiovanna* v. *St. George*, 300 Conn. 59, 79 n.10, 12 A.3d 900 (2011).

[8] The court also noted that the matter would need to be revisited and referred the matter to the family relations office. In the court's order denying the plaintiff's motion for reconsideration, it emphasized the temporary nature of the order permitting the defendant's move to New York City with the children.

[9] See, e.g., *Kellogg* v. *Middlesex Mutual Assurance Co.*, 211 Conn. App. 335, 352, 272 A.3d 677 (2022) ("The law of the case doctrine expresses the practice of judges generally to refuse to reopen what has been decided and is not a limitation on their power. . . . Where a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case . . . . [T]he law of the case doctrine does not preclude a judge from deciding an issue in a way contrary to how it was decided by a predecessor judge in the same case. . . . [It] provides that judges may treat a prior ruling as the law of the case if they agree with the determination. He or she may, however, decide the issue differently if he or she is convinced that the prior decision is wrong." (Internal quotation marks omitted.)).

[10] In the present case, the court noted that the school year was about to start and that it was important to provide stability to the children with regard to their education, particularly following the negative effects from the COVID-19 pandemic. It explained: "The question is, though, what are you going to do in the short run because this is something that the court ultimately would want to get the guardian ad litem's input. But the court would also want an evaluation. I mean, the court would want to look at the entire panoply of . . . issues here, so whether it's the [plaintiff's] progress toward . . . full recovery, how is this going to impact the children?" It also pointed out that an evaluation from family relations would take approximately three to four months to complete. In conclusion, the court stated: "That's not fair. That's just not . . . right, so this may call . . . for some Solomonesque approach to this particular . . . problem in the short run so that in the long run it can be all sorted out. It may actually work out in the fullness of time when everybody gets to digest all of the little pieces of it."