SHERRY NUNNO ET AL. *v.* WALTER WIXNER II ET AL.
(SC 16392)

Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.[1]

Argued February 15—officially released August 21, 2001

Counsel

Joseph De Lucia, for the appellant (named plaintiff).

Catherine S. Nietzel, for the appellees (defendants).

Opinion

VERTEFEUILLE, J. The sole issue in this appeal is whether the provisions of General Statutes § 52-192a,[2] concerning an offer of judgment by a plaintiff, apply to a judgment entered as a result of a mandatory arbitration proceeding pursuant to General Statutes § 52-549u.[3] We conclude that they do not.

The following undisputed facts are relevant to this appeal. On December 10, 1997, the plaintiff, Sherry Nunno,[4] was the operator of a motor vehicle that was involved in a collision with a motor vehicle operated by the defendant Walter Wixner II and owned by the

action, the plaintiff filed an offer of judgment for $19,000 pursuant to § 52-192a (a).[5] The defendants did not accept the offer of judgment.

Subsequently, the case was referred to an arbitrator under the court's mandatory arbitration program pursuant to § 52-549u and Practice Book § 23-61.[6] After a hearing, the arbitrator issued a decision awarding the plaintiff $21,945. The arbitrator's decision and award subsequently became a judgment of the court pursuant to General Statutes § 52-549z[7] and Practice Book § 23-66.[8]

The plaintiff thereafter filed a ''Motion to Determine Plaintiff's Offer of Judgment,'' seeking an award of 12 percent interest on the judgment pursuant to § 52-192a because the amount awarded by the arbitrator, which became the judgment of the court, exceeded the amount of the plaintiff's offer of judgment. The trial court ultimately denied the plaintiff's motion.[9] This appeal followed.[10]

On appeal, the plaintiff claims that the offer of judgment statute, § 52-192a, applies to court-mandated arbitration because the arbitration proceeding was part of a civil action. Specifically, the plaintiff asserts that the arbitration proceeding constituted a civil action because it was required by the court and was held in the form of a summary trial.[11] In response, the defendants assert that the offer of judgment statute does not apply to a court-mandated arbitration proceeding because it is not a trial within the meaning of § 52-192a (b) and that applying offer of judgment interest would undermine the purposes of the court-mandated arbitration statute. We agree with the defendants and conclude that the legislature did not intend § 52-192a (b) to apply to court-mandated arbitration proceedings. Accordingly, we affirm the judgment of the trial court.

Our resolution of the plaintiff's claim is guided by well established principles of statutory construction. ''The process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case . . . . In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . Finally, because the question presented by this appeal involves an issue of statutory construction, our review is plenary.'' (Internal quotation marks omitted.) *Winchester* v. *Northwest Associates*, 255 Conn. 379, 386, 767 A.2d 687 (2001).

The plain language of § 52-192a (b) supports our con-

clusion that offer of judgment interest does not apply to judgments resulting from arbitration proceedings. The statute provides in part that ''[a]fter trial the court shall examine the record to determine whether the plaintiff made an 'offer of judgment' which the defendants failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain stated in his 'offer of judgment', the court shall add to the amount so recovered twelve per cent annual interest on said amount . . . .'' General Statutes § 52-192a (b). The wording of § 52-192a (b) indicates the legislature's intention that offer of judgment interest apply only ''after trial . . . .'' We conclude that an arbitration proceeding pursuant to General Statutes § 52-549u and Practice Book § 23-61 is not a trial within the meaning of § 52-192a (b).

The trial court is authorized to refer to an arbitrator any civil action in which the court has a reasonable expectation that the judgment will be less than $50,000. See General Statutes § 52-549u and Practice Book § 23-61. In such court-mandated arbitration proceedings, a lawyer with a minimum of five years civil litigation experience serves as the arbitrator. See General Statutes § 52-549w[12] and Practice Book § 23-60.[13] No record is made of the proceedings and strict adherence to the rules of evidence is not required. See Practice Book § 23-63.[14] The arbitrator is required to submit a decision in writing within 120 days after the hearing. See Practice Book § 23-64.[15] The parties then have the opportunity to request a trial de novo pursuant to Practice Book § 23-66 (c)[16] within twenty days of the filing of the arbitrator's decision. If neither party requests a trial de novo within twenty days, the decision of the arbitrator becomes the judgment of the court.[17] See Practice Book § 23-66 (a).

Court-mandated arbitration proceedings pursuant to § 52-549u do not include many of the distinctive hallmarks of a trial. In a case involving private arbitration pursuant to a collective bargaining agreement, the United States Supreme Court concluded that ''[a]rbitration differs from judicial proceedings in many ways: arbitration carries no right to a jury trial as guaranteed by the Seventh Amendment; arbitrators need not be instructed in the law; they are not bound by rules of evidence; they need not give reasons for their awards; witnesses need not be sworn; the record of proceedings need not be complete; and judicial review, it has been held, is extremely limited.'' *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650, 664, 85 S. Ct. 614, 13 L. Ed. 2d 580 (1965). In another case the United States Supreme Court also distinguished arbitration from judicial proceedings, concluding that ''arbitral factfinding is generally not equivalent to judicial factfinding. . . . [T]he record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery,

compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable.'' (Internal quotation marks omitted.) *McDonald* v. *West Branch*, 466 U.S. 284, 291, 104 S. Ct. 1799, 80 L. Ed. 2d 302 (1984). This court also has distinguished arbitration from judicial proceedings, concluding that an arbitration proceeding is not an ''action'' for purposes of the statute of limitations. See *Dayco Corp.* v. *Fred T. Roberts & Co.*, 192 Conn. 497, 503, 472 A.2d 780 (1984). In doing so, the court concluded that ''arbitration proceedings do not occur in court, indeed that their very purpose is to avoid the formalities, the delay, the expense and vexation of ordinary litigation. . . . [T]hese proceedings are not governed by our rules of procedure. . . . [A]n arbitration proceeding is not an action within the meaning of that word as used in the [s]tatute of [l]imitations.'' (Citations omitted; internal quotation marks omitted.) Id.

An examination of the arbitration proceeding in the present case supports our conclusion that the arbitration proceeding was not conducted as a trial. Although the arbitrator stated in his decision that ''[this] hearing was held in the form of a summary trial,'' no witnesses testified for either party and no formal exhibits were offered. The parties merely submitted copies of a police report, photographs, transcripts of depositions, medical reports and medical bills. The parties also summarized their respective cases through their counsel. After reviewing all of the information provided, the arbitrator issued his nonbinding award. The arbitration proceedings in this case differed greatly from a trial. The procedures were informal and parties were allowed to present unsworn evidence. None of the rules of evidence applied in this proceeding. In addition, the proceeding was presided over by a nonjudicial officer, whose decision was not binding on the parties. The court-mandated arbitration proceeding in this case did not constitute a trial.

An examination of the definition of the word ''trial'' found in Black's Law Dictionary further supports our conclusion that arbitration proceedings do not constitute a trial for the purposes of § 52-192a (b). Black's Law Dictionary (7th Ed. 1999) defines trial as ''[a] formal judicial examination of evidence and determination of legal claims in an adversary proceeding.'' It further defines ''judicial'' as ''[o]f or relating to, or by the court'' and ''determination'' as ''[a] final decision by a court or administrative agency . . . .'' Id. The court-mandated arbitration proceeding in this case was not formal, was not presided over by a judge, and did not result in a binding determination of any of the legal claims. The arbitration proceeding therefore did not constitute a trial.

The absence of any express language referring to arbitration proceedings in § 52-192a (b) further con-

firms our conclusion that offer of judgment interest does not apply to judgments resulting from arbitration awards. The legislature has adopted several statutes that establish procedures for converting arbitration awards into judgments of the court. See General Statutes § 52-549z (a); see also General Statutes § 52-417 et seq. Section 52-417 et seq., which provide generally applicable procedures for confirming, vacating and modifying arbitration awards by court order, were enacted prior to the legislature's adoption of the offer of judgment statute. The legislature was, therefore, aware that arbitration awards can result in judgments of the court when it adopted § 52-192a (b). ''The legislature is presumed to be aware and to have knowledge of all existing statutes and the effect which its own action or nonaction may have on them. *Windham First Taxing District* v. *Windham*, 208 Conn. 543, 554, 546 A.2d 226 (1988).'' (Internal quotation marks omitted.) *Dodd* v. *Middlesex Mutual Assurance Co.*, 242 Conn. 375, 386, 698 A.2d 859 (1997). Despite its awareness that arbitration decisions can become judgments of the court, the legislature did not include judgments on arbitration awards within the express provisions of § 52-192a (b). Furthermore, the legislature has not amended § 52-192a (b) to include court-mandated arbitration proceedings since it adopted the statutes providing for court-mandated arbitration proceedings in 1982. The legislature's failure to include arbitration proceedings in the express language of § 52-192a (b) supports our conclusion that the legislature did not intend offer of judgment interest to apply to judgments resulting from arbitration proceedings.

The legislative history of the statutes providing for court-mandated arbitration provides strong support for our conclusion that § 52-192a (b) does not apply to judgments resulting from that arbitration process. This legislative history demonstrates that the legislature intended these arbitration proceedings to be a form of alternate dispute resolution designed to assist parties to settle cases voluntarily. In 1997, during the course of the legislative debates concerning the enactment of the bill that later amended § 52-549u, the members of the House of Representatives discussed the purpose of the court-mandated arbitration proceedings. In the course of the debate, Representative Michael P. Lawlor, a proponent of the bill, was asked why the rules of evidence would not apply in these arbitration proceedings. 40 H.R. Proc., Pt. 4, 1997 Sess., p. 1391. Representative Lawlor replied that ''[t]his whole process of arbitration is an alternate dispute resolution mechanism which [is] intended to avoid unnecessary court delays. *In effect these are the two parties sitting down with an impartial hearing officer to figure out if there is a resolution to the case which would avoid a lengthy and expensive trial. . . . [T]his is what you might consider an elaborate pre-trial discussion*.'' (Emphasis

added.) Id., pp. 1391–92. Representative Lawlor went on to indicate that the purpose of the legislation was ''essentially trying to encourage as many people as possible to go this route for a relatively small case where there are relatively simple issues at hand.'' Id., p. 1393. Representative Lawlor's comments clearly indicate that the legislature did not understand these arbitration proceedings to be a trial, or its equivalent. To the contrary, we conclude that the legislature intended these arbitration proceedings to be a desirable, informal means of resolving disputes *before* trial. The legislature's understanding of these arbitration proceedings as a form of alternate dispute resolution, the use of which the legislature wanted to encourage, further supports our conclusion that § 52-592a (b) does not apply to a judgment entered as a result of court-mandated arbitration proceedings because, if the statute did apply, the parties would have an incentive to reject the arbitrator's award and seek a trial de novo in order to avoid the payment of offer of judgment interest. This result would contravene the legislature's intention in adopting court-mandated arbitration.[18]

The punitive nature of the offer of judgment statute also reinforces our conclusion that § 52-549u does not apply to arbitration judgments. The punitive nature of § 52-192a has been recognized repeatedly. ''An award of interest pursuant to § 52-192a (b) is punitive in nature . . . . *Crowther* v. *Gerber Garment Technology, Inc.*, 8 Conn. App. 254, 267, 513 A.2d 144 (1986); *Kusha* v. *Respondowski*, 3 Conn. App. 570, 574, 490 A.2d 1014 (1985). . . . This interest is mandated when the amount recovered is greater than or equal to the offer of judgment; see General Statutes § 52-192a (b); and that amount can include interest and attorney's fees; *Crowther* v. *Gerber Garment Technology, Inc.*, supra, 270–71; as well as double or treble damages. *Gionfriddo* v. *Avis Rent a Car System, Inc.*, 192 Conn. 301, 307, 472 A.2d 316 (1984).'' *Gillis* v. *Gillis*, 21 Conn. App. 549, 554, 575 A.2d 230, cert. denied, 215 Conn. 815, 576 A.2d 544 (1990). The offer of judgment statute was ''enacted to promote fair and reasonable pretrial compromises of litigation'' by penalizing defendants who do not settle cases prior to trial. *Paine Webber Jackson & Curtis, Inc.* v. *Winters*, 22 Conn. App. 640, 651, 579 A.2d 545, cert. denied, 216 Conn. 820, 581 A.2d 1055 (1990). By awarding 12 percent interest on all amounts recovered, including interest and attorney's fees, § 52-192a ''imposes a penalty for wasting this state's judicial resources . . . [and serves as] an indigenous procedural device for promoting judicial economy . . . .'' Id., 655.

The punitive nature of the offer of judgment statute is inconsistent with the legislature's intention in enacting court-mandated arbitration. The legislature intended to encourage parties in fairly simple cases to use the arbitration proceeding to resolve cases without the need

for lengthy and expensive trials. 40 H.R. Proc., supra, pp. 1391–92. Imposing a substantial penalty on a defendant who voluntarily settles a case as a result of court-mandated arbitration would both discourage such settlements and encourage demands for trials de novo. Both of these consequences would be in contrast to the legislative purpose to promote court-mandated arbitration as an additional method of alternate dispute resolution.

The judgment is affirmed.

In this opinion BORDEN, NORCOTT and PALMER, Js., concurred.

[1] This case was argued on February 15, 2001, before a panel of this court consisting of Chief Justice Sullivan and Justices Katz, Palmer, Vertefeuille and Zarella. Thereafter, the court pursuant to Practice Book § 70-7 (b), sua sponte, ordered that the case be considered en banc. Justices Borden and Norcott were added to the panel, and they have read the record, briefs and transcripts of the original oral argument.

[2] General Statutes § 52-192a provides: ''(a) After commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, the plaintiff may before trial file with the clerk of the court a written 'offer of judgment' signed by him or his attorney, directed to the defendant or his attorney, offering to settle the claim underlying the action and to stipulate to a judgment for a sum certain. The plaintiff shall give notice of the offer of settlement to the defendant's attorney, or if the defendant is not represented by an attorney, to the defendant himself. Within thirty days after being notified of the filing of the 'offer of judgment' and prior to the rendering of a verdict by the jury or an award by the court, the defendant or his attorney may file with the clerk of the court a written 'acceptance of offer of judgment' agreeing to a stipulation for judgment as contained in plaintiff's 'offer of judgment'. Upon such filing, the clerk shall enter judgment immediately on the stipulation. If the 'offer of judgment' is not accepted within thirty days and prior to the rendering of a verdict by the jury or an award by the court, the ''offer of judgment'' shall be considered rejected and not subject to acceptance unless refiled. Any such 'offer of judgment' and any 'acceptance of offer of judgment' shall be included by the clerk in the record of the case.

''(b) After trial the court shall examine the record to determine whether the plaintiff made an 'offer of judgment' which the defendant failed to accept. If the court ascertains from the record that the plaintiff has recovered an amount equal to or greater than the sum certain stated in his 'offer of judgment', the court shall add to the amount so recovered twelve per cent annual interest on said amount, computed from the date such offer was filed in actions commenced before October 1, 1981. In those actions commenced on or after October 1, 1981, the interest shall be computed from the date the complaint in the civil action was filed with the court if the 'offer of judgment' was filed not later than eighteen months from the filing of such complaint. If such offer was filed later than eighteen months from the date of filing of the complaint, the interest shall be computed from the date the 'offer of judgment' was filed. The court may award reasonable attorney's fees in an amount not to exceed three hundred fifty dollars, and shall render judgment accordingly. This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees in accordance with the provisions of any written contract between the parties to the action.''

Section 52-192a was amended by No. 01-71, § 1, of the 2001 Public Acts, to require any offer of judgment to be filed not later than thirty days prior to trial. A few minor technical changes also were made. These changes do not take effect until October 1, 2001, and are not relevant to this appeal. For purposes of this opinion, references herein to § 52-192a are to the 2001 revision.

[3] General Statutes § 52-549u provides: ''In accordance with the provisions of section 51-14, the judges of the Superior Court may make such rules as they deem necessary to provide a procedure in accordance with which the court, in its discretion, may refer to an arbitrator, for proceedings authorized pursuant to this chapter, any civil action in which in the discretion of the court, the reasonable expectation of a judgment is less than fifty thousand dollars exclusive of legal interest and costs and in which a claim for a trial

by jury and a certificate of closed pleadings have been filed. An award under this section shall not exceed fifty thousand dollars, exclusive of legal interest and costs. Any party may petition the court to become eligible to participate in the arbitration process as provided in this section.''

[4] Although Joseph Taft, a passenger in the vehicle operated by Nunno at the time of the collision, was also a plaintiff in this action, he is not participating in this appeal, which is being pursued by the named plaintiff alone. We, therefore refer to Nunno as the plaintiff throughout this opinion.

[5] See footnote 2 of this opinion.

[6] Practice Book § 23-61 provides: ''The court, on its own motion, may refer to an arbitrator any civil action in which, in the discretion of the court, the reasonable expectation of a judgment is less than $50,000, exclusive of interest and costs and in which a claim for a trial by jury and a certificate of closed pleadings have been filed. An award under this section shall not exceed $50,000, exclusive of legal interest and costs. Any party may petition the court to participate in the arbitration process hereunder.''

[7] General Statutes § 52-549z provides: ''(a) A decision of the arbitrator shall become a judgment of the court if no appeal from the arbitrator's decision by way of a demand for a trial de novo is filed in accordance with subsection (d) of this section

''(b) A decision of the arbitrator shall become null and void if an appeal from the arbitrator's decision by way of a demand for a trial de novo is filed in accordance with subsection (d) of this section.

''(c) For the purpose of this section the word ''decision'' shall include a decision and judgment rendered pursuant to subsection (a) of section 52-549y, provided the appeal is taken by a party who did not fail to appear at the hearing, and it shall exclude any other decision or judgment rendered pursuant to said section.

''(d) An appeal by way of a demand for a trial de novo must be filed with the court clerk within twenty days of the filing of the arbitrator's decision and it shall include a certification that a copy thereof has been served on each counsel of record, to be accomplished in accordance with the rules of court. The decision of the arbitrator shall not be admissible in any proceeding resulting after a claim for a trial de novo or from a setting aside of an award in accordance with section 52-549aa.''

[8] Practice Book § 23-66 provides: ''(a) A decision of the arbitrator shall become a judgment of the court if no claim for a trial de novo is filed in accordance with subsection (c).

''(b) A decision of the arbitrator shall become null and void if a claim for a trial de novo is filed in accordance with subsection (c).

''(c) A claim for a trial de novo must be filed with the court clerk within twenty days of the filing of the arbitrator's decision. Thirty days after the filing of a timely claim for a trial de novo the court may, in its discretion, schedule the matter for a trial within thirty days thereafter. Only a party who appeared at the arbitration hearing may file a claim for a trial de novo. The decision of the arbitrator shall not be admissible in any proceeding resulting after a claim for a trial de novo pursuant to this section or from a setting aside of an award pursuant to General Statutes § 52-549aa.''

[9] On January 24, 2000, the trial court initially granted the plaintiff's motion, *without objection*. On February 9, 2000, the defendants filed a motion for reconsideration, stating that there was in fact an objection to the plaintiff's motion. On June 12, 2000, the trial court heard oral argument on the defendant's motion for reconsideration. The trial court then issued its decision on July 7, 2000, holding that ''mandatory arbitration is not a trial and therefore the offer of judgment provisions do not apply.''

[10] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

[11] The plaintiff also argues that applying offer of judgment interest to awards arising from a jury or bench trial and not applying it to awards arising from arbitration proceedings violates the equal protection clauses of the state and federal constitution. The plaintiff did not adequately brief these claims, however, and, therefore, she is deemed to have abandoned them. See Practice Book § 67-4; *Willow Springs Condominium Assn., Inc.* v. *Seventh BRT Development Corp.*, 245 Conn. 1, 38, 717 A.2d 77 (1998) (issues not adequately briefed may be deemed abandoned); see also *Latham & Associates, Inc.* v. *William Raveis Real Estate, Inc.*, 218 Conn. 297, 300, 589 A.2d 337 (1991); *Gaynor* v. *Union Trust Co.*, 216 Conn. 458, 482, 582 A.2d 190 (1990).

[12] General Statutes § 52-549w provides in relevant part: ''(a) Upon publica-

tion of a notice in the Connecticut Law Journal, any commissioner of the Superior Court admitted to practice in this state for at least five years, who has civil litigation experience and who is willing and able to act as an arbitrator, may submit his name to the Office of the Chief Court Administrator for approval to be placed on a list of available arbitrators for one or more judicial districts. The criteria for selection and approval of arbitrators shall be promulgated by the judges of the Superior Court. Upon selection and approval by the Chief Court Administrator, for such term as he may fix, the arbitrators shall be sworn or affirmed to try justly and equitably all matters at issue submitted to them. The Chief Court Administrator, in his discretion, may at any time revoke any such approval.

"(b) Each arbitrator shall receive one hundred dollars for each day he is assigned to a courthouse facility to conduct proceedings as an arbitrator and an additional twenty-five dollars for each decision filed with the court. In difficult or extraordinary cases, the Chief Court Administrator may, in his discretion, make a further allowance not to exceed two hundred dollars for services rendered attendant to but not part of the hearing. . . ."

[13] Practice Book § 23-60 provides: "(a) Upon publication of notice requesting applications, any commissioner of the superior court admitted to practice in this state for at least five years, and who possesses civil litigation experience may submit his or her name to the office of the chief court administrator for approval to be placed on a list of arbitrators for one or more judicial districts.

"(b) The chief court administrator shall have the power to designate arbitrators for such term as the chief court administrator may fix and, in his or her discretion, to revoke such designation at any time.

"(c) Applicants and arbitrators must satisfactorily complete such training programs as may be required by the chief court administrator."

[14] Practice Book § 23-63 provides: "In matters submitted to arbitration no record shall be made of the proceedings and the strict adherence to the civil rules of evidence shall not be required."

[15] Practice Book § 23-64 provides: "(a) The arbitrator shall state in writing the decision on the issues in the case and the factual basis of the decision. The arbitrator shall include in the decision the number of days on which hearings concerning that case were held.

"(b) Within 120 days of the completion of the arbitration hearing the arbitrator shall file the decision with the clerk of the court together with sufficient copies for all counsel."

[16] See footnote 8 of this opinion.

[17] We disagree with the dissent's conclusion that the use of the term "trial de novo" suggests that the nonbinding arbitration was a trial. As Representative Michael P. Lawlor stated during legislative debate on a bill that subsequently amended § 52-549u, "[e]very party who is affected by such an arbitration decision shall have a right to *elect a trial,* another trial, a new trial, a trial [de novo]." (Emphasis added.) 40 H.R. Proc., Pt. 4, 1997 Sess., p. 1388. "[I]f you don't agree with the outcome [you are] able to go back to square one and ask for a trial from the start." Id., p. 1392.

[18] The dissent cites to a portion of the legislative history of § 52-549u in support of its statement that one of the stated goals of the statute was to reduce the backlog of civil jury cases "independent of the issue of settlement." We disagree that the backlog is reduced "independent of . . . settlement." Close analysis of the operation of § 52-549u reveals that the backlog of civil jury cases is reduced only if the parties agree to accept the arbitrator's award, which is otherwise *nonbinding.* After the arbitrator renders his or her award, either party can reject it by simply requesting a trial de novo. If both parties choose to accept the award by failing to request a trial de novo, judgment enters consistent with the award. We see this process as akin to settlement, in that a neutral third party, after hearing from both parties, proposes a resolution that the parties are free to accept or reject. While the dissent focuses on the fact that participation in the arbitration is mandatory, we focus on the fact that if the case is resolved, the resolution occurs only as a result of the voluntary agreement of the parties.