R.C. EQUITY GROUP, LLC *v.* ZONING COMMISSION OF THE BOUROUGH OF NEWTOWN
(SC 17676)

Rogers, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.*

Argued April 9, 2007—officially released January 22, 2008

Robert H. Hall, for the appellant (plaintiff).

Donald A. Mitchell, for the appellee (defendant).

Opinion

PALMER, J. The plaintiff, R.C. Equity Group, LLC, appeals from the judgment of the trial court dismissing its zoning appeal from the decision of the defendant, the zoning commission of the borough of Newtown. The trial court dismissed the plaintiff's appeal for lack of subject matter jurisdiction because the plaintiff had failed to make service of process on the borough clerk within fifteen days from the published notice of the decision in accordance with General Statutes § 8-8 (b)[1] and (f) (2).[2] The plaintiff claims that the trial court incorrectly concluded that the failure of service was not subject to the savings provision of General Statutes § 8-8 (q),[3] which provides, inter alia, for the refiling of a zoning appeal that has been dismissed for defective service stemming from the "default or neglect" of the marshal. Although the plaintiff concedes both that the citation in the summons did not name the borough clerk and that the marshal effected service in accordance with the citation, the plaintiff nevertheless maintains that the service defect was due to the default or neglect of the marshal because it was the duty of the marshal, not the plaintiff or its attorney, to ensure that service was made in accordance with the provisions of § 8-8 (f) (2). We reject the plaintiff's claim and, therefore, affirm the judgment of the trial court.[4]

The following undisputed facts and procedural history are relevant to our disposition of this appeal. The borough of Newtown (borough) is a specially chartered municipality located within the town of Newtown. The defendant is the borough's zoning commission. In May, 2003, the defendant adopted zoning regulations governing a village district area pursuant to General Statutes § 8-2j, and amended its other related regulations. One of the new regulations limited the maximum size of a "discrete building structure," an undefined term, to 6500 square feet. The defendant subsequently repealed and readopted these regulations in December, 2003, and again in March, 2005. The readopted regulations were identical in all material respects to the regulations adopted in May, 2003.

The plaintiff owns approximately twelve acres of land located in the borough. The property is improved with a building that contains 16,947 square feet of gross leasable area that presently is leased to a tenant for office purposes, and is capable of expansion through the addition of a partial second floor. The property itself is also large enough to permit the addition of one or more buildings in excess of 6500 square feet. The plaintiff filed a zoning appeal from the defendant's March, 2005 decision to readopt the restrictive village district regulations, claiming that the defendant had acted illegally, arbitrarily and capriciously when it adopted the regulations because their terms violated several constitutional and statutory provisions.[5]

The plaintiff employed Robert B. Gyle III, a state marshal, to serve process in connection with the zoning appeal. On March 24, 2005, Gyle went to the office of the plaintiff's attorney, Robert H. Hall, to pick up the process. Hall was not present when Gyle arrived but had left one copy of the process with Hall's secretary. The process, a form JD-CV-1 summons with the appeal attached, identified the defendant as the "[z]oning [c]ommission of the [b]orough of Newtown, c/o Linda Shepard, Chairman," with Shepard's home address following immediately thereafter. That same day, Gyle personally served Shepard at her home. Although the form JD-CV-1 summons contained a generic citation directing the marshal to make service,[6] the form that Hall signed and provided to Gyle for service in the present case contained no instruction directing Gyle to serve the borough clerk as § 8-8 (f) (2) requires.[7] Although Gyle served Shepard, he did not serve the borough clerk.

Thereafter, on August 22, 2005, the trial court, *J. R. Downey*, *J.*, granted the defendant's motion to dismiss the plaintiff's zoning appeal on the basis of the plaintiff's failure to serve the borough clerk. The plaintiff commenced the present zoning appeal on September 2, 2005, in reliance on the savings provisions of § 8-8 (q), and Gyle properly served two copies of the summons and appeal on the borough clerk.[8] The defendant again filed a motion to dismiss the present appeal, claiming that § 8-8 (q) did not save the action because the initial failure of service was not attributable to the default or neglect of Gyle but, rather, to Hall, for preparing a summons identifying the defendant's chairperson, and not the borough clerk, as the defendant's statutory agent for service.

The plaintiff filed a memorandum of law in opposition to the defendant's motion to dismiss. Attached as exhibits to the memorandum of law were the form JD-CV-1 summonses that Hall had used in both zoning appeals,[9] along with the returns of service that Gyle had filed in connection with his service of process in those appeals. In each of those appeals, Hall had identified the defendant as the "[z]oning [c]ommission of the [b]orough of Newtown, c/o Linda Shepard, Chairman," followed by Shepard's home address. The summons forms that Hall had completed in connection with both zoning appeals contained no instruction to Gyle to serve the borough clerk. In contrast to the present zoning appeal and the zoning appeal that the plaintiff commenced in March, 2005, however, the plaintiff had served Shepard *and* the borough clerk in a zoning appeal brought in 2003 to challenge the defendant's December, 2003 decision to adopt certain regulations. See footnote 9 of this opinion.

The plaintiff also provided the court with an affidavit attested to by Gyle. In his affidavit, Gyle stated that prior to serving process in the plaintiff's zoning appeals,

he was "aware that the legal requirements for service of process in zoning appeals had been changed effective October 1, 2004,[10] so that instead of serving one copy on the [c]hairman or [c]lerk [of the zoning commission] and another copy on the [c]lerk of the [b]orough, two copies were required to be served [on] the [c]lerk of the [b]orough and [that] it was no longer necessary to serve the [c]hairman or [c]lerk of the zoning entity involved." Gyle also stated, however, that he "did not think about the requirement for service" when he picked up the process from Hall's office and served it on Shepard rather than on the borough clerk. Gyle further stated that he should have remembered to serve the borough clerk, as he had in the past, and that he had "no excuse for failing to serve the appeal in accordance with the requirements of the [s]tatute . . . ."

The trial court, *Schuman*, *J.*,[11] granted the defendant's motion to dismiss. In its memorandum of decision, the court, after observing that the process that Gyle originally received from Hall and served on Shepard did not identify the borough clerk as a person to be served, explained that it is the duty of the plaintiff, rather than the marshal, to identify who must be served. The trial court further explained that when, as in the present case, the process fails to identify the proper person to be served, the failure of service is attributable to the plaintiff as a matter of law, and cannot be ascribed to the default or neglect of the marshal under § 8-8 (f).[12] Accordingly, the trial court rendered judgment dismissing the plaintiff's zoning appeal. The Appellate Court subsequently granted the plaintiff's petition for certification to appeal, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

On appeal, the plaintiff claims that, contrary to the conclusion of the trial court, it is solely the duty of the marshal "to determine how to make proper service," and, therefore, Gyle's "failure to make proper service in this case is 'default or neglect' as a matter of law." Consistent with this contention, the plaintiff asserts that it had no legal obligation to direct—or even to assist—Gyle in accomplishing that task. Finally, the plaintiff maintains that the record is abundantly clear that, although the summons identified the wrong person, namely, Shepard, as the defendant's agent for service of process, Gyle nevertheless knew better, and, therefore, Hall's error in naming Shepard instead of the borough clerk neither relieves Gyle of responsibility for inadequate service nor removes the service deficiency from the purview of the savings provisions of § 8-8 (q). We agree with the trial court that, as a matter of law, § 8-8 (q) does not save the plaintiff's zoning appeal.

As a threshold matter, we set forth certain principles that govern our review of the plaintiff's claim. "A motion to dismiss . . . properly attacks the jurisdiction of the

court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. . . . A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . [O]ur review of the court's ultimate legal conclusion and resulting [determination] of the motion to dismiss [is] de novo." (Internal quotation marks omitted.) *Cox* v. *Aiken*, 278 Conn. 204, 210–11, 897 A.2d 71 (2006). Furthermore, whether the trial court properly dismissed the plaintiff's appeal for lack of subject matter jurisdiction turns on whether the marshal's conduct in failing to serve the borough clerk constituted "default or neglect" within the meaning of § 8-8 (q). Because "[t]he interpretation of a statute, as well as its applicability to a given set of facts and circumstances, involves a question of law . . . our review . . . is plenary."[13] (Internal quotation marks omitted.) *Lagassey* v. *State*, 268 Conn. 723, 737, 846 A.2d 831 (2004).

In applying § 8-8 (q) to the facts and circumstances of this case, we do not write on a blank slate. To place that provision in proper context, we summarize our recent analysis of the jurisdictional requirements of § 8-8, including an examination of the legislative history surrounding the adoption of § 8-8 (q). Specifically, in *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 900 A.2d 1 (2006), we explained that, "[i]n 1989 . . . the legislature amended [General Statutes (Rev. to 1989)] § 8-8 to include the savings provisions of . . . [subsections] (p) and (q). . . . [These provisions] were intended to provide a greater measure of fairness to persons seeking to appeal from the decisions of local zoning commissions and boards of appeal. . . . [T]he legislature amended General Statutes (Rev. to 1989) § 8-8 in 1989 after our decisions in [*Simko* v. *Zoning Board of Appeals*, 205 Conn. 413, 533 A.2d 879 (1987) (*Simko I*), and *Simko* v. *Zoning Board of Appeals*, 206 Conn. 374, 538 A.2d 202 (1988) (*Simko II*) (affirming *Simko I* on rehearing en banc)][14] . . . because of its concern that an overly strict adherence to the provisions of . . . [subsection] (b) . . . would result in unnecessary unfairness." (Citation omitted; internal quotation marks omitted.) *Fedus* v. *Planning & Zoning Commission*, supra, 767–68.

The facts of *Fedus* were identical in all relevant respects to the facts of *Simko*. In each case, the plaintiffs had served the town clerk with a copy of the summons and complaint, as required by statute, but had failed to name the clerk in the citation of the summons. See id., 754; *Simko I*, supra, 205 Conn. 415. In *Simko*, however, we concluded that the failure of the plaintiffs to name the town clerk in the citation constituted a fatal jurisdictional defect that deprived the court of subject matter jurisdiction over the zoning appeal. See *Simko I*, supra, 419, 421. As we explained in *Simko*, our decision in that case rested primarily on our deter-

mination that the town clerk was a statutorily mandated necessary party to the appeal, and, therefore, by failing to name the clerk in the citation of the appeal, "the sheriff had no authority to command the clerk's appearance for any purpose." Id., 421. Specifically, we stated: "[The] citation is a matter separate and distinct from the sheriff's return and is the important legal fact upon which the judgment rests. . . . [Thus, a] proper citation is essential to the validity of the appeal and the jurisdiction of the court. . . . A citation is not synonymous with notice." Id., 420. "Because of the failure to name the clerk of the municipality in the citation, the sheriff had no authority to command the clerk's appearance for any purpose. Therefore . . . the delivery to the clerk of the papers comprising the appeal was of no legal significance." Id., 421. Thus, we held "that the failure to name a statutorily mandated, necessary party in the citation is a jurisdictional defect which renders the administrative appeal subject to dismissal." Id.

Immediately following the release of our decisions in *Simko*, the legislature amended General Statutes (Rev. to 1987) § 8-8 (b) to provide, inter alia, that "service upon the clerk of the municipality shall be for the purpose of providing additional notice of [the] appeal to [the] board and shall not thereby make such clerk a necessary party to such appeal." Public Acts 1988, No. 88-79, § 1. "By this amendment, the legislature indicated that, contrary to our conclusion in *Simko*, service of the appeal on the town clerk is not for the purpose of making the town clerk a necessary party to the appeal but, rather, to provide the board with additional notice of the appeal." (Internal quotation marks omitted.) *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 763.

The legislature also amended § 8-8 to include the savings provision at issue in the present appeal, which, as we explained in *Fedus*, "signaled the preference of the legislature that zoning appeals, like civil actions, shall be treated with sufficient liberality such that technical or procedural deficiencies in the appeal do not deprive the court of subject matter jurisdiction over the appeal." Id., 770; see Public Acts 1989, No. 89-356, § 1. These amendments sought to ameliorate the harshness of our holding in *Simko* that a defect in the citation deprives the court of subject matter jurisdiction even though proper service has been made. Thus, we concluded in *Fedus* that, although a failure of service in a zoning appeal *does* implicate the court's subject matter jurisdiction; *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 770 n.17; technical or procedural deficiencies in the appeal, such as a defect in the citation, do not deprive the court of subject matter jurisdiction, as long as proper service nevertheless is effectuated.[15] See id., 768–70.

In the present appeal, the trial court relied on this

court's decision in *Gadbois* v. *Planning Commission*, 257 Conn. 604, 778 A.2d 896 (2001), in support of its conclusion that the plaintiff's failure to serve the borough clerk was not a technical defect in form but, rather, a substantive defect in service that could not be cured by the savings provisions of § 8-8 (q). In *Gadbois*, as in the present case, the citation directed the sheriff to serve the chairman of the defendant planning commission but contained no mention of the town clerk. Id., 606–607. Under then applicable law, however, service was required on both the chairperson of the planning commission and the town clerk. Id., 606, citing General Statutes (Rev. to 2001) § 8-8 (e). The sheriff effectuated service in accordance with the citation and, accordingly, did not serve the town clerk. *Gadbois* v. *Planning Commission*, supra, 606–607. We concluded that the trial court properly had determined that the failure to make service on the town clerk was a "fatal jurisdictional defect" that could not be remedied under § 8-8 (q). Id., 608. Specifically, we explained that § 8-8 (q) did not apply because the defective service was not the result of negligence or error by the sheriff; see id., 609; who had fully discharged his responsibility by serving the summons and complaint in accordance with the citation. We agree with the trial court that *Gadbois* is dispositive of this appeal.

The plaintiff nevertheless maintains that the plaintiff in a zoning appeal has no legal duty to instruct the marshal whom to serve. Specifically, the plaintiff asserts that its only duty is to identify the defendant by name and address in the summons, and, after that, "it is up to the marshal himself to determine how to make proper service."

To the contrary, "it is well established in Connecticut that if a writ appears to be [valid] on its face, appears to have been issued by a competent authority, and has been issued with legal regularity, a [marshal] has a duty to serve it and will be protected in making such service. *Watson* v. *Watson*, 9 Conn. 140, 147 (1832)." *Fair Cadillac Oldsmobile Corp.* v. *Allard*, 41 Conn. App. 659, 662, 677 A.2d 462 (1996). "When we speak of process 'valid on its face,' in considering whether it is sufficient to protect an officer, we do not mean that its validity is to be determined upon the basis of scrutiny by a trained legal mind; nor is it to be judged in the light of facts outside its provisions which the officer may know. . . . Unless there is a clear absence of jurisdiction on the part of the [authority] issuing the process, it is sufficient if upon its face it appears to be valid in the judgment of an ordinarily intelligent and informed layman. To hold otherwise would mean that an officer must often act at his peril or delay until he has had an opportunity to search out legal niceties of procedure . . . . 'A result subjecting him to constant danger of liability would be an intolerable hardship to him, and inevitably detract from the prompt and efficient performance of his public

duty.' " (Citations omitted.) *Aetna Ins. Co.* v. *Blumenthal*, 129 Conn. 545, 553–54, 29 A.2d 751 (1943).

Indeed, under General Statutes § 6-32,[16] a marshal "has a statutory duty to serve and to make prompt return of all process that is given to him [or her] for service"; *Fair Cadillac Oldsmobile Corp.* v. *Allard*, supra, 41 Conn. App. 662; and is subject to double damages for failing to comply with that requirement. General Statutes § 6-32. It would be manifestly unfair to expose a marshal to such liability merely for effecting service in compliance with the dictates of the citation, as Gyle did in the present case, especially because "[t]he law does not require or expect [marshals] to have the education and training" to do anything more. *Fair Cadillac Oldsmobile Corp.* v. *Allard*, supra, 663. In fact, § 6-38b-6 (3) of the Regulations of Connecticut State Agencies expressly precludes marshals from "engag-[ing] in the practice of law or render[ing] legal advice" in the course of performing their duties. Requiring a marshal to exercise independent judgment with respect to the legal sufficiency of a citation arguably would place the marshal in jeopardy of violating that prohibition. Thus, the responsibility for identifying the person or persons to be served with process rightly lies with the plaintiff and the plaintiff's attorney, not with the marshal.

The limited nature of the marshal's legal duty necessarily informs our interpretation of § 8-8 (q) as applied to the facts of the present case. Because a marshal's sole duty is to make service as directed by the citation, the conduct of a marshal who faithfully discharges that responsibility cannot be deemed to constitute "default or neglect" for purposes of § 8-8 (q). The word "default" signifies a "failure to do something required by duty or law," and "neglect" means "to carelessly omit doing (something that should be done) either altogether or almost altogether . . . ."[17] Webster's Third New International Dictionary. Simply put, a marshal who makes service in accordance with the citation has neither failed to do what the law requires nor carelessly omitted to do something that he or she should have done.

Furthermore, the evident purpose of § 8-8 (q) is to avoid the unfairness that otherwise would result from holding a plaintiff responsible for a failure of service that is attributable not to the plaintiff, but to the marshal. In enacting § 8-8 (q), the legislature recognized that neither a plaintiff nor the plaintiff's counsel personally effects service of process; rather, such service is delegated to a third party, a marshal, over whom the plaintiff does not have complete control. The plaintiff—or, as is most often the case, the plaintiff's counsel—is responsible for instructing the marshal whom to serve, but neither can control the actions of the marshal thereafter. Consequently, it is eminently fair and reasonable that, under § 8-8 (q), a plaintiff's right to appeal will

not be extinguished merely because the marshal, for reasons not attributable to the plaintiff or the plaintiff's attorney, fails to effectuate service as instructed.

Thus, in *Vitale* v. *Zoning Board of Appeals*, 279 Conn. 672, 904 A.2d 182 (2006), we observed that the plaintiffs in that case could rely on § 8-8 (q) to save their zoning appeal from dismissal due to the marshal's failure to serve both the chairperson of the zoning commission and the town clerk in accordance with the applicable version of § 8-8 (f). Id., 681–82 n.9. In *Vitale*, the process prepared by the plaintiffs' attorney had directed the marshal to serve both the chairperson of the zoning commission and the town clerk, but the marshal, acting on the mistaken belief as to the applicability of a recent amendment to § 8-8 (f), served only the town clerk. See id., 675. Although we concluded that the trial court properly had dismissed the original appeal for lack of proper service; see id., 681; we also concluded that § 8-8 (q) permitted the refiling of the appeal because the defective service was attributable to the default or neglect of the marshal in failing to follow the express command of the citation. See id., 681–82 n.9. We further concluded that because § 8-8 (q) is a remedial statute, it must be construed liberally, and that, so construed, the fifteen day grace period of § 8-8 (q) did not begin to run until this court finally had determined that the original service was insufficient. Id.

We fully agree with the plaintiff in the present action that § 8-8 (q) should be construed liberally to accomplish its remedial purpose. To conclude that Gyle's failure to serve the borough clerk constitutes "default or neglect" within the meaning of § 8-8 (q), however, when Gyle did exactly what he was directed to do, is not to read § 8-8 (q) liberally to achieve its purpose; rather, it is to assign § 8-8 (q) a meaning that it clearly does not have.[18]

It is true, of course, that if Gyle *had* served the borough clerk notwithstanding the faulty citation, then § 8-8 (q) would have permitted the plaintiff to refile its appeal; by serving the borough clerk, the marshal effectively would have remedied the mistake of the plaintiff's counsel in failing to name the borough clerk in the citation. Indeed, that is precisely what occurred in *Fedus*. See *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 755. Gyle, however, did not serve the borough clerk, and because he had no duty to do so, the insufficient service was not attributable to his default or neglect within the meaning of § 8-8 (q).[19] Consequently, the trial court properly granted the defendant's motion to dismiss.[20]

The judgment is affirmed.

In this opinion ROGERS, C. J., and BORDEN, KATZ and ZARELLA, Js., concurred.

* The listing of justices reflects their seniority status as of the date of oral argument.

This case originally was argued before a panel of this court consisting of Justices Norcott, 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. Accordingly, Chief Justice Rogers and Justice Borden were added to the panel, and they have read the record, briefs and transcript of oral argument.

[1] General Statutes § 8-8 (b) provides in relevant part: "[A]ny person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located. The appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. . . ."

[2] General Statutes § 8-8 (f) provides: "Service of legal process for an appeal under this section shall be directed to a proper officer and shall be made as follows:

"(1) For any appeal taken before October 1, 2004, process shall be served by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board, and by leaving a true and attested copy with the clerk of the municipality. Service on the chairman or clerk of the board and on the clerk of the municipality shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the chairman or clerk of the board or the clerk of the municipality a necessary party to the appeal.

"(2) For any appeal taken on or after October 1, 2004, process shall be served in accordance with subdivision (5) of subsection (b) of section 52-57. Such service shall be for the purpose of providing legal notice of the appeal to the board and shall not thereby make the clerk of the municipality or the chairman or clerk of the board a necessary party to the appeal."

General Statutes § 52-57 (b) provides in relevant part: "Process in civil actions against the following-described classes of defendants shall be served as follows . . . (5) against a board, commission, department or agency of a town, city or borough, notwithstanding any provision of law, upon the clerk of the town, city or borough, provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board, commission, department or agency . . . ."

[3] General Statutes § 8-8 (q) provides: "If any appeal has failed to be heard on its merits because of insufficient service or return of the legal process due to unavoidable accident or the default or neglect of the officer to whom it was committed, or the appeal has been otherwise avoided for any matter of form, the appellant shall be allowed an additional fifteen days from determination of that defect to properly take the appeal. The provisions of section 52-592 shall not apply to appeals taken under this section."

[4] The defendant also asserts that this action is moot for reasons relating to the repeal and readoption of the regulations that provide the basis for the plaintiff's claim against the defendant. In light of our conclusion that the court lacks subject matter jurisdiction due to inadequate service of process, we do not address the defendant's mootness claim.

[5] Specifically, the plaintiff claimed that (1) the village district created in the regulations was not properly identified either in the plan of conservation and development adopted after October 1, 2000, or in an earlier plan, (2) the village district was not properly coterminous with the center area created in the plan, (3) the restriction of "discrete building structure[s]" to 6500 square feet had no rational relationship to general or special zoning purposes under either § 8-2j or General Statutes § 8-2, (4) the restriction was an unconstitutional taking under the federal and state constitutions, and (5) the regulations, as adopted, were impermissibly vague under the federal and state constitutions.

[6] The form JD-CV-1 summons contains the following language near the top of the form: "TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint." Following that language is a box with several blank lines on which the names and addresses of the parties are to be printed.

[7] Because the plaintiff filed its zoning appeal after October 1, 2004, § 8-8 (f) (2) required it to serve two copies of the process on the borough clerk. See General Statutes § 52-57 (b) (5); see also footnote 2 of this opinion.

[8] There is no dispute that the plaintiff timely refiled its zoning appeal under § 8-8 (q).

[9] We note that the plaintiff had brought a previous zoning appeal in 2003 that is not the subject of this appeal. In referring to "both" appeals, we are

merely differentiating between the March, 2005 zoning appeal that the court, *J. R. Downey*, *J.*, dismissed, and the plaintiff's subsequent appeal in September, 2005, in which the plaintiff attempted to save, in reliance on the provisions of § 8-8 (q), the prior zoning appeal that *J. R. Downey*, *J.*, had dismissed.

The form JD-CV-1 summons that Hall had used in both zoning appeals were identical in all material respects.

[10] See footnote 7 of this opinion.

[11] Hereinafter, all references to the trial court are to the court, *Schuman*, *J.*, unless otherwise noted.

[12] Specifically, the trial court stated: "In the present case . . . the fact that the [marshal] did not serve the municipal clerk is primarily due to the plaintiff's failure to name the clerk in its process. Although the plaintiff had the advantage of using a marshal who was very knowledgeable about the law, when, as [in the present case], the plaintiff fails to provide the marshal with the identity of all persons to serve, ultimately the responsibility must lie with the plaintiff . . . rather than the marshal." The trial court further stated that it is unreasonable "to expect a marshal to interpret the law and identify the correct persons to [serve]. . . . [T]hat role belongs to the plaintiff and ultimately the plaintiff's attorney, who is trained in the law. Determining who to serve can be a difficult task, involving legal research and statutory construction . . . . The court will not hold that the responsibility for performing this difficult task falls on a lay marshal rather than the plaintiff and its trained attorney. Accordingly . . . the defect in service was not due to [the] 'default or neglect of the officer to whom it was committed' under § 8-8 (q)." (Citation omitted.)

[13] We note that, under General Statutes § 1-2z, "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Neither party contends, however, that § 1-2z limits our review of § 8-8 (q).

[14] Hereinafter, all references to *Simko* throughout this opinion are to the decisions in *Simko I* and *Simko II*.

[15] The plaintiff maintains that *Fedus* stands for the proposition that "[f]ailure to identify the actual official who is to be served is . . . not needed to establish subject matter jurisdiction [when] the [zoning] board or commission is identified [in the process] and there is a direction to serve that *entity*." (Emphasis added.) The plaintiff misreads *Fedus*. As we have explained, *Fedus* holds that a failure to name the town clerk in the citation of a zoning appeal does not deprive the court of subject matter jurisdiction over the appeal when, as in *Fedus*, actual service nevertheless is made on the proper person. When actual service is made, any defect in the *form* of the citation or summons may be corrected pursuant to § 8-8 (p).

[16] General Statutes § 6-32 provides: "Each state marshal shall receive each process directed to such marshal when tendered, execute it promptly and make true return thereof; and shall, without any fee, give receipts when demanded for all civil process delivered to such marshal to be served, specifying the names of the parties, the date of the writ, the time of delivery and the sum or thing in demand. If any state marshal does not duly and promptly execute and return any such process or makes a false or illegal return thereof, such marshal shall be liable to pay double the amount of all damages to the party aggrieved."

[17] Because the two words are not defined in the relevant statutory provisions, we turn to General Statutes § 1-1 (a), which provides in relevant part: "In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language . . . ." We look to the dictionary definition of the terms to ascertain their commonly approved meaning. E.g., *Stone-Krete Construction, Inc.* v. *Eder*, 280 Conn. 672, 678, 911 A.2d 300 (2006).

[18] Contrary to the plaintiff's claim, *Kobyluck* v. *Planning & Zoning Commission*, 84 Conn. App. 160, 852 A.2d 826, cert. denied, 271 Conn. 923, 859 A.2d 579 (2004), does not support the proposition that § 8-8 (q) operates to save a zoning appeal that has been dismissed for inadequate service even when the citation does not identify the proper person to be served. In contrast to the present case, the citation in the summons in *Kobyluck* directed the marshal to serve the agents of the defendant planning and zoning commission (commission), namely, the chairperson of the commission and the town clerk, under the then applicable revision of § 8-8. See *Kobyluck* v. *Planning & Zoning Commission*, Court File, Superior Court, judicial district of New London, Docket No. CV-00-0121562-S. The marshal, however, served only

the town clerk. See *Kobyluck* v. *Planning & Zoning Commission*, supra, 168–69. In its motion to dismiss the appeal, the commission asserted that the marshal's failure to serve its chairperson was attributable to the default and neglect of the plaintiffs, not the marshal, because the plaintiffs had failed to state the chairperson's correct address for service in the citation. See id., 169. The trial court rejected the commission's contention, noting that § 8-8 did not require the plaintiffs to provide the chairperson's address in the citation. Id. The trial court concluded, therefore, and the Appellate Court agreed, that the service defect was attributable to the default or neglect of the marshal, who, despite being directed to make service on the commission chairperson, had failed to perform the simple investigative work necessary to determine the chairperson's readily ascertainable correct address. See id. Thus, in *Kobyluck*, the service defect was caused by the marshal's failure to make a reasonable effort to locate the person identified in the citation, and not by the plaintiffs' failure to identify that person in the citation.

[19] Because the plaintiff does not claim that Hall orally instructed Gyle to serve the borough clerk despite the command of the citation to serve only the chairperson of the zoning commission, we need not decide whether Gyle's failure to follow such an oral instruction would constitute "default or neglect" within the meaning of § 8-8 (q).

[20] We take issue with the dissent for several reasons, both substantive and procedural. First, the dissent decides this case on a legal theory that never has been advanced by the plaintiff, namely, that this court should overrule our holding in *Gadbois* v. *Planning Commission*, supra, 257 Conn. 604. Although the dissent concedes both that the plaintiff cannot prevail under our holding in *Gadbois* and that the plaintiff has not claimed, either in the trial court or in this court, that *Gadbois* should be overruled, the dissent nevertheless concludes that *Gadbois* is no longer good law. We do not share the dissent's willingness to overrule controlling precedent without first affording the parties the opportunity to brief the issue, at least in the absence of a compelling justification to do so. We are not aware of any such reason in the present case.

In fact, the plaintiff's claim is predicated on a different theory altogether, namely, that a marshal has an independent legal duty to effect service correctly, irrespective of the command of the citation. As we have explained, however, this claim is foreclosed by a line of decisions that hold, clearly and emphatically, that a marshal's sole legal duty with respect to the service of process is to effectuate service in accordance with the dictates of the citation.

The dissent would have us construe the words "default or neglect" set forth in § 8-8 (q) in a jurisprudential vacuum, untethered to the guiding legal principles set forth in those decisions and in the regulatory scheme that enumerates the duties and responsibilities of marshals. In other words, the dissent advocates an interpretation of § 8-8 (q) that ignores the common-law and statutory backdrop against which that provision was adopted. We cannot endorse such an interpretation because we presume that the legislature was aware of those standards when it enacted § 8-8 (q). See, e.g., *Hatt* v. *Burlington Coat Factory*, 263 Conn. 279, 310, 819 A.2d 260 (2003) ("the legislature is always presumed to have created a harmonious and consistent body of law" [internal quotation marks omitted]); see also *Considine* v. *Waterbury*, 279 Conn. 830, 844, 905 A.2d 70 (2006) ("the legislature is presumed to be aware of prior judicial decisions involving common-law rules" [internal quotation marks omitted]).

We also reject the dissent's attempt to distinguish our long-standing precedent defining a marshal's duty on the ground that those cases involve a marshal's civil liability, whereas this case involves a statutory savings provision. In addressing the scope of that liability in those cases, this court necessarily defined the parameters of a marshal's legal duty insofar as it pertains to the service of process. The dissent offers no reason, and we are aware of none, why the scope of that duty is any different for purposes of the present case than it was for purposes of those prior cases. Moreover, we are unwilling to adopt an interpretation of § 8-8 (q), as advocated by the dissent, that would require a case-by-case inquiry into the subjective mental state of a marshal who has effected service as directed by the plaintiff's attorney.

Finally, we strongly disagree with the dissent's assertion that our decision "invites a return to the pre-*Fedus* interpretations of the zoning appeal statutes that were rife with the opportunities for the dismissal of land use appeals on the basis of hypertechnicalities." Our decision does no such thing. Indeed, we reaffirm all that we said in *Fedus* concerning the intent of the legislature to ameliorate the undue harshness of our holding in *Simko* and its progeny. We do not, however, have free reign to overrule our prior interpretation of a statute merely because we might wish to see the statute written differently, or because we might prefer a different result in a particu-

lar case.