LEYLA MIRJAVADI ET AL. *v.* ANTHONY VAKILZADEH ET AL.
(SC 18813)

Norcott, Palmer, Zarella, Eveleigh and Vertefeuille, Js.

Argued December 5, 2012—officially released September 24, 2013

Lloyd D. Pedersen, with whom, on the brief, was *Catherine A. Stewart*, for the appellant (defendant Maria Varone).

Brenden P. Leydon, for the appellee (named plaintiff).

Opinion

ZARELLA, J. The named plaintiff, Leyla Mirjavadi,[1] brought this action in negligence against the defendant Maria Varone, among others,[2] following the abduction of the plaintiff's two year old daughter by the daughter's father, from whom the plaintiff was seeking a divorce, during a visit supervised by the defendant at a shopping mall. The defendant appeals from the judgment of the Appellate Court, which reversed the judgment of the trial court in favor of the defendant on the ground that the trial court's flawed analysis of causation and foreseeability, in combination with two clearly erroneous factual findings, undermined the Appellate Court's confidence in the trial court's conclusion that the defendant had not been negligent. The defendant claims that the Appellate Court's conclusions were incorrect and that reversal of the judgment was unwarranted. The plaintiff argues to the contrary. We affirm the judgment of the Appellate Court.

The following relevant facts and procedural history are set forth in the Appellate Court's decision. "The plaintiff and Orang Fabriz were Iranian citizens, married to one another,[3] who came to the United States in 1995 with [their daughter] Saba to visit relatives. While in the United States, the plaintiff filed for divorce from Fabriz and was granted political asylum. The plaintiff was represented by attorney Barbara Green during the divorce proceedings.

"While the divorce was pending, Fabriz was granted visitation rights with respect to Saba. It was agreed, however, that these visits would be supervised at all times. Initially, the supervised visitations occurred at the house of the plaintiff's brother . . . but the location had to be moved due to outbursts by Fabriz. After one visit was held at the Stamford police station, the plaintiff and Fabriz agreed to hold visits at the office of a family therapist, Barbara Ivler. Eventually, because these visits were successful, Ivler recommended that the visits occur in a more natural setting. To facilitate visitation outside Ivler's office, the plaintiff, upon Green's recommendation, hired the defendant to supervise them.

"On October 5, 1996, the defendant supervised an afternoon visit between Fabriz and Saba scheduled to last from 2 until 5 p.m. at the Stamford Town Center mall. As was the usual practice, the plaintiff took Saba to the mall and left her with the defendant for the visit. Also, as had become the usual practice, the uncle of both the plaintiff and Fabriz, Anthony Vakilzadeh, was present to participate in the visit.

"At the beginning of the visit, the defendant accompanied Fabriz, Saba and Vakilzadeh to a restaurant in the mall. Soon after entering the restaurant, Fabriz left with Saba and went to a bookstore across from the restaurant. When the defendant could not locate Fabriz and

Saba in the bookstore, Vakilzadeh told her that Fabriz [might] be shopping with Saba for a coat or that he [might] be resting somewhere because he had not been feeling well that day. Vakilzadeh later that day told the defendant that, according to his wife, Fabriz had left the mall to go to Washington, D.C., for legal advice.

"Unbeknownst to the defendant, prior to the October 5, 1996 visit, Vakilzadeh had purchased two airplane tickets to Turkey for Fabriz and Saba. Additionally, Fabriz had arranged, using Vakilzadeh's credit card, for a limousine to transport him to the mall on October 5, 1996, and then to take him and Saba to John F. Kennedy International Airport (JFK airport). The police later determined that Fabriz and Saba had left the United States on a 6 p.m. flight on October 5, 1996, from JFK airport to Istanbul, Turkey. The plaintiff has not seen Saba since October 5, 1996, and has not received any communication from her during this period . . . .

"The plaintiff commenced this action on July 14, 1998. Once the plaintiff withdrew her complaint as to Vakilzadeh, Green, and Green [and] Gross, P.C.; see footnote 2 of this opinion; the court ultimately was asked to determine liability only as to the defendant for negligence and breach of fiduciary duty. Specifically, the plaintiff alleged that the abduction was caused by the defendant's negligence and carelessness because she had failed to supervise the visitation properly in order to prevent Saba from being kidnapped; she had failed to report the kidnapping immediately to any authority or to the plaintiff; she had misrepresented the time the kidnapping occurred; she had failed to ensure that Fabriz did not have his passport during a supervised visitation; she had failed to prevent the kidnapping; she had failed to keep a proper lookout for Saba; she had been inattentive to her duties during the visit; and she had permitted Fabriz to be with Saba unsupervised.

"At the conclusion of trial, the court found in favor of the defendant, stating that [it was 'unable to attach liability to [the defendant's] alleged failures' and that] '[e]ach time a liability exposition has been attempted in draft by the court, its elements appear shaky, not cumulative, and hugely overwhelmed by the superseding intentional (and criminal) conduct of . . . Fabriz and . . . Vakilzadeh coupled with the uncertainty of the sporadic and vague information [the defendant] was provided along the continuum of the ongoing divorce.' " (Footnotes altered.) *Mirjavadi* v. *Vakilzadeh*, 128 Conn. App. 61, 63–65, 18 A.3d 591 (2011).

The plaintiff appealed from the trial court's judgment to the Appellate Court, claiming that several of the trial court's factual findings were clearly erroneous because they were unsupported by the record or contradicted by the evidence. The plaintiff specifically claimed that the trial court improperly found that (1) the abduction could have occurred as late as after 4 p.m., (2) the

parties had agreed to allow a law student to serve as a substitute supervisor for visitations if the defendant was unavailable, and (3) the original purpose of the supervised visitations, which was to thwart an attempted abduction, had been minimized by the date of the kidnapping. Id., 67.

The Appellate Court agreed with the plaintiff that the first two findings were clearly erroneous and that the erroneous findings were harmful. Id., 68–71. The court determined that the third purported finding as to the purpose of the supervised visitations, however, was "more akin to a legal conclusion" regarding causation and the foreseeability of an abduction; id., 72; and that the trial court's analysis with respect to that claim was flawed. Id., 73. Thus, because the trial court's flawed analysis of foreseeability, together with its two clearly erroneous factual findings, undermined the Appellate Court's confidence in the trial court's conclusion that the defendant had not been negligent, the Appellate Court reversed the trial court's judgment and remanded the case for a new trial. Id., 77.

The defendant sought review of the Appellate Court's judgment with respect to all three findings, but this court limited certification to the first two findings.[4] Accordingly, the parties did not address the Appellate Court's decision as to the plaintiff's third claim regarding the purpose of the supervised visitations. We subsequently ordered supplemental briefing to address that claim,[5] however, and, upon reviewing the parties' arguments, we agree with the Appellate Court that the trial court's foreseeability analysis was fundamentally flawed.

I

We first consider whether the Appellate Court properly concluded that the trial court's finding regarding the purpose of the supervised visitations by the time of the abduction was more akin to a legal conclusion subject to plenary review than a factual finding subject to a determination as to whether it was clearly erroneous. Although the defendant does not directly address this issue, the plaintiff contends that, "[a]s [the] issues developed in the case, in particular, after the postargument second articulation by the trial court and supplemental briefing by the parties, what originally had been cast as a factual finding became more clearly viewed as a legal conclusion subject to plenary review." The plaintiff adds that, "[p]articularly, when a postargument articulation by the trial court itself refocuses the issues, it is proper for the reviewing court to determine and apply the appropriate standard of review to those issues regardless of how they were initially couched." We conclude that the Appellate Court properly recast the plaintiff's original claim as a challenge to the trial court's legal conclusion regarding the foreseeability of an abduction.

It is well established that "[t]he . . . determination of the proper legal standard in any given case is a question of law subject to our plenary review." *Fish* v. *Fish*, 285 Conn. 24, 37, 939 A.2d 1040 (2008); see also *Hartford Courant Co.* v. *Freedom of Information Commission*, 261 Conn. 86, 96–97, 801 A.2d 759 (2002). We thus exercise plenary review of the Appellate Court's decision to apply plenary review to the trial court's decision in the present case. *Crews* v. *Crews*, 295 Conn. 153, 161, 989 A.2d 1060 (2010).

The procedural history of this claim is complicated. In its memorandum of decision, the trial court made only one indirect reference to the purpose of the supervised visitations. Early in its recitation of facts, the court stated that, during the pendency of the divorce, "the earlier visitations between [Fabriz] and [Saba] were held at the home of a relative. This usually resulted in outbursts of anger by [Fabriz]. As a result, [Fabriz] was required to be in the presence of a [family therapist] for the court-allowed weekly visitation between [Fabriz and Saba]. Later, the supervised visitation was allowed to take place under nonpsychiatric supervision. Hired for this supervisory purpose and to be paid $30 for a Saturday [two] hour session was a young legal aid attorney, [the] defendant . . . ." The court, however, never discussed the purpose of the supervised visitations in concluding that the defendant had not been negligent. It merely determined, for various enumerated reasons, that it was "unable to attach liability to [the defendant's] alleged failures" during the supervised visitation when the abduction occurred.

After the trial court rendered judgment for the defendant, the plaintiff filed a motion to reargue, claiming, inter alia, that the trial court's memorandum of decision did not address the most important issue in the case, namely, whether the defendant had been hired largely, if not solely, to thwart an attempted abduction. The plaintiff claimed that, if the risk of flight was the reason why the defendant had been hired, then letting Saba out of her sight for any period of time would have determined the outcome of the case because allowing such a separation would have constituted a breach of her duty. After the trial court denied the motion to reargue, the plaintiff appealed to the Appellate Court. The plaintiff then moved for an articulation to ensure that the record would be adequate for review. The plaintiff requested, inter alia, that the trial court explain (1) whether it found that the purpose of the supervised visitations, in whole or in part, was to thwart an attempted abduction, and (2) its findings as to the purpose or purposes for which the defendant was hired, including the factual basis for such findings. The trial court denied the motion. The plaintiff then filed a motion for review with the Appellate Court, which ordered the trial court to provide the requested articu-

lation.

In its answer to the first question, the trial court stated that the retention of the defendant to supervise visitations between the child and her father was "at least in part, motivated by the perception that a person ought [to] be in place against the prospect that [Fabriz] might try to return to Iran with [Saba]." The court added, however, that "[t]he purpose of [the defendant's] visitation presence by the time of October 5, 1996, had become rather routinized, along the lines of more ordinary visitation situations, so rendered by passport issues probably mismanaged by [Green] (the mother's divorce attorney) and, of course, on the day in question by the obstructionism and criminal aiding and abetting of . . . Vakilzadeh."

In its answer to the second question, the court stated that the defendant was hired because (1) "someone was needed to fill the supervisory role" formerly assumed by the family therapist, (2) "the amount to be paid by [Fabriz] would be reduced to $30 per hour, much less than the $85 per hour [the family therapist] had been charging," and (3) "it appeared to the attorney representing the [plaintiff] that there was a risk that [Fabriz] might flee to Iran, and with that in mind, she hired [the defendant] whose limited prior . . . supervision included an instance where [the defendant] physically stopped or thwarted an attempted abduction. However, by the time of October 5, 1996, this concern had been allowed to wither, in multiple ways. [The defendant] had been given to understand that [Fabriz] no longer possessed the passport, [Fabriz] was ostensibly to become employed in New Jersey, and the numerous visits preceding the fateful one had concluded . . . without incident."

Following the trial court's articulation, the parties filed appellate briefs. The plaintiff's third claim was that the trial court had made a factual finding erroneously minimizing the defendant's purpose in supervising the visitations and that the erroneous finding was harmful. The defendant accepted the plaintiff's characterization of the trial court's conclusion as a factual finding, refuted the evidence offered by the plaintiff, and cited other evidence in support of the trial court's conclusion that the risk of flight was no longer a relevant concern on the day of the abduction.

Thereafter, the Appellate Court, sua sponte, ordered a further articulation by the trial court to address several additional questions, including whether it was foreseeable to the defendant on October 5, 1996, that Fabriz might attempt to abscond with Saba, and if not, why not.[6] In its articulation, the trial court responded that it did not find that the defendant foresaw, or should have foreseen, on October 5, 1996, that an abduction was underway, in part because Vakilzadeh affirmatively misled her and in part because of "his fully informed

silence" regarding his own participation in the plan. The court further explained: "[I]nstead of the passage of time always increasing the likelihood of foreseeability of an awful event, the sands can be shifting and the untoward event may shrink in sound viewing to where the reasonabl[y] prudent person is not rightly to be held. So here, one sees the unusual setting of the decreasing foreseeability of the tragic event as time and events wore on. Usually, of course, time illuminates." The court referred to many factors that had caused it to conclude that the prospect of an October 5, 1996 abduction was unforeseeable, none of which was linked to the purpose of the supervised visitations.[7]

Thereafter, the Appellate Court, sua sponte, ordered the parties to file supplemental briefs addressing two additional issues, namely, whether, assuming the defendant had been negligent, the conduct of Fabriz and Vakilzadeh was a superseding cause that absolved her of liability, and whether the evidence and the applicable law supported or refuted the trial court's conclusion that the child's abduction was foreseeable.

In its decision, the Appellate Court applied plenary review to the plaintiff's third claim of error because it concluded that the trial court's determination regarding the emphasis to be placed on the purposes of the supervised visitations was more akin to a legal conclusion than a factual finding. *Mirjavadi* v. *Vakilzadeh*, supra, 128 Conn. App. 72. The Appellate Court reasoned: "While the court's finding as to the purposes behind the supervised visitation was a factual finding, the court's conclusion concerning how much weight to assign to each purpose was a legal conclusion. The court's conclusion as to the purposes was part of its determination of whether the abduction was foreseeable and its evaluation of the scope of the legal duty that the defendant owed to the plaintiff, whether the defendant's actions were the proximate cause of the abduction and whether Fabriz' and Vakilzadeh's conduct constituted a superseding cause. The court erred in concluding that, because the circumstances surrounding the visitations seemingly had changed, that vitiated the obligation of the defendant to continue to ensure that no abduction occurred. Although we do not express an opinion as to whether the abduction was foreseeable on October 5, 1996, we do conclude that the court's error indicates a misunderstanding of what foreseeability is under our law . . . ." (Footnote omitted.) Id., 72–73. In its subsequent discussion of the trial court's analysis of foreseeability, the Appellate Court concluded that the trial court "mistakenly conflated the foreseeability of the abduction with the seemingly diminished probability that it would occur."[8] (Emphasis omitted.) Id., 75. It then continued: "[T]he [trial] court's conclusion that the concern over possible abduction was 'wither[ing]' and that, as a consequence, the foreseeability of abduction was 'decreasing' is not supportable. The question

is not whether the risk of abduction was low or had diminished over time, but whether it remained foreseeable that Saba could be abducted by [Fabriz]. . . . A decreased likelihood that an event will occur does not necessarily mean that it becomes unforeseeable. The basis of the [trial] court's conclusion that the defendant was not negligent and that the conduct of Vakilzadeh and Fabriz constituted a superseding cause, therefore, rest on a flawed analysis of the foreseeability of the abduction and cannot stand." (Citations omitted; emphasis omitted.) Id., 76–77.

This court has recognized that a reviewing court may reformulate a certified question to conform to the issue actually presented. See, e.g., *Anatra* v. *Zoning Board of Appeals*, 307 Conn. 728, 736, 59 A.3d 722 (2013); *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 191, 884 A.2d 981 (2005). In the present case, we agree with the Appellate Court that the trial court's determination in its memorandum of decision and two articulations that the risk of an abduction had decreased significantly by October 5, 1996, was more akin to a legal conclusion regarding the foreseeability of an abduction rather than a factual finding regarding the purpose of the supervised visitations, and, therefore, it was subject to plenary review.

In its first articulation, the trial court acknowledged that one of the purposes of the supervised visitations was to thwart an abduction when it stated that it "appeared to the attorney representing the [plaintiff] that there was a risk that [Fabriz] might flee to Iran, and, with that in mind, she hired the defendant," who was known to have prevented an attempted abduction in another case by throwing herself on the hood of a moving vehicle driven by the would-be kidnapper. The court further stated, however, that "[t]he purpose of [the defendant's] visitation presence by the time of October 5, 1996, had become rather routinized, along the lines of more ordinary visitation situations," and that Green's concern regarding the risk of an abduction by that time "had been allowed to wither, in multiple ways." It is this language referring to the facts and circumstances existing on October 5, 1996, that lies at the heart of the issue.

Although the thought may have been inartfully expressed, the trial court's determination that the purpose of the defendant's visitation presence "had become rather routinized" and that the concern regarding an abduction "had been allowed to wither, in multiple ways," constituted a legal conclusion regarding the foreseeability of an abduction on October 5, 1996. The court's implicit reference to foreseeability in the first articulation was made explicit in the second articulation when the Appellate Court ordered the trial court to explain whether it found that it was foreseeable to the defendant that Fabriz might attempt an abduction. In

that articulation, the trial court discussed the "decreasing foreseeability of the tragic event as time and events wore on." Among those events was each of the events mentioned by the court in its first articulation as reasons why the initial concern regarding an abduction had been "allowed to wither," including the defendant's understanding that Fabriz was no longer in possession of a passport, his potential employment in New Jersey, and his prior, uneventful visits with Saba. See footnote 7 of this opinion. Significantly, the trial court did not state that preventing an abduction was no longer a purpose of the supervised visitations. Accordingly, we agree with the Appellate Court that the plaintiff's third claim was, in effect, a challenge to the trial court's legal conclusion regarding the foreseeability of an abduction that was subject to plenary review.

II

We next consider whether the Appellate Court properly determined that the trial court misapplied Connecticut law on causation and foreseeability in concluding that the defendant had not been negligent. The defendant, focusing on the Appellate Court's reference to causation, argues that it was the Appellate Court's analysis that was flawed because it improperly assumed that the trial court considered the issue of proximate cause in determining that the defendant had not been negligent. The plaintiff, focusing on foreseeability and duty, agrees with the Appellate Court's analysis because, once the trial court determined that preventing an abduction was a purpose of the supervised visitations, it could not have properly concluded that the occurrence of the risk the defendant was hired to prevent was unforeseeable. Although we disagree with the Appellate Court's reasoning on causation, we agree with its conclusion that the trial court's analysis of foreseeability was fundamentally flawed.

We begin with the standard of review. "When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Ugrin* v. *Cheshire*, 307 Conn. 364, 389, 54 A.3d 532 (2012).

With respect to the governing legal principles, "[t]he essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Contained within the first element, duty, there are two distinct considerations. . . . First, it is necessary to determine the existence of a duty, and then, if one is found, it is necessary to evaluate the scope of that duty. . . . The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand. . . . If a court determines, as a

matter of law, that a defendant owes no duty to a plaintiff, the plaintiff cannot recover in negligence from the defendant. . . .

"Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable . . . . [T]he test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Citation omitted; internal quotation marks omitted.) *Sic* v. *Nunan*, 307 Conn. 399, 406–408, 54 A.3d 553 (2012).

Foreseeability is also considered in the context of causation. Proximate cause is "[a]n actual cause that is a substantial factor in the resulting harm . . . . The fundamental inquiry of proximate cause is whether the harm that occurred was within the scope of foreseeable risk created by the defendant's negligent conduct." (Citation omitted; internal quotation marks omitted.) *Sapko* v. *State*, 305 Conn. 360, 372–73, 44 A.3d 827 (2012). Foreseeability is likewise considered when the defendant claims there has been no negligence because an unforeseeable intentional tort, force of nature, or criminal event superseded the tortious conduct. See *Doe* v. *Manheimer*, 212 Conn. 748, 761–62, 563 A.2d 699 (1989), overruled in part on other grounds by *Stewart* v. *Federated Dept. Stores, Inc.*, 234 Conn. 597, 662 A.2d 753 (1995).

In the present case, the Appellate Court concluded that the trial court's reference to the diminishing concern by October 5, 1996, regarding an attempted abduction constituted a legal conclusion relating to "whether the abduction was foreseeable and its evaluation of the scope of the legal duty that the defendant owed to the plaintiff, whether the defendant's actions were the proximate cause of the abduction and whether Fabriz' and Vakilzadeh's conduct constituted a superseding

cause." (Footnote omitted.) *Mirjavadi* v. *Vakilzadeh*, supra, 128 Conn. App. 72–73. We agree only in part with the Appellate Court's reasoning.

The trial court's memorandum of decision was not a model of clarity, nor was its first articulation. In both documents, however, the trial court concluded that the defendant had not been negligent. The court explained in its first articulation that its "decision holding [the defendant] not negligent . . . rendered it unnecessary to voice the difficulties the court perceived regarding proximate cause." In its second articulation, it repeated that causation was not necessary to its original decision.[9] Accordingly, to the extent the Appellate Court characterized the trial court's determination regarding the purpose of the supervised visitations as a legal conclusion regarding foreseeability in relation to proximate and superseding cause, its characterization was incorrect because the trial court never reached those issues in deciding that the defendant had not been negligent.

With respect to the scope of the defendant's legal duty to the plaintiff, the trial court did not expressly consider the defendant's duty and the foreseeability of an abduction in its memorandum of decision, a fact recognized by the Appellate Court. See *Mirjavadi* v. *Vakilzadeh*, supra, 128 Conn. App. 72–73 n.13 (observing that trial court failed to make finding regarding "duty"). The trial court merely concluded that it had been "unable to attach liability to [the defendant's] alleged failures" because of certain other factors, including that the defendant had been insufficiently informed regarding the status of Fabriz' passport, which she believed he no longer possessed, and that she had been affirmatively misled and obstructed by Vakilzadeh. As previously noted, the trial court indirectly alluded to foreseeability in its first articulation when it stated that Green's concern regarding an attempted abduction "had been allowed to wither," but it was not until the Appellate Court ordered the trial court to address foreseeability in a second articulation that the trial court stated that it "did *not* conclude that [the defendant] foresaw *or* should have foreseen, as of October 5, 1996, that an abduction was underway." (Emphasis in original.) Rather, the court noted "the decreasing foreseeability of the tragic event as time and events wore on." The court subsequently listed various "factors which shrunk, in varying degrees, the ostensible or foreseeable prospect of an October 5, 1996 abduction . . . ." Thus, the trial court never explicitly addressed the defendant's duty to the plaintiff on October 5, 1996.

On the basis of these facts, we agree with the Appellate Court that the trial court "erred in concluding that because the circumstances surrounding the visitations seemingly had changed, that vitiated the obligation of the defendant to continue to ensure that no abduction occurred." *Mirjavadi* v. *Vakilzadeh*, supra, 128 Conn.

App. 73. We also agree with the Appellate Court that the trial court's failure to consider whether preventing an abduction continued to be a purpose of the supervised visitations on October 5, 1996, and its failure to consider the defendant's duty in light of the presence or absence of that purpose, rendered its analysis of the foreseeability of the abduction and its judgment in favor of the defendant fatally flawed. As we have observed, the test for the existence of a legal duty in a negligence action is "whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result . . . ." (Internal quotation marks omitted.) *Sic* v. *Nunan*, supra, 307 Conn. 407. Accordingly, on retrial, the trial court must evaluate the evidence in the record to determine whether preventing an abduction remained a purpose of the supervised visitations on October 5, 1996, whether the defendant had a legal duty to the plaintiff to thwart an attempted abduction in light of the purpose of the supervised visitations on that date, and, if so, whether the defendant breached her duty and whether that breach of duty, if found, was a proximate cause of the plaintiff's injuries or was superseded by the conduct of others.[10]

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] Mirjavadi brought this action individually and as next friend of her daughter, Saba Fabriz, whom we hereinafter refer to as Saba. Saba is not a party to this appeal. We refer to Mirjavadi as the plaintiff throughout this opinion.

[2] The plaintiff subsequently withdrew her claims against the following defendants during or after commencement of trial: Anthony Vakilzadeh, the plaintiff's uncle; Barbara Green, her divorce attorney; and Green and Gross, P.C., Green's law firm. Varone is the only remaining defendant. We refer to Varone as the defendant throughout this opinion.

[3] The plaintiff and Fabriz are first cousins who became husband and wife as a result of an arranged marriage.

[4] The following question was certified for review: "Did the Appellate Court properly determine that several of the facts found by the trial court were clearly erroneous, and, therefore, the judgment in favor of the defendant must be reversed?" *Mirjavadi* v. *Vakilzadeh*, 301 Conn. 929, 23 A.3d 724 (2011).

[5] We ordered supplemental briefing on the following additional questions: "Did the Appellate Court properly exercise plenary review of the plaintiff's claim that the trial court made an erroneous factual finding when it minimized the initial purpose of supervising visitations, which was to prevent an abduction?

"If the Appellate Court properly determined that the claim raised a legal issue that required plenary review, did the Appellate Court properly determine that the trial court misapplied Connecticut law on proximate cause and foreseeability?"

[6] Specifically, the Appellate Court ordered the trial court to provide an articulation with respect to the following additional questions: (1) whether the defendant was negligent in failing to keep Saba in her sight; (2) whether the conduct of Fabriz and Vakilzadeh constituted a superseding cause of Saba's abduction; and (3) whether that superseding cause, if found, absolved the defendant of liability for any damages caused by her alleged negligence.

[7] In addition to the passage of time, these factors included uneventful visitations since July 20, 1996, the defendant's separation from Fabriz and Saba during prior visitations, the defendant's knowledge that Green, the plaintiff's divorce attorney, had obtained Fabriz' passport and had been criticized by the Pakistani Embassy for destroying portions of it, the defendant's lack of knowledge that Fabriz may have replaced his passport, the

defendant's understanding that Fabriz may have been about to undertake employment in New Jersey, the defendant's apparent belief that Fabriz had no driver's license, and the defendant's trust in Vakilzadeh, who drove Fabriz to the visitations and stayed with the defendant during her brief separations from Fabriz and Saba during the visitations but who ultimately misled and deceived her as to their whereabouts after they could not be found in the bookstore on October 5, 1996. The court further explained that the abduction was not foreseeable because Green had written the defendant a letter just five days earlier suggesting that the change to a longer visitation of three hours was better than court-ordered unsupervised visitations because there had been no problems with the visitations to date and it appeared that Fabriz intended to settle in the United States.

[8] The Appellate Court explained: "In its memorandum of decision and its two responses to the articulations . . . the [trial] court clearly based its conclusions, to a significant degree, on a determination that an abduction on October 5, 1996, was improbable. In addressing the concern over the risk of abduction, the court stated that 'by the time of October 5, 1996, this concern had been allowed to wither, in multiple ways. [The defendant] had been given to understand that [Fabriz] no longer possessed the passport; [Fabriz] was ostensibly to become employed in New Jersey, and the numerous visits preceding the fateful one had concluded . . . without incident.' In a subsequent articulation, the court stated that: 'It may be however, instead of the passage of time always increasing the likelihood of foreseeability of an awful event, the sands can be shifting and the untoward event may shrink in sound viewing to where the reasonabl[y] prudent person is not rightly to be held. So here, one sees the unusual setting of the decreasing foreseeability of the tragic event as time and events wore on. Usually, of course, time illuminates.' " *Mirjavadi* v. *Vakilzadeh*, supra, 128 Conn. App. 76.

[9] The Appellate Court may have been misled by the reference to superseding cause in the final paragraph of the trial court's memorandum of decision. In that paragraph, the trial court stated that its attempts to draft a decision finding the defendant negligent were "overwhelmed by the superseding intentional (and criminal) conduct" of Fabriz and Vakilzadeh. Similarly, in response to the Appellate Court's query in its second order for articulation regarding whether the trial court had found that the conduct of Fabriz and Vakilzadeh constituted a superseding cause of Saba's abduction, the trial court responded in the affirmative, with the following caveat: "If the trial court is deemed in error regarding the absence of [the defendant's] negligence, and she is deemed to have been negligent in a germane, casually connected proximate fashion, then it is true that the conduct of [Vakilzadeh] and [Fabriz] superseded it."

[10] In light of this conclusion, we need not address the defendant's claims that the Appellate Court improperly concluded that the trial court's factual findings regarding the time of the abduction and the hiring of a substitute to supervise the visitations if the defendant was unavailable were clearly erroneous.