ROBERT GRIMM *v.* JOHN WAYNE FOX ET AL.
(SC 18814)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan and Vertefeuille, Js.

Argued September 20, 2011—officially released January 10, 2012

Robert Grimm, pro se, the appellant (plaintiff).

Frederick L. Murolo, with whom was *Karen T. Murolo*, for the appellees (defendants).

Opinion

NORCOTT, J. The plaintiff, Robert Grimm, appeals[1] from the trial court's grant of a motion for judgment in favor of the defendants, John Wayne Fox and Curtis, Brinckerhoff and Barrett, P.C., in this legal malpractice action. On appeal, the plaintiff claims that the trial court improperly: (1) granted the defendants' motion for judgment, determining that the critical statements concerning the defendants made by this court in its opinion in *Grimm* v. *Grimm*, 276 Conn. 377, 886 A.2d 391 (2005), cert. denied, 547 U.S. 1148, 126 S. Ct. 2296, 164 L. Ed. 2d 815 (2006), were not sufficient "evidence of an expert nature" (expert evidence) of the defendants' malpractice; and (2) heard the defendants' motion for judgment one day after the motion was filed, and on the same day that trial was scheduled to begin. We disagree with the plaintiff and, accordingly, affirm the judgment of the trial court.

The record, viewed in the light most favorable to the nonmoving plaintiff, reveals the following relevant facts and procedural history. The defendants represented the plaintiff serving as local counsel in an action to dissolve his marriage. In January, 2003, the trial court rendered judgment dissolving the plaintiff's marriage to his former wife and issued various financial orders. *Grimm* v. *Grimm*, supra, 276 Conn. 380–81. The trial court determined, among myriad other issues, that the plaintiff had diminished the marital estate by $2.9 million and also ordered him to pay $100,000 of the attorney's fees incurred by his former wife. Id., 381. The plaintiff raised both of these issues along with four other issues in an appeal from the dissolution judgment to the Appellate Court,[2] which concluded that the trial court had improperly determined that the plaintiff had diminished the marital estate by $2.9 million, but that this incorrect finding was harmless and did not require reversal. *Grimm* v. *Grimm*, 82 Conn. App. 41, 52–53, 844 A.2d 855 (2004). That court also concluded that the trial court had abused its discretion in ordering the plaintiff to pay his wife's attorney's fees. Id., 55.

This court granted the plaintiff's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly conclude that the trial court's improper findings in support of its financial award were harmless?"[3] *Grimm* v. *Grimm*, 270 Conn. 902, 903, 853 A.2d 519 (2004). We also granted his former wife's conditional cross-petition limited to the following question: "Did the Appellate Court improperly reverse the trial court's award of counsel fees?" *Grimm* v. *Grimm*, 270 Conn. 903, 853 A.2d 519 (2004). In that certified appeal, we determined that the award of attorney's fees was not an abuse of the trial court's discretion and reversed the judgment of the Appellate Court on that issue. *Grimm* v. *Grimm*, supra, 276 Conn. 399. We affirmed the judgment of the Appellate Court with regard to the

financial orders, however, determining that the plaintiff had abandoned his claims with respect to the $2.9 million because: (1) he had failed to move for an articulation or rectification of the trial court's factual findings on this point; and (2) he had failed to raise this issue until oral argument before the Appellate Court and only addressed that issue in the statement of facts section, rather than the argument section of his brief. Id., 386–87, 390–91.

Thereafter, the plaintiff brought this legal malpractice action, relying solely on certain language from this court's opinion deciding his divorce appeal[4] to establish the defendants' breach of the standard of care. The plaintiff did not, however, disclose an expert witness, as is generally required to sustain an action for legal malpractice.[5] The parties filed cross motions for summary judgment and responsive objections by the deadline specified in the court's scheduling order. Although the motions and objections were heard by the trial court, neither of these motions was decided prior to the scheduled start of the trial. The day before the trial was scheduled to begin in this case, the defendants filed four motions in limine, including one to preclude the plaintiff from making any mention, argument or claim at trial that the defendants had breached the standard of care in their representation of the plaintiff, as well as the motion for judgment that is the subject of this appeal. On the day of trial, prior to the start of jury selection, the trial court held a hearing on the motions before it, and granted the defendants' motion in limine precluding the plaintiff from presenting evidence that the defendants had breached the standard of care in their representation of him because the plaintiff had failed to disclose an expert witness. The trial court then granted the defendants' motion for judgment[6] because the plaintiff had not disclosed an expert when one was required and, therefore, could not establish a prima facie case for legal malpractice as to the defendants' breach of the standard of care. This appeal followed.

On appeal, the plaintiff claims that certain statements made by this court in its opinion on his divorce case, in which we indicated our disapproval of the defendants' actions in failing to provide an adequate record for review and in inadequately briefing the plaintiff's claims,[7] are sufficient evidence upon which the jury could reasonably have found that the defendants breached the standard of care owed to the plaintiff. The plaintiff argues, therefore, that an expert witness was not required to establish his claim for legal malpractice.[8] The defendants contend, however, that the language of this court's opinion is not sufficient, on its own, to establish that they breached the applicable standard of care.[9] We address the plaintiff's claims in turn.

I

The plaintiff first claims that the trial court improp-

erly granted the defendants' motion for judgment because the language from our opinion in *Grimm* v. *Grimm*, supra, 276 Conn. 377, was sufficient expert evidence to support the plaintiff's action for legal malpractice. We disagree.

To begin, we set forth the applicable standard of review. "The determination of whether expert testimony is needed to support a claim of legal malpractice presents a question of law. . . . Accordingly, our review is plenary." (Internal quotation marks omitted.) *Moore* v. *Crone*, 114 Conn. App. 443, 446, 970 A.2d 757 (2009). Inasmuch as the defendants' motion for judgment is, in essence, a renewed motion for summary judgment; see footnote 6 of this opinion; we note that "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant [the defendants'] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Brooks* v. *Sweeney*, 299 Conn. 196, 210, 9 A.3d 347 (2010).

"In general, the plaintiff in an attorney malpractice action must establish: (1) the existence of an attorney-client relationship; (2) the attorney's wrongful act or omission; (3) causation; and (4) damages." *Mayer* v. *Biafore*, *Florek & O'Neill*, 245 Conn. 88, 92, 713 A.2d 1267 (1998). "As a general rule, for the plaintiff to prevail in a legal malpractice case in Connecticut, he must present expert testimony to establish the standard of proper professional skill or care. . . . The requirement of expert testimony in malpractice cases serves to assist lay people, such as members of the jury . . . to understand the applicable standard of care and to evaluate the defendant's actions in light of that standard." (Citations omitted.) *Davis* v. *Margolis*, 215 Conn. 408, 416, 576 A.2d 489 (1990).

"There is an exception to this rule, however, where there is such an obvious and gross want of care and skill that neglect is clear even to a lay person." (Internal quotation marks omitted.) *Paul* v. *Gordon*, 58 Conn. App. 724, 727, 754 A.2d 851 (2000). Nevertheless, "[t]he exception to the need for expert testimony is limited to situations in which the defendant attorney essentially has done nothing whatsoever to represent his or her client's interests . . . ." *Pagan* v. *Gonzalez*, 113 Conn. App. 135, 141, 965 A.2d 582 (2009). Finally, "summary judgment [is] proper when [a] plaintiff alleging legal

malpractice fails to establish [his] claim by expert testimony." *Moore* v. *Crone*, supra, 114 Conn. App. 446.

Here, it is undisputed that the plaintiff did not retain or disclose an expert witness to testify concerning the standard of care to which the defendants' legal representation should be held. Instead, the plaintiff contends that expert testimony in this case is unnecessary because the language of our opinion in *Grimm* v. *Grimm*, supra, 276 Conn. 377, is sufficient expert evidence regarding the standard of care and the breach of that standard to establish that element of his claim. Relying on *Dubreuil* v. *Witt*, 80 Conn. App. 410, 421–22, 835 A.2d 477 (2003), aff'd, 271 Conn. 782, 860 A.2d 698 (2004), in which the Appellate Court indicated that "there may be no expert who knows more about the practice of law before the Superior Court than a judge of that court," the plaintiff contends that, logically, no expert knows more about the practice of law before the appellate courts than the justices of the Supreme Court. Therefore, he argues that the statements this court made regarding the inadequate record and the inadequate briefing of the divorce appeal clearly indicate an obvious and gross want of care such that a layperson could reasonably and logically conclude that the defendants breached the standard of care. We are not persuaded.

Initially, we note that *Dubreuil* is inapposite to the disposition of the present case. In *Dubreuil*, the Appellate Court observed, and this court agreed, that when a legal malpractice case is tried before a judge, rather than a jury, the trial judge need not require the aid of expert testimony to understand the requisite standard of care or the reasonableness of the attorney's actions in the context of that standard. Id., 422. It is possible to infer from this statement that no expert knows more about appellate practice than this court, but the present case was scheduled to go forward as a jury trial rather than a bench trial. Had this case proceeded to trial, the jury would have required the aid of expert testimony to understand the applicable standard of care and the reasonableness of the defendants' actions in that context. The jury—not this court or even the trial judge—would have been required to assess whether the defendants' actions in the underlying divorce case breached the standard of care such that they would be liable for legal malpractice.[10]

Furthermore, the language we used in our opinion in *Grimm* v. *Grimm*, supra, 276 Conn. 377, expressed our dissatisfaction with the state of the record and the briefing of the issues in that case. This court did not, however, set forth the standard of care that is required of attorneys in similar situations, nor did it address the reasonableness of the defendants' actions within the context of the factual circumstances of that case. The statements, although critical in tone and content, were

based upon nothing more than the materials we had before us in the record of that case. We did not, nor could we, on the basis of the record before us, opine as to the reasonableness of the defendants' strategic process or their ultimate decisions throughout the litigation of that case.[11] Although the specific language we used can certainly be characterized as critical of the materials that the defendants submitted to this court, it did not delve into whether the activities in preparing those materials satisfied the requisite standard of care or whether other attorneys would have performed similarly in a comparable situation.[12] Ultimately, our opinion does not indicate that we had determined that the defendants had definitively breached the requisite standard of care with regard to ensuring an adequate record for review or with regard to adequately briefing the issue on appeal because we did not consider whether their failure to move for an articulation was reasonable within the circumstances of that case and we were not privy to the interactions with the client or the ultimate strategic decisions regarding which issues to emphasize on appeal. As such, a jury would still require the aid of an expert to explain the standard of care regarding the decision to move for an articulation and preparing a brief, and whether by failing to move for an articulation and de-emphasizing the financial claim in the specific circumstances of the divorce appeal, the defendants failed to satisfy that standard of care.[13]

Thus, we find persuasive *Dixon* v. *Bromson & Reiner*, 95 Conn. App. 294, 298–99, 898 A.2d 193 (2006), wherein the Appellate Court noted that "an observation by a trial judge . . . that evidence was not produced to support a contention does not mean that the failure to produce that evidence was the result of professional negligence by trial counsel." (Internal quotation marks omitted.) Similarly, in the present case, our observation that the defendants had provided this court with an inadequate record and inadequately briefed issues, even though such actions amounted to technical violations of rules of appellate practice, does not, standing alone, indicate that those failures were necessarily the result of professional negligence by the defendants. Accordingly, we conclude that the critical language from *Grimm* v. *Grimm*, supra, 276 Conn. 377, is not sufficient expert evidence of the standard of care that the defendants owed to the plaintiff, nor is it sufficient expert evidence to inform the jury as to whether the defendants breached their duty to the plaintiff.

Moreover, this case is also not one that falls within the exception to the expert testimony requirement set forth in *Paul* v. *Gordon*, supra, 58 Conn. App. 727. The cases that have defined the extent of the exception to the expert testimony requirement have made clear that the exception is limited to "situations in which the . . . attorney essentially has done nothing whatsoever to represent his or her client's interests . . . ." *Pagan* v.

Gonzalez, supra, 113 Conn. App. 141.[14] Thus, the Appellate Court has upheld grants of summary judgment in favor of attorneys when disgruntled clients have sued for legal malpractice on the basis of an omission by their attorneys, but have failed to retain or disclose an expert witness to testify that such omissions breached the standard of care the attorneys owed to their clients. See *Moore* v. *Crone*, supra, 114 Conn. App. 447–48 (attorney failed to raise certain issues on appeal, failed to notice portion of trial transcript was missing, and *failed to adequately brief issues on appeal*); see also *Byrne* v. *Grasso*, 118 Conn. App. 444, 450, 985 A.2d 1064 (2009) (attorney failed to appear at hearing at which award of fees was made against client and failed to explain right to appeal fees ordered), cert. denied, 294 Conn. 934, 987 A.2d 1028 (2010); *Pagan* v. *Gonzalez*, supra, 138 n.4 (criminal defense attorney failed to object, at sentencing, to representation by prosecutor as to amount of heroin in client's possession at time of his arrest). Although *Moore*, *Byrne* and *Pagan* all involved omissions and failures by the attorneys therein, the Appellate Court consistently has required a more significant failure or omission to warrant the application of the exception to the expert testimony requirement in legal malpractice cases.

Here, the defendants represented the plaintiff in his divorce case throughout a lengthy trial and appeal that took place over the course of several years. This is not a case wherein the attorneys essentially did "nothing whatsoever" in their representation of their client; *Pagan* v. *Gonzalez*, supra, 113 Conn. App. 141; but rather one in which the plaintiff claims that the activities that the defendants undertook on his behalf failed to satisfy the requisite professional standard of care. Although the language we used in our opinion in *Grimm* expressing our dissatisfaction with the record and the briefing before us was critical, such language does not by itself clearly indicate such an obvious and gross want of care and skill so as to render expert testimony unnecessary. Accordingly, in the absence of expert testimony regarding the professional standard of care owed and whether the defendants breached their duty in the circumstances of this case, both of which are required to establish a prima facie case of legal malpractice under *Mayer* v. *Biafore*, *Florek & O'Neill*, supra, 245 Conn. 88, the defendants were entitled to judgment as a matter of law.

II

The plaintiff also contends that it was improper for the trial court to grant the defendants' motion for judgment the day after the motion was filed. We disagree.

"The summary judgment procedure is designed to eliminate the delay and expense incident to a trial where there is no real issue to be tried. . . . It is an attempt to dispose of cases involving sham or frivolous issues

in a manner which is speedier and less expensive for all concerned than a full-dress trial." (Citations omitted; internal quotation marks omitted.) *Mac's Car City, Inc.* v. *American National Bank*, 205 Conn. 255, 261, 532 A.2d 1302 (1987). Furthermore, "[a] trial court has the authority to manage cases before it as is necessary." *Krevis* v. *Bridgeport*, 262 Conn. 813, 819, 817 A.2d 628 (2002).

This court has determined that "it is within the trial court's discretion to consider a renewed motion for summary judgment that has previously been denied where . . . additional or new evidence has been submitted . . . ." *Mac's Car City, Inc.* v. *American National Bank*, supra, 205 Conn. 262. "We have declared that, although a judge should not lightly depart from a prior ruling on a motion before the same or a different judge, the prior ruling is not binding. 'From the vantage point of an appellate court it would hardly be sensible to reverse a correct ruling by a second judge on the simplistic ground that it departed from the law of the case established by an earlier ruling.' " *Barnes* v. *Schlein*, 192 Conn. 732, 734, 473 A.2d 1221 (1984). "Because this determination is within the trial court's discretion, it may be overturned on appeal only if the court abused that discretion." *Chadha* v. *Charlotte Hungerford Hospital*, 97 Conn. App. 527, 533, 906 A.2d 14 (2006).

Here, because the previous motions for summary judgment had not been acted upon and jury selection was set to begin as soon as the motions in limine and the motion for judgment before the court had been decided, those initial motions for summary judgment had been effectively denied by virtue of the trial court's inaction. In that context, the trial court then granted the defendants' pending motion in limine, which precluded the plaintiff from making any mention, argument or claim at trial that the defendants had breached the standard of care in their representation of him. Although that ruling is not the "new evidence" that is often referred to in cases addressing renewed motions for summary judgment; see, e.g., *Johnson* v. *Atkinson*, 283 Conn. 243, 250, 926 A.2d 656 (2007) (outstanding factual disputes present during first motion for summary judgment were resolved by parties' stipulation of facts prior to renewed motion), overruled in part on other grounds by *Jaiguay* v. *Vasquez*, 287 Conn. 323, 348, 948 A.2d 955 (2008); it is nonetheless equivalent.

Prior to the start of the trial, the defendants obtained a ruling from the trial court precluding the plaintiff from presenting any evidence, including the language that this court used in *Grimm* v. *Grimm*, supra, 276 Conn. 377, as to the standard of care that the defendants owed to the plaintiff or their alleged breach of the duty owed to him. Without the ability to present any evidence showing that the defendants were negligent in their

representation of him, the plaintiff's legal malpractice claim could not go forward. Because the plaintiff could not establish a prima facie case for legal malpractice without evidence of the defendants' alleged negligence, it was well within the trial court's discretion to consider the renewed motion filed the day before jury selection began in order to avoid the delay and expense of a trial in which the plaintiff could not present any evidence to support his claim.

Furthermore, the Appellate Court recently has emphasized the trial court's ample discretion in determining whether to address a motion for summary judgment filed on the eve of trial. In *Kervick* v. *Silver Hill Hospital*, 128 Conn. App. 341, 354, 18 A.3d 622, cert. granted on other grounds, 301 Conn. 922, 22 A.3d 1279 (2011), the Appellate Court affirmed the trial court's determination that a motion for summary judgment was untimely because it had not given the defendants adequate notice regarding the plaintiff's claim. Id., 353. That is not the case here. In their initial motion for summary judgment, the defendants argued that the plaintiff had failed to disclose an expert witness to testify as to the relevant standard of care and the reasonableness of the defendants' actions under that standard of care, and thus could not establish a prima facie case for legal malpractice. The plaintiff had the opportunity, and did in fact offer specific arguments to counter the defendants' claims in his opposition to their initial motion for summary judgment and during the five hour hearing on the cross motions for summary judgment. Moreover, when the defendants renewed their motion for judgment, they specifically referred back to their initial motion for summary judgment and the accompanying memorandum of law in support of that motion. The trial court also held a hearing on the defendants' renewed motion in which it gave the plaintiff another opportunity to argue against the motion. The renewed motion did not present any new arguments of which the plaintiff did not have notice or an opportunity to refute. It simply renewed the defendants' claim that the plaintiff could not establish a prima facie case of legal malpractice without presenting an expert witness, an issue upon which the trial court had not yet ruled.

Inasmuch as the trial court's grant of the defendants' motion in limine solidified the defendants' position that the plaintiff could not establish a prima facie case of legal malpractice, we conclude that the trial court did not abuse its discretion in hearing and deciding the defendants' motion for judgment.

The judgment is affirmed.

In this opinion ROGERS, C. J., and ZARELLA, McLACHLAN and VERTEFEUILLE, Js., concurred.

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

[2] In his appeal to the Appellate Court, the plaintiff claimed that: (1) the

irretrievable breakdown provision of General Statutes § 46b-40 (c) (1) violates the free exercise of religion clauses of the federal and state constitutions; (2) the trial court improperly concluded that the parties' marriage had irretrievably broken down and precluded expert testimony on the subject; (3) the trial court abused its discretion in making financial orders that lacked evidentiary support; (4) the trial court improperly denied his motion to open the evidence prior to judgment for the purpose of offering certain evidence regarding the valuation of stock options; and (5) the court improperly denied his motion to dismiss or to transfer the matter to another judicial district. See *Grimm* v. *Grimm*, 82 Conn. App. 41, 43, 844 A.2d 855 (2004).

[3] In addition to the question that this court certified, the plaintiff also sought review of three additional questions, namely: (1) whether attorney's fee awards that are improperly rendered as part of a judgment are severable from the overall financial award; (2) whether the Appellate Court properly declined to address his claim of prejudice from the trial court's denial of his pretrial motions; and (3) whether the Appellate Court improperly determined that the no-fault divorce statute did not violate his rights to exercise his religious beliefs.

[4] The language on which the plaintiff most heavily relies as evidence of the defendants' breach of the standard of care includes our statement that "two separate, but related, breakdowns of basic appellate procedure require that the trial court's judgment be affirmed because this intensely factual issue is incapable of evaluation by any reviewing court"; *Grimm* v. *Grimm*, supra, 276 Conn. 386; our statement that the Appellate Court brief "violently disregards Practice Book § 67-4, which is the rule governing the organization of appellate briefs"; id., 391 n.14; and the several instances in which we stated that the record was inadequate for review and that the plaintiff's claim on appeal was abandoned due to his failure to adequately brief the issue. See id., 379, 390, 391 n.14, 393.

[5] See, e.g., *Davis* v. *Margolis*, 215 Conn. 408, 416, 576 A.2d 489 (1990) ("[a]s a general rule, for a plaintiff to prevail in a legal malpractice case in Connecticut, he must present expert testimony to establish the standard of proper professional skill or care").

[6] Although the defendants relied on Practice Book §§ 15-1, 16-9 and 17-1 in support of their "Motion for Judgment," these sections appear inapposite. We therefore understand the defendants' "Motion for Judgment" to be, in essence, a renewed motion for summary judgment, since a stand-alone motion for judgment does not exist under our rules of practice.

[7] For the specific language on which the plaintiff relies, see footnote 4 of this opinion.

[8] At oral argument before this court, the plaintiff, for the first time, also claimed that if the defendants had not decided to file the petition for certification in the first place, his former wife would not have filed her conditional cross petition, which provided this court the opportunity to reverse the Appellate Court's determination that the trial court's award of attorney's fees was an abuse of discretion. In other words, if the petition for certification had not been filed, the Appellate Court's decision that the trial court had abused its discretion in ordering the plaintiff to pay the attorney's fees incurred by his former wife would have been the last word on the issue, and he would not have been required to pay those fees. Because the claim regarding the propriety of the defendants' conduct in filing the petition for certification in the first place and the consequences of such conduct was raised for the first time during oral argument before this court, and, therefore, has not been properly briefed, we decline to consider it. See, e.g., *State* v. *Wright*, 197 Conn. 588, 595, 500 A.2d 547 (1985).

[9] The defendants also argue, alternatively, that, even if the court's language in the opinion were sufficient to establish a breach of the standard of care, such language, alone, is not sufficient to establish another required element of the cause of action, namely, that such breach actually *caused* the plaintiff harm. The plaintiff, however, argues that expert testimony similarly would have been unnecessary to prove the causation of damages because the Appellate Court's conclusion that the trial court's miscalculation of the amount to which the plaintiff had dissipated the marital assets was harmless was obviously, clearly, and egregiously incorrect such that a jury would not need expert testimony to understand the error. Given that we conclude that the trial court properly rendered judgment in favor of the defendants because the plaintiff was precluded from presenting any evidence regarding the defendants' alleged breach of the standard of care, and thus, could not establish a prima facie case for legal malpractice, we need not reach the alternative causation issue.

[10] The concurrence correctly notes that the jury would be required to accept our observation that the defendants had violated basic rules of appellate procedure as a definitive statement on that issue in evaluating the defendants' performance on behalf of the plaintiff. See footnote 10 of the concurring opinion. As explained hereinafter, however, this does not obviate the need for expert testimony to elucidate whether such violations were, in fact, a breach of the requisite standard of care in the specific circumstances of the plaintiff's divorce appeal. See footnote 13 of this opinion.

[11] The concurrence states that it "ha[s] difficulty with [this] assertion . . . because the plaintiff does not claim that the defendants were negligent in their handling of the . . . case generally . . . [but rather] in connection with a particular claim on appeal . . . ." (Internal quotation marks omitted.) Footnote 12 of the dissenting opinion. The reasonableness of the defendants' conduct with regard to the one claim before this court cannot be assessed in a vacuum. Rather, whether the defendants breached the requisite standard of care with regard to this one claim must be determined given the entire context of the plaintiff's divorce appeal.

[12] The lack of certainty as to the standard of care is demonstrated by the fact that, at present, the advisory committee on appellate rules has before it a proposed amendment to Practice Book § 61-10, which currently places the burden for providing an adequate record for review wholly on the appellant. See Practice Book § 61-10 ("[i]t is the responsibility of the appellant to provide an adequate record for review"). The amendment proposes "that the existing articulation system should be overhauled because it often results in an unfair and inequitable finding that a party has forfeited a right to obtain appellate review for failure to seek an articulation from the trial court, there is a lack of certainty as to when articulation is needed, and the current system encourages trial judges to withhold the grounds for their decisions unless an articulation is requested." Advisory Committee on Appellate Rules, Meeting Minutes, p. 2 (May 11, 2011), available at http://www.jud.ct.gov/Committees/ap- rules/aprules min 051111.pdf (last visited December 23, 2011). Indeed, there are multitudinous cases, in virtually all areas of the law, in which both the Appellate Court and this court have determined that the claims would not receive appellate review because the appellant, by failing to move for an articulation, had not presented the court with an adequate record to support the factual underpinnings of the claims. See Connecticut Bar Association's Appellate Advocacy Committee, The Articulation Process in Connecticut Appellate Practice: A Proposal for Change, pp. 6, 21–27 (January 2011) (identifying 152 appellate cases from 2007 to 2010 in which appellate review was forfeited for failure to seek articulation)." The proposed amendment to § 61-10 states that the failure to seek articulation shall not be grounds for the court to decline to review any issue or claim on appeal." Advisory Committee on Appellate Rules, Meeting Minutes, supra, p. 2.

Providing this court with an adequate record for review is a basic rule of appellate procedure in that this court is incapable of meaningful review of a claim without an adequate record. That providing an adequate record for review is a basic rule, however, does not necessarily mean that what is required to provide an adequate record in a specific case is entirely clear at the start of the appeal. The statement by the concurrence that "we made it clear that (1) the plaintiff was required to file a motion for articulation or rectification, (2) the requirement to do so was a basic one, (3) without a motion for articulation or rectification, the plaintiff's claim was unreviewable, and (4) if the plaintiff had filed the motion, [the plaintiff] would have obtained appellate review of his claim," is nothing more than twenty-twenty hindsight. Given that the efficacy of the current articulation system is currently under review and given the frequency with which the appellate courts refuse to engage in review of claims when the appellant has failed to comply with Practice Book § 61-10, our mention of the defendants' failure to do so in this case is hardly consequential to the plaintiff's legal malpractice claim.

Furthermore, our statement that the defendants failed to adequately brief the financial order issue does not account for the off-the-record interactions between the defendants and the plaintiff or the extent to which the plaintiff or his cocounsel directed the content of the brief on appeal. For example, the plaintiff's main goal in bringing the appeal from his divorce decree was to remain married to his wife. It is possible that the appeal regarding the trial court's financial orders was sought merely as a consolation if he could not remain married to his wife. Had that been the motivation—and tellingly, we must surmise as to what the specific goals were on appeal because the record did not include such information—the question becomes whether

the emphasis on the claims that would result in the reversal of the divorce decree altogether, with the resulting de-emphasis on the financial arguments, was a professionally sound strategic decision. Simply stating that the one claim certified for appeal before this court, out of the five claims presented on appeal to the Appellate Court, was inadequately briefed does not necessarily indicate a breach of the requisite standard of care. Such a statement does not address whether it was reasonable for the defendants to emphasize certain issues and necessarily de-emphasize other issues, or whether another attorney would have presented the issues differently in similar circumstances. Finally, similar to the treatment of the failure to provide an adequate record for review, both this court and the Appellate Court frequently refuse to address the merits of claims because they have been inadequately briefed. See, e.g., *Commission on Human Rights & Opportunities ex rel. Arnold* v. *Forvil*, 302 Conn. 263, 279, 25 A.3d 632 (2011); *Bohonnon Law Firm, LLC* v. *Baxter*, 131 Conn. App. 371, 383, 27 A.3d 384 (2011). As such, our mention of the inadequate briefing of one of the five claims in the plaintiff's divorce appeal is not necessarily noteworthy without additional context.

[13] In stating that "our determination that the defendants had violated certain basic rules of appellate procedure and that we would have entertained the plaintiff's claim but for those violations, may be adequate, without more, to support the conclusion that the defendants' representation of the plaintiff with respect to that claim was not acceptable under any fair standard of reasonableness," the concurrence essentially states that a violation of the rules of practice is negligence per se. We decline to go that far. As explained previously, without a review of or an explanation as to *why* counsel acted as they did, and particularly without a statement regarding whether violating rules of practice was reasonable in a specific circumstance, the observation that the defendants had violated even basic rules of practice is not, alone, sufficient to establish a prima facie case for legal malpractice.

[14] The concurrence takes issue with our reference to *Pagan* because there could be a circumstance in which "an attorney who has represented a client competently over a period of time might thereafter engage in professional conduct that so clearly falls below the standard of care that a juror readily would recognize the inadequacy of the attorney's performance." In support of its disagreement with the exception to the requirement for expert testimony in legal malpractice cases articulated in *Pagan*, the concurrence cites to a medical malpractice case in which the court indicated that the exception to the requirement for expert testimony was applicable only in situations similar to when a surgeon leaves a foreign object inside a patient following an otherwise successful surgery. See footnote 14 of the concurring opinion; see *Boone* v. *William W. Backus Hospital*, 272 Conn. 551, 568, 864 A.2d 1 (2005). Leaving a foreign object inside a surgical patient, however, could only be attributed to a lack of the requisite care by the surgeon. In that case, there is no possibility that the surgeon exercised some level of professionally sound judgment in deciding to leave a foreign object inside a patient, which makes such a case inapposite to legal malpractice cases involving a question as to whether an attorney's violation of a rule of procedure was attributable to a legitimate professional decision. There very well may be instances in which an attorney, after a period of competent representation, engages in conduct that clearly falls below the requisite standard of care, and in such a circumstance the jury may not require the aid of expert testimony to understand the applicable standard. Nevertheless, this is not such a case. As discussed previously, it cannot be said that our recognition that the defendants failed to move for an articulation or to adequately brief one of the issues presented on appeal to the Appellate Court indicated that such conduct could have no justifiable, professionally sound explanation. We therefore disagree that "this court's characterization of the defendants' representation of the plaintiff on appeal as violating several basic rules of appellate procedure arguably was sufficient to establish a prima facie case of negligence, even though there is no claim that the defendants did 'nothing whatsoever' to represent the plaintiff's interests . . . ."