FOTI, J., dissenting in part. I respectfully disagree with the majority's conclusion that the trial court improperly constructed General Statutes § 45a-650 (h) when it affirmed the Probate Court's appointment of the defendant attorney Robert Mirto as a neutral third party conservator without first receiving evidence regarding his qualifications. In contradistinction from the majority, I do not believe that the absence of language in § 45a-650 (h), requiring that a Probate Court receive evidence on the qualifications of a neutral third party conservator, renders the plain language of the statute ambiguous. Accordingly, I dissent from part I of the majority decision.[1] I agree with the facts set forth in the majority's opinion and will not repeat them in this opinion.

In addition to the majority's enunciation of our process of statutory interpretation, I note that "[t]he legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter. . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . . [T]he General Assembly is always presumed to know all the existing statutes and the effect that its action or [nonaction] will have upon any one of them." (Internal quotation marks omitted.) *Wilton Meadows Ltd. Partnership* v. *Coratolo*, 299 Conn. 819, 828, 14 A.3d 982 (2011). "A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." Id., 825.

It is against this legal backdrop that I begin by underscoring the plain language of the statute with respect to a Probate Court's authority to appoint a neutral third party conservator. Section 45a-650 (h) provides in relevant part: "[I]f the court does not appoint the person appointed, designated or nominated by the respondent or conserved person, *the court may appoint any qualified person*, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644. *In considering who to appoint as conservator*, *the court shall consider* (1) the extent to which a proposed conservator has knowledge of the respondent's or conserved person's preferences regarding the care of his or her person or the management of his or her affairs, (2) the ability of the proposed conservator to carry out the duties, responsibilities and powers of a conservator, (3) the cost of the proposed conservatorship to the estate of the respondent or conserved person, (4) the proposed conservator's commitment to

promoting the respondent's or conserved person's welfare and independence, and (5) any existing or potential conflicts of interest of the proposed conservator." (Emphasis added.) I construe this language to be plain and unambiguous when read in context with the statute as a whole. It specifies clearly that if the Probate Court does not appoint the person nominated by petition to be conservator, then it may, at its discretion, appoint any qualified person. Prior to any appointment, § 45a-650 (h) mandates only that the Probate Court "shall consider" the enumerated factors set forth in the statute. In the present case, after disqualifying the plaintiff's petition to be conservator because of a conflict of interest, the Probate Court stated expressly, "[h]aving considered the factors set forth in § 45a-650 (h) . . . and the evidence obtained through this trial, this court appoints attorney Robert Mirto . . . as the conservator of the person of [Rose Zurolo] and as conservator of the estate of [Zurolo]."[2] Within the context of the statute, the court went no further than was expressly provided by the legislature. See *Wilton Meadows Ltd. Partnership* v. *Coratolo*, supra, 299 Conn. 826.

The majority contends, however, that the plain language of § 45a-650 (h) is rendered ambiguous because there is no guidance in this particular section with respect to whether the court must receive evidence pertaining to the suitability and qualifications in the appointment of a neutral third party conservator. I note, however, that statutory silence does not immediately or necessarily equate to ambiguity. See *Dept. of Public Safety* v. *State Board of Labor Relations*, 296 Conn. 594, 605-606, 996 A.2d 729 (2010) (statutory silence regarding additional requirements that managerial employees exercise independent judgment did not render statute ambiguous); *Wilton Meadows Ltd. Partnership* v. *Coratolo*, supra, 299 Conn. 829–30 (statutory silence with respect to spousal liability of nursing home expenses not ambiguous).

I do not agree that the trial court's construction of § 45a-650 (h), in conjunction with General Statutes § 45a-186 (a), will yield absurd and unworkable results or is ambiguous as the majority posits.[3] The plain language of § 45a-650 (h) instructs that a Probate Court must appoint the person nominated by the conserved person, unless the person declines or "there is substantial evidence to disqualify such person"; however, in order to appoint a conservator subsequent to such a disqualification, the court is obligated only to *consider* the enumerated factors in the statute. See General Statutes § 45a-650 (h). I presume that by using different language to distinguish between disqualifying and appointing a conservator, the legislature intended to continue to allow Probate Courts the discretion to appoint a conservator without a hearing when there is substantial evidence to disqualify a petitioner. See *Dias* v. *Grady*, 292 Conn. 350, 361, 972 A.2d 715 (2009)

("when the legislature uses different language [within a statute], the legislature intends a different meaning" [internal quotation marks omitted]). Consequently, I agree with the trial court's conclusion that in circumstances in which the legislature has intended a specific evidentiary standard with respect to conservatorships, it has provided for such a standard expressly.[4] See, e.g., General Statutes § 45a-650 (f) (1) ("clear and convincing evidence" standard required to render decision that respondent is incapable of managing own affairs in order to appoint conservator); General Statutes § 45a-650 (f) (2) ("clear and convincing evidence" standard required to render decision that respondent is incapable of caring for himself or herself); General Statutes § 45a-650 (a) and (b) (Probate Court must conduct hearing and apply normal rules of evidence for involuntary representation). Given the breadth of substantive reform ushered in by Public Acts 2007, No. 07-116 (P.A. 07-116), the absence of any additional requirements on a probate judge prior to appointing a neutral third party conservator is, in a word, conspicuous.

"Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed. . . . That tenet of statutory construction is well grounded because [t]he General Assembly is always presumed to know all the existing statutes and the effect that its action or non-action will have upon any one of them." (Internal quotation marks omitted.) *State* v. *Fernando A.*, 294 Conn. 1, 21, 981 A.2d 427 (2009). Certainly, if the legislature had intended to require a hearing or a specific evidentiary standard regarding the appointment of a neutral third party conservator it could have expressly done so, as it has clearly articulated in other subsections of § 45a–650. See, e.g., General Statutes § 45a-650 (a), (b), (f) (1) and (f) (2). Cf. *Wilton Meadows Ltd. Partnership* v. *Coratolo*, supra, 299 Conn. 826 (if legislature had intended to extend spousal liability to include nursing home expenses, it could have done so expressly); *Dept. of Public Safety* v. *State Board of Labor Relations*, supra, 296 Conn. 605 (if legislature had intended to impose additional statutory requirements regarding duties of managerial employees it could have done so expressly).

A plain reading of the statute, however, reveals that the legislature has chosen specifically not to mandate such a requirement in circumstances such as these. Moreover, the language contained in the statute, prior to the reforms instituted by P.A. 07-116 regarding a Probate Court's authority to appoint a conservator in similar situations, is virtually identical to the language of § 45a-650 (h).[5] This only serves to buttress the point that the legislature's omission to require an increased evidentiary standard was purposeful. It is firmly established that "[w]e are not permitted to supply statutory

language that the legislature may have chosen to omit." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *State Board of Labor Relations*, supra, 296 Conn. 605. Nor are we permitted to go any further than the legislature has gone. See *Wilton Meadows Ltd. Partnership* v. *Coratolo*, supra, 299 Conn. 826. Despite these precedential prohibitions, I believe that the majority has substituted its understanding of what the statute should have expressed in place of what was a purposeful omission by the legislature by interpreting ambiguity where none exists. Although I am sensitive to what the majority is aspiring to accomplish, the result of that endeavor requires this court to legislate. This we cannot do. See *Hayes* v. *Smith*, 194 Conn. 52, 65, 480 A.2d 425 (1984). Accordingly, I would affirm the trial court's judgment affirming the Probate Court's appointment of Mirto as conservator of Zurolo's person and estate.

I respectfully dissent.

[1] I join the majority's conclusion that there was sufficient evidence in the record to affirm the Probate Court's determination that there was either an existing or potential conflict of interest regarding the application of the plaintiff, Jannine Falvey, to become conservator of her mother's estate. I also agree with the conclusion that the plaintiff's claim pertaining to attorney's fees is not properly before this court.

[2] I note that neither Zurolo's court-appointed attorney nor Vanessa Ramadon, the plaintiff's sister, opposed the appointment of Mirto as a neutral third party conservator.

[3] When read in context, the plain language of the statute illustrates that the legislature sought purposefully to maintain the Probate Court's ability to appoint a conservator in circumstances such as these given the adequate statutory protections in place after the conservator is appointed by the court. For example, "[t]he Probate Court is under an affirmative duty to protect the assets of a [conserved person's] estate. . . . The court, and not the conservator, is primarily entrusted with the care and management of the [conserved person's] estate, and, in many respects, *the conservator is but the agent of the court*." (Citation omitted; emphasis altered; internal quotation marks omitted.) *Marcus' Appeal from Probate*, 199 Conn. 524, 529, 509 A.2d 1 (1986). Contrary to the majority's assertion, I believe that there are ample statutory provisions for review of the Probate Court's appointment of a conservator. General Statutes § 45a-705a specifically allows a conserved person to appeal the legality of guardianship pursuant to a writ of habeas corpus. See General Statutes § 45a-705a. Additionally, the Probate Court is required to "review each conservatorship not later than one year after the conservatorship was ordered, and not less than every three years after such initial one-year review." General Statutes § 45a-660 (c). Subsequent to that review, a conserved person may request, and the Probate Court must grant, a hearing to modify the conservatorship under § 45a-660. See General Statutes § 45a-660 (d).

[4] Even if I were to accept the majority's position, that the absence of an evidentiary requirement requires us to delve into the statutory history of the statute, the previous language of this provision, when juxtaposed with the extensive probate reforms instituted by Public Acts 2007, No. 07-116, illustrate that the legislature intended to maintain that omission purposefully to allow probate judges the discretion to appoint neutral third party conservators. This is because of a Probate Court's unique position within its community to understand the needs of a conserved person in conjunction with its experience regarding the capabilities of neutral third party conservators to fulfill those needs. See footnote 5 of this dissent.

[5] General Statutes (Rev. to 2007) § 45a–650 (e) provides in relevant part: "[I]n the absence of any such nomination [of a proposed conservator by the conserved person], the court *may appoint any qualified person*, authorized public official or corporation in accordance with subsections (a) and (b) of section 45a-644." (Emphasis added.). Although P.A. 07-116 subsequently supplemented the criteria that a probate judge shall consider prior to appointing a neutral third party conservator, the revisions made no mention of a requirement for the Probate Court to receive evidence in pertinence to those

enumerated factors. Compare General Statutes (Rev. to 2007) § 45a-650 (e) with General Statutes § 45a–650 (h).