LEO RHEAUME *v.* ROSALIE RHEAUME
(AC 36065)

Gruendel, Lavine and Bishop, Js.

Argued February 5—officially released April 28, 2015

(Appeal from Superior Court, judicial district of Hartford, Carbonneau, J.)

Barbara J. Ruhe, for the appellant (plaintiff).

Keith Yagaloff, for the appellee (defendant).

Opinion

GRUENDEL, J. The plaintiff, Leo Rheaume, appeals from the judgment rendered by the trial court denying his postdissolution motion for a protective order against the defendant, Rosalie Rheaume. The plaintiff claims that the court erred in denying the motion for the protective order because: (1) the order was necessary to protect the plaintiff from future collection attempts by the defendant, (2) the order was required to secure the plaintiff's due process rights in the bank execution process, (3) the court improperly concluded that the state marshal who conducted the bank execution was entitled to his fee, and (4) the court improperly concluded that the order was not an appropriate remedy.[1] As the plaintiff's first claim is based on a request for prospective relief, we dismiss it for lack of subject matter jurisdiction because it is not ripe for review. *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 86–87, 952 A.2d 1 (2008). As the plaintiff's third claim challenges a fee that the plaintiff has not paid or been ordered to pay, we also dismiss it for lack of subject matter jurisdiction because the plaintiff lacks standing.[2] *Ganim* v. *Smith & Wesson Corp.*, 258 Conn. 313, 346–47, 780 A.2d 98 (2001). Upon consideration of the remainder of the plaintiff's claims, we conclude that the court did not abuse its discretion when it denied the motion for a protective order. Accordingly, we affirm the judgment of the court.

The following facts, as found by the court, and procedural history are relevant here. The plaintiff and defendant married on June 19, 1994, and remained married for eighteen years. The plaintiff filed for divorce on October 18, 2011. During the dissolution proceedings, the parties agreed that the marital assets should be divided evenly. The parties did, however, dispute the value of the marital assets.

The source of this disagreement was the plaintiff's lottery winnings from a ticket purchased during the pendency of the dissolution action. Soon after filing for divorce, the plaintiff purchased a lottery ticket using cash that he had with him at the time. In December, 2011, the winning lottery numbers were announced, matching those on the plaintiff's ticket. The lottery ticket was worth $1 million. The plaintiff failed to disclose this information to either the defendant or her attorney. In March, 2012, the plaintiff, his sister, and his adult son from a previous marriage went to the Connecticut Lottery Commission to claim the lottery winnings. The plaintiff represented that he had previously entered into an agreement with his sister and son to share in any lottery winnings. As a result, the parties were each issued a check for $227,667, representing one third of the net proceeds after taxes. After the funds were distributed, the plaintiff disclosed to the defendant that he had won $200,000 from the lottery.

In response, the defendant filed a motion for contempt, alleging that the plaintiff had violated the automatic orders of the court by transferring, assigning, or concealing property during the pendency of the dissolution without the consent of the defendant. Specifically, the defendant claimed that the plaintiff's purported agreement to share the lottery ticket winnings was actually an attempt to conceal or withhold what would otherwise constitute marital property.

In October, 2012, a hearing was held in connection with the dissolution judgment and the motion for contempt. Both parties presented evidence regarding the lottery winnings. On December 10, 2012, the court, *Westbrook, J.*, rendered judgment dissolving the marriage and entering various orders regarding the distribution of the marital property. The court found that the lottery winnings, in their entirety, were an asset of the marriage. In its decision, the court noted that the plaintiff had failed to provide any evidence of the purported agreement with his sister or his son to share in the lottery winnings. The court also found that the plaintiff's testimony regarding the agreement was not credible. Therefore, it determined that the net amount of the lottery winnings, after taxes, was $683,002 and that the plaintiff had spent $10,000 of the funds on attorney's fees. Accordingly, a balance of $673,002 was to be considered an asset of the marriage. Further, the court found the plaintiff in contempt for violating the court's automatic order not to transfer, assign, or conceal assets during the pendency of the dissolution action.

As part of the dissolution judgment, the court awarded the defendant, inter alia, $224,334 to be paid out of the plaintiff's bank account within thirty days of the dissolution. This order was made after the court considered both "the timing of the [lottery] winnings along with the malfeasance of the plaintiff . . . ." The plaintiff filed a motion to reargue, which was denied.

On April 5, 2013, more than thirty days after the denial of the motion to reargue, the defendant, having not received payment from the plaintiff, filed an application for a financial institution execution with the trial court. The execution application was approved, pursuant to General Statutes § 52-367b, and given to a state marshal, who served the execution on the plaintiff's bank. Upon execution, the financial institution issued two checks to the marshal. The first check was made out to the defendant in the amount of $191,618.90. The second check was made out to the marshal in the amount of $33,665.10, as a fee for his services.[3]

On May 10, 2013, the plaintiff filed a motion for a protective order seeking the following: (1) an order precluding any further bank executions, (2) an order that the plaintiff was not responsible for the marshal's fee, and (3) an order that the judgment had been satisfied. The defendant filed a motion to dismiss the plain-

tiff's motion on the ground that the court lacked subject matter jurisdiction to modify the dissolution judgment. In July, 2013, the court, *Carbonneau*, *J.*, denied the plaintiff's motion for a protective order. In doing so, the court found that the execution had been properly conducted and that the plaintiff's motion failed to allege that anyone had exceeded his or her legal authority during the execution. The court then denied the defendant's motion to dismiss as moot. This appeal followed.

On appeal, the plaintiff claims that the trial court erred in denying his motion for a protective order. Specifically, the plaintiff argues that the protective order was appropriate because (1) the order was necessary to protect him from future collection attempts by the defendant, (2) the order was required to ensure his due process rights, (3) the state marshal was not entitled to collect his fee, and (4) it provided an appropriate remedy under the circumstances. Because we conclude that the plaintiff's first claim and third claim seek prospective relief, we dismiss those claims, as the plaintiff has not been aggrieved and therefore this court lacks subject matter jurisdiction. In reviewing the plaintiff's remaining claims, we conclude that the court did not abuse its discretion in denying the plaintiff's motion for a protective order.

We first address the plaintiff's claims seeking prospective relief. The plaintiff first argues that the protective order was appropriate because it would protect him against the prospective threat that the defendant may seek reimbursement of the marshal's fee. Additionally, the plaintiff argues that further executions would be in violation of the original dissolution judgment. The defendant, however, has not filed any motion before the trial court seeking the reimbursement of the marshal's fee and, thus, we dismiss this claim on the basis that it is not ripe for review. See *Chapman Lumber, Inc.* v. *Tager*, supra, 288 Conn. 86–87 ("[T]he rationale behind the ripeness requirement is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements. . . . Accordingly, in determining whether a case is ripe, a trial court must be satisfied that the case before [it] does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire." [Citation omitted; internal quotation marks omitted.]).

The plaintiff also claims that the court improperly concluded that the marshal was entitled to his fee. In support of this claim, he cites several cases where the party who paid the execution fee challenged its reasonableness. The court concluded that the state marshal was entitled to collect fees for his services pursuant to General Statutes § 52-261 (a),[4] which provides a statutory fee of 15 percent of the amount collected. The marshal collected $225,284 from the bank, keeping a

15 percent fee of $33,665.10, and delivering the remainder to the defendant. We further note that the marshal's conduct was in accordance with § 52-367b (h), which states that the "serving officer shall thereupon pay such sum, *less such serving officer's fees*, to the judgment creditor . . . ." (Emphasis added.) Here, similar to his previous claim, the plaintiff has not paid, or been ordered to pay, any of the marshal's fee and therefore he lacks standing to challenge the marshal's right to the fee or its reasonableness. *Andross* v. *West Hartford*, 285 Conn. 309, 324, 939 A.2d 1146 (2008) (standing requires demonstration of a "specific, personal and legal interest in the subject matter of the controversy"). We therefore dismiss this claim for a lack of standing.

We review the plaintiff's remaining claims regarding the court's ruling on the motion for a protective order under an abuse of discretion standard; *Pryor* v. *Pryor*, 140 Conn. App. 64, 68, 57 A.3d 846 (2013); and review the factual findings underlying the court's determination under a clearly erroneous standard. *Buddenhagen* v. *Luque*, 10 Conn. App. 41, 44, 521 A.2d 221 (1987). "Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion." (Internal quotation marks omitted.) *Kupersmith* v. *Kupersmith*, 146 Conn. App. 79, 96, 78 A.3d 860 (2013). The court's factual findings will not be disturbed unless there is either no support for them in the record, or, after reviewing the entire evidence, we are "left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *D'Amato Investments, LLC* v. *Sutton*, 117 Conn. App. 418, 426, 978 A.2d 1135 (2009).

A judgment debtor may seek a protective order from the court in situations where a judgment creditor is engaged in an illegal levy or some other collection practice in violation of state or federal law. See General Statutes § 52-400a (b);[5] *Haworth* v. *Dieffenbach*, 133 Conn. App. 773, 784–85, 38 A.3d 1203 (2012). In *Haworth*, this court reversed the trial court's denial of a motion for a protective order after concluding that, as a matter of law, the judgment stipulated to by the parties was usurious and therefore, in violation of state law. *Haworth* v. *Dieffenbach*, supra, 784–85. The judgment creditor's attempt to collect the debt was therefore an illegal levy and this court concluded that a protective order should have been granted. Id., 784. Thus, a judgment debtor who seeks a protective order is required to establish that the creditor's collection efforts amounted to an illegal levy or other practice in violation of the law.

In the present case, the court concluded that the plaintiff had not sufficiently alleged a claim warranting a protective order. First, the court found that the plaintiff had failed to comply with the dissolution judgment

requiring him to pay the defendant $224,334 within thirty days of the judgment. The court then found that the defendant had properly filed and received court approval of a financial institution execution in accordance with § 52-367b (b).[6] Pursuant to § 52-367b (b), an application must be made to the clerk of court, along with an application fee of $100. When a completed application has been presented, the clerk is required to issue the execution to a state marshal, who then executes a demand for the money on the financial institution where the funds are held. Our review of the record supports the court's conclusion that the process was performed properly. A completed application was submitted by the defendant on April 5, 2013, and was approved by the clerk on April 10, 2013.

Subsection (d) of § 52-367b requires the financial institution to notify the judgment debtor of the execution and provide an exemption claim form. The financial institution must then hold the amount to be executed for a period of fifteen days. Under subsection (h) of § 52-367b, if the judgment debtor does not file a claim of exemption within the fifteen day period, the bank must transfer the money to the state marshal. Here, the plaintiff represented to the court that he received notice of the execution on April 15, 2013, when his bank, Dutch Point Credit Union, notified him that his account was frozen. The bank later faxed a copy of the execution application to his attorney. Thus, by April 15, 2013, demand had been made by the state marshal. On May 1, 2013, after the fifteen day period had passed and the plaintiff had failed to file a claim of exemption, the marshal returned and collected the money.

In denying the plaintiff's motion, the court concluded that he failed to state any claim that the defendant, her attorney, the clerk, or the state marshal exceeded their relevant legal authority. Our review of the record confirms that the plaintiff failed to allege that any party had engaged in an illegal form of collection. Under § 52-400a (b), a protective order is issued only after the moving party has established that the creditor has engaged in an illegal form of collection.

The plaintiff argues that the execution was authorized without the statutory notification to the plaintiff and an opportunity for a hearing on the matter in violation of his due process rights. This argument is without merit. Section 52-367b (d) requires the financial institution to provide notice to the judgment debtor, who has fifteen days to file an exemption form. Upon submission of the exemption claim form to the financial institution, the institution informs the court of the claimed exemption, and the debtor is allowed a short calendar hearing prior to the court's ruling. General Statutes § 52-367b (e) and (f) (1). Because the plaintiff failed to submit the exemption claim form within fifteen days, he waived his right to a hearing under the statute. Accordingly,

the protective order was not required to ensure any due process rights claimed by the plaintiff.

Finally, the plaintiff claims that, in denying his motion, the court failed to recognize that the protective order was an appropriate remedy and that it had authority to address issues regarding the execution and related marshal fee. This argument is unavailing as the court did address the plaintiff's motion by making factual findings and then ruling on the motion. In rejecting this claim, we note that a motion for a protective order is not the proper procedural vehicle for determining whether the dissolution order was completely satisfied by the execution or whether the plaintiff was liable for the marshal's fee. The statutory purpose of a protective order is to afford debtors some recourse when creditors resort to illegal means of collection. There is no basis, under a motion for a protective order, to request a determination of whether an order relating to the distribution of marital property has been fully satisfied.

In affirming the judgment of the court, we do not reach the issue of whether a judgment debtor is liable for some or all of the fees incurred when a creditor collects funds through judicial execution. In the foregoing review, we recognize that a ruling on this issue will be dispositive on whether the plaintiff has completed payment in full satisfaction of the dissolution order. As the defendant in this case has not filed either a motion with the court seeking reimbursement of the marshal fee or an application seeking to execute additional sums from the plaintiff, we conclude that the issue is not properly before this court. Since addressing such concerns would amount to an advisory opinion; *Martino* v. *Scalzo*, 113 Conn. App. 240, 242 n.2, 966 A.2d 339, cert. denied, 293 Conn. 904, 976 A.2d 705 (2009); we leave this issue for another day.

The appeal is dismissed for lack of subject matter jurisdiction only in regard to the plaintiff's claims for prospective relief. The judgment is affirmed in all other respects.

In this opinion the other judges concurred.

[1] The plaintiff's appellate brief contained a fifth claim, arguing that "[t]he court err[ed] in failing to grant the plaintiff's motion for a protective order in that its ruling could shift a portion of the defendant's litigation costs to the plaintiff in the form of the marshal's fee." The plaintiff's brief on this issue contains just two case citations and no analysis. "We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs." (Internal quotation marks omitted.) *Paoletta* v. *Anchor Reef Club at Branford, LLC*, 123 Conn. App. 402, 406, 1 A.3d 1238, cert. denied, 298 Conn. 931, 5 A.3d 491 (2010). Accordingly, we decline to review this claim on appeal.

[2] In making this determination, we are mindful that the marshal's fee was paid from funds that were the subject of the execution. Whether the fee was simply a cost incurred by the defendant to serve the execution or may be attributed to the plaintiff has not to date been determined by the trial court.

[3] These figures are taken from the plaintiff's motion for a protective order.

Although the total of these two checks exceeds the amount in the dissolution judgment and the $100 application fee by $850, the plaintiff does not raise any claims related to this discrepancy on appeal.

[4] General Statutes § 52-261 (a) provides in relevant part: "The following fees shall be allowed and paid . . . for the levy of an execution, when the money is actually collected and paid over . . . fifteen per cent on the amount of the execution, provided the minimum fee for such execution shall be thirty dollars . . . ."

[5] General Statutes § 52-400a (b) provides: "On motion of a judgment debtor alleging that the judgment creditor is engaged in any illegal levy or in any other practices for the purpose of collecting his judgment which violate state or federal law, or on its own motion, the court may render such protective order as justice requires."

[6] General Statutes § 52-367b (b) provides in relevant part: "Issuance and service of execution. If execution is desired against any such debt, the plaintiff requesting the execution shall make application to the clerk of the court. The application shall be accompanied by a fee of one hundred dollars payable to the clerk of the court for the administrative costs of complying with the provisions of this section which fee may be recoverable by the judgment creditor as a taxable cost of the action. . . . If the papers are in order, the clerk shall issue such execution containing a direction that the officer serving such execution shall, within seven days from the receipt by the serving officer of such execution, make demand (1) upon the main office of any financial institution having its main office within the county of the serving officer, or (2) if such main office is not within the serving officer's county and such financial institution has one or more branch offices within such county, upon an employee of such a branch office, such employee and branch office having been designated by the financial institution in accordance with regulations adopted by the Banking Commissioner, in accordance with chapter 54, for payment of any such nonexempt debt due to the judgment debtor and, after having made such demand, shall serve a true and attested copy of the execution, together with the affidavit and exemption claim form prescribed by subsection (k) of this section, with the serving officer's actions endorsed thereon, with the financial institution officer upon whom such demand is made. . . ."