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JANE DOE *v.* QUINNIPIAC UNIVERSITY ET AL.
(AC 44938)

Elgo, Moll and Suarez, Js.

Syllabus

Pursuant to the accidental failure of suit statute (§ 52-592 (a)), if any action, *commenced within the time limited by law*, has failed one or more times to be tried on its merits because the action has been otherwise avoided or defeated for any matter of form, the plaintiff may commence a new action for the same cause at any time within one year.

Pursuant further to statute (§ 52-584), an action for negligence shall be brought within two years from the date the injury is sustained.

The plaintiff sought to recover damages from the defendants, a university and a fraternity, alleging that they were negligent in failing to prevent certain individual members of the fraternity from sexually assaulting her on October 27, 2017. The plaintiff had filed a previous action against the defendants in 2019, serving the fraternity and the university on October 28 and 31, 2019, respectively. The trial court granted the defendants' motions to dismiss the 2019 action for lack of personal jurisdiction because the complaint that the plaintiff filed with the court was never served on the defendants. The plaintiff then commenced the present action in 2021 pursuant to the applicable savings statutes (§§ 52-592 and 52-593). The defendants again moved to dismiss the present action on the ground that the summons and complaint served on them were different than the summons and complaint that the plaintiff had filed with the court, depriving the court of personal jurisdiction over them. The university additionally argued that, because the 2019 action had not been commenced within the two year statute of limitations set forth in § 52-584, § 52-592 (a) did not apply to save the 2021 action. The trial court granted the defendants' motions to dismiss, and the plaintiff appealed to this court. *Held* that, because the plaintiff did not challenge on appeal every independent basis on which the trial court relied in granting the defendants' motions to dismiss, the appeal was moot: the plaintiff failed to challenge the specific ground on which the trial court relied with respect to the applicability of § 52-592, namely, that her failure to commence the 2019 action within the two year statute of limitations set forth in § 52-584, precluded § 52-592 from saving the present action, the plaintiff's counsel acknowledged at oral argument before this court that the 2019 action had not been commenced within the statute of limitations, and, thus, this court was incapable of providing her any practical relief.

Argued November 14, 2022—officially released March 14, 2023

Procedural History

Action to recover damages for the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Young*, *J.*, granted the defendants' motions to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Appeal dismissed.*

Kevin P. Walsh, for the appellant (plaintiff).

Tara F. Racicot, with whom were *Michael R. McPherson* and, on the brief, *Matthew G. Conway*, *Paul D. Meade*, and *Laura Pascale Zaino*, for the appellees (defendants).

Opinion

SUAREZ, J. The plaintiff, Jane Doe, brought the underlying action against the defendants, Alpha Sigma Phi Fraternity, Inc. (fraternity), and Quinnipiac University (Quinnipiac), pursuant to two savings statutes, General Statutes §§ 52-592 (accidental failure of suit statute) and 52-593 (wrong defendant statute). In her complaint, the plaintiff alleged that the defendants were negligent in that they failed to prevent members of the fraternity from sexually assaulting her. The plaintiff appeals from the judgment of the trial court granting the motions to dismiss filed by the defendants. On review of the arguments presented on appeal, we interpret the plaintiff's claims to be that the trial court erred in concluding that (1) the process filed with the court never was served on the defendants, (2) the plaintiff's service of process and filing of process violated General Statutes §§ 52-46[1] and 52-46a,[2] and (3) § 52-592[3] does not save the plaintiff's action.[4] We dismiss the plaintiff's appeal as moot.

The following procedural history is relevant to our resolution of this appeal. The plaintiff served the fraternity and Quinnipiac on October 28 and 31, 2019, respectively, with a summons and a complaint in which she asserted claims against the defendants and certain individual members of the fraternity arising from an alleged sexual assault of the plaintiff by those members of the fraternity that took place on October 27, 2017. With respect to the defendants, the plaintiff alleged that they negligently failed to prevent the sexual assault. Subsequently, the plaintiff reached a settlement with the individual fraternity members, pursuant to which the plaintiff signed a nondisclosure agreement to protect their identities.

On November 27, 2019, the plaintiff filed with the court a different summons and complaint (2019 action) from those served on the defendants in October, 2019. In the complaint that the plaintiff filed with the court, the individual fraternity members were no longer named as defendants, and the counts that were brought against them in the original complaint were removed as a result of the settlement agreement.

The complaint that the plaintiff filed with the court was never served on the defendants. On this ground, the fraternity and Quinnipiac, on December 10, 2019, and January 10, 2020, respectively, filed motions to dismiss the actions against them for lack of personal jurisdiction. On April 27, 2020, the court granted both of the defendants' motions to dismiss.

On March 1, 2021, the plaintiff filed, inter alia, a summons and complaint (2021 action) naming the fraternity and Quinnipiac as defendants. The complaint, dated February 17, 2021, stated that it was "brought pursuant to [Connecticut's saving statutes] . . . § 52-592—acci-

dental failure of suit, allowance of a new action, [and] . . . § 52-593[5]—action against wrong defendant, allowance of new action." (Footnote added.) In her 2021 complaint, the plaintiff brought the same claims against the fraternity and Quinnipiac as she had in the 2019 action. The summons and complaint filed with the court contained a return date of March 16, 2021. Process was then served on the fraternity and Quinnipiac on March 10 and 11, 2021, respectively.

Quinnipiac and the fraternity, on April 23 and 26, 2021, respectively, filed motions to dismiss the 2021 action. In their memoranda in support of their motions to dismiss, both defendants asserted that, in several respects, the summons and complaint served on them were different from the summons and complaint that the plaintiff had filed with the court, including having different return dates. Given that the defendants were not served with the same process that was filed with the court, they argued that the plaintiff failed to comply with §§ 52-46 and 52-46a, depriving the court of personal jurisdiction over them. The defendants further argued that the plaintiff could not thereafter amend the return date in an attempt to comply with §§ 52-46 and 52-46a. The fraternity, in its memorandum in support of its motion to dismiss, also argued that § 52-592 did not apply because the 2019 action was not dismissed "for any matter of form"; General Statutes § 52-592; rather, the fraternity argued, it was dismissed because the plaintiff "*chose* not to file or return the original writ to court . . . ." (Emphasis added.) Additionally, the fraternity argued that, because the court had not dismissed the 2019 action for the plaintiff's failure to name the correct defendant, § 52-593 did not apply to the 2021 action.

On June 11, 2021, the plaintiff responded by filing a motion to amend the return date from March 16, 2021, to March 23, 2021. On June 14, 2021, the plaintiff filed objections to the motions to dismiss with accompanying memoranda of law.

On June 22, 2021, Quinnipiac filed a supplemental memorandum of law in support of its motion to dismiss. Quinnipiac argued, consistent with the fraternity's argument, that the plaintiff had willingly abandoned the 2019 action, thereby making § 52-592 inapplicable to the 2021 action. Quinnipiac further asserted that the 2019 action was not commenced within the relevant statute of limitations, namely, General Statutes § 52-584,[6] and that, because § 52-592 applies only to eligible, previously failed actions "commenced within the time limited by law," § 52-592 did not apply to the 2021 action.

Quinnipiac filed a reply to the plaintiff's objection to its motion to dismiss on June 28, 2021. On July 27, 2021, the court held a hearing on the motions to dismiss.

On August 24, 2021, the court issued a memorandum of decision granting the defendants' motions to dismiss. In its memorandum of decision, the court first concluded that the summons and complaint that were filed with the court in the 2021 action were not identical to the summons and complaint served on the defendants and, accordingly, it lacked personal jurisdiction over the defendants. Second, the court reasoned that the plaintiff's service of process in the 2021 action did not comply with § 52-46 or § 52-46a and that amending the return date would not remedy the noncompliance, further depriving the court of personal jurisdiction over the defendants. Third, the court concluded that the "alleged incident and corresponding acts of negligence . . . occurred on October 27, 2017. . . . Assuming arguendo that there was identical service of the filed process and complaint upon the defendants, that service was not made until March 10 [and] 11, 2021, by the marshal, long after the expiration of the statute of limitations, depriving the court of jurisdiction." Relatedly, the court concluded that the plaintiff's reliance on § 52-592 was misplaced because § 52-592 applies only to save eligible, previously failed actions "commenced within the time limited by law . . . ." (Internal quotation marks omitted.) The court concluded that the 2019 action did not commence until after the relevant statute of limitations, § 52-584, had expired and, therefore, the 2021 action could not be saved under § 52-592. Moreover, the court concluded that the plaintiff's reliance on § 52-593 was misplaced because "[t]he [2019] action was not dismissed for failure to name the right defendant." This appeal followed.

In this appeal, the plaintiff principally claims that the trial court erred in dismissing the 2021 action on the grounds that (1) the process filed with the court was never served on the defendants and (2) the process served on the defendants was not, and could not have been, timely returned to the court. Finally, the plaintiff cursorily claims that the court erred by failing to conclude that the 2021 action is saved under § 52-592, noting that § 52-592 is "remedial in nature and therefore warrants broad construction." (Internal quotation marks omitted.) The plaintiff, however, does not challenge one of the independent grounds on which the court dismissed the 2021 action, namely, that the plaintiff's failure to commence the 2019 action within the relevant statute of limitations precludes § 52-592 from applying to the 2021 action.[7]

Because the plaintiff does not challenge every independent basis on which the court granted the defendants' motions to dismiss, we consider whether the present appeal is moot.[8] "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . A determination regarding . . .

[this court's] subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way. . . .

"Where an appellant fails to challenge all bases for a trial court's adverse ruling on [her] claim, even if this court were to agree with the appellant on the issues that [she] does raise, we still would not be able to provide [her] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *Bongiorno* v. *J & G Realty, LLC*, 211 Conn. App. 311, 322, 272 A.3d 700 (2022).

As stated previously in this opinion, the plaintiff does not challenge the specific ground on which the court concluded that § 52-592 did not apply to save the otherwise time barred 2021 action, namely, her failure to commence the 2019 action within the applicable statute of limitations. Indeed, counsel for the plaintiff acknowledged at oral argument before this court that the 2019 action was not commenced within the statute of limitations. In particular, although the defendants' alleged negligence occurred on or before October 27, 2017, they were not served with the summons and complaint in the 2019 action until October 28, 2019, with respect to the fraternity, and October 31, 2019, with respect to Quinnipiac, outside of the two year statute of limitations prescribed in § 52-584. To invoke the court's jurisdiction, it was incumbent on the plaintiff to demonstrate that one or both of the savings statutes on which she relied applied. Thus, even if we were to agree with the plaintiff with respect to the other claims that she raises on appeal, her failure to challenge the specific ground on which the court relied with respect to the applicability of § 52-592 renders us incapable of providing her any practical relief. See, e.g., *State* v. *Carter*, 194 Conn. App. 202, 203, 208, 220 A.3d 882 (2019) (defendant's failure to challenge all independent bases for court's dismissal of motion to set aside judgment of conviction rendered appeal moot); see also, e.g., *State* v. *Lester*, 324 Conn. 519, 527–28, 153 A.3d 647 (2017) (defendant's appeal claiming that court improperly applied rape shield statute when it excluded evidence was moot for failure to challenge all independent bases for trial court's exclusion of evidence). Accordingly, the appeal is moot.

The appeal is dismissed.

In this opinion the other judges concurred.

[1] General Statutes § 52-46 provides in relevant part: "Civil process . . . shall be served . . . if returnable to the Superior Court, at least twelve days, inclusive, before [the day of the sitting of the court]."

[2] General Statutes § 52-46a provides in relevant part: "Process in civil actions . . . shall be returned . . . if returnable to the Superior Court, except process in summary process actions and petitions for parentage and support, to the clerk of such court at least six days before the return day."

[3] General Statutes § 52-592 provides in relevant part: "(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form . . . the plaintiff . . . may commence a new action . . . for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment."

[4] We note that, in her statement of issues, the plaintiff characterized the claims raised on appeal as follows: "(1) Whether the trial court was correct in entering dismissal of the plaintiff's claims as detailed in the court's memorandum of decision on August 24, 2021, and/or as the issue has been briefed by the parties.

"(2) Any issues that are identified after a review of the record."

We have reframed the claims in this appeal to more accurately reflect the arguments set forth in the body of the plaintiff's brief. See, e.g., *Festa* v. *Board of Education*, 145 Conn. App. 103, 106 n.1, 73 A.3d 904, cert. denied, 310 Conn. 934, 79 A.3d 888 (2013).

[5] General Statutes § 52-593 provides in relevant part: "When a plaintiff in any civil action has failed to obtain judgment *by reason of failure to name the right person as defendant therein*, the plaintiff may bring a new action and the statute of limitations shall not be a bar thereto if service of process in the new action is made within one year after the termination of the original action. . . ." (Emphasis added.)

[6] General Statutes § 52-584 provides in relevant part: "No action to recover damages for injury to the person . . . caused by negligence, or by reckless or wanton misconduct . . . *shall be brought but within two years from the date when the injury is first sustained or discovered* . . . ." (Emphasis added.)

[7] The plaintiff also does not challenge the trial court's conclusion that § 52-593 does not apply because the 2019 action was not dismissed for failure to name the right defendant.

[8] Following oral argument in this appeal, this court ordered the parties to file supplemental briefs addressing "whether this appeal should be dismissed as moot in light of the fact that the plaintiff has failed to challenge on appeal an independent basis for the trial court's decision to grant the defendants' motions to dismiss . . . namely, that . . . § 52-592 did not apply because the underlying action the plaintiff sought to revive was not timely commenced within the relevant statute of limitations." The parties complied with our supplemental briefing order and we have considered their arguments in our resolution of the appeal. The defendants argue that the appeal should be dismissed as moot. The plaintiff argues that the appeal is not moot. We note that, in her supplemental brief, the plaintiff fails to squarely address the effect of the court's conclusion in its memorandum of decision that § 52-592 does not apply to the 2021 action because the process that was served on the defendants in connection with the 2019 action did not commence the 2019 action within the relevant statute of limitations.