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R. H. *v.* M. H.*
(AC 45186)

Bright, C. J., and Clark and Seeley, Js.

Syllabus

The defendant mother, whose marriage to the plaintiff father previously had been dissolved, appealed to this court from the judgment of the trial court granting the plaintiff's application for an emergency ex parte order of custody with respect to the parties' minor children and granting his postdissolution motion to modify custody. In his application for an emergency ex parte order of custody, in which he requested temporary sole custody of the children, the plaintiff alleged that, in violation of an agreement between the parties that was filed with the trial court, the defendant had tested positive on an alcohol use monitoring program, and thereafter missed multiple requests to test, while or immediately after the children had been in her care. The trial court granted the application and ordered that a hearing on the ex parte order take place, although such hearing never occurred. Thereafter, the trial court approved an agreement of the parties that modified the ex parte order. Subsequently, the trial court heard evidence on various postdissolution motions of the plaintiff, including a motion to modify custody. The trial court granted that motion, awarded sole legal custody of the children to the plaintiff, and ordered that the children were to reside primarily with the plaintiff. With respect to the parties' son, R, the trial court further ordered, inter alia, that the defendant was entitled to supervised, in-person visitation, after she had engaged in sessions with a mental health professional, and to incrementally increased, unsupervised visitation on a schedule approved by the plaintiff in consultation with R's therapist. The plaintiff could suspend such visitation or reinstate the requirement of supervised visitation if he determined, in consultation with R's therapist, that the unsupervised visits were causing negative behavioral or emotional consequences for R. *Held*:

1. The defendant's argument that the trial court erred in granting the plaintiff's application for an emergency ex parte order of custody was not persuasive:

   a. Contrary to the defendant's claim, the emergency ex parte order was supported by sufficient evidence: it was reasonable for the trial court to infer from the information in the guardian ad litem's affidavit, which was included with the application, that the defendant had drank to excess while the children were in her care and that her intoxication posed an immediate and present risk of physical danger or psychological harm to the children, as her positive and missed blood alcohol tests occurred on a weekday morning at a time when the defendant was responsible for getting her children ready for and transporting them to school; moreover, the application was filed on the same day that the incident occurred, and, if the trial court allowed the defendant to escape the reach of the applicable statute (§ 46b-56f) merely because the children were not in the defendant's physical custody at the exact moment that the application was filed, and would not be in her care for the following few days, it would have construed the statute too narrowly; accordingly, the trial court's determination that there was an immediate and present risk of physical danger or psychological harm to the children was not clearly erroneous.

   b. The trial court's failure to hold a hearing on the plaintiff's application for an emergency ex parte custody order did not violate the defendant's right to due process: the trial court scheduled a hearing on the ex parte order, which was to take place within the fourteen day period required by § 46b-56f (c), and the parties appeared before the court on that date but the hearing did not proceed because the parties were attempting to reach an agreement and, several times thereafter, the parties again appeared before the court but consented to keep the order in place and to continue the hearing to a later date while they further attempted to negotiate an agreement; moreover, the parties thereafter filed an agreement, which the trial court approved, that modified the ex parte

order; accordingly, the only reason that a hearing on the application did not occur before the ex parte order was superseded was that the defendant expressly agreed, on multiple occasions, to keep the order in place while the parties attempted to reach a final agreement, and the defendant subsequently consented to the agreement that modified and superseded the order, rendering any hearing unnecessary.

2. The trial court improperly delegated its judicial authority by giving the plaintiff the authority to decide the nature and scope of the defendant's visitation with R: the trial court's order clearly granted the defendant a specific right to visitation, which it then allowed the plaintiff, in consultation with R's therapist, to suspend or terminate; moreover, pursuant to the applicable statute (§ 46b-56 (c)), the trial court was required to consider the best interests of R, including his physical and emotional safety, his temperament, and his developmental needs, in deciding the visitation dispute, and the delegation of that responsibility to a nonjudicial entity was impermissible; accordingly, this court reversed the trial court's judgment as it related to the defendant's visitation with R because the trial court effectively delegated to the plaintiff its attendant obligations under § 46b-56 (c).

3. This court declined to review the defendant's claim that the trial court's handling of her confidential medical information violated her privacy rights: the defendant failed to preserve her evidentiary claim that certain testimony by two witnesses regarding her medical history violated her individual privacy rights because she never raised an objection to such testimony at trial, and, accordingly, the trial court was never presented with, and never ruled on, her claim; moreover, the defendant failed to file an appeal form indicating that she wanted this court to review the trial court's denial of her request to remove her personal identifying information from its memorandum of decision or to amend her appeal to indicate such an intention pursuant to the applicable rule of practice (§ 61-9).

(*One judge concurring in part and dissenting in part*)

Argued November 14, 2022—officially released June 6, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Middlesex, where the court, *Albis*, *J.*, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *Albis*, *J.*, granted the plaintiff's application for an emergency ex parte order of custody with respect to the parties' minor children; subsequently, the court, *Albis*, *J.*, granted the plaintiff's motion to modify custody of the parties' minor children, and the defendant appealed to this court. *Reversed in part*; *further proceedings*.

M. H., self-represented, the appellant (defendant).

Kenneth J. McDonnell, for the appellee (plaintiff).

Opinion

CLARK, J. In this custody dispute, the defendant mother, M. H.,[1] appeals from the judgment of the trial court granting the postdissolution motion of the plaintiff father, R. H., for modification of custody and access seeking sole legal and physical custody of the parties' two minor children. On appeal, the defendant argues that the court improperly (1) granted the plaintiff's October 30, 2019 application for an emergency ex parte order for custody of the children, (2) delegated its judicial authority by giving the plaintiff decision-making authority over the defendant's access to the children, and (3) infringed on her privacy rights, first by allowing testimony about her medical information and, second, by including her medical information in its November 18, 2021 memorandum of decision without sealing the decision. We agree with the defendant's second claim but disagree with her remaining claims. Accordingly, we reverse in part and affirm in part the judgment of the trial court.

We begin by setting forth the relevant facts, as found by the trial court, and procedural history of this case. The parties' marriage was dissolved on March 11, 2019, and their separation agreement was incorporated into the judgment of dissolution. Pursuant to that judgment, the parties had joint legal custody and shared physical custody of their eleven year old daughter, S, and ten year old son, R. Each week, the defendant had the children from Monday to Wednesday, the plaintiff had them from Wednesday to Friday, and the parties alternated visitation on the weekends. The judgment also provided that the parties would keep the children enrolled in the Haddam-Killingworth school district and would work with a parenting coordinator. The parties' ability to coparent deteriorated shortly after the court rendered judgment.

On June 12, 2019, the plaintiff filed a postjudgment motion for contempt alleging that the defendant ceased attending meetings with the parenting coordinator. The plaintiff also alleged that the defendant moved to an apartment in Middletown, which required the children to wake up at 5:30 a.m. to get to school on time. Lastly, he alleged that the defendant, without consulting the plaintiff, contacted a state trooper and a counselor about S purportedly conducting inappropriate Internet searches. According to the plaintiff, the defendant claimed to have discovered the inappropriate search through a monitoring program that she had installed on S's phone, but she refused to provide login credentials for that program to the plaintiff. Along with the motion for contempt, the plaintiff also filed a motion to open the judgment and modify custody and access, which asserted substantially the same factual allegations and sought an order granting him sole legal and physical custody of the children.

On July 15, 2019, while the two motions were pending, the court approved an agreement between the parties appointing Victoria Lanier as guardian ad litem for the minor children. The parties also agreed to postpone the adjudication of all outstanding motions and requests.

On September 18, 2019, the parties filed another agreement with the court, this time agreeing that Keith Roeder, a psychologist specializing in family matters, would perform a custody evaluation, which would include observations of each parent's interactions with the children. The parties each agreed to not "drink alcohol to excess" during their parenting time with the children, a term they defined as a blood alcohol content (BAC) of 0.08 or higher, and the defendant agreed to utilize Soberlink, an alcohol use monitoring program.[2]

On October 30, 2019, the plaintiff filed an application for an emergency ex parte order of custody pursuant to General Statutes § 46b-56f (a).[3] The plaintiff requested temporary sole custody of the children, alleging that he learned that the defendant had tested positive on Soberlink and had missed multiple Soberlink tests while or immediately after the children had been in her care. In support of his application, the plaintiff attached an affidavit from the guardian ad litem. The guardian ad litem averred that the children were in the defendant's care on the night of October 29, 2019, and that, on October 30, 2019, "[a]t 6:49am . . . [the defendant] had a BAC reading of .103, and then missed her next test at 7:04am. I texted [the defendant] at 6:57 am inquiring about the positive test and she indicated that it was from mouthwash and she would retest in ten minutes. At 7:25am I received an email from Soberlink that [the defendant's] device regained cellular connection and that she had a positive test at 7:25am of .092. At 7:34am, I contacted [the defendant] via phone at which time [the defendant] indicated that she could not talk on the phone or re-test because she was in the classroom with 20 students at the school where she teaches. [The defendant] has missed all subsequent requests to test." In light of this information, the court, on the same day, granted the plaintiff's application for an emergency ex parte order of custody. The court ordered that the parties would have joint legal custody of the children but added that the plaintiff would have temporary sole physical custody and the defendant would have "reasonable visitation as agreed by the parties and with such supervision as [the plaintiff] may approve or require." The court further ordered that a hearing on its ex parte order would take place thirteen days later, on November 12, 2019, though that hearing did not occur.

On June 8, 2020, the court approved an agreement of the parties that modified the October 30, 2019 ex parte order. Under the agreement, the defendant was to abstain from alcohol use and utilize Soberlink four times a day for forty-five days. If the defendant had no

positive or missed tests in that forty-five day period, then she would be required to test only in the morning on the date of a visit before the visit commenced and then again periodically throughout the course of a visit with the children. The parties also agreed to engage in family therapy. Once the defendant completed forty-five days of consistent negative Soberlink tests and engaged in family therapy, the agreement provided for an expansion of the defendant's access to the children, allowing unsupervised visitation on Wednesdays and Sundays from 10 a.m. to 7 p.m.

On November 13, 2020, after the court modified the ex parte order, it held a status conference on the parties' pending motions. Both parties had motions to modify custody pending before the court, as well as a number of other motions, including motions for contempt. The parties agreed that a hearing on their pending motions would be appropriate and that the resolution of those motions would address the ultimate issue of custody. A hearing was scheduled to begin in April, 2021.

On November 17, 2020, the plaintiff filed a motion for contempt, alleging that the defendant had failed to pay one half of the children's out-of-pocket medical expenses, which was her responsibility pursuant to the dissolution judgment. On December 21, 2020, the plaintiff filed another application for an emergency ex parte order of custody. In that application, the plaintiff stated: "The guardian ad litem believes that it would be detrimental to the child, [R], to not afford him of immediate services that are in accordance with his diagnosis, and that the [Planning and Placement Team] meeting occur as planned today so that any adjustments to [R's] schedule/schooling be made prior to the start of the new school year. As such, she supports an immediate order of decision-making in favor of the [plaintiff]." The court declined to grant ex parte relief on the plaintiff's application but ordered that a hearing be scheduled on the matter.

On January 7, 2021, the court, *Albis*, *J.*, held a hearing on the plaintiff's December 21, 2020 application. The court heard testimony from the guardian ad litem that the defendant was using the joint legal custody granted to her in the court's October 30, 2019 order to veto certain medical services for the children unless such services were provided in accordance with her specified terms. The guardian ad litem also testified that the defendant threatened to file complaints against the children's providers any time they did not fully comply with her requests or acted in a manner with which she disagreed. At the end of that hearing, the court ordered that the parties would continue to have joint legal custody of the children but that the plaintiff would have final decision-making authority in the event of an impasse on decisions about S's therapy or R's therapy, education, or medical treatment. It further ordered that

the defendant could communicate with the children's providers to get information but expressly prohibited her from threatening them. The court, however, made clear that this order was temporary and that the ultimate issue of custody would be resolved following the hearing on all pending motions, which was scheduled to begin in April, 2021.

On March 19, 2021, the plaintiff filed an amended motion for contempt, alleging that the defendant violated the court's January 7, 2021 order by filing a complaint against the guardian ad litem in the Superior Court. The plaintiff also alleged, inter alia, that the defendant called the children's school and threatened to file a complaint against school officials with the Connecticut Commission on Human Rights and Opportunities. The defendant filed an objection to this motion on March 22, 2021.

On April 7, 2021, the plaintiff filed a motion to open and modify, seeking modification of the portion of the dissolution judgment that allowed the defendant to claim the children on her taxes while she paid the children's medical insurance premiums.

Over the course of six separate dates between April 9 and October 7, 2021, the court heard evidence concerning the plaintiff's June 12, 2019 motion for contempt; June 12, 2019 motion for modification; November 17, 2020 motion for contempt; March 19, 2021 amended motion for contempt; and April 7, 2021 motion for modification.[4] On November 18, 2021, the court, *Albis*, *J.*, issued a memorandum of decision addressing each of those motions. The court found, inter alia, that "the vast majority of [the parties'] issues and problems were generated by the [defendant]." (Internal quotation marks omitted.) It found that "the [plaintiff] has been a steady hand in raising the children through the periods of conflict with the [defendant] and her attempts to cope with her personal issues. Since October 30, 2019 . . . the children have generally done well academically, socially, and behaviorally. The [plaintiff] has sought and procured appropriate medical, mental health, and educational supports for the children. He has made significant changes in his own parenting behavior, often at the suggestion of professionals like [S's] therapist . . . or the [guardian ad litem], that have given the children more structure and stability and reduced their exposure to parental conflict."

With respect to the defendant, the court found that she "has not caused physical harm to her children, and there is no reason to believe she is a threat to do so. But she fails to recognize the emotional and psychological harm she has caused [the children] by her actions: [1] her predominant role in the destruction of the parties' ability to co-parent; [2] her ongoing effort to prove herself a superior parent to the [plaintiff], often by denigrating or obstructing him; [3] her alternating between seek-

ing treatment for alcohol abuse and denying that she has an alcohol problem; [4] her insistence that her mental health issues consist only of depression caused by her separation from the children after the ex parte order of October 30, 2019; and [5] her habit of taking the offensive against anyone whom she perceives as criticizing, hindering, or disagreeing with her." Importantly, the court found "that the [defendant's] focus on asserting her positions and vindicating herself from perceived criticism has had a direct negative impact on the children and will likely continue to do so until she receives appropriate treatment."

Although the court denied each of the plaintiff's motions for contempt,[5] it granted the plaintiff's June 12, 2019 motion for modification and awarded the plaintiff sole legal custody of the children. It also ordered that the children would reside primarily with the plaintiff. The court explained that "the [defendant] must engage in mental health treatment to address her childhood trauma before there is a substantial enhancement of her parenting time with either child. She must gain a better understanding of that trauma and the tools to cope with its effects, as well as a better understanding of how her words and actions impact the children."

With respect to the defendant's access to the children, the court limited the defendant's visitation with S to family therapy sessions "and such further contact . . . as the parties may agree upon recommendation of the family therapist." The court further ordered: "After the [defendant] has engaged in at least four sessions with [a mental health professional who has a doctoral level degree and a specialization in the treatment of childhood trauma] and said professional has stated, in writing, his or her opinion that the [defendant] is ready to engage productively in family therapy with [S] . . . then the [plaintiff] shall engage [S] in family therapy for [S] and the [defendant] with a qualified family therapist chosen by the [plaintiff]. [S] and the [defendant] shall each engage in the family therapy with such frequency and for so long as the therapist shall recommend." The court also noted S's "informed preference . . . not to have the parenting time that the [defendant] seeks" and that S "harbors deep resentment over the [defendant's] past actions . . . ."

With respect to the defendant's access to R, the court ordered that the visitation between the defendant and R that his school was already facilitating and supervising may continue "with such frequency and for so long as the school is willing and able to provide such access." Additionally, the court ordered supervised, in-person visitation between R and the defendant, but only "[a]fter the [defendant] has engaged in at least four sessions with her mental health professional and the same has been confirmed in writing to the [plaintiff] by the mental health professional . . . . The first three in-person vis-

its shall occur within sixty days after [the plaintiff] has received such confirmation, shall be no longer than one hour each, and shall be supervised by a professional supervisor selected and paid for by the [plaintiff]." The orders further provided that, "[u]nless the [plaintiff] reasonably determines, after consultation with [R's] therapist, that the supervised visits are causing negative behavioral or emotional consequences for [R], then the [defendant] shall thereafter be entitled to reasonable, incrementally increased, unsupervised visitation with [R] on a schedule approved by the [plaintiff] from time to time. If at any time the [plaintiff] reasonably determines, after consultation with [R's] therapist, that the unsupervised visits are causing negative behavioral or emotional consequences for [R], then the [plaintiff] may either suspend the [defendant's] visitation or reinstate the requirement of supervision of the visits by a third party of his choice, with [the plaintiff] responsible for the cost of supervision, if any . . . ."

The court also granted the plaintiff's April 7, 2021 motion for modification, allowing the plaintiff to claim the children on his taxes indefinitely and ordering the plaintiff to maintain health and dental insurance for the children.[6] This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant first argues that the court erred in granting the plaintiff's October 30, 2019 application for an emergency ex parte order of custody because there was insufficient evidence to support the application and because the court failed to hold a hearing on it. We are not persuaded.[7]

A

The defendant argues that the evidence was insufficient to support the court's October 30, 2019 emergency ex parte custody order. Specifically, she argues that the children were not in her care at the time of the application and, thus, there was not an immediate and present risk of physical danger or psychological harm.

Section 46b-56f provides in relevant part: "(a) Any person seeking custody of a minor child pursuant to [General Statutes §] 46b-56 or pursuant to an action brought under [General Statutes §] 46b-40 may make an application to the Superior Court for an emergency ex parte order of custody when such person believes an immediate and present risk of physical danger or psychological harm to the child exists. . . . (c) The court shall order a hearing on any application made pursuant to this section. If, prior to or after such hearing, the court finds that an immediate and present risk of physical danger or psychological harm to the child exists, the court may, in its discretion, issue an emergency order for the protection of the child . . . ."

This court has made clear that "[t]he proper standard

of proof in a trial on an order of temporary custody is the normal civil standard of a fair preponderance of the evidence. . . . We note that [a]ppellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. The trial court's findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . With those principles in mind, we will review the evidence presented . . . to determine whether the court's determination is supported by the evidence in the record." (Internal quotation marks omitted.) *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 365, 190 A.3d 68 (2018).

The court was presented with the following relevant evidence. The plaintiff's October 30, 2019 application for an ex parte order included an affidavit from the guardian ad litem stating that the children were in the defendant's care on October 29, 2019, and referencing the parties' September 18, 2019 agreement that prohibited each party from having a BAC of 0.08 or higher while caring for the children. The affidavit also stated that, on October 30, 2019, the defendant had a BAC reading of 0.103 at 6:49 a.m., she missed her next test at 7:04 a.m., and she had a BAC reading of 0.092 at 7:25 a.m. It was reasonable for the court to infer that, because she had a BAC level of 0.103 at 6:49 a.m., the defendant drank to excess in the preceding hours, while the children were in her care. It was similarly reasonable for the court to infer that, because these tests took place on a Wednesday morning at a time when the defendant was responsible for getting her children ready for school and safely transported there, her intoxication posed an immediate and present risk of physical danger or psychological harm to the children, especially in light of her prior documented alcohol abuse issues.

The defendant argues that § 46b-56f (a) could not have been satisfied here because any risk of injury to the children was not " 'immediate and present' " at the time the plaintiff filed the application. She notes that October 30, 2019, was a Wednesday and that the visitation schedule at the time called for the plaintiff to pick up the children from school on Wednesdays and have physical custody of them from Wednesday evening to Friday morning. She therefore argues that, because the children were already at school by the time the plaintiff filed the application and would be in the plaintiff's custody for the next several days, she could not have posed an immediate and present danger to the children at the exact time the plaintiff filed the application. We disagree.

Section 46b-56f requires that an application for an emergency ex parte order of custody be accompanied by an affidavit that sets forth, inter alia, the conditions warranting an emergency ex parte order. See General Statutes § 46b-56f (b). Thus, when a court is considering whether to issue an ex parte order, it has not yet had the benefit of evidence from the respondent; it is instead limited to the sworn statements of the applicant and must decide whether, on the basis of that information, a temporary ex parte order should issue. The statute gives a court the authority to issue an emergency order of custody for the protection of a child without a hearing if it finds that an immediate and present risk of physical danger or psychological harm to the child exists. See General Statutes § 46b-56f (c). Here, the plaintiff submitted evidence with his application indicating that the defendant was intoxicated while the children were in her care and that she refused to comply with the Soberlink testing, both of which violated the parties' September 18, 2019 agreement. The application was also filed on the same day that this conduct occurred. We conclude that the evidence in the plaintiff's application supported the court's determination that the danger to the children was "immediate and present" under § 46b-56f (a).[8]

Furthermore, even if the court knew that the children were neither in the defendant's physical custody nor would be for a few days, allowing the defendant to escape the reach of § 46b-56f simply because the children were not in her physical custody at the exact moment that the plaintiff filed the application would construe the statute too narrowly. See *Barrett* v. *Montesano*, 269 Conn. 787, 797, 849 A.2d 839 (2004) ("[B]ecause [t]he law favors rational and sensible statutory construction . . . we interpret statutes to avoid bizarre or nonsensical results. . . . [I]f two constructions of a statute are possible, we will adopt the one that makes the statute effective and workable." (Citations omitted; internal quotation marks omitted.)). Thus, the court's determination that there was an immediate and present risk of physical danger or psychological harm to the children was not clearly erroneous.

We therefore conclude that the October 30, 2019 emergency ex parte order was supported by sufficient evidence.

B

The defendant also argues that the court violated her right to due process by failing to hold a hearing on the plaintiff's October 30, 2019 application for an emergency ex parte custody order.

The following procedural history is relevant to our consideration of this issue. When the court granted the plaintiff's application for an ex parte order of custody on October 30, 2019, it scheduled a hearing on the ex

parte application to take place on November 12, 2019. On November 12, 2019, the parties appeared in court, but the hearing did not proceed because the parties attempted to reach an agreement. Although they failed to reach an agreement at that time, they agreed to keep the ex parte order in place and to postpone the hearing while they continued to negotiate. On December 18, 2019, the parties were still attempting to come to an agreement, so they again consented to continue the matter and keep the ex parte order in place. On January 6, 2020, the parties requested a special assignment date to have a hearing on the ex parte application. The parties agreed to have the hearing on the ex parte application on May 8, 2020, but the hearing ultimately did not take place on that date. Although it is unclear from the record why the hearing did not take place, on June 5, 2020, the parties filed an agreement with the court indicating that they were agreeing to "modify the ex parte custody order dated October 30, 2019," to include, inter alia, that the parties would share joint legal custody of the children but that the plaintiff would continue to have physical custody. The agreement also required the defendant to undergo alcohol testing for a period of time before she could have unsupervised visitation with the children. The court approved the parties' agreement, finding it to be in the best interests of the children.

On November 13, 2020, the court held a status conference on the parties' outstanding motions. During the ensuing discussion, the defendant indicated that docket entry #209 might still be outstanding. The court replied: "That was an objection to [the October 30, 2019] ex parte motion . . . and the motion has been acted upon, and, if I recall, orders entered and then subsequently modified by agreement of the parties. . . . So, I don't think that's still on the table. The motion it addressed has been resolved, at least to this point the additional motions to modify would determine whether further changes from the current orders would be made." The defendant indicated to the court that she understood, and the court, with the agreement of the parties, subsequently ordered the caseflow coordinator to schedule hearing dates on the pending motions, including the parties' motions to modify custody and access.

Section 46b-56f (c) provides in relevant part: "The court shall order a hearing on any application made pursuant to this section. If, prior to or after such hearing, the court finds that an immediate and present risk of physical danger or psychological harm to the child exists, the court may, in its discretion, issue an emergency order for the protection of the child . . . . If relief on the application is ordered ex parte, the court shall schedule a hearing not later than fourteen days after the date of such ex parte order. *If a postponement of a hearing on the application is requested by either party and granted, no ex parte order shall be . . . continued except upon agreement of the parties or by*

order of the court for good cause shown." (Emphasis added.)

Here, the court scheduled a hearing on the ex parte order to take place on November 12, 2019, which was within the fourteen days that § 46b-56f (c) requires. The parties appeared on November 12, 2019, December 18, 2019, and January 6, 2020, each time for a scheduled hearing on the ex parte application. Each time, however, they agreed to keep the ex parte order in place and to continue the hearing to a later date while they attempted to reach an agreement. They eventually scheduled a hearing for May 8, 2020, which never took place. Although the record is not clear as to why that hearing did not occur, it is reasonable to infer that it was due, at least in part, to the parties' ongoing attempts to reach an agreement because, on June 5, 2020, the parties filed an agreement, dated May 28, 2020, proposing to modify the ex parte order. Three days later, the court approved that agreement, finding that it was fair and equitable under all the circumstances and in the best interests of the children. On November 13, 2020, after the court modified the ex parte order, the court held a status conference on the pending motions and informed the defendant that the October 30, 2019 ex parte order had been superseded by the parties' agreement and that any remaining custody issues would be resolved with the pending motions. The parties agreed that a hearing on the pending motions would be appropriate and that the hearing would begin in April, 2021.

On the record before us, we cannot conclude that the defendant's due process rights were violated. The only reason that a hearing on the ex parte application did not occur before the ex parte order was superseded is that the defendant expressly agreed, on multiple occasions, to keep the ex parte order in place while the parties attempted to reach a final agreement. The defendant subsequently consented to the agreement that modified and superseded the ex parte order, and that agreement rendered any hearing on that order unnecessary. Accordingly, the defendant's due process claim fails.

II

The defendant next argues that the court improperly delegated its judicial authority by giving the plaintiff the authority to decide the nature and scope of her visitation with R in its November 18, 2021 orders.[9] The plaintiff argues that the court did not delegate its judicial authority but, rather, exercised its authority in making the orders at issue in this appeal. We agree with the defendant.[10]

"It is well settled . . . that [n]o court in this state can delegate its judicial authority to any person serving the court in a nonjudicial function. The court may seek the advice and heed the recommendation contained in

the reports of persons engaged by the court to assist it, but in no event may such a nonjudicial entity bind the judicial authority to enter any order or judgment so advised or recommended. . . . A court improperly delegates its judicial authority to [a nonjudicial entity] when that person is given authority to issue orders that affect the parties or the children. Such orders are part of a judicial function that can be done only by one clothed with judicial authority." (Internal quotation marks omitted.) *Lehane* v. *Murray*, 215 Conn. App. 305, 311, 283 A.3d 62 (2022). Although our standard of review of a trial court's decision regarding custody and visitation orders typically is one of abuse of discretion; *J. Y.* v. *M. R.*, 215 Conn. App. 648, 659, 283 A.3d 520 (2022); "whether the court improperly delegated its judicial authority presents a legal question over which we exercise plenary review." *Zilkha* v. *Zilkha*, 180 Conn. App. 143, 170, 183 A.3d 64, cert. denied, 328 Conn. 937, 183 A.3d 1175 (2018).

By its plain terms, § 46b-56 (a) authorizes the court—and the court alone—to "make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. . . ." Section 46b-56 (b), in turn, provides in relevant part that, "[i]n making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. . . ." Lastly, § 46b-56 (c) provides in relevant part that, "[i]n making or modifying any order as provided in subsections (a) and (b) of this section, *the court shall consider the best interests of the child*, and in doing so, may consider, but shall not be limited to, one or more of" the seventeen factors enumerated therein. (Emphasis added.) Although a court may seek advice and heed recommendations from a nonjudicial entity when issuing orders pursuant to § 46b-56; see *Keenan* v. *Casillo*, 149 Conn. App. 642, 660, 89 A.3d 912, cert. denied, 312 Conn. 910, 93 A.3d 594 (2014); our appellate courts have made clear that a court may not delegate its statutory decision-making authority to a nonjudicial entity. See, e.g., *Valante* v. *Valante*, 180 Conn. 528, 532–33, 429 A.2d 964 (1980); *Nashid* v. *Andrawis*, 83 Conn. App. 115, 119, 847 A.2d 1098, cert. denied, 270 Conn. 912, 853 A.2d 528 (2004); *Weinstein* v. *Weinstein*, 18 Conn. App. 622, 628–29, 561 A.2d 443 (1989).

Many of the earlier improper delegation cases in Connecticut arose in instances in which the court had clearly removed itself entirely from the decision-making process. See, e.g., *Nashid* v. *Andrawis*, supra, 83 Conn. App. 120–21. More recent cases, however, have addressed some of the nuances that arise in the context

of orders addressing child custody and visitation. See, e.g., *Lehane* v. *Murray*, supra, 215 Conn. App. 309 (trial court did not improperly delegate its judicial function by ordering that father could "alter, change or modify" mother's visitation schedule); *Kyle S.* v. *Jayne K.*, supra, 182 Conn. App. 370–71 (court improperly removed itself from decision-making process by permitting therapist to decide nature and scope of father's contact with child); *Zilkha* v. *Zilkha*, supra, 180 Conn. App. 172 (order granting teenage children control over father's access was not improper delegation).

Three recent cases are particularly instructive for present purposes. We begin with *Zilkha* v. *Zilkha*, supra, 180 Conn. App. 143. In *Zilkha*, the trial court had found that the defendant's relationship with his children was strained due to years of fighting between the parties and the children's tendency to side with the plaintiff. Id., 161–62. As a result, the trial court's postdissolution order limited the defendant's visitation with his fifteen year old children to voluntary visitation at their discretion. Id., 165. The defendant argued that the trial court impermissibly delegated its judicial authority to the children in giving them sole discretion over his visitation. Id., 168. This court concluded that, when the court crafted its order, "rather than delegating its responsibility, the court exercised its authority and met its obligation to decide issues of custody and visitation . . . . This adjudication by the court was the antithesis of a delegation because it plainly decided that the defendant should not have any *right* to custody or visitation. The fact that the court's order left open the possibility of voluntary visits at the discretion of the teenagers does not transform the court's decision-making into impermissible delegation." (Emphasis in original.) Id., 172.

A few months after this court decided *Zilkha*, it decided *Kyle S.* v. *Jayne K.*, supra, 182 Conn. App. 353. In *Kyle S.*, the father claimed that the court erred in delegating the determination of the scope, nature, and duration of his contact with his child to the child's therapist. Id., 370. He argued that this constituted an improper delegation. Id. In its oral decision, the trial court ordered that "[the child's therapist] will dictate the scope of [the father's] contact with [the child] in a therapeutic setting." (Emphasis omitted; internal quotation marks omitted.) Id., 370–71. The court went on to state that it was "restricting . . . contact so that the mental health professional can be in charge." (Emphasis omitted; internal quotation marks omitted.) Id., 371. This court reversed that decision, concluding that the court "improperly removed itself from the decision-making process by permitting [the therapist] to decide the *nature and scope* of [the plaintiff's] contact with [the child]." (Emphasis added.) Id., 373.

Most recently, this court decided *Lehane* v. *Murray*,

supra, 215 Conn. App. 305. The parties in *Lehane* filed several postdissolution motions regarding custody and visitation, and the trial court issued a memorandum of decision awarding the defendant sole legal and physical custody of the parties' son. Id., 308. The court also ordered "that the plaintiff shall have parental access to the minor child every other weekend and every Wednesday overnight, and that the defendant may alter, change or modify [that] schedule, along with the location, date and time of the exchanges." (Internal quotation marks omitted.) Id. The plaintiff argued on appeal that the trial court's order had impermissibly delegated to the defendant the authority to " 'decide the nature and scope' " of the plaintiff's access to their son. Id., 316. We disagreed, explaining that "the court's order allowing the defendant to 'alter, modify or change' the plaintiff's visitation schedule does not give him the authority to 'decide the nature and scope' of her relationship with their son." Id. We reasoned that "the court did not, as the plaintiff contends, give the defendant 'unbridled' authority to modify her right to visit their son; *nor did the court give the defendant unilateral authority to suspend or terminate her parenting access to their son*. The court's order permits the defendant to modify the plaintiff's visitation *schedule*, not to modify her *right* to visitation. The court established specific parameters regarding the plaintiff's visitation with the parties' son, and the defendant is governed by those parameters in exercising the limited discretion afforded to him by the court. In other words, although the court's order allows the defendant to 'alter, change or modify' the plaintiff's visitation *schedule*, it does not permit him to reduce, suspend or terminate her access to their son." (Emphasis altered.) Id., 315.

With this as our backdrop, we turn to the order in this case. The November 18, 2021 order pertaining to visitation with R provides in relevant part: "After the [defendant] has engaged in at least four sessions with her mental health professional and the same has been confirmed in writing to the [plaintiff] by the mental health professional, the [defendant] shall also be entitled to have in-person visits with [R]. The first three in-person visits shall occur within sixty days after [the plaintiff] has received such confirmation, shall be no longer than one hour each, and shall be supervised by a professional supervisor selected and paid for by the [plaintiff]. Unless the [plaintiff] reasonably determines, after consultation with [R's] therapist, that the supervised visits are causing negative behavioral or emotional consequences for [R], then the [defendant] shall thereafter be entitled to reasonable, incrementally increased, unsupervised visitation with [R] on a schedule approved by the [plaintiff] from time to time. If at any time the [plaintiff] reasonably determines, after consultation with [R's] therapist, that the unsupervised visits are causing negative behavioral or emotional con-

sequences for [R], then the [plaintiff] may either suspend the [defendant's] visitation or reinstate the requirement of supervision of the visits by a third party of his choice, with [the plaintiff] responsible for the cost of supervision, if any . . . ."

On the basis of our review of the court's order, we conclude that a portion of the order pertaining to the defendant's visitation with R is an improper delegation of authority because the court effectively delegated to the plaintiff, in consultation with the child's therapist, the authority to suspend or terminate the defendant's visitation with R and its attendant obligation to consider the best interests of R pursuant to § 46b-56 (c) before doing so. The plaintiff contends that the court's order in this case is like the order in *Zilkha* because "the court likewise decided that the defendant should not have any right to visitation." The court's order makes clear on its face, however, that the defendant was granted a specific right to visitation. The order states in no uncertain terms that, "[a]fter the [defendant] has engaged in at least four sessions with her mental health professional and the same has been confirmed in writing to the [plaintiff] by the mental health professional, the [defendant] *shall also be entitled* to have in-person visits with [R]. The first three in-person visits shall occur within sixty days after [the plaintiff] has received such confirmation, shall be no longer than one hour each, and shall be supervised by a professional supervisor selected and paid for by the [plaintiff]." (Emphasis added.) The court went on to state that the defendant "shall thereafter *be entitled* to reasonable, incrementally increased, unsupervised visitation with [R] on a schedule approved by the [plaintiff] from time to time." (Emphasis added.) Although the court properly exercised its authority in awarding the defendant visitation in the first instance, the order became impermissible when the court gave the plaintiff the authority, after consultation with the child's therapist, to deny this incrementally increased, unsupervised visitation with R and the ultimate authority to suspend or terminate the defendant's right to visitation altogether. See *Kyle S.* v. *Jayne K.*, supra, 182 Conn. App. 373 ("[p]ut another way, the court in the present case improperly removed itself from the decision-making process by permitting [the child's therapist] to decide the nature and scope of [the parent's] contact with [the child]").

In *Lehane*, this court, in upholding a visitation order, explained that "the court did not . . . give the defendant 'unbridled' authority to modify her right to visit their son; nor did the court give the defendant unilateral authority to suspend or terminate her parenting access to their son." *Lehane* v. *Murray*, supra, 215 Conn. App. 315. Instead, that order simply permitted "the defendant to modify the plaintiff's visitation *schedule*, not to modify her *right* to visitation." (Emphasis in original.) Id. In the present case, the court's order did not merely

permit the plaintiff to modify a visitation *schedule*; it did precisely what this court emphasized the order in *Lehane* did *not* do: it permitted the plaintiff to unilaterally "suspend the [defendant's] visitation . . . ." See id. The fact that the court's order required the plaintiff to act reasonably and consult with R's therapist before exercising this authority does not salvage the order. On the contrary, that requirement further illustrates how the court improperly ceded its duty to consider the best interests of the child pursuant to § 46b-56 (c)—which requires a court to consider, inter alia, "[t]he physical and emotional safety of the child" and "the temperament and developmental needs of the child"—to the plaintiff and the child's therapist.

We note that the overwhelming majority of jurisdictions that have addressed whether a court can delegate this authority to a custodial parent have similarly concluded that this type of delegation is improper.[11] We find particularly persuasive the decision of the Virginia Court of Appeals in *Rainey* v. *Rainey*, 74 Va. App. 359, 386, 869 S.E.2d 66 (2022). There, following the dissolution of the parties' marriage, the mother had primary physical custody of the children and the father had visitation, but his relationship with the children had deteriorated and visitation was not going well. Id., 369–70. The mother consented to the father assuming temporary physical custody of the children to help repair the father's relationship with them. Id., 370. The father, in tandem with the children's mental health providers, then severely limited the mother's access to the children, and she was allowed to communicate with them only via letter. Id., 371–72. Subsequently, the juvenile and domestic relations district court ordered that the father would have sole physical custody and forbade the mother from contacting the children outside of therapeutic letter writing; id., 372–73; and granted "[the] father 'sole discretion to consent to supervised visitation between the [m]other and [the] children with a supervisor of [the] [f]ather's choice' if '[he] believes that [the] [m]other is appropriate and will not cause harm to the children' . . . ." Id., 383. The mother appealed to the Virginia Circuit Court, and that court held an evidentiary hearing on the matter. Id., 373. The Circuit Court ultimately adopted the trial court's order, and the mother appealed that decision to the Virginia Court of Appeals. Id., 375–76.

On appeal, the mother argued that both the trial court and the Circuit Court erred in allowing the father sole discretion over her visitation with the children, and the Court of Appeals agreed. Id., 382. The court concluded that the trial court "abdicated its statutory power, and duty, to determine visitation under [Virginia] Code § 20-124.2 (A)";[12] id., 383; and reasoned that, "[w]here the governing statutes squarely place the obligation to make contested visitation decisions on the judiciary, delegation of this responsibility to third parties or parents is

unauthorized." Id., 387. The court also noted that, "from a practical standpoint, there are obvious problems inherent in delegating judicial decision-making functions to a party. First, particularly in child custody and visitation cases, parties are likely to have difficulty communicating and seeing past their inherent biases. Leaving the sole power of increased visitation with such a party invites abuse and inequity." Id. Accordingly, the Virginia Court of Appeals reversed the trial court's ruling on visitation and remanded the case with instructions for the trial court to make the ultimate visitation determinations itself. Id., 389.

In the present case, the dissent takes the position that, although a court may not delegate its decision-making authority over a parent's visitation rights to a third party, a court may nevertheless delegate that authority to a custodial parent. The dissent focuses in large part on the language in § 46b-56 (a) that provides in relevant part that "the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. . . ." In the dissent's view, this language affords Connecticut courts more discretion in issuing an order regarding custody and visitation than Virginia courts and the courts of many other states that have found this type of delegation improper. As a result, it contends that, "under the [trial] court's order as to R, the plaintiff is permitted to exercise limited discretion over the defendant's visitation." We disagree.

First, if the dissent's interpretation were correct, there would be no logical basis for interpreting the statute to prohibit delegations to third parties other than custodial parents. That same language could only be interpreted as also permitting a court to delegate its authority over visitation orders to other third parties, such as a therapist or guardian ad litem. Such an interpretation, therefore, is contrary to this court's well established nondelegation jurisprudence. We interpret the language on which the dissent relies to mean precisely what it says: that a court may impose certain conditions and limitations on a parent's right to visitation, not that a court may delegate to a custodial parent—but not to any other parties—the authority to grant, deny, suspend or terminate a noncustodial parent's visitation rights.

Second, there can be little dispute that Connecticut's laws governing custody and visitation orders are substantially similar to the laws of many other states that have concluded that this type of delegation is impermissible. Although the dissent contends, for instance, that "our statute affords a court more discretion in issuing an order regarding custody and visitation than that afforded to a court in Virginia," it focuses only on Vir-

ginia Code § 20-124.2 (A) and overlooks other provisions of § 20-124.2 and other Virginia laws governing custody and visitation. Like § 46b-56 (c), Virginia Code § 20-124.2 (B) provides: "In determining custody, the court shall give primary consideration to the best interests of the child. The court shall consider and may award joint legal, joint physical, or sole custody, and there shall be no presumption in favor of any form of custody. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest." We do not find such language to be materially different from § 46b-56 for purposes of our analysis.

The dissent also notes that a few of the out-of-state jurisdictions that we cite as examples of jurisdictions that prohibit a delegation like the one at issue in this case also have held that a court may not delegate to a child its authority over visitation. The dissent argues that this court's decision in *Zilkha* interpreted § 46b-56 to effectively permit such delegations.[13] It further contends that this distinction demonstrates that our statute is less restrictive than the statutes in some of the jurisdictions that prohibit delegations over visitation to a custodial parent. But, even if we were to accept the dissent's reading of this court's holding in *Zilkha* as standing for the broad proposition that § 46b-56 authorizes a court to delegate to a child its authority over a noncustodial parent's right to visitation, the fact that a few of the jurisdictions that prohibit delegations to a custodial parent also interpret their statutes to prohibit delegations to a child does not explain how the clear language of § 46b-56 (a), which gives courts—and courts only—the power and responsibility to make rulings in contested custody and visitation matters, can be reconciled with the notion that a court may delegate to one parent the authority to determine the visitation rights of the other.

Although the dissent also contends that Alabama and Arkansas do not categorically ban courts from affording some discretion over visitation to a custodial parent, those states make it abundantly clear that this sort of delegation "generally should not be allowed . . . ." *Pratt* v. *Pratt*, 56 So. 3d 638, 643 (Ala. Civ. App. 2010). Similarly, although the dissent argues that the North Dakota Supreme Court has "recognize[d] the propriety of such orders under certain circumstances" in *Wigginton* v. *Wigginton*, 692 N.W.2d 108, 112–13 (N.D. 2005), that decision and more recent North Dakota cases

include no discussion of the statutory framework governing visitation orders in that state or how orders delegating authority in such a fashion can be reconciled with that framework. See, e.g., *Taylor* v. *Taylor*, 970 N.W.2d 209, 216–17 (N.D. 2022). Moreover, the North Dakota Supreme Court itself has recognized the potential problems with such orders and, consequently, has significantly limited the use of such orders to "exceptional circumstances" when visitation with a noncustodial parent is "likely to endanger the child's physical or emotional health"; id., citing *Paulson* v. *Paulson*, 694 N.W.2d 681, 690–91 (N.D. 2005); and "when the custodial parent demonstrates a willingness to foster the parent-child relationship between the child and the other parent . . . ." *Taylor* v. *Taylor*, supra, 217, citing *Marquette* v. *Marquette*, 719 N.W.2d 321, 325 (N.D. 2006). We are not persuaded that such a rule is permissible under our statutory framework. Nor are we persuaded that such a rule provides sufficient guidance over its application to courts or adequate assurance to noncustodial parents and the children that visitation orders will be issued according to a child's best interests.[14]

Lastly, and as the Virginia Court of Appeals noted in *Rainey*; see *Rainey* v. *Rainey*, supra, 74 Va. App. 387; a statute prohibiting third parties, including custodial parents, from deciding a noncustodial parent's right to access his or her child is neither arbitrary nor irrational. On the contrary, the legislature's decision to prohibit such delegations serves important public policy goals. Indeed, given the often contentious nature of postdissolution relationships, permitting a custodial parent to decide visitation arguably poses even more significant concerns than a rule permitting objective third parties, such as guardians ad litem or therapists, to decide the issue. See id. ("[l]eaving the sole power of increased visitation with . . . a party [in a child custody and visitation case] invites abuse and inequity"); see generally *Berglass* v. *Berglass*, 71 Conn. App. 771, 778, 804 A.2d 889 (2002) ("It was necessary here for the court, and not the plaintiff, to interpret the parties' [parenting plan] agreement to determine whether the defendant had satisfied the [condition precedent to overnight visitation]. That is essential in classic high conflict, custody, postjudgment litigation. It is inappropriate for the custodial parent in a high conflict case to be given decision-making control over the noncustodial parent's access to minor children.").

In sum, our nondelegation jurisprudence compels us to conclude that, where a governing statute squarely places the obligation on the trial court to decide custody and visitation in contested disputes, delegation of this responsibility to a nonjudicial entity, whether it be a parent or some other third party, is impermissible.[15] Because the order in this case impermissibly delegated the court's judicial authority under § 46b-56, we reverse

the trial court's judgment as it relates to the defendant's visitation with R.

III

The defendant's last argument on appeal is that the court's handling of her confidential medical information violated her privacy rights pursuant to 42 C.F.R. § 2.64 and General Statutes § 17a-688. Specifically, the defendant argues that her privacy rights were violated when the court (1) permitted two witnesses to testify about the details of her medical history and (2) referenced that medical history in its publicly available November 18, 2021 memorandum of decision. For the reasons that follow, we decline to review these claims.

A

The defendant first argues that allowing the guardian ad litem and Dr. Roeder to testify about her medical records violated her individual privacy rights. It is well known, however, that, "[i]n order to preserve an evidentiary ruling for review, trial counsel must object properly. . . . Assigning error to a court's evidentiary rulings on the basis of objections never raised at trial unfairly subjects the court and the opposing party to trial by ambush." (Citations omitted; internal quotation marks omitted.) *State* v. *Qayyum*, 344 Conn. 302, 310–11, 279 A.3d 172 (2022).

In the present case, the defendant never raised this objection to the testimony of Dr. Roeder or the guardian ad litem at trial, which was the appropriate time to resolve any claimed violation of the defendant's individual privacy rights. Thus, the trial court was never presented with—and never ruled on—the claim that certain testimony infringed on her privacy rights. As a result, we conclude that the defendant failed to preserve this evidentiary claim, and, therefore, we do not review it.

B

The defendant also argues that the court violated her privacy rights by including her personal medical history in its November 18, 2021 decision and publishing that decision without sealing it or removing identifying information.

The following procedural history is relevant to our consideration of this argument. The defendant appealed from the November 18, 2021 decision on December 20, 2021. On February 3, 2022, while this appeal was pending, the defendant filed a request seeking, inter alia, removal of her personal identifying information from the November 18, 2021 memorandum of decision. That was the first time the defendant alerted the court to this concern. On March 15, 2022, the court denied the request, stating that it found "no legal basis on which to grant the . . . relief requested, seeking . . . the removal of pleadings, testimony, and factual findings from the court file."

Practice Book § 61-9 provides in relevant part: "Should the trial court, subsequent to the filing of a pending appeal, make a decision that the appellant desires to have reviewed, the appellant shall file an amended appeal within twenty days from the issuance of the notice of the decision as provided for in Section 63-1. . . ." Thus, if the defendant wanted this court to review the court's ruling on her February 3, 2022 request, she should have filed an appeal form indicating such intention or amended her appeal pursuant to Practice Book § 61-9. Because she failed to do so, we decline to review this claim. See *Jewett* v. *Jewett*, 265 Conn. 669, 673 n.4, 830 A.2d 193 (2003); *Juliano* v. *Juliano*, 96 Conn. App. 381, 386, 900 A.2d 557, cert. denied, 280 Conn. 921, 908 A.2d 544 (2006).

The judgment is reversed only as to the order providing that a nonjudicial entity may suspend the defendant's visitation rights with R, and the case is remanded for further proceedings solely as to that issue; the judgment is affirmed in all other respects.

In this opinion SEELEY, J., concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

[1] The defendant restored her maiden name after the plaintiff commenced this action and is now known as M. S.

[2] The record does not reflect whether the court acted on the September 18, 2019 agreement.

[3] General Statutes § 46b-56f (a) provides: "Any person seeking custody of a minor child pursuant to [General Statutes §] 46b-56 or pursuant to an action brought under [General Statutes §] 46b-40 may make an application to the Superior Court for an emergency ex parte order of custody when such person believes an immediate and present risk of physical danger or psychological harm to the child exists."

[4] The defendant filed many motions and requests postdissolution but withdrew each of them before the court issued its decision.

[5] The plaintiff did not cross appeal from the denial of his motions for contempt.

[6] We note that the defendant did not address this ruling in her appellate brief. We therefore deem abandoned any claim concerning that aspect of the decision. See *Traylor* v. *State*, 332 Conn. 789, 810 n.18, 213 A.3d 467 (2019).

[7] The defendant filed her appellate brief on June 13, 2022. On July 26, 2022, this court, sua sponte, ordered the parties to address whether the portion of the appeal challenging the trial court's October 30, 2019 emergency ex parte custody and visitation order had become moot, ordering the plaintiff to address the issue in his appellate brief and the defendant to address it in her reply brief, if she filed one. The plaintiff filed his appellate brief on August 24, 2022, and argued that the defendant's challenges to the ex parte order are moot because the November 18, 2021 decision superseded the October 30, 2019 order. The defendant did not file a reply brief. Nevertheless, we conclude that, although the November 18, 2021 orders superseded the October 30, 2019 order, the defendant's challenge to the ex parte order is not moot because we are bound by this court's decision in *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 365, 190 A.3d 68 (2018), which held that "a § 46b-56f order is not subject to dismissal pursuant to the mootness doctrine."

[8] We also note that the defendant had every right to challenge this determination at the hearing on the application scheduled for November 12, 2019, by presenting evidence and arguments on why there was no immediate and present danger to the children. She declined to do so, however, and instead consented to having the order remain in effect.

[9] The defendant specifically challenges the court's decision to give the plaintiff the power to (1) control the defendant's right of access to the

children's medical records; (2) know the name and contact information of the defendant's mental health professional; (3) choose the family therapist who will work with the defendant and S; (4) determine the frequency of visitation between the defendant and R, including the ability to cancel visits and modify visitation if the plaintiff determines the visits are causing negative behavioral or emotional consequences for R; (5) receive reports related to the defendant's alcohol testing; and (6) receive, on request, information about the dates and duration of the defendant's mental health treatment and notification of any missed sessions. We address only the defendant's fourth contention because that is the only claim that could be construed as a challenge to the orders on the ground that they constituted an impermissible delegation of judicial authority.

[10] The defendant also claims that the court improperly delegated its judicial authority in the October 30, 2019 ex parte order. We decline to review this claim because it is moot. As discussed in footnote 7 of this opinion, this court has held that "§ 46b-56f order[s] [are] not subject to dismissal pursuant to the mootness doctrine." *Kyle S.* v. *Jayne K.*, supra, 182 Conn. App. 365. In so holding, the court cited decisions in which courts have held that challenges to protection orders issued pursuant to General Statutes § 46b-15 are not subject to dismissal on mootness grounds because of the collateral consequences of such orders. Id., citing *Putman* v. *Kennedy*, 279 Conn. 162, 164–65, 900 A.2d 1256 (2006) and *Gail R.* v. *Bubbico*, 114 Conn. App. 43, 47 n.5, 968 A.2d 464 (2009). Although the court in *Kyle S.* did not elaborate further about what, if any, collateral consequences may flow from an ex parte temporary custody order issued pursuant to § 46b-56f, it is clear that a decision from this court invalidating just that portion of the § 46b-56f order pertaining to visitation on the ground that it was an improper delegation of judicial authority would do nothing to alleviate any potential collateral consequences of the ex parte order that was issued in the present case. See *Williams* v. *Ragaglia*, 261 Conn. 219, 227, 802 A.2d 778 (2002) ("the application of the collateral consequences mootness doctrine is not predicated on a showing of the probability of such consequences, but, rather, on a showing of the *reasonable possibility* of collateral consequences" (emphasis in original)). This court is therefore incapable of granting any practical relief to the defendant with respect to this claim. As a result, we dismiss the defendant's challenge to the portion of the ex parte order pertaining to visitation as moot because that order was superseded by the subsequent visitation order. See, e.g., *Santos* v. *Morrissey*, 127 Conn. App. 602, 605, 14 A.3d 1064 (2011) (claim challenging visitation order that was superseded by subsequent order is moot).

[11] See, e.g., *Pratt* v. *Pratt*, 56 So. 3d 638, 643 (Ala. Civ. App. 2010) ("a visitation order awarding reasonable visitation with the minor children at the discretion of the [custodial parent] generally should not be allowed because it authorizes the custodial parent to deny visitation altogether, which would not be in the best interests of the children" (internal quotation marks omitted)); *Brooks* v. *Shepherd*, Docket No. CA 98-1526, 1999 WL 1031263, *6 (Ark. App. November 10, 1999) (The trial court improperly delegated judicial authority when it gave the mother authority over all of the father's out-of-town visitation because "[the mother] has been injured by the [father's] actions as has [the child]. She is likely to be influenced by her own anger, frustration, and pain when she should be making a determination regarding the best interests of [the child] in her relationship with her father. . . . [W]e believe [the child's] interests would be better served in this matter if the chancellor retains direct control over the visitation rights of [the father] rather than vesting that discretion with [the mother]."); *In re T.H.*, 190 Cal. App. 4th 1119, 1123–24, 119 Cal. Rptr. 3d 1 (2010) (court's order improperly delegated authority where mother had discretion as to whether father's visitation would occur); *People ex rel. D.G.*, 140 P.3d 299, 302 (Colo. App.) ("the trial court may not delegate the determination of entitlement to visitation to caseworkers, therapists, *and others*" (emphasis added)), cert. denied, Docket No. 06SC373, 2006 WL 2204790 (Colo. July 31, 2006); *Cheek* v. *Edwards*, 215 A.3d 209, 216 n.11 (D.C. 2019) ("[w]hether to grant a noncustodial parent visitation is a decision committed to the trial court's discretion and the court abuses this discretion when it delegates this decision to anyone else"); *In re Marriage of Jenkins*, Docket No. 22-0656, 2023 WL 382301, *3 (Iowa App. January 25, 2023) (finding trial court improperly delegated authority to mother and to children to determine whether visitation with father would occur); *Sanchez* v. *Sanchez*, Docket No. 1689, 2022 WL 2354989, *7 (Md. Spec. App. June 30, 2022) (court improperly delegated to mother and therapist power to determine father's right to

contact and visitation with minor sons); *State ex rel. Ryley G.* v. *Ryan G.*, 306 Neb. 63, 78, 943 N.W.2d 709 (2020) ("because the authority to determine custody and visitation is a judicial function, it cannot be delegated to [a custodial parent]"); *In re Izrael J.*, 149 App. Div. 3d 630, 630, 51 N.Y.S.3d 88 (2017) ("[a] court may not delegate its authority to determine visitation to either a parent or a child" (internal quotation marks omitted)); *In re A.P.*, 281 N.C. App. 347, 361, 868 S.E.2d 692 (2022) (finding trial court improperly gave father substantial discretion over mother's visitation where father testified he was not willing to facilitate or supervise mother's visits and did not want mother to be part of child's life); *Rainey* v. *Rainey*, 74 Va. App. 359, 387, 869 S.E.2d 66 (2022) ("[w]here the governing statutes squarely place the obligation to make contested visitation decisions on the judiciary, delegation of this responsibility to third parties or parents is unauthorized").

[12] Section 20-124.2 (A) of the Virginia Code Annotated (Cum. Supp. 2020) provides in relevant part: "In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. . . ."

[13] We do not agree with the dissent's interpretation of *Zilkha*. In *Zilkha*, this court held that the trial court did not improperly delegate its authority because the court plainly decided that the defendant had *no right* to visitation. *Zilkha* v. *Zilkha*, supra, 180 Conn. App. 172 ("Simply put, rather than delegating its responsibility, the court exercised its authority and met its obligation to decide issues of custody and visitation by denying the defendant's motions. This adjudication by the court was the antithesis of a delegation because it plainly decided that the defendant should not have any *right* to custody or visitation." (Emphasis in original.)). This court's decision made clear that the father's right to visitation was not left up to the children. Rather, the court simply noted that, should the teenage children want to voluntarily visit their father, they were free to do so. Id.

[14] We note that, unlike the courts in Alabama, Arkansas, and North Dakota, the dissent's interpretation of § 46b-56 would place no significant limits on the use of orders delegating the authority to suspend or terminate a noncustodial parent's visitation to custodial parents. Although the dissent states that it does not posit "that an order that affords the custodial parent unfettered discretion as to the noncustodial parent's visitation should be the usual practice of a trial court considering a custody and visitation dispute," it also makes clear that, under its interpretation of § 46b-56, such an order could be made upon a showing that it would be in a child's best interests and would be reviewed on appeal under the ordinary abuse of discretion standard that applies to all other custody and visitation orders.

[15] We recognize that this is the first time this court has had the opportunity to directly apply our prior precedents to an order delegating authority over a noncustodial parent's visitation to a custodial parent. We also recognize that our decision may require courts to entertain more frequent motions concerning visitation than they might otherwise be required to decide if custodial parents were permitted to decide a noncustodial parent's right to visitation. We are confident, however, that Superior Court judges, like their counterparts in nearly every other state that has decided this issue, will continue to carry out their statutory duty under § 46b-56 to issue visitation orders that take into consideration the rights of all parties and are in the best interests of the child.