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JOHN CHRISTIAN ET AL. v. PRIYA IYER ET AL.
(AC 45350)

Prescott, Clark and Bear, Js.*

Syllabus

The plaintiffs sought to recover damages from the defendants for vexatious litigation in connection with the defendants' prior action against them for trespass, which resulted in a judgment for the plaintiffs. The plaintiffs owned residential property that was adjacent to that of the defendants. From their property, the plaintiffs had views of Long Island Sound that would be blocked if trees located on the defendants' property were not kept trimmed. As such, the prior owners of the defendants' property had allowed the plaintiffs to access their property to trim certain trees. When the defendants purchased the property, they were made aware of this informal oral agreement and continued to adhere to it until a dispute arose between the parties in 2011. Thereafter, the defendants sued the plaintiffs, alleging that the plaintiffs had intentionally trespassed on their property and cut down thirteen trees without their consent. Following a bench trial, the court found in favor of the plaintiffs, determining that the defendants gave the plaintiffs permission to cut down the trees and, accordingly, that the plaintiffs had established their defense of consent. Subsequently, the plaintiffs commenced the present action. The defendants raised a special defense, claiming that they had relied on the legal advice of counsel in prosecuting the trespass action. Without determining whether the plaintiffs had established the elements of their vexatious litigation claims, the trial court rendered judgment for the defendants, concluding that they had established their advice of counsel defense. On the plaintiffs' appeal to this court, *held*:

1. The trial court erred in concluding that the defendants had established the defense of good faith reliance on advice of counsel because the court failed to apply the correct legal standard and to make the requisite findings: instead of determining whether the defendants had made a full and fair disclosure of all material facts related to their potential trespass claim to P, the attorney who had instituted the trespass action on their behalf, the trial court incorrectly focused its analysis on M, the attorney who had replaced P as counsel for the defendants after the action had already been commenced; moreover, the sole finding that the trial court made with respect to P, namely, that he had concluded that the defendants had a good faith basis to pursue legal action against the plaintiffs, was immaterial to the defendants' defense because the subjective opinion of counsel as to whether to bring the action was not an element of the defense; furthermore, the trial court failed to make any findings as to whether the defendants made a full and fair disclosure of all material facts to either P or M; accordingly, this court reversed the judgment of the trial court and remanded the case for a new trial.
2. The trial court did not err in failing to apply the doctrine of collateral estoppel because it was not applicable to the case: the plaintiffs erroneously conflated the issue of consent in the trespass action with the issues of full and fair disclosure and probable cause in the present action, as the issues were not identical and those asserted in the present action had not been litigated or decided in the trespass action; moreover, although the court in the trespass action found that the defendants had consented to the tree removal, that finding did not mean that the defendants had failed to disclose to counsel all of the material facts and circumstances underlying their potential claim or that they lacked probable cause to bring the trespass action; accordingly, contrary to the plaintiffs' claim, the court's finding of consent in the trespass action did not bar the trial court in the present action from finding that the defendants had made a full and fair disclosure to counsel of all material facts related to the trespass claim or that the defendants had probable cause to commence the trespass action.

Argued September 7—officially released October 17, 2023

Action to recover damages for vexatious litigation, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the matter was tried to the court, *Hon. Taggart D. Adams*, judge trial referee; judgment for the defendants, from which the plaintiffs appealed to this court. *Reversed; new trial.*

Brendan J. O'Rourke, with whom, on the brief, was *Joseph M. Musco*, for the appellants (plaintiffs).

Thomas H. Houlihan, Jr., with whom, on the brief, was *Ashley A. Noel*, for the appellees (defendants).

Opinion

CLARK, J. In this vexatious litigation action, the plaintiffs, John Christian and Susan Christian, appeal from the judgment of the trial court, rendered following a bench trial, in favor of the defendants, Priya Iyer and Chandrasekhar Narayanaswami. On appeal, the plaintiffs claim that the court erred (1) in concluding that the defendants established the defense of good faith reliance on advice of counsel because it failed to apply the correct legal standard or make the requisite findings, and (2) by failing to apply the doctrine of collateral estoppel on the basis of a judgment in their favor in a prior trespass action brought against them by the defendants. We agree with the plaintiffs with respect to their first claim, but we disagree as to their second claim. For the reasons that follow, we reverse the judgment of the court and remand the case for a new trial.

The following facts, either found by the court or undisputed by the parties, and procedural history are relevant to our resolution of this appeal. The defendants are the owners of property located at 83 Keelers Ridge Road in Wilton. The plaintiffs are the owners of an adjacent property, located at 97 Keelers Ridge Road. The plaintiffs' residence is at a higher elevation and is situated to the southwest of the defendants' residence. The plaintiffs' residence affords sweeping views of Long Island Sound over the rear of the defendants' property, a view that was at risk of being blocked if trees located on the defendants' property were not trimmed. When the defendants purchased the property, they were made aware of the previous informal oral agreement between the prior owners and the plaintiffs that allowed the plaintiffs to trim certain trees on the defendants' property in order to preserve their views. The defendants did not object to this agreement, and, from 2009 to 2011, the plaintiffs and the defendants communicated about trimming the trees on the defendants' property. In 2011, however, that prior arrangement gave rise to a dispute that resulted in litigation between the parties.

On September 12, 2013, the defendants sued the plaintiffs, alleging that, in 2011, the plaintiffs had intentionally trespassed onto their property and cut down thirteen trees without the defendants' consent (trespass action). At the time the defendants initiated the trespass action, they were represented by Attorney Anthony Piazza. In 2014, during the pendency of the trespass action, Attorney Matthew Mason was substituted as counsel for the defendants.

A bench trial was held over five days during June and July, 2016. Following the trial, the court, *Lee, J.*, issued a memorandum of decision dated February 6, 2017, finding in favor of the plaintiffs.¹ The court concluded that the defendants could not prevail on their trespass claim because the plaintiffs had established

their special defense of consent. Specifically, the court found that “Iyer gave her permission to [John] Christian to allow the cutting of the [pine trees located to the east of the plaintiffs’ pool and those along the southern border of the plaintiffs’ property] during their conversation on her property on September 15, 2011.”

Subsequently, on April 24, 2017, the plaintiffs commenced the present vexatious litigation action against the defendants. In their operative complaint, the plaintiffs assert a common-law vexatious litigation claim and two statutory vexatious litigation claims pursuant to General Statutes § 52-568 (1) and (2).² On August 8, 2017, the defendants filed their answer and a special defense, which claimed that they relied on the legal advice of counsel in prosecuting the trespass action. The defendants also brought three counterclaims against the plaintiffs sounding in vexatious litigation, but they ultimately withdrew those counterclaims.

Following a bench trial,³ the court, *Hon. Taggart D. Adams*, judge trial referee, issued a memorandum of decision dated February 23, 2022, finding in favor of the defendants. In its memorandum of decision, the court did not determine whether the plaintiffs had established the elements of the vexatious litigation claims; instead, it analyzed only whether the defendants had established their special defense of advice of counsel. The court ultimately concluded that the defendants had established their advice of counsel defense, and, therefore, it rendered judgment for the defendants on all of the plaintiffs’ claims, reasoning that the defendants’ advice of counsel defense was a complete defense to those claims. In reaching its conclusion, the court found the following facts: “Attorney [Mason] represented [the defendants] throughout their controversy with [the plaintiffs]. [Attorney] Mason has been a well regarded member of the Connecticut bar for forty years, representing clients in a wide range of legal matters including all phases of litigation. He is a principal with the Wilton, Connecticut law firm of Gregory and Adams

“In October, 2011, [Attorney] Mason was asked to assist the defendants in this case . . . in resolving issues with the [plaintiffs] over trees. . . . At that time [Attorney] Mason had worked to mediate a dispute between the plaintiffs and the defendants. In 2014, [Attorney] Mason took over representation of the defendants in their trespass action against the [plaintiffs] . . . substituting for Attorney [Piazza]. Attorney Piazza had concluded [that] the defendants had a good faith basis to pursue a legal action against the [plaintiffs] and had undertaken the defendants’ representation until then.

“In connection with his assessment of the legal action, Attorney Mason reviewed Attorney Piazza’s file and spoke with both defendants. . . . [Attorney] Mason testified at the trial of this case in a credible

fashion. In his trial testimony, he testified that he found [Iyer] to be credible and determined that she and her husband had a ‘viable’ trespass claim that ‘should be pursued.’ . . .

“[Attorney] Mason further testified that he first learned in November, 2014, of a voicemail left by [Iyer] on [John] Christian’s telephone on September 15, 2011. That voicemail is a major bone of contention in this case, and [John] Christian has characterized it as a ‘smoking gun’ in his favor. The voicemail referenced some workers who were ‘cutting down’ pine trees between Iyer’s property on Keelers Ridge Road and the property of a neighbor, Al Nickel. [Iyer] has characterized her use of the phrase ‘cutting down’ as meaning reducing in size, not eliminating.

“In discussing the voicemail with Iyer, Attorney Mason understood that it could be interpreted to grant permission to the [plaintiffs] to remove some trees on her property. Nevertheless, [Attorney] Mason found [Iyer’s] explanation that her meaning of cut down to mean ‘reduce in size or amount’ was ‘truthful’ and ‘reasonable.’ . . . At the same time [Attorney] Mason was ‘absolutely’ aware that the voicemail could be interpreted otherwise. . . . As described by the defendants’ counsel, Attorney Mason was aware of all the case’s ‘warts.’ . . . [Attorney] Mason further testified [that] he had ‘great difficulty understanding’ how the issue of tree removal could be resolved without agreement on a ‘whole host’ of other issues such as replacement trees, planting, tree height, ownership and maintenance. . . . Attorney Mason further testified: ‘[The defendants] had opportunit[ies] to withdraw the case over a period of years, and whenever this issue would be raised by the [plaintiffs]’ counsel we would discuss it and [Iyer] was adamant, and I found credible, that she had not given permission and needed to pursue the claim. . . . A reason they were pursuing this claim was their need to establish control over the property line. They were convinced about the trees having been removed without permission, further request[s] by the [plaintiffs] . . . to trim other trees, they were concerned about their property line not being respect[ed] . . . and that was a significant part of their motivation and desire in pursuing . . . the claim.’ [Attorney Mason was asked] ‘And if you believed that [the defendants] did not have a good faith basis to bring their trespass claim would you have continued to represent them?’ [He answered] ‘Absolutely not.’ . . .

“As to whether [Iyer] gave consent for the [plaintiffs] to remove her trees, Attorney Mason testified: ‘I believe she did not give consent. I understand Judge Lee found differently, but I believe she did not give consent and that . . . she had a good faith basis to pursue the claim.’ . . .

“Attorney Mason further testified [that] he had yet

to have a case where there was not ‘good’ evidence and ‘bad’ evidence for his clients and that he expected the voicemail would be used for the [plaintiffs] ‘benefit.’ ” (Citations omitted.)

Ultimately, the court found that “the evidence of Attorney Mason and his actions in connection with his representation of the defendants, and the defendants’ actions in accepting and relying on the advice and counsel of Attorney Mason in pursuing their lawsuit, have met the burden of proof the law imposes on the defendants in order to be successful in proving by a preponderance of the evidence their special defense of good faith reliance on advice of counsel.” This appeal followed.

On May 16, 2022, the plaintiffs filed a motion for articulation, which the trial court issued on September 12, 2022. Additional facts will be set forth as necessary.

I

The plaintiffs first claim that the court erred in concluding that the defendants established the defense of good faith reliance on advice of counsel because it failed to apply the correct legal standard or make the requisite findings. In particular, the plaintiffs argue that the court failed to determine whether the defendants made a full and fair disclosure of all the material facts related to their potential trespass claim to Attorney Piazza, the attorney who instituted the trespass action on their behalf, and, instead, improperly evaluated the disclosures in relation to the defendants’ second attorney, Attorney Mason. The plaintiffs further argue that, even if it were proper to look at what disclosures the defendants made to Attorney Mason for purposes of the advice of counsel defense, the court still erred by failing to apply the correct objective legal standard, instead giving weight to Attorney Mason’s subjective assessment regarding the completeness and truthfulness of the defendants’ disclosures and the validity of their claims. We agree with the plaintiffs.

We begin by setting forth our standard of review and the relevant legal standards governing vexatious litigation claims. The plaintiffs argue that the court failed to apply the correct legal standard for the good faith reliance on advice of counsel defense and, thus, they present a question of law over which our review is plenary. “It is well established that [t]he . . . determination of the proper legal standard in any given case is a question of law subject to our plenary review.” (Internal quotation marks omitted.) *Crosskey Architects, LLC v. Poko Partners, LLC*, 192 Conn. App. 378, 386, 218 A.3d 133 (2019).

The plaintiffs assert both common-law and statutory vexatious litigation claims. “In Connecticut, the cause of action for vexatious litigation exists both at common law and pursuant to statute. . . . [T]o establish a claim

for vexatious litigation at common law, one must prove want of probable cause, malice⁴ and a termination of suit in the plaintiff's favor. . . . The statutory cause of action for vexatious litigation exists under . . . § 52-568, and differs from a common-law action only in that a finding of malice is not an essential element, but will serve as a basis for higher damages. . . . In the context of a claim for vexatious litigation, the defendant lacks probable cause if he lacks a reasonable, good faith belief in the facts alleged and the validity of the claim asserted." (Emphasis omitted; footnote added; internal quotation marks omitted.) *Carolina Casualty Ins. Co. v. Connecticut Solid Surface, LLC*, 207 Conn. App. 525, 533–34, 262 A.3d 885 (2021).

In response to the plaintiffs' vexatious litigation claims, the defendants asserted the defense of good faith reliance on advice of counsel. "Advice of counsel is a complete defense to an action of . . . [vexatious litigation] when it is shown that the [client] . . . instituted his [or her] civil action relying in good faith on such advice, given after a full and fair statement of all facts within his [or her] knowledge, or which he [or she] was charged with knowing." (Internal quotation marks omitted.) *Kazemi v. Allen*, 214 Conn. App. 86, 117, 279 A.3d 742 (2022), cert. denied, 345 Conn. 971, 286 A.3d 906 (2023). "[T]he defense [of advice of counsel] has five essential elements. First, the defendant must actually have consulted with legal counsel about his decision to institute a civil action Second, the consultation with legal counsel must be based on a full and fair disclosure by the defendant of all facts he knew or was charged with knowing concerning the basis for his contemplated . . . action Third, the lawyer to whom the defendant turns for advice must be one from whom the defendant can reasonably expect to receive an accurate, impartial opinion as to the viability of his claim The fourth element . . . is . . . that the defendant, having sought such advice, actually did rely upon it Fifth and finally, if all other elements of the defense are satisfactorily established, the defendant must show that his reliance on counsel's advice was made in good faith." (Internal quotation marks omitted.) *Id.*, 116; see also *Rieffel v. Johnston-Foote*, 165 Conn. App. 391, 406–407, 139 A.3d 729, cert. denied, 322 Conn. 904, 138 A.3d 289 (2016).

"In determining whether a [client] gave a full and fair statement of the facts within his or her knowledge to counsel, reliance on whether the omitted information would have had any impact on counsel's decision to bring the allegedly vexatious action . . . is irrelevant . . . because, as a matter of law, showing an impact on an attorney's ultimate course of action is not an element of the defense of reliance on counsel. . . . In other words, a client should not be permitted to rely upon the defense of advice of counsel if the client did not disclose all of the material facts related to a poten-

tial claim, because the lawyer cannot render full and accurate legal advice regarding whether there is a good faith basis to bring the claim in the absence of knowledge of all material facts. In such instances, a client's reliance on the advice of counsel is unreasonable regardless of whether the material facts would have altered counsel's assessment of the validity of the claim." (Internal quotation marks omitted.) *Kazemi v. Allen*, supra, 214 Conn. App. 117.

With those legal principles in mind, it is clear that the court, in determining whether the defendants had established their defense of advice of counsel,⁵ was required to determine, inter alia, whether the defendants made a full and fair disclosure of all the material facts concerning the contemplated trespass action to Attorney Piazza, the attorney who instituted the trespass action on their behalf. On the basis of our review of the court's memorandum of decision, it is evident that the court's ultimate determination regarding the defendants' advice of counsel defense was predicated on considerations and findings immaterial to the ultimate question of whether the defendants made a full and fair disclosure of material facts to Attorney Piazza concerning the basis for their contemplated trespass action. The court made no such findings regarding that question and, instead, based its decision on ancillary considerations.

First, instead of determining whether the defendants made a full and fair disclosure of all material facts related to their potential claim to Attorney Piazza—the attorney who actually instituted the trespass action on behalf of the defendants—the court erroneously focused its analysis on Attorney Mason, who replaced Attorney Piazza as counsel after the action had already been instituted. In vexatious litigation cases, the court generally looks to whether a party *commenced and prosecuted* an action without probable cause. See General Statutes § 52-568. Hence, with respect to the defense of advice of counsel, it is “a complete defense to an action of . . . [vexatious litigation] when it is shown that the [client] . . . *instituted* his [or her] civil action relying in good faith on such advice, given after a full and fair statement of all facts within his [or her] knowledge, or which he [or she] was charged with knowing.” (Emphasis added; internal quotation marks omitted.) *Kazemi v. Allen*, supra, 214 Conn. App. 117. Thus, the question that the court was charged with answering was not whether the defendants *continued* the litigation in good faith on the advice of Attorney Mason but, rather, whether the defendants *instituted* the litigation in good faith on the advice of Attorney Piazza.

Although the court did make a single finding with respect to Attorney Piazza, stating that “Attorney Piazza had concluded the defendants had a good faith basis to pursue a legal action against the [plaintiffs],” that

finding is immaterial to the defendants' defense because the subjective opinion of counsel as to whether to bring an action is not an element of the defense at issue. See *Kazemi v. Allen*, supra, 214 Conn. App. 117 (“[i]n determining whether a [client] gave a full and fair statement of the facts within his or her knowledge to counsel, reliance on whether the omitted information would have had any impact on counsel’s decision to bring the allegedly vexatious action . . . is irrelevant . . . because, as a matter of law, showing an impact on an attorney’s ultimate course of action is not an element of the defense of reliance on counsel” (internal quotation marks omitted)).

Second, even if we were to accept the defendants’ argument that the court was correct in focusing on Attorney Mason, the court still failed to determine whether the defendants made a full and fair disclosure of all material facts to Attorney Mason. Indeed, the court made no findings as to whether there was a full and fair disclosure of all material facts to *either* of the defendants’ counsel.⁶ The court’s findings regarding Attorney Mason, although more detailed than those regarding Attorney Piazza, concerned solely whether Attorney Mason found the defendants’ disclosures to be credible,⁷ and were therefore, irrelevant to the inquiry of whether the defendants actually made a full and fair disclosure to him. Although the court found that Attorney Mason subjectively believed that the defendants’ disclosures were credible and that the defendants had a viable trespass action based on the facts communicated to him by the defendants, the court made no findings concerning whether the defendants in fact disclosed to him all of the material facts related to the potential claim. By making findings only as to the subjective beliefs of Attorney Mason, rather than examining what material facts were or were not disclosed to him, the court failed to apply the proper standard for determining the advice of counsel defense.

In sum, the court, in determining whether the defendants proved their advice of counsel defense, was tasked with answering, inter alia, whether the defendants met their burden of proof in demonstrating that they made a full and fair disclosure of all material facts to Attorney Piazza, the attorney that instituted their trespass action. Instead of making those findings, the court improperly made multiple findings regarding the subjective beliefs and opinions of Attorney Mason and one finding regarding the subjective beliefs of Attorney Piazza, all of which are immaterial to whether there was a full and fair disclosure of all material facts to Attorney Piazza before he initiated the litigation. Because the court failed to apply the correct legal standard or make the material findings of fact, we are compelled to reverse and remand this case for a new trial.

Although our resolution of the plaintiffs' first claim is dispositive of the appeal, we address the plaintiffs' second claim because it is likely to arise on remand. Specifically, the plaintiffs claim that the court failed to apply the doctrine of collateral estoppel to the issue of full and fair disclosure to counsel in the present action on the basis of the finding of consent in the trespass action. In particular, the plaintiffs claim that, because the court in the trespass action found "that the defendants knowingly agreed to removal of the trees," the "defendants are precluded from claiming that telling their counsel that they did not consent to the removal of the trees, or even that a misunderstanding occurred, was [a] full and truthful disclosure to their attorneys." The plaintiffs also argue that the finding of consent in the trespass action bars the defendants from arguing that they had probable cause to initiate the trespass action. We disagree with the plaintiffs.

We first set forth our standard of review and the legal principles governing a claim of collateral estoppel. A determination of whether collateral estoppel applies is a question of law over which our review is plenary. See *Wiacek Farms, LLC v. Shelton*, 132 Conn. App. 163, 168, 30 A.3d 27 (2011) ("[w]hether the trial court properly declined to invoke the doctrine of collateral estoppel is a question of law over which our review is plenary"), cert. denied, 303 Conn. 918, 34 A.3d 394 (2012).

"The doctrine of collateral estoppel prevents a party from relitigating issues and facts [that have been] actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them [on] a different claim" (Emphasis omitted; internal quotation marks omitted.) *Solon v. Slater*, 345 Conn. 794, 810, 287 A.3d 574 (2023). "To invoke collateral estoppel the issues sought to be litigated in the new proceeding must be identical to those considered in the prior proceeding. . . . In other words, *collateral estoppel has no application in the absence of an identical issue*. . . . Further, an overlap in issues does not necessitate a finding of identity of issues for the purposes of collateral estoppel." (Emphasis added; internal quotation marks omitted.) *Independent Party of CT—State Central v. Merrill*, 330 Conn. 681, 714, 200 A.3d 1118 (2019).

In the present case, the plaintiffs argue that the court's finding of consent in the trespass action serves to bar the court in the present action from finding that the defendants made a full and fair disclosure to counsel of all material facts related to their trespass claim or from finding that the defendants had probable cause to commence the trespass action. The plaintiffs, however, erroneously conflate the issue of consent in the trespass action with the issues of full and fair disclosure and probable cause in the present action. Although the finding of consent in the trespass action might appear simi-

lar to, or have some overlap with, the issues of probable cause or disclosure in the present action, the issues are by no means identical. The issues of whether there was probable cause to bring the trespass action and whether a full and fair disclosure of material facts was made to the defendants' attorney were neither litigated nor decided in the trespass action. The judicial finding of consent in the trespass action was rendered by the court after weighing substantially conflicting evidence and deciding which evidence was most credible. In finding that the defendants consented to having the trees cut down, the court in the trespass action did not need to, nor did it, make findings regarding what facts were or were not disclosed by the defendants to Attorney Piazza or whether there was probable cause to initiate the trespass action. To suggest that the court should apply collateral estoppel to issues that were not litigated and findings that were not made goes against the principle that "collateral estoppel has no application in the absence of an identical issue." (Internal quotation marks omitted.) *Id.*, 714.

Although the court in the trespass action ultimately found that the defendants consented to the tree removal, this finding does not necessarily mean that the defendants failed to disclose to counsel all the material facts and circumstances underlying their potential claim or that they lacked probable cause to bring the trespass action in the first instance.⁸ See *Elwell v. Kellogg*, 220 Conn. App. 822, 846, 299 A.3d 1166 (2023) (collateral estoppel did not apply because issue of whether defendant lacked probable cause to bring foreclosure action was not identical to issue of consideration). Because the issues of probable cause and full and fair disclosure to counsel were not before the court in the trespass action and are not identical to the issue of whether the defendants ultimately consented to the trees being cut down, collateral estoppel has no application here.⁹

The judgment is reversed and the case is remanded for a new trial.

In this opinion the other judges concurred.

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

¹ The court found in favor of the plaintiffs with respect to the defendants' trespass claim but against the plaintiffs with respect to their counterclaims, which asserted claims of adverse possession and prescriptive easement over the defendants' property.

² General Statutes § 52-568 provides: "Any person who commences and prosecutes any civil action or complaint against another, in his own name or the name of others, or asserts a defense to any civil action or complaint commenced and prosecuted by another (1) without probable cause, shall pay such other person double damages, or (2) without probable cause, and with a malicious intent unjustly to vex and trouble such other person, shall pay him treble damages."

³ The trial took place over three days. The trial began on February 13, 2020, and continued on February 14, 2020. Additional trial days were scheduled for March 19 and 20, 2020, but were subsequently delayed due to the COVID-19 pandemic. The final day of trial eventually took place on July 21, 2021. This delay resulted in the plaintiffs submitting a motion for mistrial, which

the court, *Hon. Taggart D. Adams*, judge trial referee, denied on May 13, 2021.

⁴ “In a vexatious suit action, the defendant is said to have acted with malice if he acted primarily for an improper purpose; that is, for a purpose other than that of securing the proper adjudication of the claim on which [the proceedings] are based Malice may be inferred from lack of probable cause.” (Citation omitted; internal quotation marks omitted.) *Kazemi v. Allen*, 214 Conn. App. 86, 121, 279 A.3d 742 (2022), cert. denied, 345 Conn. 971, 286 A.3d 906 (2023).

⁵ We note that, in a vexatious litigation claim, the plaintiffs carry the burden of proof; yet, in the present case, the court made no finding, express or implied, as to whether the plaintiffs had successfully made out their vexatious litigation claims. Instead, the court bypassed this initial inquiry and analyzed only the defendants’ asserted defense of good faith reliance on advice of counsel.

⁶ In the plaintiffs’ motion for articulation, the court was asked in reference to both defendants: “Did the court find Iyer disclosed all material facts within her knowledge to Attorney Mason?” and “Did the court find Narayanaswami disclosed all material facts within his knowledge to Attorney Mason?” In response to both questions, the court stated: “The court is not in a position to say it knows all the material facts, but generally, yes.” The motion for articulation did not ask this question in regard to Attorney Piazza, nor did the court address whether a full disclosure was made to Attorney Piazza in its memorandum of decision.

⁷ The court found that “[Attorney Mason] testified that he found [Iyer] to be credible and determined that she and her husband had a ‘viable’ trespass claim that ‘should be pursued.’” Additionally, the court reviewed testimony from Attorney Mason regarding the credibility of the defendants and his opinion on the viability of their claims. Nowhere in the court’s memorandum of decision does the court find that a full and fair disclosure of material facts had been made by the defendants to Attorney Mason.

⁸ As the defendants point out in their appellate brief, if a court in a vexatious litigation action was required to give preclusive effect to the findings of the court in the underlying action that gave rise to the vexatious litigation action, even when the issues were not identical, defendants who prevail in litigation almost always would prevail in a subsequent vexatious litigation action.

⁹ In their principal appellate brief, the plaintiffs suggest that this court can and should reach the issue of whether the defendants had probable cause to bring the trespass action. The trial court, however, specifically stated that it made no findings regarding the issue of probable cause. In the plaintiffs’ motion for articulation, the court was asked, “[d]id the court find that, absent their advice of counsel special defense, the defendants had probable cause to bring the 2013 trespass action?” In its articulation, the court answered, “[n]o such finding was made.” Additionally, both parties conceded at oral argument before this court that the trial court did not make a finding as to the issue of probable cause, and, thus, it would be inappropriate for this court to decide the issue for the first time on appeal. We agree that it would be inappropriate for us to reach that issue. See *Lee v. Stanziale*, 161 Conn. App. 525, 539, 128 A.3d 579 (2015) (“Connecticut appellate courts generally will not address issues not decided by the trial court” (internal quotation marks omitted)), cert. denied, 320 Conn. 915, 131 A.3d 750 (2016). Because we conclude that collateral estoppel has no application here, and because the court made no findings as to the issue of probable cause, we make no determination as to whether the defendants had probable cause to bring the trespass action.
