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SHERI SPEER *v.* BROWN JACOBSON P.C. ET AL.
(AC 45662)

Bright, C. J., and Elgo and Cradle, Js.

Syllabus

The self-represented plaintiff appealed to this court from the judgment of the trial court dismissing her quo warranto action challenging the qualifications of the defendant law firm, B Co., and the defendant attorney, W, to serve as corporation counsel and assistant corporation counsel for the defendant city of Norwich. The plaintiff had claimed in several prior cases, either offensively or as a special defense, that B Co. and W were not eligible to serve as the city's counsel. After the plaintiff filed the present action, alleging that B Co. and W did not meet the qualifications for the offices of corporation counsel or assistant corporation counsel for the city because neither was an elector in accordance with the city charter and the city's code of ordinances and seeking to eject B Co. and W from those offices, the defendants filed a motion to dismiss, arguing that the plaintiff's action was barred by the doctrine of res judicata because the issue of whether B Co. and W properly represented the city as its attorneys had been the subject of prior litigation on numerous occasions that resulted in a final judgment on the merits in favor of the defendants. The trial court granted the defendants' motion to dismiss, relying on two prior cases in finding that the plaintiff's action was barred by res judicata and collateral estoppel. In the first prior case, the plaintiff and three other individuals had filed a quo warranto action alleging that W, B Co. and another attorney had not been appointed to the office of corporation counsel in accordance with the city charter and, therefore, were not authorized to act as corporation counsel for the city, but they neglected to sign the complaint. The plaintiff filed an amended complaint on behalf of herself and the three other individuals, and the court subsequently ordered them to appear at a hearing and show cause why their complaint should not be dismissed for lack of subject matter jurisdiction because the complaint was not signed in accordance with the rules of practice and because the plaintiff, by filing the amended complaint on behalf of other individuals, engaged in the unauthorized practice of law. Following that hearing, the court dismissed the case without explanation. In the second case, a foreclosure action, the city sought to foreclose certain municipal tax liens on property owned by the plaintiff, and she asserted as a special defense that B Co. lacked agency to represent the city or enforce the alleged liens because the firm, as a professional corporation, could not be an elector as required to qualify as corporation counsel under the city charter. The court granted the city's motion for summary judgment as to liability only, finding that the plaintiff lacked standing to challenge the authority of the city's attorney to institute the foreclosure action. *Held*:

1. The trial court improperly concluded that the doctrine of res judicata barred the plaintiff's action: neither disposition of the two cases relied on by the trial court was a judgment on the merits, that is, one that is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction or form, as the foreclosure action was dismissed because the plaintiff lacked standing and the first quo warranto action was dismissed after the court determined that the plaintiff had engaged in the unauthorized practice of law and that the court lacked subject matter jurisdiction because the complaint was not properly signed; accordingly, the doctrine of res judicata did not bar the present action.
2. The trial court improperly concluded that the doctrine of collateral estoppel precluded the plaintiff's action, this court having found that the issues raised in the present action were not decided in either of the two cases on which the trial court relied: although the trial court's precise reasoning in the dismissal of the first quo warranto action was unclear, that court's show cause order stated that the court was considering dismissing the case only because the plaintiff had engaged in the unauthorized practice of law by signing the complaint on behalf of other unrepresented parties and because it lacked subject matter jurisdiction

due to the improper signing of the complaint, and the court never addressed the merits of the first quo warranto action, in particular, whether B Co. and W were qualified to hold the offices of corporation counsel and assistant corporation counsel; moreover, as to the foreclosure action, the court addressed whether the plaintiff had standing to raise, as a special defense, the propriety of the city's counsel's representation in that case but never addressed the merits of the plaintiff's claims and, although the issue of whether the plaintiff had standing to defensively challenge the authority of the city's counsel to represent the city in a foreclosure proceeding was necessarily determined and essential to the judgment in the foreclosure action and would have preclusive effect if the plaintiff sought to assert that same defense in a subsequent foreclosure action, the court did not decide whether the plaintiff had standing to initiate a quo warranto action, which depended solely on her status as a taxpayer.

Argued September 14—officially released December 5, 2023

Procedural History

Action for, inter alia, a writ of quo warranto challenging the appointment of the named defendant to the office of corporation counsel of the city of Norwich, brought to the Superior Court in the judicial district of New London, where the court, *O'Hanlan*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Reversed*; *further proceedings*.

Sheri Speer, self-represented, the appellant (plaintiff).

Opinion

BRIGHT, C. J. The self-represented plaintiff, Sheri Speer, appeals from the judgment of the trial court dismissing, on the grounds of res judicata and collateral estoppel, her quo warranto action challenging the qualifications of the defendants Brown Jacobson P.C. (Brown Jacobson) and one of its attorneys, Aimee Wickless, to serve as corporation counsel for the defendant city of Norwich (city).[1] On appeal, the plaintiff claims, inter alia, that the court improperly concluded that her claims are barred by the doctrines of res judicata and collateral estoppel. We agree and, therefore, reverse the judgment of the trial court.[2]

The following undisputed facts and procedural history are relevant to our resolution of this appeal. Brown Jacobson and Wickless have acted as corporation counsel and assistant corporation counsel for the city in legal proceedings, including some involving the plaintiff. The plaintiff filed the present quo warranto action on August 4, 2021, alleging that Brown Jacobson and Wickless "do not presently meet the qualifications for the offices of corporation counsel or assistant corporation counsel" for the city because neither is an elector in accordance with the city charter and code of ordinances.[3] As a "resident and taxpayer" of the city, the plaintiff sought "temporary and permanent writs of quo warranto ejecting" Brown Jacobson and Wickless from those offices.

The defendants filed a motion to dismiss, arguing that the plaintiff's action "is barred by the doctrine of res judicata" because "[t]he issue of [Brown Jacobson and Wickless] representing the [city] as its [attorneys] has been the subject of prior litigation on numerous occasions that resulted in a final judgment on the merits in favor of the defendants."[4] In their motion to dismiss, the defendants cited four different cases in which the plaintiff claimed, either offensively or as a special defense, that Brown Jacobson and Wickless were not eligible to serve as the city's corporation counsel. The defendants discussed three of those cases in their memorandum of law in support of that motion, and the court relied on only two of them in its order granting the defendants' motion.[5]

The procedural histories of the two cases relied on by the trial court in granting the defendants' motion to dismiss are as follows. First, on February 24, 2012, the plaintiff and three other individuals filed a quo warranto action alleging that Wickless, Brown Jacobson, and Attorney John Wirzbicki had not been appointed to the office of corporation counsel in accordance with the city charter and, therefore, were not authorized to act as corporation counsel for the city (first quo warranto action).[6] See *Speer* v. *Wickless*, Superior Court, judicial district of New London, Docket No. CV-12-5014370-S.

The complaint, which was not signed, contained forty-six counts, several of which directly challenged Wickless' prosecution of foreclosure actions against the plaintiff in 2009 and 2010. The plaintiff, on behalf of herself and the three other individuals, filed an amended complaint in the first quo warranto action on April 24, 2012. After the plaintiff filed the amended complaint, the court, *Hon. Thomas F. Parker*, judge trial referee, ordered the plaintiff and the three other individuals to appear at a May 30, 2012 hearing and show cause why their complaint should not be dismissed for lack of subject matter jurisdiction because the complaint was not signed in accordance with Practice Book § 4-2 (a)[7] and because the plaintiff, by filing the amended complaint on behalf of other individuals, engaged in the unauthorized practice of law. In response to that order, the plaintiff and the other individuals filed prehearing briefs on May 25, 2012. During oral argument before this court, the plaintiff indicated that she believes that she attended the show cause hearing. Following that hearing, the court dismissed the case without explanation on May 31, 2012.

In the second case, the city, represented by Wickless and Attorney Michael E. Driscoll, filed a complaint on September 20, 2012, seeking to foreclose certain municipal tax liens on property owned by the plaintiff (foreclosure action). See *Norwich* v. *Speer*, Superior Court, judicial district of New London, Docket No. CV-12-6014928-S. In her answer, the plaintiff asserted as a special defense that Wickless' firm, Brown Jacobson, "lack[ed] agency to represent the [city] or enforce the liens alleged" because the firm, which is a professional corporation, cannot be an elector as is required to qualify as corporation counsel under the city charter. In its memorandum of law in support of its motion for summary judgment as to liability, the city asserted that the plaintiff lacked standing to assert that special defense because the city's "representation by counsel is an entitlement belonging to the [city], not [to] the [plaintiff]," and, regardless, such a special defense is not among the "limited defenses to a foreclosure action." In an effort to disprove the plaintiff's allegation, the city attached to its motion a city council resolution dated December 19, 2011, indicating that Wickless had been reappointed as assistant corporation counsel. In response, the plaintiff filed a motion for summary judgment as to her special defense. The court, *Cosgrove, J.*, denied the plaintiff's motion and granted the city's motion for summary judgment as to liability only on January 23, 2014. In its memorandum of decision, the court agreed with the city that the plaintiff lacked standing to challenge "the authority of the [city's] attorney to institute [the foreclosure] action. . . . The city is entitled to retain the lawyers of its choice. It has passed corporate resolutions and it has cooperated with the prosecution of this action. This defense is without merit

and is asserted solely for the purposes of delay."

On the basis of the resolution of those actions, the defendants in the present case argued that "the allegations raised by the plaintiff . . . are identical to those raised . . . in the aforementioned [cases]. The plaintiff has sued the defendants on two occasions, each time claiming that [Brown Jacobson and Wickless] are not eligible to represent the [city] as its corporation counsel and/or [assistant] corporation counsel. In addition, the plaintiff has raised this same issue several times as [a] special defense, [and] each time said special defense was either stricken or summary judgment was rendered." The plaintiff filed a memorandum of law in opposition to the defendants' motion to dismiss on October 25, 2021, arguing that the defendants misconstrued the facts, that their motion to dismiss was frivolous and intended to stall the proceedings, and that the doctrine of res judicata is inapplicable to this case.

After hearing argument on the defendants' motion on January 24, 2022,[8] the court granted the motion to dismiss on May 18, 2022, concluding, on the basis of the foreclosure action and the first quo warranto action, that the present action was barred by the doctrines of res judicata and collateral estoppel.[9] In its two paragraph order, the court stated: "The court grants the motion to dismiss for the reasons set forth in the [defendants'] motion to dismiss and in this order. . . . The plaintiff has raised these same claims at least twice earlier, in each case directly challenging the attorneys chosen by the [city] to represent its interests against her. Her claims each time were rejected by the Superior Court. The first was in the memorandum of decision granting summary judgment . . . in favor of the city on [the plaintiff's] special defense in [the foreclosure action]. The second was in the court's judgment of dismissal . . . of [the first quo warranto] action . . . [in which the plaintiff challenged] the [city's] selection of counsel, for [the plaintiff's] failure to respond to the court's order to show cause . . . . Under principles of res judicata and collateral estoppel, the plaintiff is precluded from pursuing the same claims that she raised in those cases again in this action, seeking a writ of quo warranto on the same issue. . . . The fact that the plaintiff raises these issue[s] in a different procedural posture, by quo warranto, rather than in a special defense or a declaratory action, does not change the fact that it is the same claim, seeking the same result. What matters is that the court in those cases took up the issue presented by the plaintiff and either refuted it on its merits or dismissed it by reason of the plaintiff's own misconduct.

"It is worth noting that the plaintiff's opposition . . . does not refute the res judicata/collateral estoppel grounds raised by the defendant[s], but simply recites the procedural nature of a quo warranto action. The

sound policy of these doctrines is amply demonstrated in the subject matter of these cases, in that the plaintiff should not be allowed, once the issue has been decided, to collaterally attack the propriety of the city's choice of counsel each time the city and she are involved in litigation. The waste of time and resources, the distraction from the real issues in each case, in addition to the danger of inconsistency, that are threatened each time the plaintiff yet again raises the issue are all factors for which the doctrines of res judicata and collateral estoppel were developed to avoid." (Citations omitted.)

The plaintiff filed a motion to reconsider the court's decision on May 31, 2022, which the court denied on July 12, 2022. This appeal followed.

On appeal, the plaintiff claims that the court improperly concluded that her quo warranto action is precluded by the doctrines of collateral estoppel and res judicata.[10] We agree.

We begin by setting forth the applicable standard of review. "The issue of whether the doctrines of res judicata and collateral estoppel apply to the facts of this case presents a question of law. Our review, therefore, is plenary." (Internal quotation marks omitted.) *Wells Fargo Bank, National Assn.* v. *Doreus*, 218 Conn. App. 77, 83, 290 A.3d 921, cert. denied, 347 Conn. 904, 297 A.3d 198 (2023).

"The doctrines of collateral estoppel and res judicata, also known as issue preclusion and claim preclusion, respectively, have been described as related ideas on a continuum. . . . Both doctrines share common purposes, namely, to protect the finality of judicial determinations, [to] conserve the time of the court, and [to] prevent wasteful litigation . . . . Despite their conceptual closeness . . . the two doctrines are regarded as distinct." (Citations omitted; internal quotation marks omitted.) *Solon* v. *Slater*, 345 Conn. 794, 810, 287 A.3d 574 (2023). For this reason, we address each doctrine separately.

I

The plaintiff first argues that the doctrine of res judicata is inapplicable to the present case because (1) "the dismissal of an earlier action for lack of standing is not a judgment on the merits and does not have a res judicata effect," and (2) the first quo warranto action was dismissed only because the complaint was unsigned. We conclude that neither of the two judgments on which the court relied were decided on the merits for the purposes of res judicata.

The following legal principles are relevant to our analysis. "[T]he doctrine of res judicata . . . [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action [between the same parties or those in privity with them] on the same claim. . . . In order for res judicata to

apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." (Internal quotation marks omitted.) *Girolametti* v. *Michael Horton Associates, Inc.*, 332 Conn. 67, 75, 208 A.3d 1223 (2019). "[A] judgment on the merits is one which is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction or form. . . . A decision with respect to the rights and liabilities of the parties is on the merits where it is based on the ultimate fact or state of facts disclosed by the pleadings or evidence, or both, and on which the right of recovery depends." (Internal quotation marks omitted.) *Hall* v. *Gulaid*, 165 Conn. App. 857, 864, 140 A.3d 396 (2016).

"Res judicata, as a judicial doctrine . . . should be applied as necessary to promote its underlying purposes. . . . But by the same token, the internal needs of the judicial system do not outweigh its essential function in providing litigants a legal forum to redress their grievances. Courts exist for the purpose of trying lawsuits. If the courts are too busy to decide cases fairly and on the merits, something is wrong. . . . The judicial doctrines of res judicata and collateral estoppel are based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate. . . . Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest. The doctrines of preclusion, however, should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies. . . .

"We review the doctrine of res judicata to emphasize that its purposes must inform the decision to foreclose future litigation. The conservation of judicial resources is of paramount importance as our trial dockets are deluged with new cases daily. We further emphasize that where a party has fully and fairly litigated his claims, he may be barred from future actions on matters not raised in the prior proceeding. But the scope of matters precluded necessarily depends on what has occurred in the former adjudication." (Internal quotation marks omitted.) *Bruno* v. *Geller*, 136 Conn. App. 707, 722–23, 46 A.3d 974, cert. denied, 306 Conn. 905, 52 A.3d 732 (2012).

In the foreclosure action, the court rejected the plaintiff's special defense because she lacked standing to challenge "the authority of the [city's] attorney to institute [the] action." In the first quo warranto action, the

court dismissed the case after it determined that the plaintiff had engaged in the unauthorized practice of law and that the court lacked subject matter jurisdiction because the complaint was not properly signed.[11] Neither disposition is a judgment on the merits, and, therefore, the doctrine of res judicata does not apply. See *Wells Fargo Bank, National Assn.* v. *Doreus*, supra, 218 Conn. App. 84 ("[j]udgments based on the following reasons are not rendered on the merits: *want of jurisdiction*; pre-maturity; failure to prosecute; unavailable or inappropriate relief or remedy; *lack of standing*" (emphasis altered; internal quotation marks omitted)). Accordingly, the court improperly concluded that the doctrine of res judicata bars the present quo warranto action.

II

As to the application of collateral estoppel, the plaintiff argues that the present case involves a different issue than the prior two cases because, at the time of the first quo warranto action and the foreclosure action, Wickless was an elector and, therefore, was validly appointed. We agree that collateral estoppel does not apply, but for different reasons.

The following legal principles guide our review. "Collateral estoppel . . . is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be relitigated between the same parties in any future lawsuit. . . . Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment." (Internal quotation marks omitted.) Id. "For collateral estoppel to apply, the issue concerning which relitigation is sought to be estopped must be identical to the issue decided in the prior proceeding. . . . An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered." (Citations omitted; internal quotation marks omitted.) *State* v. *Joyner*, 255 Conn. 477, 490, 774 A.2d 927 (2001). The burden is on the party asserting collateral estoppel to "[show] that the issue [the] relitigation [of which they seek] to foreclose was actually decided in the first proceeding." (Internal quotation marks omitted.) *Solon* v. *Slater*, supra, 345 Conn. 812.

Neither the court nor the defendants identified any particular issues raised in the current action that were decided in a prior case. Instead, in its order granting the defendants' motion to dismiss, the court merely

stated in general terms that the plaintiff "should not be allowed, once the issue has been decided, to collaterally attack the propriety of the city's choice of counsel each time the city and she are involved in litigation."[12]

To decide whether collateral estoppel applies to bar the plaintiff's claim, we must first determine what issues actually were litigated and resolved in the prior actions and then compare those issues to the issues raised in the present action. See *Solon* v. *Slater*, supra, 345 Conn. 811 ("[t]o establish whether collateral estoppel applies, the court must determine what facts were necessarily determined in the first trial, and must then assess whether the [party] is attempting to relitigate those facts in the second proceeding" (internal quotation marks omitted)). We address each case in turn.

In the first quo warranto action, the court's show cause order stated that the court was considering dismissing the case only because (1) it lacked subject matter jurisdiction due to the improper signing of the complaint, and (2) the plaintiff had engaged in the unauthorized practice of law by signing the complaint on behalf of other unrepresented parties. The court thereafter dismissed the case without any explanation. Although the court's precise reasoning for the dismissal is not clear, what is clear is that the court never addressed the merits of the first quo warranto action, in particular whether Brown Jacobson and Wickless are qualified to hold the offices of corporation counsel and assistant corporation counsel.[13] Consequently, contrary to the court's statement in the present case, the court in the first quo warranto action never addressed the propriety of the city's choice of counsel, and, therefore, the first quo warranto action does not preclude the present action under the doctrine of collateral estoppel.

As to the foreclosure action, the court addressed whether the plaintiff had standing to raise, as a special defense, the propriety of the city's choice of representation in that case. The court never addressed the merits of the plaintiff's claims.[14] Furthermore, the standing issue that the court decided in that action is distinct from the standing issue raised in the present quo warranto action. As the city argued in its memorandum of law in support of its motion for summary judgment in the foreclosure action, the plaintiff lacked standing to assert a defense other than one "that relates to the making, validity or enforcement of the lien"[15] and to challenge the city's choice of counsel, "an entitlement belonging to the [city]." Accordingly, the issue of whether the plaintiff had standing to defensively challenge the authority of the city's counsel to represent the city in a foreclosure proceeding was necessarily determined and essential to the judgment in the foreclosure action and, therefore, would have preclusive effect if the plaintiff sought to assert that same defense in a subsequent *foreclosure* action. The court did not decide,

however, whether the plaintiff has standing to initiate a quo warranto action, which depends solely on her status as a taxpayer.

General Statutes § 52-491 provides: "When any person or corporation usurps the exercise of any office, franchise or jurisdiction, the Superior Court may proceed, on a complaint in the nature of a quo warranto, to punish such person or corporation for such usurpation, according to the course of the common law and may proceed therein and render judgment according to the course of the common law." "Since [our Supreme Court] decided *State ex rel. Waterbury* v. *Martin*, [46 Conn. 479 (1878)], [it has] relied implicitly on the rule established therein that a plaintiff's status as a taxpayer is sufficient to establish standing to pursue a quo warranto action [under § 52-491]. See, e.g., *Cheshire* v. *McKenney*, 182 Conn. 253, 254–55, 438 A.2d 88 (1980) (quo warranto action filed, in part, by plaintiffs as councilmen, residents and taxpayers); *State ex rel. Barnard* v. *Ambrogio*, 162 Conn. 491, 493, 294 A.2d 529 (1972) (quo warranto action brought by plaintiff as finance director and taxpayer); *State ex rel. Sloane* v. *Reidy*, 152 Conn. 419, 420, 209 A.2d 674 (1965) (quo warranto action brought by plaintiffs as residents and taxpayers); *Civil Service Commission* v. *Pekrul*, 41 Conn. Sup[p]. 302, 303, 308, 571 A.2d 715 [(1989)] (concluding that plaintiff as city resident and taxpayer had standing to bring quo warranto action), aff'd, 221 Conn. 12, 14, 601 A.2d 538 (1992) (affirming trial court decision 'in all of its procedural and substantive ramifications' . . .). Even though standing was not an issue expressly before [the court] in these cases, in reaching the substantive issue on appeal, [the] court necessarily presumed that the plaintiffs, as taxpayers, had alleged sufficient grounds for standing, as standing implicates the trial court's subject matter jurisdiction." (Emphasis omitted.) *Bateson* v. *Weddle*, 306 Conn. 1, 8, 48 A.3d 652 (2012).

Here, the plaintiff alleged in her complaint in the present action that she is a "resident and taxpayer" of the city.[16] The issue of whether the plaintiff is in fact a taxpayer of the city was not decided in the foreclosure action. Even if it had been, the fact that the plaintiff was not a taxpayer in 2012 would not collaterally estop her from claiming that she was a taxpayer in 2021, when she brought the present action. Consequently, the foreclosure action does not bar the plaintiff from litigating her standing to pursue, or the merits of, the present quo warranto action.

Therefore, because the issues raised in the present action were not decided in either of the two cases on which the court relied, the court improperly concluded that the doctrine of collateral estoppel precludes the plaintiff's quo warranto action.

The judgment is reversed and the case is remanded

for further proceedings consistent with this opinion.

In this opinion the other judges concurred.

[1] On April 14, 2023, the defendants filed a notice of intent not to file a brief and waived oral argument in this appeal. As such, we consider this appeal on the basis of the plaintiff's brief and the record, as defined by Practice Book § 60-4, only. In the defendants' notice, they also requested that this court "consider whether or not the prior . . . court rulings prohibiting [the plaintiff from] filing until sanctions were paid precludes even accepting this appeal." We decline this request for two reasons. First, any concern about the propriety of the plaintiff filing the underlying action in the Superior Court in light of sanctions issued against her is not properly raised for the first time on appeal; instead, that issue should have been raised with the trial court in the first instance. See *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 643, 224 A.3d 147 (2020) ("[i]t is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial, and [o]nly in [the] most exceptional circumstances can and will [an appellate] court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court" (internal quotation marks omitted)). Second, any argument that the defendants wanted this court to consider should have been raised in a brief filed with this court. See *Electrical Contractors, Inc.* v. *Dept. of Education*, 303 Conn. 402, 444, 35 A.3d 188 (2012) ("[i]t is well established that [w]e are not obligated to consider issues that are not adequately briefed" (internal quotation marks omitted)).

[2] The plaintiff also claims that the court improperly (1) denied her motion to reconsider, (2) denied her discovery requests in connection with the motion to dismiss, (3) refused to take judicial notice of alleged facts regarding the prior litigation, and (4) disregarded the law of quo warranto in granting the defendants' motion to dismiss. Because we agree with the plaintiff's primary claim that the court improperly granted the defendants' motion to dismiss, we do not consider her additional claims challenging that judgment.

[3] Chapter XVI, § 1, of the Norwich City Charter provides in relevant part: "There shall be a corporation counsel who shall be appointed by the city council . . . . He shall be an elector of the [city] . . . ." Similarly, the city's code of ordinances provides in relevant part that "[t]he assistant corporation counsels shall be electors of the city . . . ." Norwich Code of Ordinances, c. 2, art. I, § 2-16.

[4] The defendants also moved for sanctions against the plaintiff for "vexatious litigation," which the court did not address in its order.

[5] The two cases that the court did not address in its order were (1) a quo warranto action that the plaintiff and other individuals filed on June 15, 2012, against Brown Jacobson, Wickless and others (second quo warranto action); see *Speer* v. *Wickless*, Superior Court, judicial district of New London, Docket No. CV-12-5014421-S; and (2) an action that the plaintiff filed on August 15, 2012, alleging that a tax collector for the city had improperly engaged the legal services of Brown Jacobson and Wickless, who were not corporation counsel at that time; see *Speer* v. *Daily*, Superior Court, judicial district of New London, Docket No. CV-12-5014452-S. In their memorandum of law in support of their motion to dismiss, however, the defendants failed to explain how either case satisfies the criteria necessary for the application of res judicata or collateral estoppel. As to the case against the tax collector, the defendants entirely omitted that case from their memorandum of law. Although the defendants argued in their memorandum that the second quo warranto action precluded the present action under the doctrine of res judicata, they failed to address the judgment rendered in that case and, moreover, failed to cite the correct trial court docket number. Given the defendants' failure to adequately discuss those cases in their memorandum of law, the court was not required to address them in its order granting the defendants' motion to dismiss. See *Walker* v. *Commissioner of Correction*, 176 Conn. App. 843, 856, 171 A.3d 525 (2017) ("Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . These same principles apply to claims raised in the trial court." (Emphasis omitted; internal quotation marks omitted.)). Furthermore, because the defendants elected not to file a brief in this appeal, they have presented us with no argument as to how the resolution of either

of those cases acts as a bar to the present action. See *Harris* v. *Bradley Memorial Hospital & Health Center, Inc.*, 306 Conn. 304, 337, 50 A.3d 841 (2012) ("this court will not make arguments on behalf of parties that have declined to make any"), cert. denied, 569 U.S. 918, 133 S. Ct. 1809, 185 L. Ed. 2d 812 (2013). Accordingly, we limit our discussion to the two cases that the court relied on in its order.

[6] In that action, the plaintiffs also alleged that Brown Jacobson was not an elector and, therefore, was not qualified to hold the office of corporation counsel.

[7] Practice Book § 4-2 (a) provides in relevant part: "A party who is not represented by an attorney shall sign his or her pleadings and other papers. . . ."

[8] Pursuant to Practice Book § 63-4 (3), the plaintiff certified that no transcripts are required for this appeal. Accordingly, the transcript from the hearing was not considered in our resolution of this appeal.

[9] In the defendants' motion to dismiss, they argued only that res judicata—not collateral estoppel—precluded the plaintiff's claims.

[10] We note that both our Supreme Court and this court generally have held that neither res judicata nor collateral estoppel "is . . . a proper basis on which to predicate a motion to dismiss for lack of subject matter jurisdiction. Those doctrines properly are raised by motion for summary judgment." *Geremia* v. *Geremia*, 159 Conn. App. 751, 771 n.15, 125 A.3d 549 (2015); see also *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 222, 982 A.2d 1053 (2009) ("[c]ollateral estoppel, like res judicata, must be specifically pleaded by a defendant as an affirmative defense" (internal quotation marks omitted)); *State* v. *T.D.*, 286 Conn. 353, 360 n.6, 944 A.2d 288 (2008) ("the doctrine of collateral estoppel does not implicate a court's subject matter jurisdiction . . . [and] [e]ven when applicable . . . does not mandate dismissal of a case" (citations omitted)); *Zizka* v. *Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985) ("Res judicata is not included among the permissible grounds on which to base a motion to dismiss. Res judicata with respect to a jurisdictional issue does not itself raise a jurisdictional question. It merely alleges that the court has previously decided a jurisdictional question and therefore must be asserted as a special defense. . . . It may not be raised by a motion to dismiss." (Citation omitted.)). Because we conclude on the merits that the court improperly relied on res judicata and collateral estoppel when dismissing the plaintiff's claims, we need not address whether the motion to dismiss was the correct procedural vehicle for raising those issues in this case.

[11] The record is unclear as to the court's reason for dismissing the first quo warranto action. The court's order of dismissal, which was issued the day after the show cause hearing, states simply that "[t]his case is dismissed." In granting the defendants' motion to dismiss, the court in the present action concluded that the first quo warranto action was dismissed "for [the plaintiff's] failure to respond to the court's order to show cause . . . ." Our review of the record indicates that the plaintiff did, in fact, respond to the court's order. The plaintiff filed a prehearing brief on May 25, 2012, and, during oral argument before this court, the plaintiff indicated that she believes that she attended the show cause hearing. Regardless of the reason for the dismissal, however, it is clear that the court never reached the merits of the first quo warranto action.

[12] As previously noted, the defendants did not argue in their motion to dismiss that the doctrine of collateral estoppel bars the present action; instead, the court raised that issue sua sponte. The plaintiff does not argue on appeal that we should not reach the issue of collateral estoppel because it was not a basis of the defendants' motion to dismiss or because it was raised sua sponte by the court. She has instead addressed the merits of the issue on appeal. In light of that, and given that our standard of review is plenary, we address the merits of the court's reliance on collateral estoppel in dismissing the plaintiff's complaint.

[13] See footnote 11 of this opinion.

[14] We note that, after the court in the foreclosure action concluded that the plaintiff did not have standing to raise the special defense attacking the city's choice of counsel, the court went on to say that the plaintiff's defense was "without merit" and that the city had "passed corporate resolutions," presumably referring to the city council's reappointment of Wickless as assistant corporation counsel in 2011. Because the court made those statements after concluding that the plaintiff lacked standing, which is an issue of subject matter jurisdiction; see *Ferri* v. *Powell-Ferri*, 326 Conn. 438, 448, 165 A.3d 1137 (2017) (" '[t]he issue of standing implicates subject matter

jurisdiction' "); that further discussion of the plaintiff's special defense was nonessential to the court's judgment and constitutes "pure dicta" that does not have preclusive effect. See *Statewide Grievance Committee* v. *Rozbicki*, 211 Conn. 232, 246, 558 A.2d 986 (1989) ("[o]nce it becomes clear that the trial court lacked subject matter jurisdiction . . . any further discussion of the merits is pure dicta" (internal quotation marks omitted)); see also *Healey* v. *Mantell*, 216 Conn. App. 514, 526, 285 A.3d 823 (2022) ("If an issue has been determined, but the judgment is not dependent upon the determination of the issue, the parties may relitigate the issue in a subsequent action. . . . Thus, statements by a court regarding a nonessential issue are treated as merely dicta." (Emphasis omitted; internal quotation marks omitted.)).

Regardless, even if the foreclosure court's additional discussion of that special defense did not constitute dicta, whether Wickless was reappointed as assistant corporation counsel in 2011 does not resolve the issue in the present action, that is, whether Brown Jacobson and Wickless are currently qualified to hold the offices of corporation counsel and assistant corporation counsel. Resolution of that question requires the court to interpret provisions of the city charter and code of ordinances, which it did not do in the foreclosure action, in light of the present circumstances of the defendants. See *DeMayo* v. *Quinn*, 315 Conn. 37, 40–41, 105 A.3d 141 (2014) (whether "the defendant's appointment to the office of corporation counsel violated the charter presents a question of law . . . [that] requires us to construe provisions of [a municipal] charter" (citations omitted; internal quotation marks omitted)).

[15] See *U.S. Bank National Assn.* v. *Blowers*, 332 Conn. 656, 665–67, 212 A.3d 226 (2019) ("[T]he 'making, validity, or enforcement test' is a legal creation of uncertain origin, but it has taken root as the accepted general rule in the Superior and Appellate Courts over the past two decades. Its scope, however, has been the subject of some debate in those courts. This court has never expressly endorsed this test. . . . In reaching our decision, we presume that the Appellate Court did not intend for the making, validity, or enforcement test to require mortgagors to meet a more stringent test than that required for special defenses and counterclaims in nonforeclosure actions. We therefore interpret the test as nothing more than a practical application of the standard rules of practice that apply to all civil actions to the specific context of foreclosure actions. See *CitiMortgage, Inc.* v. *Rey*, 150 Conn. App. 595, 605, 92 A.3d 278 ('a counterclaim must simply have a sufficient relationship to the making, validity or enforcement of the subject note or mortgage in order to meet the transaction test as set forth in Practice Book § 10-10 and the policy considerations it reflects'), cert. denied, 314 Conn. 905, 99 A.3d 635 (2014)." (Citations omitted; footnotes omitted.)).

[16] During oral argument before this court, the plaintiff confirmed that she based her claim of standing on her status as a taxpayer in the city.