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BERDON, J., concurring. This case was properly decided by the trial court under the motion to dismiss filed by the defendant, Ronald LaBow, because there were no new factual issues raised by the plaintiff, Myrna LaBow,<sup>1</sup> not as a result of waiver as the majority contends. The plaintiff already has had her day in court. See *LaBow v. LaBow*, Superior Court, judicial district of Fairfield, Docket No. 210394 (March 15, 1999). We affirmed that judgment in a per curiam decision. *LaBow v. LaBow*, 65 Conn. App. 210, 782 A.2d 200, cert. denied, 258 Conn. 943, 786 A.2d 430 (2001). Accordingly, the defendant's motion to dismiss was correctly granted.

<sup>1</sup> In *Ruddock v. Burrowes*, 243 Conn. 569, 572–73, 706 A.2d 967 (1998), the majority of our Supreme Court held that a motion for summary judgment was not properly used to determine the applicability of General Statutes § 52-592 (a), the accidental failure of suit statute, because there were factual issues raised.

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