VAYLE NELSON ET AL. *v.* KAREN
S. DETTMER ET AL.
(SC 18700)

Rogers, C. J., and Norcott, Zarella, McLachlan, Eveleigh and Harper, Js.*

*Argued March 13—officially released July 24, 2012*

*Michael G. Rigg*, for the appellants (defendant John Dempsey Hospital et al.).

*Steven D. Ecker*, with whom were *Paul A. Slager* and, on the brief, *M. Caitlin S. Anderson*, for the appellees (plaintiffs).

*Opinion*

McLACHLAN, J. In this appeal, we must determine whether the trial court had subject matter jurisdiction and substantive authority to set aside its prior decision granting a motion for summary judgment. The issues on appeal arise out of two reversals of fortune, so to speak, in favor of the named plaintiff, Vayle Nelson (plaintiff), through her parents and next friends, Susan Birk and Glen Nelson, in a medical malpractice action against, inter alia, the defendants, John Dempsey Hospital and the University of Connecticut Health Center (state). The claims commissioner (commissioner) granted the plaintiff permission to sue the state after vacating an earlier decision dismissing the plaintiff's claim, and the trial court granted the plaintiff's motion to set aside the summary judgment rendered in favor of the state after the legislature amended General Statutes § 4-158 to authorize the commissioner to vacate a decision under certain conditions. The state appeals from the trial court's decision granting the plaintiff's motion to set aside the summary judgment rendered in favor of the state. The state argues: (1) that the trial court lacked subject matter jurisdiction over the plaintiff's claim because the commissioner did not have authority to vacate his original dismissal of the plaintiff's claim, thus leaving the state's sovereign immunity intact; and (2) that the trial court lacked substantive authority to entertain the plaintiff's motion to set aside because the motion was not filed within the four month limitation period provided in General Statutes § 52-212a.[1] We conclude that the trial court had subject matter jurisdiction and substantive authority to consider the plaintiff's motion to set aside. Accordingly, we affirm the judgment of the trial court.

The record discloses the following undisputed facts and procedural history. The plaintiff was born on April 30, 2005, in Charlotte Hungerford Hospital. After her birth, due to serious medical complications, the plaintiff was transported to John Dempsey Hospital by the transport team for John Dempsey Hospital and the University of Connecticut Health Center. The plaintiff alleges that she sustained severe and permanent brain damage due to a delay in treatment by the state.

The plaintiff filed a claim with the commissioner pursuant to General Statutes § 4-160,[2] seeking permission to bring an action against the state. The commissioner dismissed this claim on January 30, 2007, for failure to prosecute because the plaintiff failed to respond to the state's discovery requests. The plaintiff alleges that her attorney had not informed her of the discovery requests or the dismissal of her claim. Upon discovery of the dismissal, the plaintiff retained new counsel and filed a motion to vacate the dismissal and reopen her claim. The commissioner concluded that " 'justice and equity' " required the granting of the plaintiff's motion

and her request for permission to bring an action against the state.

The plaintiff thereupon filed the present action in the Superior Court. Thereafter, the state moved for summary judgment, arguing that the commissioner did not have statutory authority to vacate his prior dismissal of the plaintiff's claim. The state further contended that, because the commissioner did not have authority to undertake further proceedings with respect to the plaintiff's claim, the state retained sovereign immunity, and, therefore, the court did not have subject matter jurisdiction to hear the plaintiff's claims. The trial court agreed and granted the state's motion on November 13, 2008. The plaintiff then filed a timely motion to reargue that decision. On February 11, 2009, the trial court granted the motion to reargue but ultimately upheld its prior decision in favor of the state.

Subsequently, on May 20, 2009, No. 09-44 of the 2009 Public Acts (P.A. 09-44) was enacted. Public Act 09-44 amended General Statutes (Rev. to 2007) § 4-158 by adding a new subsection (e)[3] that expressly authorized the commissioner to vacate a prior dismissal in certain circumstances. Additionally, P.A. 09-44, § 1, provided that it applied to all "claims filed prior to, on or after" the date of enactment. On June 11, 2009, the plaintiff moved to set aside the court's previous ruling on the state's motion for summary judgment, arguing that the new subsection (e) of § 4-158, as enacted pursuant to the P.A. 09-44, specifically granted the commissioner the authority to vacate a prior dismissal. The state objected on the following grounds: (1) the plaintiff's motion was not timely; (2) § 4-158 (e), as amended, violated article first, § 1, of the constitution of Connecticut because it constituted an exclusive public emolument or privilege for the plaintiff; and (3) even if § 4-158 (e) did not violate the constitution of Connecticut, it did not impact the trial court's prior decision.

The trial court rejected these arguments and granted the motion to set aside. The trial court first determined that it had authority to consider the plaintiff's motion because it was timely filed within four months of that court's ruling on the plaintiff's motion for reargument, and, even if the motion fell outside the four month limit, it fell within the "[u]nless otherwise provided by law" exception to the four month limitation contained in § 52-212a. Second, the trial court held that § 4-158 (e) did not constitute an exclusive public emolument or privilege for the plaintiff in violation of article first, § 1, of the constitution of Connecticut because § 4-158 (e) applied universally and not solely to the plaintiff.[4] Finally, the court reviewed § 4-158 (e) and determined that both the plain language and the extratextual evidence supported the conclusion that the statute applied to the situation at hand and provided the commissioner with authority to vacate his earlier dismissal. Accord-

ingly, the trial court set aside its decision granting summary judgment in favor of the state. This appeal followed.[5]

On appeal, the state claims that the trial court improperly interpreted § 4-158 (e), as amended by P.A. 09-44, to provide the commissioner with the authority to vacate the earlier dismissal of the plaintiff's claim and, thereafter, to waive the state's sovereign immunity. The state also renews its argument that the plaintiff's motion to set aside the summary judgment was untimely under § 52-212a. In particular, the state contends that the trial court improperly determined that it had the authority pursuant to § 52-212a to consider the motion to set aside because that motion was filed within the four month statutory period, and, even if the motion was not filed within the four month limit, it met the "[u]nless otherwise provided by law" exception under § 52-212a. In response, the plaintiff challenges the state's interpretation of § 4-158 (e) and argues that the trial court's interpretation of the plain language of the statute is reinforced by the legislative history. The plaintiff also argues that her motion was timely filed because the four month statutory limitation period ran from the date on which the trial court denied the relief requested in the plaintiff's motion to reargue the summary judgment decision, not the date summary judgment was rendered, as the defendant claims. Alternatively, the plaintiff suggests that the new subsection (e) of § 4-158, triggered the application of the "[u]nless otherwise provided by law" exception to § 52-212a, permitting the filing of an untimely motion to open or set aside when strict adherence to the four month time limit would thwart the purpose of remedial legislation. Upon consideration of these claims, we agree with the plaintiff.

I

We begin with the state's contention that the trial court improperly interpreted § 4-158 (e) to provide the commissioner with the authority to vacate an earlier dismissal of a claim and to conduct further proceedings, including waiving the state's sovereign immunity. "Sovereign immunity relates to a court's subject matter jurisdiction over a case . . . and therefore presents a question of law over which we exercise de novo review." (Internal quotation marks omitted.) *DaimlerChrysler Corp.* v. *Law*, 284 Conn. 701, 711, 937 A.2d 675 (2007). "Once the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented. . . . The court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.) *St. Paul Travelers Cos.* v. *Kuehl*, 299 Conn. 800, 816, 12 A.3d 852 (2011).

"The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in

ancient common law." (Internal quotation marks omitted.) *DaimlerChrysler Corp.* v. *Law*, supra, 284 Conn. 711. "[T]he doctrine protects the state from unconsented to litigation, as well as unconsented to liability." *Shay* v. *Rossi*, 253 Conn. 134, 166, 749 A.2d 1147 (2000), overruled on other grounds by *Miller* v. *Egan*, 265 Conn. 201, 325, 828 A.2d 549 (2003). When the state has not expressly waived sovereign immunity by statute,[6] "a plaintiff who seeks to bring an action for monetary damages against the state must first obtain authorization from the [commissioner]. . . . [T]he . . . commissioner is authorized by statute to hear monetary claims against the state and determine whether the claimant has a cognizable claim. See General Statutes §§ 4-141 through 4-165b." (Internal quotation marks omitted.) *Miller* v. *Egan*, supra, 317. Chapter 53 of the General Statutes, which governs claims against the state, "expressly bars suits upon claims cognizable by the . . . commissioner . . . except as he may authorize, an indication of the legislative determination to preserve sovereign immunity as a defense to monetary claims against the state not sanctioned by the commissioner or other statutory provisions." (Internal quotation marks omitted.) Id., 317–18.

Section 4-158 (a) sets forth the permissible actions the commissioner may take in response to a claim. Under General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44, the commissioner may later vacate his decision to take one of the enumerated actions "at any time prior to the submission of a claim to the General Assembly" if the commissioner deems it "just and equitable . . . ." The state argues that the trial court misread § 4-158 (e) to provide that the commissioner retains authority over claims indefinitely, unless the claim has been submitted to the General Assembly. Rather, the state suggests that, properly construed, § 4-158 (e) provides the commissioner with continuing authority over a dismissed claim only in cases in which a claimant has filed a request for review within the twenty day time period set forth in § 4-158 (b).[7] According to the state's interpretation of § 4-158 (e), because the plaintiff did not file a request for review in the present action and the twenty day window had passed when the commissioner vacated his dismissal of the plaintiff's claim, the commissioner would not have retained authority over the plaintiff's claim. Thus, under the state's interpretation of the statute, the commissioner's subsequent "waiver" of sovereign immunity was invalid and, accordingly, the state retained its sovereign immunity. In the absence of both express statutory waiver and valid permission to sue by the commissioner, the trial court therefore would lack subject matter jurisdiction to consider the present action.

Resolution of the issue concerning the trial court's subject matter jurisdiction requires us to determine whether the commissioner had statutory authority to

act. Because this issue presents a question of statutory interpretation, our review is plenary. See, e.g., *Considine* v. *Waterbury*, 279 Conn. 830, 836, 905 A.2d 70 (2006). When construing a statute, "we are guided by well established principles regarding legislative intent. See *Hicks* v. *State*, 297 Conn. 798, 801, 1 A.3d 39 (2010) (setting forth process of ascertaining legislative intent pursuant to General Statutes § 1-2z)." (Internal quotation marks omitted.) *Taylor* v. *Conservation Commission*, 302 Conn. 60, 68, 24 A.3d 1199 (2011).

In accordance with § 1-2z, we begin our analysis by reviewing the text of General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44, which provides in relevant part: "*Whenever* the . . . [c]ommissioner deems it just and equitable, the . . . [c]ommissioner may, at any time prior to the submission of a claim to the General Assembly pursuant to subsection (a) of section 4-159, vacate the decision made pursuant to subsection (a) of this section and undertake such further proceedings in accordance with this chapter as the . . . [c]ommissioner may, in his or her discretion, deem appropriate."[8] (Emphasis added.) This language is unambiguous in conferring broad discretion to the commissioner to vacate a prior decision if the following three requirements have been met: (1) the decision being vacated was made pursuant to § 4-158 (a); (2) the decision has not been submitted to the General Assembly pursuant to General Statutes § 4-159 (a); and (3) vacating that decision would be "just and equitable . . . ." General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44.[9] Because the state does not challenge the commissioner's conclusion that vacating his prior dismissal of the plaintiff's claim was just and equitable, we focus our analysis on the first two requirements.

We first review § 4-158 (a) to determine the specific decisions the commissioner may vacate pursuant to § 4-158 (e). General Statutes (Rev. to 2007) § 4-158 (a), as amended by P.A. 09-44, expressly authorizes the commissioner to take the following actions: "(1) order that a claim be denied or dismissed, (2) order immediate payment of a just claim in an amount not exceeding seven thousand five hundred dollars, (3) recommend to the General Assembly payment of a just claim in an amount exceeding seven thousand five hundred dollars, or (4) authorize a claimant to sue the state, as provided in section 4-160." In authorizing the commissioner to "vacate the decision made pursuant to subsection (a) of this section," General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44, does not provide any indication that the statute's application is limited to certain types of decisions under § 4-158 (a). Therefore, we conclude that § 4-158 (e) authorizes the commissioner to vacate any of the enumerated decisions if the other requirements of that statute have been met.

Turning to the second requirement—that the decision has not been submitted to the General Assembly pursuant to § 4-159 (a)—we look to that statute to clarify further the scope of the commissioner's authority to vacate a prior decision. Section 4-159 (a)[10] *requires* review by the General Assembly when the commissioner recommends payment of a claim in an amount greater than $7500 and when a claimant has filed a request for review pursuant to § 4-158 (b).[11] In turn, under § 4-158 (b), a claimant can file a request for review only if the claimant sought *more than* $7500 and the commissioner denied or dismissed the claim or ordered immediate payment of the claim in an amount *less than* $7500. Thus, the language in General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44, "prior to the submission of a claim to the General Assembly pursuant to subsection (a) of section 4-159," precludes the commissioner from vacating a decision in three situations, namely: (1) when the commissioner recommends payment of a claim in an amount greater than $7500; (2) when the commissioner denies or dismisses a claim seeking more than $7500 and the claimant properly files a request for review; and (3) when the commissioner orders payment of a claim seeking more than $7500 in an amount less than $7500 and the claimant properly files a request for review. Prior to submission to the General Assembly, the commissioner may vacate his earlier decision with respect to these three types of claims pursuant to § 4-158 (e); however, once the commissioner submits the claim to the General Assembly, he is divested of this authority. In such a way, the statutory scheme avoids the potential for duplicative review and conflicting decisions by the commissioner and the General Assembly.

On the other hand, the statutory scheme does not contemplate review by the General Assembly of certain other types of claims. Specifically, § 4-159 (a) does not direct the commissioner to submit a claim to the General Assembly for review in the following circumstances: (1) when the commissioner denies or dismisses a claim seeking less than $7500; (2) when the commissioner orders immediate payment of a claim seeking less than $7500 in an amount less than $7500; (3) when the commissioner grants permission to sue; (4) when the commissioner denies or dismisses a claim seeking more than $7500 and the claimant does not file a request for review; and (5) when the commissioner orders payment of a claim seeking more than $7500 in an amount less than $7500 and the claimant does not file a request for review. The condition "at any time prior to the submission of a claim to the General Assembly pursuant to subsection (a) of section 4-159"; General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44; therefore does not implicate these types of claims. Accordingly, the plain language of General Statutes (Rev. to 2007) § 4-158 (e), as amended by P.A. 09-44,

permits the commissioner to vacate these latter types of claims "[*w*]*henever* the . . . [c]ommissioner deems it just and equitable," without any express time limitation on the commissioner's authority. (Emphasis added.)

To summarize, we conclude that, pursuant to § 4-158 (e), the commissioner has discretion to vacate the three types of decisions to which § 4-159 (a) applies whenever he deems it just and equitable *for the limited period of time prior* to the submission of the claim to the General Assembly. With respect to all other decisions that the commissioner has made pursuant to § 4-158 (a), he retains discretion to vacate those decisions *at any time* in the future.[12]

This broad authority is consistent with the commissioner's legislative role as "the gatekeeper through which [actions] against the state must pass." (Internal quotation marks omitted.) *Lyon* v. *Jones*, 291 Conn. 384, 401, 968 A.2d 416 (2009). For instance, under § 4-160 (a),[13] the commissioner may grant permission to file an action against the state. This statute uses the same broad and unequivocal language in delegating responsibility to the commissioner that is used in § 4-158 (e). Specifically, the commissioner may authorize an action against the state "[w]hen the . . . [c]ommissioner deems it just and equitable . . . ." General Statutes § 4-160 (a). Previous decisions of this court have recognized the commissioner's broad latitude in exercising this discretion. See, e.g., *Capers* v. *Lee*, 239 Conn. 265, 279–81, 684 A.2d 696 (1996). Similarly, General Statutes § 4-156 also empowers the commissioner with broad discretion, namely, to rehear a claim following his previous outright or recommended rejection of a claim "[u]pon the discovery of new evidence . . . ."[14]

The state argues that the legislature intended to grant the commissioner the power to vacate a decision pursuant to § 4-158 (e) only in cases in which a claimant has filed a request for review of the commissioner's decision under § 4-158 (b). Because General Statutes (Rev. to 2007) § 4-158 (b), as amended by P.A. 09-44, indicates that "[t]he filing of a request for review shall automatically stay the decision of the . . . [c]ommissioner," the state suggests that the ability to obtain a stay of the commissioner's decision when a claimant files a request for review indicates that the commissioner's decision is final in the absence of such a request and corresponding stay. The state further asserts that if this court construed § 4-158 (e) to provide the commissioner with authority to vacate a claim at any time, so long as the claim has not been submitted to the General Assembly, the "stay" provision would be rendered superfluous because the commissioner's decision would not be final in either case. We disagree.

We are not persuaded that the "stay" provision compels us to adopt the state's interpretation of § 4-158 (e).

Although the claims to which § 4-158 (b) and 4-158 (e) apply overlap, they are not coextensive. A stay prevents the commissioner from implementing a decision; it does not inherently conflict with subsection (e), which allows the commissioner to vacate the earlier decision. Rather, we view § 4-158 (b) and 4-158 (e) as setting forth alternative procedures for obtaining review of the commissioner's decision, and we fail to see how the availability of an automatic stay in one case but not the other renders the "stay" provision a nullity.

Moreover, we are mindful that, "in the absence of ambiguity, courts cannot read into statutes, by construction, provisions which are not clearly stated . . . ." (Citation omitted; internal quotation marks omitted.) *Carothers* v. *Capozziello*, 215 Conn. 82, 129, 574 A.2d 1268 (1990). Because the plain language of § 4-158 (e) does not mention the request for review process, there is no express textual basis for limiting the provision's application to cases in which a request for review has been filed. Nor does the plain language of § 4-158 (e) permit us to impute a request for review requirement. As already discussed, § 4-158 (e) applies to any decision made by the commissioner pursuant to § 4-158 (a). As we have also indicated, a claimant can file a request for review under § 4-158 (b) only in two circumstances, namely, if the claimant sought more than $7500 and the commissioner denied or dismissed the claim or the commissioner ordered immediate payment of that claim in an amount less than $7500. Section 4-158 (b) does not authorize a claimant to seek review by the General Assembly of any of the other decisions made by the commissioner under § 4-158 (a) enumerated previously in this opinion. Consequently, if this court interpreted § 4-158 (e) to require the filing of a request for review, we would deny this avenue of relief to certain types of claimants without any evidence of a legislative intent to so restrict the statute's application.

Additionally, in spite of the state's argument that it would be absurd to interpret § 4-158 (e) to permit the commissioner to vacate a decision on a claim that has not been submitted to the General Assembly at any time in the future, we observe that § 4-156, which permits the commissioner to rehear a claim upon the discovery of new evidence, authorizes exactly that. Like § 4-158 (e), § 4-156 does not contain an express time limit or a requirement that the claimant has filed a request for review under § 4-158 (b); nor is this court aware of any case interpreting § 4-156 to include either implicitly. Without any apparent reason for concluding that the legislature intended to authorize the commissioner to revisit a claim upon the discovery of new evidence at any time, but that the legislature could not have intended to allow the commissioner to revisit a claim when justice and equity so required at any time in the future as well, we decline to impose any restriction not contained in the statutory text on the commissioner's

authority to vacate a prior decision.

Finally, we also disagree with the state's contention that interpreting § 4-158 (e) to empower the commissioner to vacate a decision at any time is bizarre and unsupportable because the General Assembly's authority to review the merits of a claim is limited to cases in which a claimant files a request for review within twenty days of a decision. In fact, the state's argument conflicts with the legislature's intention in creating the office of the commissioner. "[P]rior to 1959, before the legislature created the office of the claims commission, the General Assembly in the first instance considered what action, if any, was appropriate on claims made against the state. . . . It reached a point where the number of claims submitted to the legislature became a major burden and this interfered with the more important function of enacting general legislation. . . . [The] director [of the claims commission] . . . explained [that the commission was created] . . . to ensure that 'equity and justice' [would be] done. . . . Therefore, the commissioner is in reality the conscience of the state, assuming in part the prior role of the legislature to ensure that justice and equity is done. It is the commissioner who now determines what claims should be paid, what claims should be referred to the legislature for payment, or which claimants should be authorized to institute an action against the state." *Chotkowski* v. *State*, 240 Conn. 246, 271–74, 690 A.2d 368 (1997) (*Berdon, J.*, concurring and dissenting). Merely because § 4-158 (e) invests the commissioner with substantial discretion does not compel the conclusion that our interpretation of the plain language of that provision is absurd or unworkable. Accordingly, upon consideration of the text of § 4-158 (e) in relation to related provisions in the statutory scheme, we discern no basis for engrafting any further limitation on the commissioner's authority to vacate a prior decision pursuant to § 4-158 (e) that the statutory language does not contain.

In the present case, the plaintiff filed a claim seeking an amount greater than $7500 and permission to sue the state. The commissioner initially dismissed this claim pursuant to his authority under § 4-158 (a) for failure to prosecute.[15] Although a dismissal of a claim that sought an amount greater than $7500 and permission to sue the state is a decision that could be reviewed by the General Assembly upon the claimant's request under § 4-158 (b), the plaintiff did not file a request for review, and the commissioner's decision was not submitted to the General Assembly pursuant to § 4-159 (a). Consequently, in accordance with our interpretation of the plain and unambiguous language of § 4-158 (e), the commissioner had discretion without any express time limitation to vacate the dismissal of the plaintiff's claim and to undertake further proceedings, including waiving sovereign immunity on behalf of the state. Because the commissioner exercised that discre-

tion to waive the state's sovereign immunity, we conclude that this court has subject matter jurisdiction to consider the present action.

II

Proceeding to the primary issue on appeal, we consider whether the trial court properly concluded that the plaintiff's motion to set aside was timely filed pursuant to the requirements set forth in § 52-212a. Preliminarily, we recognize that this court has jurisdiction to hear an appeal only if the appeal is taken from a final judgment. See General Statutes § 52-263. "Although it is well established that an order opening a judgment ordinarily is not a final judgment [for purposes of appeal] . . . [t]his court . . . has recognized an exception to this rule [when] the appeal challenges the power of the court to act to set aside the judgment. . . . Thus, [a]n order of the trial court opening a judgment is . . . an appealable final judgment [when] the issue raised is the power of the trial court to open [the judgment] in light of the four month limitation period of § 52-212a." (Citation omitted; internal quotation marks omitted.) *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 195, 884 A.2d 981 (2005). Consequently, this court has jurisdiction to consider the timeliness of the plaintiff's motion to set aside the summary judgment.

The state argues that the four month period within which the plaintiff could have filed a motion to set aside pursuant to § 52-212a commenced on the date that the trial court initially rendered summary judgment. In response, the plaintiff maintains that the trial court properly measured the four month period from the trial court's denial of the plaintiff's motion to reargue. The issue of when a judgment sought to be set aside is "rendered or passed" under § 52-212a, triggering the start of the four month period, presents a question of statutory interpretation over which our review is plenary. See *Hicks* v. *State*, supra, 297 Conn. 800. Upon consideration of the plain language of § 52-212a, we agree with the plaintiff that the motion to set aside was timely.

Our analysis of the statute is guided by § 1-2z and principles of statutory construction. See id., 801. Thus, we begin with the text of § 52-212a, which provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."[16] This statutory limitation "operates as a constraint, not on the trial court's jurisdictional authority, but on its substantive authority to adjudicate the merits of the case before it." (Internal quotation marks omitted.) *Rosado* v. *Bridgeport Roman Catholic Diocesan*

*Corp.*, supra, 276 Conn. 176 n.11. Although the language of § 52-212a indicates that the four month period to open or to set aside a judgment is mandatory, it does not address the effect of motions, such as a motion to reargue, which, if granted, would render the underlying judgment ineffective. Thus, although the statute does not expressly provide that the filing of a motion that could change the underlying judgment suspends the four month period, neither does the statute preclude such an interpretation.

According to the text of § 52-212a, the four month period begins on the "date on which [the judgment sought to be opened or set aside] was *rendered* or *passed*." (Emphasis added.) General Statutes § 52-212a. The statute does not define the terms "rendered" or "passed." "If a statute . . . does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Lauer* v. *Zoning Commission*, 243 Conn. 485, 490, 705 A.2d 195 (1998). According to Black's Law Dictionary (7th Ed. 1999), "to pass" means "[t]o pronounce or render an opinion, ruling, sentence, or judgment . . . ." Similarly, "rendition of judgment" refers to "[t]he judge's oral or written ruling containing the judgment entered." Id. Thus, both terms turn on the meaning of the word "judgment," which is defined as the "court's *final* determination of the rights and obligations of the parties in a case . . . ." (Emphasis added.) Id. The plain language of § 52-212a therefore contemplates finality. Consistent with this definition, decisions by this court reviewing the application of § 52-212a have measured the four month period from the time that the judgment became final. See *State* v. *Wilson*, 199 Conn. 417, 437, 513 A.2d 620 (1986); see also *In re Jonathan M.*, 255 Conn. 208, 237–38, 764 A.2d 739 (2001); *Lynch* v. *Lynch*, 135 Conn. App. 40, 56, A.3d (2012); *Fitzsimons* v. *Fitzsimons*, 116 Conn. App. 449, 458, 975 A.2d 729 (2009).

A decision granting a motion for summary judgment would satisfy this definition of "judgment" as summary judgment is a final judgment. See Practice Book § 61-2 (judgment "rendered on an entire complaint, counterclaim or cross complaint . . . by summary judgment . . . shall constitute a final judgment"). It is therefore clear that the four month period under § 52-212a would begin when the trial court granted a motion for summary judgment. This finality, however, is called into question upon the filing of a motion to reargue because the purpose of filing a motion to reargue is "to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . It also may be used to address . . . claims of law that the [movant] claimed were not addressed by the court." (Internal quotation marks omitted.) *Hudson Valley Bank* v. *Kissel*, 303

Conn. 614, 624, 35 A.3d 260 (2012). A decision granting a motion for reargument thereby implicitly recognizes that the underlying judgment may be altered or invalidated if the court is persuaded by the moving party's argument that the court overlooked facts or law in rendering its initial judgment and, accordingly, grants the relief requested. In other words, until the court issues a decision on the motion to reargue, the substantive rights and obligations of the parties are placed in flux. So long as the parties' substantive rights and obligations remain undetermined, the finality of the original judgment becomes, in effect, suspended. In turn, once the court issues a decision resolving the issues raised upon reargument, this new decision constitutes the "court's final determination of the rights and obligations of the parties in a case." Black's Law Dictionary, supra (defining "judgment"). Thus, an interpretation of the plain terms of § 52-212a suggests that when a party files a motion to reargue, which would, if granted, alter the substantive rights and duties of the parties, the four month limitation is measured from the court's decision on that motion, as opposed to the initial judgment.

In an analogous context, the rules for calculating the statutory period to appeal recognize the instability in the rights and obligations of the parties as set forth in the underlying decision when a motion to reargue has been filed.[17] The rules of practice address this instability by providing that "the filing of a motion that seeks an alteration, rather than a clarification of the judgment suspends the appeal period." *Weinstein* v. *Weinstein*, 275 Conn. 671, 699, 882 A.2d 53 (2005). Specifically, although the statutory time period for filing an appeal commences with the notice of a judgment; Practice Book § 63-1 (a);[18] "[i]f a motion is filed within the appeal period that, if granted, would render the judgment . . . ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion . . . ." Practice Book § 63-1 (c) (1). Furthermore, our rules of practice expressly characterize "reargument of the judgment or decision" as a "[motion] that, if granted, would render a judgment . . . ineffective . . . ." Practice Book § 63-1 (c); see also Practice Book § 11-11 (motion to reargue may extend appeal period). Thus, a new appeal period commences when the trial court issues a decision on a motion to reargue.

The state concedes that if the trial court granted a motion to reargue *and* modified the underlying judgment, the new judgment would supplant the original judgment, and the four month period would be measured from the date of the new judgment. The state argues, however, that if the decision on the motion merely reaffirms the underlying judgment and does not effect any change, the four month period continues to

commence from the date of the original decision. We disagree. Instead, we believe the proper rule is the rule that we employ to calculate the appeal period, that is, a motion suspends the finality of a judgment if, viewed prospectively, the motion, *if granted*, would redetermine the rights and obligations of the parties such that it would render the judgment ineffective. In contrast, if the motion would not affect the rights of the parties, and would merely clarify a portion of the decision, the motion would not suspend the finality of the judgment. See, e.g., Practice Book § 63-1 (c) (1) (new appeal period triggered "[i]f a motion is filed within the appeal period that, *if granted*, would render the judgment . . . ineffective" but not if motion seeks "clarification or articulation, as opposed to alteration, of the terms of the judgment" [emphasis added]).

We followed this same approach in *Weinstein* v. *Weinstein*, supra, 275 Conn. 671, and *Killingly* v. *Connecticut Siting Council*, 220 Conn. 516, 600 A.2d 752 (1991), wherein we were asked to determine the point at which a decision became final in varying contexts. In *Weinstein*, we held that a motion for reconsideration suspended the finality of a judgment of dissolution until the trial court decided such motion, even though that court ultimately denied it. *Weinstein* v. *Weinstein*, supra, 698. Likewise, in *Killingly*, we rejected the plaintiff's argument that a request for a rehearing suspended the finality of the underlying administrative agency decision because the rehearing "sought to clarify a portion of the [agency's] decision, and would not, *if granted*, have redetermined the rights of the parties." (Emphasis added.) *Killingly* v. *Connecticut Siting Council*, supra, 521. In both cases, the trial court's ultimate determination on the merits of the motion was irrelevant; rather, the pertinent inquiry focused on the potential effect on the parties' rights if the motion were granted.[19]

Principles of judicial economy are consistent with this interpretation of the four month limitation under § 52-212a. As the rules of practice recognize, "reargument of the judgment or decision" is a "[motion] that, if granted, would render a judgment . . . ineffective . . . ." Practice Book § 63-1 (c) (1). Consequently, if the court granted a motion to reargue and altered the underlying judgment, there would be no need to open or to set aside the underlying judgment under § 52-212a. Cf. *Young* v. *Young*, 249 Conn. 482, 494, 733 A.2d 835 (1999) (stating that in Practice Book § 63-1, creation of new appeal period upon filing of motion " 'which, if granted, would render the judgment or decision appealed from ineffective,' " promotes principles of judicial economy); *Whitney Frocks, Inc.* v. *Jaffe*, 138 Conn. 428, 430 n.1, 85 A.2d 242 (1951) ("it would be futile to compel the losing party to perfect his appeal while a motion to reopen is pending"). Indeed, under the state's interpretation, a delay in a trial court's decision on a motion to reargue could deprive the movant

of an opportunity to file a motion to set aside. Our interpretation also advances the policy that "[a] trial court should make every effort to adjudicate the substantive controversy before it, and, where practicable, should decide a procedural issue so as not to preclude hearing the merits of an appeal." *Killingly* v. *Connecticut Siting Council*, supra, 220 Conn. 522; see also *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, 257 Conn. 1, 16, 776 A.2d 1115 (2001) ("[o]ur practice does not favor the termination of proceedings without a determination of the merits of the controversy where that can be brought about with due regard to necessary rules of procedure" [internal quotation marks omitted]).

In contrast, the state contends that this interpretation of § 52-212a violates the principle of finality. Specifically, the state argues that, under this interpretation, a judgment would never become final and the four month limitation period in § 52-212a would be indefinitely tolled until a postjudgment motion was filed. We reject the state's concern that our interpretation indefinitely suspends the finality of judgments for the following three reasons. First, under our interpretation of § 52-212a, as set forth in this opinion, we do not stray from the well established rule that a judgment is final when rendered. See, e.g., Practice Book § 61-2 ("[w]hen judgment has been rendered on an entire complaint, counterclaim or cross complaint, whether by judgment on the granting of a motion to strike pursuant to Section 10-44, by dismissal pursuant to section 10-30, by summary judgment pursuant to Section 17-44, or otherwise, such judgment shall constitute a final judgment"). The judgment is divested of its finality only if a postjudgment motion is filed that, if granted, would affect the substantive rights and obligations of the parties, such that the original judgment would be rendered void. Second, the state fails to consider other time limitations prescribed by statute and the rules of practice, confining the availability of postjudgment motions. For instance, a motion to reargue must be filed within twenty days of the judgment; Practice Book § 11-12; and a motion for a new trial must be filed within ten days after the judgment is rendered. Practice Book § 17-4A. Finally, if a party does not file its postjudgment motion within the twenty day appeal period pursuant to Practice Book § 63-1 (a), that party may appeal only the court's ruling on the postjudgment motion and not the underlying judgment. "Claimed errors which might have been assigned on such an appeal are no longer open to review." *Zingus* v. *Redevelopment Agency*, 161 Conn. 276, 282, 287 A.2d 366 (1971); see also *Worth* v. *Korta*, 132 Conn. App. 154, 158–59, 31 A.3d 804 (2011) ("Although a motion to open can be filed within four months of a judgment . . . the filing of such a motion does not extend the appeal period for challenging the merits of the underlying judgment unless filed within the [twenty day period provided by Practice Book § 63-1]. . . . When a motion

to open is filed more than twenty days after the judgment, the appeal from the denial of that motion can test only whether the trial court abused its discretion in failing to open the judgment and not the propriety of the merits of the underlying judgment." [Citation omitted; internal quotation marks omitted.]). For the aforementioned reasons, we believe that our interpretation of § 52-212a, suspending the finality of a judgment for purposes of calculating the four month period pending the court's decision on a motion to reargue, implements the plain language of the statute in a manner that strikes the ideal balance between the competing policy interests at play.

In the present action, the plaintiff filed a motion to reargue the trial court's decision granting summary judgment in favor of the state, contending that the trial court improperly reviewed the merits of the commissioner's decision when it granted summary judgment. The trial court granted the plaintiff's motion but denied the relief requested. Nevertheless, the motion to reargue, if granted, would have rendered the summary judgment ineffective, thereby redetermining the rights and obligations of the parties. Accordingly, we conclude that this motion suspended the underlying judgment's finality until the trial court denied the relief requested in the motion to reargue. Because the plaintiff filed her motion to set aside the summary judgment within four months of the trial court's denial of the plaintiff's motion to reargue, the motion to set aside was timely pursuant to § 52-212a.[20] Accordingly, the trial court had the authority to entertain the plaintiff's motion. Because the state does not otherwise challenge the merits of the trial court's decision granting the plaintiff's motion to set aside, we affirm the judgment of the trial court.

The judgment is affirmed.

In this opinion the other justices concurred.

* This case was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Zarella, McLachlan, Eveleigh and Harper. Although Justice McLachlan was not present when the case was argued before the court, he read the record and briefs and listened to the recording of oral argument prior to participating in this decision.

[1] General Statutes § 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which it was rendered or passed. . . ."

[2] General Statutes § 4-160 provides in relevant part: "(a) When the [commissioner] deems it just and equitable, the [commissioner] may authorize suit against the state on any claim which, in the opinion of the [commissioner], presents an issue of law or fact under which the state, were it a private person, could be liable. . . ."

[3] General Statutes (Rev. to 2007) § 4-158 (e), as amended by Public Acts 2009, No. 09-44, § 1, provides: "Whenever the [commissioner] deems it just and equitable, the [commissioner] may, at any time prior to the submission of a claim to the General Assembly pursuant to subsection (a) of section 4-159, vacate the decision made pursuant to subsection (a) of this section and undertake such further proceedings in accordance with this chapter as the [commissioner] may, in his or her discretion, deem appropriate."

Unless otherwise indicated, all references in this opinion to § 4-158 (e)

are to the 2007 revision of the statute, as amended by P.A. 09-44.

[4] The defendant has not appealed this portion of the trial court's decision.

[5] The state appealed from the judgment of the trial court to the Appellate Court. Subsequently, we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[6] We have stated that the legislature may waive the state's sovereign immunity by statute only if such waiver is explicit or if the "statute waives sovereign immunity by force of necessary implication . . . ." *Envirotest Systems Corp.* v. *Commissioner of Motor Vehicles*, 293 Conn. 382, 389, 978 A.2d 49 (2009); id., 389–90 ("in order for a court to conclude that a statute waives sovereign immunity by force of necessary implication . . . [i]t must, by logical necessity, be the *only possible interpretation* of the language" [emphasis in original]).

[7] See footnote 11 of this opinion for the text of § 4-158 (b).

[8] Although P.A. 09-44 was enacted on May 20, 2009, and the plaintiff's claim was filed on or around April 28, 2006, the act provides that it applies to all "claims filed prior to, on or after" the date of enactment. P.A. 09-44, § 1. Neither party disputes that the act had retroactive effect in the present case.

[9] General Statutes § 4-148 (c) provides that "[n]o claim cognizable by the [commissioner] shall be presented against the state except under the provisions of this chapter. Except as provided in section 4-156, no claim *once considered* by the [commissioner], by the General Assembly or in a judicial proceeding shall again be presented against the state in any manner." (Emphasis added.)

At first glance, this provision appears to conflict with the legislature's authorization of the commissioner to vacate a prior decision and thereupon to conduct further proceedings pursuant to § 4-158 (e). Although the state has not claimed that §§ 4-148 (c) and 4-158 (e) are irreconcilable, we briefly address the conflict between the two statutes here. "[T]he legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter . . . ." (Internal quotation marks omitted.) *Wilton Meadows Ltd. Partnership* v. *Coratolo*, 299 Conn. 819, 828, 14 A.3d 982 (2011). Thus, in construing the relationship between §§ 4-148 (c) and 4-158 (e), we interpret the phrase "once considered" in § 4-148 (c) to refer to the commissioner's final resolution of a claim. We interpret § 4-158 (e) to set forth an alternate vehicle for review by the commissioner, akin to a motion for reconsideration. Thus, § 4-158 (e) provides an additional step in the overall process of a commissioner's decision on a claim and does not constitute a separate and distinct proceeding. Section 4-148 (c), therefore, does not inherently conflict with the application of § 4-158 (e). Indeed, even if there were a conflict, the specific statute, § 4-158, would control over the more general statute, § 4-148. *In re Carlos D.*, 297 Conn. 16, 25, 997 A.2d 471 (2010).

[10] General Statutes § 4-159 (a) provides in relevant part: "Not later than five days after the convening of each regular session and at such other times as the speaker of the House of Representatives and president pro tempore of the Senate may desire, the [commissioner] shall submit to the General Assembly (1) all claims for which the [commissioner] recommended payment . . . in an amount exceeding seven thousand five hundred dollars . . . and (2) all claims for which a request for review has been filed pursuant to subsection (b) of section 4-158 . . . ."

[11] General Statutes (Rev. to 2007) § 4-158 (b) provides: "Any person who has filed a claim for more than seven thousand five hundred dollars may request the General Assembly to review a decision of the [commissioner] (1) ordering the denial or dismissal of the claim pursuant to subdivision (1) of subsection (a) of this section, including denying or dismissing a claim that requests permission to sue the state, or (2) ordering immediate payment of a just claim in an amount not exceeding seven thousand five hundred dollars pursuant to subdivision (2) of subsection (a) of this section. A request for review shall be in writing and filed with the [o]ffice of the [commissioner] not later than twenty days after the date the person requesting such review receives a copy of the decision. The filing of a request for review shall automatically stay the decision of the [commissioner]."

[12] Whether a great lapse of time would render the vacatur of a prior dismissal unjust or inequitable, and therefore not eligible for relief under § 4-158 (e), is, of course, a factor that may be considered by the commissioner.

[13] See footnote 2 of this opinion for the text of § 4-160 (a).

[14] General Statutes § 4-156 provides in relevant part: "Upon the discovery

of new evidence, any claimant aggrieved by an order of the [commissioner] rejecting or recommending the rejection of his claim, in whole or in part, may apply for rehearing. . . ."

[15] Although the parties disagree on whether the commissioner dismissed the plaintiff's claim pursuant to his authority under § 4-158 (a) or General Statutes § 4-151 (e) (permitting commissioner to summarily dismiss claim if claimant fails to testify or produce relevant materials), the specific type of dismissal delineated in § 4-151 (e) is encompassed within the commissioner's general authority to dismiss claims under § 4-158 (a). Therefore, whether the commissioner specifically relied on § 4-151 (e) is irrelevant.

[16] The first sentence of § 52-212a is nearly identical in language to Practice Book § 17-4 (a). Practice Book § 17-4 (a) provides that "[u]nless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court." Because the statutory provisions and those of our rules of practice are, for present purposes, identical, we will refer hereafter only to § 52-212a.

[17] The state suggests that reference to the rules of practice concerning the appeal period is improper because the rules of practice cannot modify any substantive right. Cases cited in support of this proposition are inapposite, however, because we review the rules of practice governing the appeal period merely to assist our interpretation of the point at which a "judgment" is "rendered" as those terms are used in § 52-212a; we do not purport to import the rules governing the appeal period to this context.

[18] Practice Book § 63-1 (a) provides in relevant part: "Unless a different time period is provided by statute, an appeal must be filed within twenty days of the date notice of the judgment or decision is given. . . ."

[19] The state, on the other hand, argues that our decision in *RAL Management, Inc.* v. *Valley View Associates*, 278 Conn. 672, 899 A.2d 586 (2006), contains conflicting language that supports its position. In particular, we stated that the "opening and modification of a judgment triggers a new limitations period under which the modified judgment may be opened"; id., 689; but not "*any* modification to a judgment renders the original judgment void such that it extinguishes all rights that flowed from that judgment." (Emphasis in original.) Id. The state interprets this language to mean that a new limitations period is not triggered when the trial court denies a motion to reargue, because a denial leaves the terms in the original judgment intact, and, therefore, the four month period is measured from the original judgment. We first observe that *RAL Management, Inc.*, is distinguishable because the issue therein on appeal questioned whether a pending appeal becomes moot when the trial court grants a motion to open a judgment of strict foreclosure to set new law days. Id., 674. We further observe, however, that the cited passage in that case emphasized the "substantive distinction between opening a judgment to modify or to alter *incidental* terms of the judgment, leaving the essence of the original judgment intact, and opening a judgment to set it aside." (Emphasis added.) Id., 690. We concluded that when the only change to the original judgment involved the extension of a sale date—an incidental term—the substantive terms of the original judgment remained intact, and the opening of the judgment did not render the original judgment void. Id., 691. Contrary to the state's position, we view this language to support our calculation of the four month period because it extends the proposition that a motion, which would, if granted, alter the substantive terms of the original judgment, divests the original judgment of its finality, whereas a motion that merely seeks clarification or otherwise leaves the substantive terms unaffected does not. See Practice Book § 63-1 (c) (1) (setting forth examples of motions that, if granted, would render judgment ineffective, which suspend appeal period, as opposed to motions that do not give rise to new appeal period, such as motions that seek "clarification or articulation, as opposed to alteration, of the terms of the judgment or decision").

[20] Because we conclude that the plaintiff's motion to set aside the summary judgment was timely filed within four months of the court's denial of the motion to reargue, we need not determine whether the motion to set aside also would satisfy the timeliness requirement of § 52-212a under the "[u]nless otherwise provided by law" exception.