PATRICIA SANTORSO, ADMINISTRATRIX (ESTATE OF LAWRENCE SANTORSO), ET AL. *v.* BRISTOL HOSPITAL ET AL.
(SC 18798)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued February 15—officially released April 23, 2013

Bruce E. Newman, for the appellants (plaintiffs).

Michael G. Rigg, with whom were *Lorinda S. Coon* and *Richard A. O'Connor*, for the appellees (defendants).

Opinion

ZARELLA, J. The plaintiff Patricia Santorso[1] appeals from the judgment of the Appellate Court, which reversed the trial court's denial of the motions for summary judgment filed by the defendants, Bristol Hospital (hospital), Jeffrey Goldberg and Rainer Bagdasarian. The plaintiff claims that the Appellate Court incorrectly concluded that the present action was barred by the doctrine of res judicata. We affirm the judgment of the Appellate Court on the alternative ground that the present action was time barred and was not saved by General Statutes § 52-592,[2] the accidental failure of suit statute.

The Appellate Court set forth the following facts and procedural history, which are relevant to our resolution of the present appeal. "On June 1, 2006, [the plaintiff's decedent] Lawrence Santorso . . . commenced an action against the defendants . . . (first action). . . . [The decedent alleged] . . . that the defendants were negligent in that, for two years, they failed to treat [him] for a lesion in his lung that had been detected by the hospital's radiology department on three separate occasions. By the time [the decedent] was diagnosed with lung cancer, the cancer had metastasized, and he was not a candidate for surgical intervention. He died while the first action was pending.

"When the complaint in the first action was served on the defendants, it contained neither an attorney's good faith certificate nor opinion letters [from] similar health care providers . . . both [of which are] required by General Statutes § 52-190a (a).[3] The defendants filed motions to dismiss the first action pursuant to . . . § 52-190a (c),[4] claiming that the court lacked subject matter jurisdiction due to the absence of a good faith certificate and opinion letters. The court, *Prestley*, *J.*, denied the motions to dismiss on January 25, 2007, concluding that the defect was curable, and ordered [the decedent], within thirty days, to file an amended complaint containing a good faith certificate and opinion letters.

"[The decedent's] counsel . . . filed an amended complaint containing [a] good faith certificate and opinion letters purportedly from similar health care providers. The defendants again filed motions to dismiss . . . because the . . . opinion letters . . . were dated after the first action had been commenced. On July 31, 2007, Judge Prestley again denied the defendants' motions to dismiss, concluding that the claimed insufficiencies were to be tested by means of a motion to strike.

"Thereafter, the defendants filed motions to strike the respective counts of the amended complaint alleged against them. The court, *Pittman*, *J.*, granted the motions to strike . . . on April 3, 2008. Judge Pittman concluded that 'a fair reading of the complaint together

with the good faith certificate and the opinion letters yields the conclusion that [the decedent] sued first and conducted the required "reasonable inquiry" later. This is the exact sequence of events that [§ 52-190a (a)] was enacted to prohibit. . . . The complaint, without any appended opinion letter that demonstrates a *pre-suit* opinion from a similar health care provider, is legally insufficient.' . . . [The decedent] failed to plead over, and, on June 25, 2008, Judge Pittman granted the defendants' motions for judgment pursuant to Practice Book § 10-44. [No appeal was taken] from the judgment rendered in the first action.

"Approximately six weeks later, the plaintiff commenced the present action (present action). In the present action, the plaintiff alleged the same causes of action alleged against the defendants in the first action and sought damages for wrongful death on behalf of [the decedent's] estate and loss of consortium on her own behalf. The complaint in the present action contained a good faith certificate signed by [the plaintiff's attorney] and the same opinion letters from a general surgeon and medical oncologist that had been attached to the second amended complaint in the first action. The [plaintiff] also alleged [in her complaint] that . . . [she] brought [the present action] pursuant to . . . § 52-592 (a), the accidental failure of suit statute.

"The [defendants] filed motions to dismiss the present action on the ground that the opinions were not written by similar health care providers. Judge Pittman denied the motions to dismiss, reasoning that the opinions offered by a general surgeon and an oncologist were physicians with sufficient training, experience and knowledge to be qualified to offer medical opinions concerning the standard of care. At that stage of the proceedings, Judge Pittman declined 'the invitation to begin a detailed and wide ranging comparison of the subspecialties and particularized background of each health care provider in this case.' Following the filing of revisions and amendments to the complaint and certain discovery, the defendants filed their motions for summary judgment in July, 2009.

"In their motions for summary judgment, the defendants argued that the first action was not defeated for any 'matter of form' and that [the] failure [of the plaintiff's attorney] to comply with § 52-190a (a) precluded the plaintiff from taking advantage of the accidental failure of suit statute. [The defendants argued that] [w]ithout the benefit of the accidental failure of suit statute . . . the present action was not commenced within the two year statute of limitations and the three year statute of repose for medical malpractice actions [see General Statutes § 52-584], and, therefore, they were entitled to summary judgment. The defendants also claimed that the present action was barred by the doctrine of res judicata. [The court, *Shortall, J.*] denied

the defendants' motions for summary judgment on March 17, 2010.

"The defendants appealed [to the Appellate Court] from the [trial court's] denial of their motions for summary judgment, claiming that a judgment against a plaintiff on a motion to strike for failure to comply with § 52-190a (a) is a judgment on the merits subject to the doctrine of res judicata." (Citation omitted; emphasis in original.) *Santorso* v. *Bristol Hospital*, 127 Conn. App. 606, 608–13, 15 A.3d 1131 (2011). After determining that the denial of the motions for summary judgment constituted a final judgment for purposes of appeal because those motions were predicated on the doctrine of res judicata; id., 607 n.1; the Appellate Court agreed with the defendants, concluding that the first action was decided on its merits because the trial court granted the motions to strike in the first action, and "a judgment rendered pursuant to a motion to strike is a judgment on the merits . . . ." Id., 617. The Appellate Court therefore reversed the trial court's decision and remanded the case with direction to grant the defendants' motions for summary judgment. Id., 619.

Thereafter, the plaintiff sought certification to appeal to this court, which we granted, limited to the following question: "Did the Appellate Court properly reverse the trial court's denial of summary judgment based on res judicata where a prior action was stricken for failure to comply with . . . § 52-190a?" *Santorso* v. *Bristol Hospital*, 301 Conn. 918, 21 A.3d 464 (2011). We then granted the defendants' motion, filed pursuant to Practice Book § 84-11 (c),[5] for permission to present an alternative ground for affirmance of the judgment of the Appellate Court, namely, that the present action was time barred. Specifically, the defendants claimed that, under this court's decision in *Plante* v. *Charlotte Hungerford Hospital*, 300 Conn. 33, 12 A.3d 885 (2011), the present action could not be saved under the accidental failure of suit statute; General Statutes § 52-592; because it was not dismissed "for [a] matter of form . . . ."[6] (Internal quotation marks omitted.) We address each claim in turn.

I

We begin with the plaintiff's claim that the Appellate Court incorrectly concluded that the present action was barred by the doctrine of res judicata in reversing the trial court's denial of the defendants' motions for summary judgment because the trial court's granting of the motions to strike in the first action was not a decision on the merits. In support of this claim, the plaintiff maintains that the first action should have been challenged by way of motions to dismiss, rather than motions to strike, in accordance with the language of § 52-190a (c). Accordingly, the plaintiff maintains that the motions to strike should be treated as if they had been motions to dismiss, which would not constitute

a decision on the merits and, therefore, would not cause the present action to be precluded under the doctrine of res judicata.

The defendants, by contrast, assert that the Appellate Court properly reversed the trial court's denial of their motions for summary judgment because the Appellate Court correctly concluded that the present action is barred by the doctrine of res judicata. Specifically, the defendants maintain that the first action was a judgment on the merits because it was resolved by virtue of the trial court's granting of the defendants' motions to strike on the ground that the complaint was legally insufficient. Although the defendants concede that a motion to dismiss, rather than a motion to strike, is presently recognized as the proper procedural device to address defects under § 52-190a (a), they primarily assert that the Appellate Court properly treated the trial court's granting of the motions to strike as a judgment on the merits because the case confirming this approach was decided after the decision of the trial court in the present case to grant the motions to strike, and subsequent changes in the law do not provide a recognized exception to res judicata. We agree with the plaintiff.

Turning first to the standard of review that informs our analysis, we note that "[t]he standards governing our review of a trial court's decision to grant [or deny][7] a motion for summary judgment are well established. Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . Finally, the scope of our review of the trial court's decision to grant [or deny] [a] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Anastasia* v. *General Casualty Co. of Wisconsin*, 307 Conn. 706, 711, 59 A.3d 207 (2013), quoting *DiPietro* v. *Farmington Sports Arena, LLC*, 306 Conn. 107, 115–16, 49 A.3d 951 (2012). In addition, the applicability of the doctrine of res judicata presents a question of law over which our review is plenary. E.g., *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, 300 Conn. 325, 347, 15 A.3d 601 (2011).

With respect to the relevant legal principles, under the doctrine of res judicata, "[a] valid, final judgment

rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties . . . [on] the same claim or demand." (Internal quotation marks omitted.) *Weiss* v. *Weiss*, 297 Conn. 446, 459, 998 A.2d 766 (2010). "The principles that govern res judicata are described in Restatement (Second) of Judgments . . . . The basic rule is that of § 18, which [provides] in relevant part: When a valid and final personal judgment is rendered in favor of the plaintiff: (1) [t]he plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although he may be able to maintain an action upon the judgment . . . ." (Internal quotation marks omitted.) *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, supra, 300 Conn. 347–48. "Traditionally, a judgment is on the merits when it amounts to a decision as to the respective rights and liabilities of the parties, 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, irrespective of formal, technical, or dilatory objections or contentions." 50 C.J.S. 283–84, Judgments § 959 (2009).

In the present case, the parties principally dispute whether the first action constituted a decision on the merits for purposes of res judicata because it was resolved in response to motions to strike followed by a judgment rendered pursuant to Practice Book § 10-44. As we explained previously, the defendants initially challenged the decedent's claims in the first action with motions to dismiss, asserting, inter alia, that the decedent had failed to include the requisite opinion letters and good faith certificate required under § 52-190a to demonstrate that his claim was based on a reasonable inquiry before the first action was filed. The trial court, *Prestley, J.*, denied the defendants' motions to dismiss and permitted the decedent to amend his complaint. Subsequently, the defendants moved to strike the complaint, and the court, *Pittman, J.*, granted the motions.

Under the language of General Statutes § 52-190a (c), "[t]he failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action." Our decision in *Bennett* v. *New Milford Hospital, Inc.*, 300 Conn. 1, 29, 12 A.3d 865 (2011), addressed a closely related issue, namely, whether a motion to dismiss was the appropriate vehicle for challenging not only a failure to obtain and file the opinion letter, as is squarely addressed by § 52-190a (c), but also a complaint accompanied by a letter that otherwise fails to comply with the requirements of § 52-190a (a). In *Bennett*, the plaintiff had filed an opinion letter with the complaint, but the defendant contended that the letter's author did not qualify as a "similar health care provider" within the meaning of § 52-190a (a). Id., 7. We determined that, "[i]nasmuch as the legislative history indicates that a motion to dismiss pursuant to § 52-190a (c) is the only proper procedural

vehicle for challenging deficiencies with the opinion letter, and that dismissal of a letter that does not comply with § 52-190a (c) is mandatory, we agree with the Appellate Court's reasoning in its . . . decisions in *Votre* v. *County Obstetrics & Gynecology Group, P.C.*, [113 Conn. App. 569, 582–83, 966 A.2d 813, cert. denied, 292 Conn. 911, 973 A.2d 661 (2009)], and *Rios* v. *CCMC Corp.*, [106 Conn. App. 810, 820–21, 943 A.2d 544 (2008)], both of which concluded that the grant[ing] of a motion to dismiss, rather than a motion to strike, is the proper statutory remedy for deficiencies under § 52-190a . . . ." *Bennett* v. *New Milford Hospital, Inc.*, supra, 29.

"A motion to strike challenges the legal sufficiency of a pleading . . . and, consequently, requires no factual findings by the trial court. As a result, our review of the court's ruling is plenary. . . . We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency. . . . Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. . . . A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Citation omitted; internal quotation marks omitted.) *Bridgeport Harbour Place I, LLC* v. *Ganim*, 303 Conn. 205, 212–13, 32 A.3d 296 (2011).

In contrast to a motion to strike, "[a] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Narayan* v. *Narayan*, 305 Conn. 394, 401, 46 A.3d 90 (2012). Accordingly, "[i]n determining whether [to grant a motion to dismiss], the inquiry usually does not extend to the merits of the case. *GHK Exploration Co.* v. *Tenneco Oil Co.*, 857 F.2d 1388, 1392 (10th Cir. 1988); *State* v. *S & R Sanitation Services, Inc.*, 202 Conn. 300, 301, 521 A.2d 1017 (1987); *Rhodes* v. *Hartford*, 201 Conn. 89, 92, 513 A.2d 124 (1986); *Davis* v. *Board of Education*, 3 Conn. App. 317, 320, 487 A.2d 1114 (1985). *Lampasona* v. *Jacobs*, 209 Conn. 724, 728, 553 A.2d 175, cert. denied, 492 U.S. 919, 109 S. Ct. 3244, 106 L. Ed. 2d 590 (1989); see also [*Assn. of Data Processing Service Organizations, Inc.*] v. *Camp*, 397 U.S. 150, 153, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970); *Ducharme* v. *Putnam*, 161 Conn. 135, 139, 285 A.2d 318 (1971). The decision [granting a motion to dismiss] is rendered in the form of a final judgment dismissing the action. . . . [*H*]*owever, only the present action has been terminated and no decision on the merits has been made. In some situations the plaintiff by amendment may cure the defect and have the case reinstated.* In others, the plaintiff can proceed only by initiating a new action. . . . 1 E. Stephenson, Connecticut Civil Procedure (1971 & Cum. Sup. 1982) § 153, pp. 615, 616." (Emphasis altered; internal quotation marks

omitted.) *Southport Manor Convalescent Center, Inc.* v. *Foley*, 216 Conn. 11, 16–17, 578 A.2d 646 (1990).

In *Morgan* v. *Hartford Hospital*, 301 Conn. 388, 397, 21 A.3d 451 (2011), we considered the nature of the jurisdictional challenge presented by a motion to dismiss brought under § 52-190a (c). We concluded that "the written opinion letter, prepared in accordance with the dictates of § 52-190a, like the good faith certificate, is akin to a pleading that must be attached to the complaint in order to commence . . . the action [properly]." Id., 398. Accordingly, we reasoned that "[t]he failure to provide a written opinion letter, or the attachment of a written opinion letter that does not comply with § 52-190a, constitutes insufficient process," which implicates personal jurisdiction over the defendant. Id., 401. Relying on our decision in *Bennett*, however, we reiterated our conclusion that "the legislature envisioned the dismissal as being without prejudice . . . and even if the statute of limitations has run, relief may well be available under the accidental failure of suit statute . . . ." (Internal quotation marks omitted.) Id., 398, quoting *Bennett* v. *New Milford Hospital, Inc.*, supra, 300 Conn. 31.

In the present case, it is evident that the first action, which was challenged on § 52-190a grounds, properly should have been tested not by way of motions to strike but, rather, by way of motions to dismiss, the granting of which would not constitute a judgment on the merits. See *Morgan* v. *Hartford Hospital*, supra, 301 Conn. 398. The defendants maintain that, even though motions to strike were inappropriately used in lieu of motions to dismiss, we nevertheless must accept the title of the motions at face value and, therefore, consider them as motions to strike and a decision on the merits. We are not inclined to accord such significance to the labels of the motions at issue in the present case. In certain circumstances, this court previously has looked beyond the label of a motion to reclassify it when its substance did not reflect the label applied by the moving party. See, e.g., *Aetna Casualty & Surety Co.* v. *Jones*, 220 Conn. 285, 293, 596 A.2d 414 (1991) ("Despite the fact that [the defendant] entitled her motion 'Motion For Summary Judgment' . . . both the substance of the motion and the trial court's ruling on the motion demonstrate that it is more accurately described as a motion to strike. . . . Therefore, we shall address her motion for summary judgment as if it were a properly presented motion to strike." [Citations omitted.]). In the present case, in accordance with § 52-190a (c), we elect to treat the improperly designated motions to strike as motions to dismiss. As this court explained in *Morgan*, the failure to include the opinion letter constitutes insufficient process, and dismissal under such circumstances is without prejudice. *Morgan* v. *Hartford Hospital*, supra, 398, 401; see also *Bennett* v. *New Milford Hospital, Inc.*, supra, 300 Conn. 31 (legislature envisioned that dis-

missal due to noncompliance with § 52-190a [a] would be without prejudice). We are therefore persuaded that the first action does not preclude the present action under the doctrine of res judicata. Cf. *Varanelli* v. *Luddy*, 130 Conn. 74, 80, 32 A.2d 61 (1943) ("[t]he effect of a denial of a motion or application 'without prejudice' will often prevent that ruling from becoming res adjudicata [on] its merits and leave the matter open for further presentation and consideration in the same or another proceeding"); annot., 149 A.L.R. 553, 557 (1944) ("as a general proposition a judgment which by its terms purports to be 'without prejudice' does not operate as res judicata").

The defendants argue, however, that it is immaterial that the first action was resolved in a procedurally improper manner, because "Connecticut law provides no exception to res judicata for erroneous decisions." *Tirozzi* v. *Shelby Ins. Co.*, 50 Conn. App. 680, 687, 719 A.2d 62, cert. denied, 247 Conn. 945, 723 A.2d 323 (1998); see also *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 395, 685 A.2d 1108 (1996) ("[t]he fact that a prior judicial determination may be flawed, however, is ordinarily insufficient, in and of itself, to overcome a claim that otherwise applicable principles of res judicata preclude it from being collaterally attacked"), overruled in part on other grounds by *State* v. *Salmon*, 250 Conn. 147, 735 A.2d 333 (1999). Although this is a correct statement of the legal principle, we are not persuaded by the defendants' application of it to the present case. In *Tirozzi*, on which the defendants rely, and on which the Appellate Court also relied; see *Santorso* v. *Bristol Hospital*, supra, 127 Conn. App. 615–18; the plaintiff, Stephen Tirozzi, brought two actions against his employer, seeking to recover underinsured motorist benefits under a policy that the defendant insurance company had issued to the employer. *Tirozzi* v. *Shelby Ins. Co.*, supra, 682–83. After Tirozzi's first complaint was stricken on the basis of the underinsured motorist coverage law then in effect, the law barring his action was legislatively overruled, with retroactive effect. Id. Tirozzi thereafter brought a second action, asserting the same claim against the same party and "argu[ing] in essence for an exception to the doctrine of res judicata for a situation [in which] a change in the law occurs by virtue of a clarifying act of the legislature." Id., 685. The trial court granted the insurance company's motion for summary judgment on res judicata grounds. Id., 683. The Appellate Court affirmed the judgment of the trial court; id., 688; concluding that Tirozzi "had an adequate opportunity to litigate the matter in the first action" and that res judicata therefore barred the second action. Id., 687.

In the present case, however, the plaintiff's argument regarding the first action is distinguishable from the position unsuccessfully advanced by Tirozzi. Tirozzi sought to relitigate a claim following the granting of a

concededly proper motion to strike, which was appropriately considered a final judgment on the merits, because he wished to avail himself of a later change in the law that would be beneficial to his interests. See id., 682–83. In the present case, by contrast, the parties agree[8] that the first action should have been resolved by way of motions to dismiss, rather than by motions to strike, and the trial court's decision on the motions to strike therefore was made without addressing the merits of the claim. See id., 687. See generally 50 C.J.S., supra, p. 285 ("[f]or res judicata to apply, the court in the prior action must have made a final ruling based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction, or form").

For these reasons, we are persuaded that the first action was not disposed of on its merits, notwithstanding the court's granting of the defendants' motions to strike, when the motions granted should have been treated as motions to dismiss. We therefore conclude that the Appellate Court incorrectly concluded that the trial court should have granted the defendants' motions for summary judgment in the present action on the basis of the doctrine of res judicata.

II

Although we agree with the plaintiff with respect to the certified question, this does not end our inquiry. As we noted previously, pursuant to Practice Book § 84-11 (c), the defendants filed with this court a petition for permission to present an alternative ground for affirmance of the Appellate Court's judgment, which we granted.[9] Specifically, the defendants claim that, under *Plante* v. *Charlotte Hungerford Hospital*, supra, 300 Conn. 33, the plaintiff's first action, which was stricken for failure to comply with the requirements of § 52-190a, was not defeated for a "matter of form" within the meaning of the accidental failure of suit statute. General Statutes § 52-592 (a). Without the savings benefit of the accidental failure of suit statute, the defendants argue, the present action is barred by the statute of limitations and the statute of repose. We agree with the defendants.

As we have explained previously, the accidental failure of suit statute can be traced "as far back as 1862"; *Peabody N.E., Inc.* v. *Dept. of Transportation*, 250 Conn. 105, 121, 735 A.2d 782 (1999); and is a savings statute that is intended to promote "the strong policy favoring the adjudication of cases on their merits rather than the disposal of them on the grounds enumerated in § 52-592 (a)." Id., 127. "We note, however, that this policy is not without limits. If it were, there would be no statutes of limitations. Even the saving statute does not guarantee that all plaintiffs have the opportunity to have their cases decided on the merits. It merely allows them a limited opportunity to correct certain defects in their actions within a certain period of time." Id.,

127–28.

In the present case, our resolution of the defendants' alternative ground for affirmance depends on our interpretation of the phrase "matter of form" as used in the accidental failure of suit statute and its interaction with the requirements of § 52-190a (a).[10] The interpretation of a statute presents a question of law over which our review is plenary. See, e.g., *Plante* v. *Charlotte Hungerford Hospital*, supra, 300 Conn. 47. In undertaking this interpretation, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Bennett* v. *New Milford Hospital, Inc.*, supra, 300 Conn. 11.

In *Plante*, we interpreted the statutory provision at issue in this case when we considered, as a matter of first impression, "whether dismissal for the failure to supply an opinion letter authored by a similar health care provider is a matter of form subject to being saved by the accidental failure of suit statute, § 52-592 (a) . . . ." *Plante* v. *Charlotte Hungerford Hospital*, supra, 300 Conn. 49. The plaintiffs in *Plante* brought a medical malpractice action against a hospital, several physicians and hospital employees who had treated the decedent, alleging that their malpractice had led to the decedent's suicide. Id., 39. The plaintiffs, however, failed to comply with the requirement of § 52-190a (a) that the complaint be accompanied by an opinion letter from a similar health care provider. See id. Accordingly, certain defendants moved to dismiss the claim under § 52-190a (c), and the trial court granted the motion. Id., 39–40. The plaintiffs then commenced an action that otherwise would have been time barred, claiming that the accidental failure of suit statute saved their action because the dismissal for failure to comply with the opinion letter requirement of § 52-190a (a) was a dismissal for a "matter of form" under § 52-592 (a). (Internal quotation marks omitted.) Id., 40.

Applying § 1-2z,[11] we determined that "§ 52-592 (a) is ambiguous about what constitutes a matter of form" and therefore turned to extratextual sources "to reconcile its relationship with § 52-190a." Id., 49. Our exami-

nation of such sources led us to "conclude that, when a medical malpractice action has been dismissed pursuant to § 52-190a (c) for failure to supply an opinion letter by a similar health care provider required by § 52-190a (a), a plaintiff may commence an otherwise time barred new action pursuant to the matter of form provision of § 52-592 (a) only if that failure was caused by a simple mistake or omission, rather than egregious conduct or gross negligence attributable to the plaintiff or his attorney." Id., 46–47.

In addition, in the analysis in *Plante*, we further examined our decision in *Ruddock* v. *Burrowes*, 243 Conn. 569, 706 A.2d 967 (1998), which arose in the context of a disciplinary dismissal,[12] concluding that its rationale applied with equal force to cases beyond the disciplinary context. *Plante* v. *Charlotte Hungerford Hospital*, supra, 300 Conn. 51. In *Ruddock*, we reasoned that "[w]hether [§ 52-592 (a)] applies cannot be decided in a factual vacuum. To enable a plaintiff to meet the burden of establishing the right to avail himself or herself of the statute, a plaintiff must be afforded an opportunity to make a factual showing that the prior dismissal was a 'matter of form' in the sense that the plaintiff's noncompliance with a court order occurred in circumstances such as mistake, inadvertence or excusable neglect." *Ruddock* v. *Burrowes*, supra, 243 Conn. 576–77.

In the present case, the trial court expressly determined that "[i]t cannot be said that counsel's failure to file a good faith certificate and opinion letters in [the first action] was the result of 'mistake, inadvertence, or excusable neglect.' " Moreover, because the plaintiff's counsel declined the court's invitation to explain the failure to comply with the requirements of § 52-190a (a), "there is no record that might support a finding that [counsel's] conduct was due to those factors, and the court must conclude that his action was deliberate." In view of these findings, we cannot conclude that the first action was dismissed for a matter of form under the rationale this court set forth in *Plante*, in which we concluded that "a plaintiff may bring a subsequent medical malpractice action pursuant to the matter of form provision of § 52-592 (a) *only when the trial court finds as a matter of fact that the failure in the first action to provide an opinion letter that satisfies § 52-190a (a) was the result of mistake, inadvertence or excusable neglect, rather than egregious conduct or gross negligence on the part of the plaintiff or his attorney*." (Emphasis added.) *Plante* v. *Charlotte Hungerford Hospital*, supra, 300 Conn. 56. Accordingly, we conclude that the present action is not saved by the accidental failure of suit statute. Therefore, we affirm the Appellate Court's judgment on this alternative ground.

The judgment of the Appellate Court is affirmed.

In this opinion the other justices concurred.

[1] Patricia Santorso is the surviving spouse of the decedent, Lawrence Santorso, and brought the present action individually and in her capacity as administratrix of the decedent's estate. We hereinafter refer to Patricia Santorso as the plaintiff.

[2] General Statutes § 52-592 provides in relevant part: "(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form; or if, in any such action after a verdict for the plaintiff, the judgment has been set aside, or if a judgment of nonsuit has been rendered or a judgment for the plaintiff reversed, the plaintiff, or, if the plaintiff is dead and the action by law survives, his executor or administrator, may commence a new action, except as provided in subsection (b) of this section, for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment. . . ."

[3] General Statutes § 52-190a (a) provides: "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. The complaint, initial pleading or apportionment complaint shall contain a certificate of the attorney or party filing the action or apportionment complaint that such reasonable inquiry gave rise to a good faith belief that grounds exist for an action against each named defendant or for an apportionment complaint against each named apportionment defendant. To show the existence of such good faith, the claimant or the claimant's attorney, and any apportionment complainant or the apportionment complainant's attorney, shall obtain a written and signed opinion of a similar health care provider, as defined in section 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. Such written opinion shall not be subject to discovery by any party except for questioning the validity of the certificate. The claimant or the claimant's attorney, and any apportionment complainant or apportionment complainant's attorney, shall retain the original written opinion and shall attach a copy of such written opinion, with the name and signature of the similar health care provider expunged, to such certificate. The similar health care provider who provides such written opinion shall not, without a showing of malice, be personally liable for any damages to the defendant health care provider by reason of having provided such written opinion. In addition to such written opinion, the court may consider other factors with regard to the existence of good faith. If the court determines, after the completion of discovery, that such certificate was not made in good faith and that no justiciable issue was presented against a health care provider that fully cooperated in providing informal discovery, the court upon motion or upon its own initiative shall impose upon the person who signed such certificate or a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. The court may also submit the matter to the appropriate authority for disciplinary review of the attorney if the claimant's attorney or the apportionment complainant's attorney submitted the certificate."

[4] General Statutes § 52-190a (c) provides: "The failure to obtain and file the written opinion required by subsection (a) of this section shall be grounds for the dismissal of the action."

[5] Practice Book § 84-11 (c) provides in relevant part: "Any party desiring to present alternative grounds for affirmance, adverse rulings or decisions in the event of a new trial or a claim concerning the relief ordered by the appellate court shall file a statement thereof within fourteen days from the issuance of notice of certification. . . ."

[6] Because *Plante* was decided after oral argument but before the release of the Appellate Court's decision in the present case, the parties did not

address its import in their arguments before the Appellate Court. Nevertheless, the Appellate Court itself observed that *Plante* might provide a separate basis for challenging the decision of the trial court but did not reach this issue because it resolved the appeal on res judicata grounds. See *Santorso* v. *Bristol Hospital*, supra, 127 Conn. App. 614 n.9; see also id., 611 n.7.

[7] As we previously have explained, "[o]rdinarily, the denial of a motion for summary judgment is not an appealable final judgment. E.g., *Brown & Brown, Inc.* v. *Blumenthal*, 288 Conn. 646, 653, 954 A.2d 816 (2008). When the decision on a motion for summary judgment, however, is based on the doctrine of collateral estoppel, the denial of that motion does constitute a final judgment for purposes of appeal. See, e.g., *Convalescent Center of Bloomfield, Inc.* v. *Dept. of Income Maintenance*, 208 Conn. 187, 194–95, 544 A.2d 604 (1988). 'That precept applies to the doctrine of res judicata with equal force.' *Singhaviroj* v. *Board of Education*, 124 Conn. App. 228, 232, 4 A.3d 851 (2010)." *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, 300 Conn. 325, 328 n.3, 15 A.3d 601 (2011).

[8] We are not persuaded by the defendants' argument that, even though the first action should have been challenged by way of motions to dismiss, rather than motions to strike, equity nevertheless demands that we treat the motions as motions to strike because the plaintiff "induced" the trial court to reject the motions to dismiss. The defendant provides no citations to the record to indicate that the trial court relied on representations by the plaintiff in reaching its determination on the motions to dismiss.

[9] Although the denial of a statute of limitations defense is not itself an appealable final judgment, we nevertheless may review such a claim when it is *inextricably intertwined* with the trial court's denial of a res judicata defense. See *Clukey* v. *Sweeney*, 112 Conn. App. 534, 542, 963 A.2d 711 (2009) ("in some circumstances, the factual and legal issues raised by a legal argument, the appealability of which is doubtful, may be so 'inextricably intertwined' with another argument, the appealability of which is established that we should assume jurisdiction over both"); cf. *Collins* v. *Anthem Health Plans, Inc.*, 266 Conn. 12, 29–30, 836 A.2d 1124 (2003) (permitting interlocutory appeal for certain claims when " 'inextricably intertwined' " with other claims that were subject to interlocutory appeal pursuant to statute).

[10] See footnotes 2 and 3 of this opinion.

[11] General Statutes § 1-2z provides: "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered."

[12] The disciplinary dismissal arose out of a failure to attend a scheduled pretrial conference. *Ruddock* v. *Burrowes*, supra, 243 Conn. 571.