NEW ENGLAND ROAD, INC. *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF CLINTON
(SC 18840)

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

Argued January 10—officially released March 26, 2013

Raymond J. Rigat, for the appellant (plaintiff).

David M. Royston, with whom was *Sylvia K. Rutkowska*, for the appellee (defendant).

Opinion

EVELEIGH, J. The plaintiff, New England Road, Inc., appeals from the judgment of the trial court dismissing its administrative appeal from the decision of the defendant, the planning and zoning commission of the town of Clinton, for lack of jurisdiction,[1] because the service of process in the appeal did not conform to the requirements of General Statutes § 8-8 (f) (2).[2] On appeal, the plaintiff claims that, although the service of process was defective because the complaint was served without a citation or summons, it should have been allowed to add the citation and serve the corrected process pursuant to General Statutes (Rev. to 2009) § 52-72.[3] In response, the defendant claims that the trial court properly declined to allow the plaintiff to amend the service of process pursuant to § 52-72 because failure to serve a citation or summons is a substantive defect that is not amendable under that statute. We agree with the defendant and, accordingly, affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. In September, 2010, the plaintiff appealed to the Superior Court from the decision of the defendant granting, subject to certain conditions, its applications for a special permit and for coastal site plan review allowing it to engage in the depositing and processing of earth materials on a certain parcel of land located in Clinton. The plaintiff caused the defendant to be served with a complaint. The complaint, however, was not accompanied by a citation or a summons of any kind.

The defendant thereafter filed a motion to dismiss the administrative appeal, for lack of both subject matter jurisdiction and personal jurisdiction, on the basis of the plaintiff's failure to serve a citation or summons with the complaint. The plaintiff argued in response that, if the court were to dismiss the action, the court should allow the plaintiff to cure the jurisdictional defect pursuant to § 52-72 by serving process correctly within fifteen days of the court's dismissal.

The trial court granted the defendant's motion to dismiss for lack of personal jurisdiction due to the plaintiff's failure to "comply in any fashion" with the basic requirements of § 8-8 (f) (2). The trial court further held that the jurisdictional defect could not be cured pursuant to § 52-72 because the absence of a citation or summons is not the type of jurisdictional defect that § 52-72 was designed to remedy. This appeal followed.

As a threshold matter, we address our standard of review. This court has recently reaffirmed the long-standing principle that "failure to comply with the statutory requirements for service of legal process on a zoning board in a zoning appeal will deprive the court of subject matter jurisdiction." (Internal quotation marks

omitted.) *Abel* v. *Planning & Zoning Commission*, 297 Conn. 414, 443, 998 A.2d 1149 (2010); see *Vitale* v. *Zoning Board of Appeals*, 279 Conn. 672, 678, 904 A.2d 182 (2006); *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 770 n.17, 900 A.2d 1 (2006). "We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary."[4] (Internal quotation marks omitted.) *Vitale* v. *Zoning Board of Appeals*, supra, 678.

Furthermore, with respect to administrative appeals generally, "[t]here is no absolute right of appeal to the courts from a decision of an administrative agency. . . . Appeals to the courts from administrative [agencies] exist only under statutory authority . . . . Appellate jurisdiction is derived from the . . . statutory provisions by which it is created . . . and can be acquired and exercised only in the manner prescribed. . . . In the absence of statutory authority, therefore, there is no right of appeal from [an agency's] decision . . . ." (Internal quotation marks omitted.) *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 756.

Section 8-8 provides statutory authority for the administrative appeal at issue. Section 8-8 (b) provides in relevant part: "[A]ny person aggrieved by any decision of a board, including a decision to approve or deny a site plan pursuant to subsection (g) of section 8-3 or a special permit or special exception pursuant to section 8-3c, may take an appeal to the superior court for the judicial district in which the municipality is located, notwithstanding any right to appeal to a municipal zoning board of appeals under section 8-6. The appeal shall be commenced by service of process in accordance with subsections (f)[5] and (g)[6] of this section within fifteen days from the date that notice of the decision was published as required by the general statutes. The appeal shall be returned to court in the same manner and within the same period of time as prescribed for civil actions brought to that court."

Traditionally, the failure to comply strictly with the provisions of § 8-8 (b) rendered a zoning appeal subject to dismissal. See *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 767. We have previously concluded, however, that administrative appeals are to be treated as civil cases. See id., 776 n.21. Thus, defects in the service of process in administrative appeals may be cured, generally, to the same extent as defects in the service of process in civil cases. See id. Section 52-72 therefore applies equally to both administrative appeals and civil cases.

Whether the defect in the present case can be cured under § 52-72 is a question of statutory interpretation that also requires our plenary review. *Cogan* v. *Chase Manhattan Auto Financial Corp.*, 276 Conn. 1, 7, 882 A.2d 597 (2005). "When construing a statute, [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. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .'' (Citation omitted; internal quotation marks omitted.) Id.

We begin our analysis with the relevant statutory provision. General Statutes (Rev. to 2009) § 52-72 (a) provides in relevant part: ''Any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective . . . .'' The plaintiff claims that it should be allowed, under § 52-72, to re-serve process to correct its failure to attach a proper citation or summons to the complaint. The plaintiff claims that the trial court was required to allow it to re-serve the defendant to correct the defect in the original service of process because the plain language of General Statutes (Rev. to 2009) § 52-72 mandates that a court allow a proper amendment to civil process that is ''for any other reason defective . . . .'' In response, the defendant contends that the remedial aspects of § 52-72 have been limited to amending defects in the return date or the return of process to court. Thus, the defendant claims that a failure to include a citation or summons is a defect of service that cannot be amended pursuant to § 52-72. We agree with the defendant, and conclude that in interpreting the language of § 52-72, we do not write on a clean slate, but are bound by our previous judicial interpretations of this language and the purpose of the statute. See *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 501, 923 A.2d 657 (2007) (holding that § 1-2z does not require this court to overrule prior judicial interpretations of statutes, even if not based on plain meaning rule); *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 577, 986 A.2d 1023 (2010) (same).

In prior cases, we have applied § 52-72 to cure only technical defects in the return date or the late return of process to court. For example, in *Concept Associates, Ltd.* v. *Board of Tax Review*, 229 Conn. 618, 621, 642 A.2d 1186 (1994), the defendant filed a motion to dismiss because the plaintiff had listed the return date as a

Thursday, rather than a Tuesday as required by General Statutes § 52-48 (a).[7] After the return date had passed, the plaintiff sought to amend the return date pursuant to § 52-72 to a Tuesday, in order to comply with § 52-48 (a). Id. The issue presented, therefore, was whether § 52-72 "permits the amendment of an improper return date in civil process after the return date has passed." Id., 619–20.

Our resolution of the issue presented in *Concept Associates, Ltd.*, required a thorough process of statutory interpretation. In so doing, we determined that "[§] 52-72 was originally adopted in 1917. Public Acts 1917, c. 164. Although there is no legislative history available, it appears that the statute was enacted in response to decisions of this court holding that an improper return date was a jurisdictional defect that could not be corrected. See, e.g., *Hoxie* v. *Payne*, 41 Conn. 539 (1874). Indeed, this court has stated that the purpose of § 52-72 'is to provide for amendment of otherwise incurable defects that go to the court's jurisdiction.' *Hartford National Bank & Trust Co.* v. *Tucker*, 178 Conn. 472, 478–79, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980). The apparent intent of the legislature in enacting § 52-72 was to prevent the loss of jurisdiction merely because of a defective return date." *Concept Associates, Ltd.* v. *Board of Tax Review*, supra, 229 Conn. 623.

This court further determined that § 52-72 is a remedial statute that must "be liberally construed in favor of those whom the legislature intended to benefit. . . . [S]tatutes such as § 52-72 were intended to take the sharp edges off the common law: Over-technical formal requirements have ever been a problem of the common law, leading [the legislature] at periodic intervals to enact statutes . . . which, in substance, told the courts to be reasonable in their search for technical perfection." (Citations omitted; internal quotation marks omitted.) Id., 623–24, quoting 1 E. Stephenson, Connecticut Civil Procedure (2d Ed. 1970) § 35, p. 137. Accordingly, this court concluded that § 52-72 permitted the amendment of the return date. *Concept Associates, Ltd.* v. *Board of Tax Review*, supra, 229 Conn. 621–22.

Additionally, in *Coppola* v. *Coppola*, 243 Conn. 657, 661, 707 A.2d 281 (1998), the plaintiff claimed that § 52-72 permitted the amendment of the return date to correct a failure to return civil process to the court at least six days prior to the return date as required by General Statutes § 52-46a.[8] In response, the defendant claimed that the return date was proper and that the plaintiff was simply late in returning process, a flaw which § 52-72 was not intended to amend. Id., 664. The defendant therefore claimed that the phrase " 'for any other reason defective' " did not encompass the late return of process. Id., 662. This court agreed with the plaintiff and concluded that a construction of the term "defective"

to permit an amendment of the return date to correct the failure to return the process in a timely fashion "effectuates the statute's remedial purpose and statutory policy of amend[ing] . . . otherwise incurable defects that go to the court's jurisdiction." (Internal quotation marks omitted.) Id., 665, citing *Concept Associates, Ltd.* v. *Board of Tax Review*, supra, 229 Conn. 623. In allowing the amendment to the return date, this court discussed the purpose of remedial statutes such as § 52-72, and stated: " 'Centuries ago the common law courts of England . . . insisted upon rigid adherence to the prescribed forms of action, resulting in the defeat of many suits for *technical faults* rather than upon their merits. Some of that ancient jurisprudence migrated to this country . . . and has affected the development of procedural law in this state. . . . [H]owever, our legislature enacted numerous procedural reforms applicable to ordinary civil actions that are designed to ameliorate the consequences of many deviations from the prescribed norm, which result largely from the fallibility of the legal profession, in order generally to provide errant parties with an opportunity for cases to be resolved on their merits rather than dismissed for some *technical flaw*.' *Andrew Ansaldi Co.* v. *Planning & Zoning Commission*, 207 Conn. 67, 75–76, 540 A.2d 59 (1988) (*Shea, J.*, concurring). The legislature, in enacting § 52-72, expressed an intent to reject the draconian result of dismissal of the plaintiff's cause of action because of a defect involving the return date." (Emphasis added.) *Coppola* v. *Coppola*, supra, 664–65. This court further determined that such an interpretation was consistent with the statute's purpose of ending the "inequities inherent in eighteenth century common law that denied a plaintiff's cause of action if the pleadings were *technically imperfect*." (Emphasis added.) Id., 666. Accordingly, our prior analysis of § 52-72 illustrates that the intent of the legislature was to permit cure of technical, rather than substantive, defects in civil process. See also *Olympia Mortgage Corp.* v. *Klein*, 61 Conn. App. 305, 309–10, 763 A.2d 1055 (2001) (§ 52-72 cured defect in process made returnable more than two months from date of service of process); *Haigh* v. *Haigh*, 50 Conn. App. 456, 464–65, 717 A.2d 837 (1998) (§ 52-72 applied to amend return date from Monday to Tuesday).

Having concluded that § 52-72 has applied historically only to allow cure of technical defects in the service of civil process, we must now determine whether the failure to attach a citation and summons to the complaint is the type of defect that is amendable pursuant to § 52-72. This court has previously concluded, albeit under General Statutes § 52-123, that the failure to attach a summons to a complaint is a substantive defect that deprives the court of jurisdiction and, thus, is not amendable. In *Hillman* v. *Greenwich*, 217 Conn. 520, 524, 587 A.2d 99 (1991), the plaintiff served the original

complaint on the defendant without a writ of summons. The defendant filed a motion to dismiss for lack of personal jurisdiction because service of process did not include a writ of summons. Id. The plaintiff thereafter served an amended complaint on the defendant, which included a writ of summons. Id. The trial court denied the defendant's motion to dismiss and ultimately rendered judgment, in part, for the plaintiff on the merits of the complaint. Id., 523. The defendant subsequently appealed from that judgment claiming, inter alia, that the trial court improperly denied its motion to dismiss. Id., 524.

On appeal in *Hillman*, this court concluded that the failure to include a writ of summons was a jurisdictional defect and, therefore, was not amendable pursuant to § 52-123.[9] Id., 526–27. Thus, this court concluded that the trial court improperly determined that the amended complaint cured the absence of a writ of summons from the original complaint. Id., 526. In reaching its conclusion, this court stated that "a writ of summons is a statutory prerequisite to the commencement of a civil action. General Statutes § 52-45a. A writ of summons is analogous to a citation in an administrative appeal; *Sheehan* v. *Zoning Commission*, 173 Conn. 408, 412, 378 A.2d 519 (1977); *State* v. *One 1981 BMW Automobile*, [5 Conn. App. 540, 544, 500 A.2d 961 (1985)]; it is an essential element to the validity of the jurisdiction of the court. *Village Creek Homeowners Assn.* v. *Public Utilities Commission*, [148 Conn. 336, 339, 170 A.2d 732 (1961)]; *State* v. *One 1981 BMW Automobile*, supra [540]." *Hillman* v. *Greenwich*, supra, 217 Conn. 526. Accordingly, "[b]ecause the plaintiff . . . failed to comply in any fashion [with the requirement to include a writ of summons]," this court concluded that the trial court should have granted the defendant's motion to dismiss.[10] Id.

Furthermore, in *Village Creek Homeowners Assn.* v. *Public Utilities Commission*, supra, 148 Conn. 340, this court concluded that the absence of a citation deprived the court of jurisdiction over the administrative appeal. The court stated that "[t]he citation, signed by competent authority, is the warrant which bestows upon the officer to whom it is given for service the power and authority to execute its command. . . . Without it, the officer would be little more than a deliveryman. . . . The citation is a matter separate and distinct from the sheriff's return and is the important legal fact upon which the judgment rests. . . . A proper citation is essential to the validity of the appeal and the jurisdiction of the court. . . . A citation is not synonymous with notice." (Citations omitted.) Id., 339. The court therefore concluded that the failure to include a citation in the service of process "constitutes more than a circumstantial defect" and, thus, could not be amended. Id., 340.

We therefore conclude, for the same reasons as this court announced in *Hillman* and *Village Creek Homeowners Assn.*, that the failure to serve a summons or citation is a substantive defect that is not amendable pursuant to § 52-72.[11] As this court stated in *Hillman*, "a writ of summons is a statutory prerequisite to the commencement of a civil action. . . . [I]t is an essential element to the validity of the jurisdiction of the court." (Citations omitted.) *Hillman* v. *Greenwich*, supra, 217 Conn. 526. Furthermore, "[t]he citation . . . is the warrant which bestows upon the officer to whom it is given for service the power and authority to execute its command. . . . Without it, the officer would be little more than a delivery-man." *Village Creek Homeowners Assn.* v. *Public Utilities Commission*, supra, 148 Conn. 339. Additionally, without a summons or citation, the party being served may not know when or where to appear in court. Thus, the failure to include a summons or citation in the service of process may give rise to due process concerns. See, e.g., *Tayco Corp.* v. *Planning & Zoning Commission*, 294 Conn. 673, 685, 986 A.2d 290 (2010) ("Proper service of process . . . promotes the public policy of ensuring actual notice to defendants. . . . Moreover, '[p]roper service of process gives a court power to render a judgment which will satisfy due process . . . .' " [Citation omitted.]). Accordingly, for the foregoing reasons, we conclude that the failure to include a summons or citation in the service of process is a jurisdictional defect that is not amendable pursuant to § 52-72.

We also disagree with the plaintiff's claim that it should have been allowed to re-serve the defendant under § 52-72, because such a conclusion would be in harmony with other curative statutes that allow for the amendment of the text of the writ, such as § 52-123, and with the letter and spirit of § 8-8, the enabling act which authorizes zoning appeals to be brought to the Superior Court. Contrary to the plaintiff's assertion, interpreting § 52-72 to allow the amendment of the failure to include a summons or citation in the service of process would stand in stark contrast to our prior cases interpreting other remedial statutes such as § 52-123 and § 8-8 (p). As we have stated, § 52-123 only allows for the amendment of circumstantial defects in pleadings and, thus, does not apply to jurisdictional defects, such as the failure to attach and serve a summons. See *Hillman* v. *Greenwich*, supra, 217 Conn. 526–27; see also *Colon* v. *State*, 129 Conn. App. 59, 64, 19 A.3d 699 (2011) ("[d]efective pleadings are broken down into two categories: circumstantial defects, which are subject to correction under . . . § 52-123, and substantive defects, which are not" [internal quotation marks omitted]). Furthermore, in *Fedus* v. *Planning & Zoning Commission*, supra, 278 Conn. 770, we concluded that § 8-8 (p) and (q) were enacted so that administrative appeals, "like civil actions, [would] be treated with suffi-

cient liberality such that *technical or procedural* deficiencies in the appeal do not deprive the court of subject matter jurisdiction . . . .'' (Emphasis added.) Accordingly, we noted in *Fedus* that, notwithstanding the enactment of § 8-8 (p) and (q), an administrative appeal would ''be subject to dismissal for a total failure to effect service on the board within the statutorily prescribed time period of fifteen days. . . . In all other respects, however, zoning appeals are to be treated as civil actions, and, therefore, *technical deficiencies* in the appeal do not deprive the court of subject matter jurisdiction.'' (Citations omitted; emphasis added.) Id., 776 n.21.

We therefore conclude that the plaintiff's failure to attach a summons or citation to the complaint was a substantive defect in the service of process and, thus, was not the type of technical defect that is amendable pursuant to § 52-72. See *Hillman* v. *Greenwich*, supra, 217 Conn. 526 (''a writ of summons is a statutory prerequisite to the commencement of a civil action'' and ''the defect was jurisdictional, not circumstantial in nature''); *Village Creek Homeowners Assn.* v. *Public Utilities Commission*, supra, 148 Conn. 339 (''[a] proper citation is essential to the validity of the appeal and the jurisdiction of the court''). Accordingly, we conclude that the trial court properly dismissed the administrative appeal for lack of jurisdiction.

The judgment is affirmed.

In this opinion the other justices concurred.

[1] We note that the trial court dismissed the plaintiff's appeal for lack of personal jurisdiction rather than subject matter jurisdiction. As we explain fully herein, however, a defect in service of process in an administrative appeal deprives the court of subject matter jurisdiction.

[2] The plaintiffs filed a petition for certification for review in accordance with § 8-8 (o), which was granted by the Appellate Court. We subsequently transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[3] General Statutes (Rev. to 2009) § 52-72 (a) provides: ''Any court shall allow a proper amendment to civil process which has been made returnable to the wrong return day or is for any other reason defective, upon payment of costs taxable upon sustaining a plea in abatement.'' Hereinafter, unless otherwise noted, all references to § 52-72 in this opinion are to the 2009 revision.

[4] See footnote 1 of this opinion.

[5] General Statutes § 8-8 (f) (2) provides in relevant part: ''For any appeal taken on or after October 1, 2004, process shall be served in accordance with subdivision (5) of subsection (b) of section 52-57. . . .''

General Statutes § 52-57 (b) provides in relevant part: ''Process in civil actions against the following-described classes of defendants shall be served as follows . . . (5) against a board, commission, department or agency of a town, city or borough, notwithstanding any provision of law, upon the clerk of the town, city or borough, provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board, commission, department or agency . . . .''

[6] General Statutes § 8-8 (g) provides: ''Service of process shall also be made on each person who petitioned the board in the proceeding, provided such person's legal rights, duties or privileges were determined therein. However, failure to make service within fifteen days on parties other than the board shall not deprive the court of jurisdiction over the appeal. If service is not made within fifteen days on a party in the proceeding before the board, the court, on motion of the party or the appellant, shall make such orders of notice of the appeal as are reasonably calculated to notify

the party not yet served. If the failure to make service causes prejudice to the board or any party, the court, after hearing, may dismiss the appeal or may make such other orders as are necessary to protect the party prejudiced."

[7] General Statutes § 52-48 (a) provides: "Process in civil actions, including transfers and applications for relief or removal, but not including summary process actions, brought to the Superior Court may be made returnable on any Tuesday in any month. The return day in any summary process action may be any week day, Monday through Saturday, except a holiday."

[8] General Statutes § 52-46a provides in relevant part: "Process in civil actions . . . shall be returned . . . if returnable to the Superior Court . . . to the clerk of such court at least six days before the return day."

[9] General Statutes § 52-123, entitled "Circumstantial defects not to abate proceedings," provides: "No writ, pleading, judgment or any kind of proceeding in court or course of justice shall be abated, suspended, set aside or reversed for any kind of circumstantial errors, mistakes or defects, if the person and the cause may be rightly understood and intended by the court."

[10] In *Hillman*, a civil case, this court concluded that the lack of a summons deprived the court of personal jurisdiction over the defendant. *Hillman* v. *Greenwich*, supra, 217 Conn. 526. As previously stated herein, because the ability to appeal from an administrative decision is controlled by statute, defects in the service of process in an administrative appeal deprive the trial court of subject matter jurisdiction. See *Vitale* v. *Zoning Board of Appeals*, supra, 279 Conn. 678. For purposes of our analysis in the present case, however, this distinction is irrelevant.

[11] We find this court's analysis in *Hillman* particularly instructive. Although the remedial statute at issue in *Hillman* was § 52-123, and not § 52-72, the remedial purpose of § 52-123 is analogous to that of § 52-72, in that both statutes are intended to cure technical or circumstantial defects, rather than those that are jurisdictional or substantive. We have stated that " '[§] 52-123 is a remedial statute [that] . . . must be liberally construed in favor of those whom the legislature intended to benefit.' . . . The statute 'replaces the common law rule that deprived courts of subject matter jurisdiction whenever there was a misnomer or misdescription in an original writ, summons or complaint.' . . . It prevents 'the recurrence of the inequities inherent in eighteenth century common law that denied a plaintiff's cause of action if the pleadings were technically imperfect.' " (Citations omitted.) *Bayer* v. *Showmotion, Inc.*, 292 Conn. 381, 389–90, 973 A.2d 1229 (2009), quoting *Andover Ltd. Partnership I* v. *Board of Tax Review*, 232 Conn. 392, 396, 655 A.2d 759 (1995). "[T]he effect given to such a misdescription usually depends upon the question whether it is interpreted as merely a misnomer or defect in description, or whether it is deemed a substitution or entire change of party; in the former case an amendment will be allowed, in the latter it will not be allowed." (Internal quotation marks omitted.) *Andover Ltd. Partnership I* v. *Board of Tax Review*, supra, 397.