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2023 Edition

Motion to Open Judgment in Family Matters

A Guide to Resources in the Law Library

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This guide links to advance release opinions on the Connecticut Judicial Branch website **and to case law hosted on Google Scholar and Harvard's Case Law Access Project.** The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

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Introduction

A Guide to Resources in the Law Library

- Setting Aside or opening judgments: **“(a) Unless 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.”** Conn. Practice Book [§ 17-4](#) (2023). (Emphasis added.)
- **“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 the notice of judgment or decree was sent.”** Conn. Gen. Stat. [§ 52-212a](#) (2023).
- **“It is a well-established general rule that ... a judgment rendered by the court ... can subsequently be opened [after the four month limitation set forth in General Statutes § 52-212a ... if it is shown that ... the judgment, was obtained by fraud ... or because of mutual mistake.”** (Internal quotation marks omitted.) [Terry v. Terry](#), 102 Conn. App. 215, 222, 925 A.2d 375 (2007).
- **“We recently altered the standard for a party to obtain a new trial on the basis of fraud to require that party to show only a ‘reasonable probability’ that the result of a new trial will be different, rather than a ‘substantial likelihood,’ as our previous case law had held. See [Duart v. Dept. of Correction](#), 303 Conn. 479, 491, 34 A.3d 343 (2012). A reasonable probability means ‘a probability sufficient to undermine confidence in the outcome,’ or that the nondisclosed information ‘could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [judgment].’** (Internal quotation marks omitted.) **Id.**, 492.” [Reville v. Reville](#), 312 Conn 428, 442, n. 11, 93 A3d 1076 (2014).
- **“In family matters, the court exercises its equitable powers. The balancing of equities is a matter which falls within the discretion of the trial court....For that reason, equitable remedies are not bound by formula but are molded to the needs of justice.”** (Citations omitted.) [Oneglia v. Oneglia](#), 14 Conn. App. 267, 271-272, 540 A.2d 713 (1988).

Section 1: Motion to Open or Set Aside Judgment

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to setting aside or opening judgments in family matters

DEFINITIONS:

- **Setting Aside or opening judgments:** "(a) Unless 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." Conn. Practice Book [§ 17-4](#) (2023). (Emphasis added.)
- **Requirements:** "Every motion, request, application or objection directed to pleading or procedure, unless relating to procedure in the course of a trial, shall be in writing." Conn. Practice Book [§ 11-1](#) (2023).
- **Within four month limitation:** "...neither [§ 52-212a](#) nor Practice Book [§ 17-4](#) specify the standard for opening a judgment within four months of its rendering. Thus, the basis on which our trial courts can permissibly open a judgment is limited by legal interpretation of the relevant statutes. Our courts, recognizing the important consideration of finality of judgments, have limited the circumstances in which a court may open a judgment within four months of its rendering to where there is a good and compelling reason for its modification or vacation." [Callahan v. Callahan](#), 157 Conn. App. 78, 88, 116 A.3d 317 (2015), certs. denied, 317 Conn. 913, 914.
- **After four month limitation:** "A judgment rendered may be opened after the four month limitation if it is shown that the judgment was obtained by fraud, in the absence of actual consent, or because of mutual mistake." [Richards v. Richards](#), 78 Conn. App. 734, 739, 829 A.2d 60 (2003). (Emphasis added.)
- "Section 52-212a does not abrogate the court's common-law authority to open a judgment beyond the four month limitation upon a showing that the judgment was obtained by fraud, duress or mutual mistake. See *Nelson v. Charlesworth*, 82 Conn. App. 710, 713, 846 A.2d 923 (2004). The common-law reasons for opening a judgment seek to preserve fairness and equity. (Internal quotation marks omitted.) [Bruno v. Bruno](#), 146 Conn. App. 214, 230, 76 A.3d 725 (2013).

- What it is not: **"The claims in the motion to open were merely a repeat of the claims before the trial court. If the defendant disagreed with that court, he should have appealed its decision."** [Clapper v. Clapper](#), 3 Conn. App. 637, 638, 490 A.2d 1030 (1985).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2023)
[§ 52-212a](#). Civil judgment or decree opened or set aside within four months only.

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2023)
[§ 17-4](#). Setting Aside or Opening Judgment.
“(a) Unless 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.

(b) Upon the filing of a motion to open or set aside a civil judgment, except a judgment in a juvenile matter, the moving party shall pay to the clerk the filing fee prescribed by statute such fee has been waived by the judicial authority.” **(Emphasis added)**

[§ 25-38](#). Judgment Files.

“The provisions of Sections 17-4, 17-9 and 17-43 shall apply to family matters as defined in Section 25-1.”

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Connecticut Judicial Branch, Official Court Forms: *Motion to Open Judgment*, [JD-FM-206](#) (Family Matters).
- *Library of Connecticut Family Law Forms*, 2nd ed., edited by MacNamara, Welsh, and George, Connecticut Law Tribune, 2014.
Form 16-002. Motion to Open Judgment, Post Judgment
- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn and Ellen B. Lubell, Connecticut Law Tribune, 1991.
“Motion to Open Judgment,” Form XVI-B-1c, p. 243.
Pension not previously disclosed.

CASES:

- [McGovern v. McGovern](#), 217 Conn. App. 636, 646-647, 289 A.3d 1255 (2023). **“Although the denial of a motion to open is a judgment for which an oral or written decision is required: see Practice Book § 64-1 (a) (6) . . . the plaintiff**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

did not file a notice pursuant to Practice Book § 64-1 (b) with the appellate clerk's office, nor did he file a motion asking the court to articulate the factual and legal basis for its ruling. Given our duty to make every reasonable presumption in favor of the correctness of the court's decision . . . our review of the record before us leads us to conclude that the court acted reasonably and did not abuse its discretion in rejecting the plaintiff's reasons offered in support of his motion to open the judgment, namely, **counsel's sudden illness and a claimed 'immeasurable harm' arising out of the court's dissolution of the parties' sixteen year marriage."**

- [Gershon v. Beck](#), 346 Conn. 181, 194–95, 288 A.3d 602 (2023). **"To determine whether New York or Connecticut law governs a motion to open and vacate a New York judgment of divorce registered pursuant to § 46b-71, we apply Connecticut's conflict of law rules. See id. Subsection (b) of § 46b-71 codifies the conflict of law rules governing a foreign matrimonial judgment registered in this state and provides in relevant part that such a judgment 'shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of a court of this state and is subject to the same procedures for modifying, altering, amending, vacating, setting aside, staying or suspending said judgment as a judgment of a court of this state; provided, in modifying, altering, amending, setting aside, vacating, staying or suspending any such foreign matrimonial judgment in this state the substantive law of the foreign jurisdiction shall be controlling.' The plaintiff's motion to open and set aside the judgment is governed by New York substantive law and Connecticut procedural law."**
- [Foisie v. Foisie](#), 335 Conn. 525, 526-527, 239 A.3d 1198 (2020). "In this appeal, we are asked to decide for the first time whether a party to a dissolution of marriage action may substitute the executor or administrator of the estate of a deceased party in the place of the decedent under General Statutes § 52-599, when the pending civil proceeding seeks to open a judgment of dissolution on the **basis of financial fraud."**
- [Casablanca v. Casablanca](#), 190 Conn. App. 606, 609, 212 A.3d 1278 (2019). "...[T]he defendant filed the operative motion to open the dissolution judgment on grounds of mutual mistake and unilateral mistake, and on the basis of equitable principles. Specifically, she contended that the relevant part of the retirement asset provision, the phrase **"minus the amount of the wife's Social Security Benefit,"** was entered upon mutual mistake of the parties."
- [Reinke v. Sing](#), 328 Conn. 376, 378-379, 179 A.3d 769 (2018). **"In this certified appeal, the plaintiff, Gail Reinke,** appeals from the judgment of the Appellate Court, which reversed the trial court's decision to modify the property

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distribution orders in a prior judgment dissolving her marriage to the defendant, Walter Sing. The plaintiff claims that the Appellate Court incorrectly concluded that, under § 46b-86 (a), in the absence of a finding of fraud, the trial court lacked subject matter jurisdiction to modify the prior judgment. We agree and, accordingly, reverse the **judgment of the Appellate Court**”

- [Cimino v. Cimino](#), 174 Conn. App. 1, 6, 164 A.3d 787 (2017). “In considering a motion to open the judgment on the basis of fraud, then, the trial court must first determine whether there is probable cause to open the judgment for the limited purpose of proceeding with discovery related to the fraud claim.... This preliminary hearing is not intended to be a full scale trial on the merits of the [moving party's] claim. The [moving party] does not have to establish that he will prevail, only that there is probable cause to sustain the validity of the claim.... If the moving party demonstrates to the court that there is probable cause to believe that the judgment was obtained by fraud, the court **may permit discovery.**’ (Internal quotation marks omitted.) *Gaary v. Gillis*, 162 Conn. App. 251, 255-57, 131 A.3d 765 (2016); see also *Spilke v. Spilke*, 116 Conn. App. 590, 594-95, 976 A.2d 69, cert. denied, 294 Conn. 918, 984 A.2d 68 (2009).”
- [Sousa v. Sousa](#), 173 Conn. App. 755, 758, 164 A.3d 702 (2017). “A party seeking to open a judgment beyond the passage of the four month limitation period from its rendering provided by General Statutes § 52-212a under an exception for judgments procured by fraud, bears the burden of proving fraud in all of its elements by clear and convincing evidence.”
- [Zilkha v. Zilkha](#), 167 Conn. App. 480, 494-495, 144 A.3d 447 (2016). “For a party to demonstrate duress, it must prove [1] a wrongful act or threat [2] that left the victim no reasonable alternative, and [3] to which the victim in fact acceded, and that [4] the resulting transaction was unfair to the victim.... The wrongful conduct at issue could take virtually any form, but must induce a fearful state of mind in the other party, which makes it impossible for [the party] **to exercise his own free will...**” *Noble v. White*, 66 Conn. App. 54, 59, 783 A.2d 1145 (2001). A motion to open grounded on duress necessarily requires a court to make factual determinations with respect to the elements of duress and, therefore, any allegation of duress must be accompanied by supporting evidence, either documentary or testimonial, on which such factual determinations can rest.... Those determinations as to the elements of duress are findings of fact that we will not disturb on appeal unless they are **clearly erroneous.**” (Citation omitted; internal quotation marks omitted.)

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- [Callahan v. Callahan](#), 157 Conn. App. 78, 91-92, 116 A.3d 317 (2015), **certs. denied, 317 Conn. 913, 914**. “We agree with the plaintiff that, in the present case, because the opening was premised on considering post-judgment conduct, the court did not have authority to open the judgment. In addition to considering her prejudgment conduct, the court improperly considered the postjudgment withdrawals made by the plaintiff. Neither party has identified precedent wherein the trial court opened a marital dissolution judgment to revalue an asset subject to equitable distribution on the basis of postjudgment conduct by **one of the parties.**”
- [Reville v. Reville](#), 312 Conn 428, 442, n. 11, 93 A.3d 1076 (2014). “**We recently altered the standard for a party to obtain a new trial on the basis of fraud to require that party to show only a ‘reasonable probability’ that the result of a new trial will be different, rather than a ‘substantial likelihood,’ as our previous case law had held. See *Duart v. Dept. of Correction*, 303 Conn. 479, 491, 34 A.3d 343 (2012). A reasonable probability means ‘a probability sufficient to undermine confidence in the outcome,’ or that the nondisclosed information ‘could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [judgment].’ (Internal quotation marks omitted.) *Id.*, 492.**”
- [Dogan v. Dogan](#), 301 Conn. 361, 369, 21 A.3d 791 (2011). “**It necessarily follows that if the judgment conforms to the stipulation it cannot be altered or set aside without the consent of all the parties, unless it is shown that the stipulation was obtained by fraud, accident or mistake. . . . For a judgment by consent is just as conclusive as one rendered upon controverted facts.**” (Citations omitted; internal quotation marks omitted.) *Gillis v. Gillis*, 214 Conn. 336, 339-40, 572 A.2d 323 (1990); see also *Afkari-Ahmadi v. Fotovat-Ahmadi*, 294 Conn. 384, 389-90, 985 A.2d 319 (2009).”
- [Terry v. Terry](#), 102 Conn. App. 215, 222-223, 925 A.2d 375 (2007). “**In an appeal from a denial of a motion to open a judgment, our review is limited to the issue of whether the trial court has acted unreasonably and in clear abuse of its discretion.... In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action.... The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did.**” (Internal quotation marks omitted.)
- [Weinstein v. Weinstein](#), 275 Conn. 671, 685, 882 A.2d 53 (2005). “**There are three limitations on a court’s ability to grant relief from a dissolution judgment secured by fraud: (1) there must have been no laches or unreasonable delay by the injured party after the fraud was discovered; (2)**

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there must be clear proof of the fraud; and (3) there is a substantial likelihood that the result of the new trial will be **different.**' (Citations omitted; internal quotation marks omitted.) *Mattson v. Mattson*, 74 Conn. App. 242, 244-46, 811 A.2d 256 (2002). Because there is no claim of undue delay in the present case, we limit our consideration to whether there was sufficient proof of fraud and whether the **result in a new trial would differ.**" (See [Reville v. Reville](#) above, which changes **"substantial likelihood" to "reasonable probability."**)

- [Magowan v. Magowan](#), 73 Conn. App. 733, 741, n. 11, 812 A.2d 30 (2002). "The kind of mistake that would justify the opening of a stipulated judgment under § 52-212a must be mutual; a unilateral mistake will not be sufficient to open the judgment."
- [Clapper v. Clapper](#), 3 Conn. App. 637, 638, 490 A.2d 1030 (1985). "The purpose of a motion to open is to permit the granting of a new trial when a party had a meritorious defense but did not have an opportunity to present it. It is not a substitute for an appeal of a claimed error which the party knew or should have known at the time the appeal could have been taken."
- [Oneglia v. Oneglia](#), 14 Conn. App. 267, 271-272, 540 A.2d 713 (1988). "In family matters, the court exercises its equitable powers. The balancing of equities is a matter which falls within the discretion of the trial court....For that reason, equitable remedies are not bound by formula but are molded to the needs of justice." (Citations omitted.)

WEST KEY NUMBERS:

- West Key Numbers
Divorce #165(3). Opening or vacating, Grounds; Defenses in general

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 47 *Am Jur* 2d Judgments, Thomson West, 2017 (Also available on Westlaw).
IX. Relief From Judgments
A. Opening, Modifying, and Vacating Judgments
§ 633. Generally
- 27A *CJS* Divorce, Thomson West, 2016 (Also available on Westlaw).
IV. Proceedings, Trial, and Judgment
K. Judgment or Decree
2. Modification or Vacation of Decree

TEXTS & TREATISES:

- 8A Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
Chapter 52. Post-Judgment Motions
§ 52.4. Motion to reopen or vacate judgment

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- § 52.5. Time for setting aside or opening judgments
- § 52.6. Grounds for opening or setting aside judgment
- § 52.7. Motion to reopen or set aside judgment on the basis of fraud
- § 52.11. Lack of jurisdiction

- 1 Connecticut Practice Series, *Connecticut Superior Court Civil Rules*, by Wesley Horton et al., Thomson West, 2022-2023 (also available on Westlaw).
Authors' Comments following § 17-4.
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, editor, 2023 ed., LexisNexis.
§ 12.31. Filing Motions for Articulation, for Clarification and to Open
- *A Practical Guide to Divorce in Connecticut*, Hon. Barry F. Armata and Campbell D. Barrett, editors, Massachusetts Continuing Legal Education, 2013, with 2018 supplement.
§ 16.2.2 (b) Motion to Open

Table 1: Opening an Acknowledgement of Parentage

Opening an Acknowledgement of Parentage	
<p>Connecticut Practice Book § 25a-17 (2023).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted online.</p> </div>	<p>“(a) Any mother or acknowledged father who wishes to challenge an acknowledgement of paternity pursuant to General Statutes § 46b-172 (a)(2) shall file a motion to open judgment, which shall state the statutory grounds upon which the motion is based and shall append a certified copy of the document containing the acknowledgement of paternity to such motion.”</p>
<p>Connecticut General Statutes (2023).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p> </div>	<p>In 2023, Connecticut General statute section 46b-172 was transferred to 46b-570.</p> <p>Connecticut General Statute section 46b-569(b) states “(b) (1) Except as provided in subdivision (2) of this subsection, a judgment of parentage entered by the Superior Court or family support magistrate pursuant to this chapter may not be opened or set aside unless (A) a motion to open or set aside is filed not later than four months after the date on which the judgment was entered, and (B) upon a showing (i) of reasonable cause, or (ii) that a valid defense to the petition for a judgment of parentage existed, in whole or in part, at the time judgment was rendered, and the person seeking to open or set aside the judgment was prevented by mistake, accident or other reasonable cause from making a valid defense.</p> <p>(2) The Superior Court or a family support magistrate may consider a motion to open or set aside a judgment of parentage filed more than four months after such judgment was entered if such court or magistrate determines that the judgment was entered due to fraud, duress or material mistake of fact. The burden of proof shall be on the person seeking to open or set aside such judgment. If the court or family support magistrate determines such person has met the burden of proof under this subdivision, the judgment shall be set aside only if the court or family support magistrate determines that doing so is in the best interest of the child, based on the relevant factors set forth in section 46b-475.</p> <p>(3) Whenever the Superior Court or family support magistrate opens a judgment of parentage entered pursuant to this section in which a person was found to be the parent of a child who is or has been supported by the state and the court or family support magistrate finds that the person adjudicated the parent is not the parent of the child, the Department of Social Services shall refund to such person any money paid to the state by such person during the period such child was supported by the state.”</p>

<p>Doyle v. Chaplen, 184 Conn. App. 278, 302-03, 194 A.3d 1198 (2018).</p>	<p>In sum, we conclude that the court had the authority to open the judgment of paternity under § 46b-172 (a) (2) because the court found that Doyle signed the acknowledgment on the basis of a material mistake of fact. We also conclude that court's findings are not clearly erroneous, and that the court's legal conclusions regarding equitable estoppel and laches are consistent with those findings and are legally and logically correct. Therefore, we conclude that the court did not abuse its discretion in granting Doyle's motion to open.</p>
<p>Asia A.M. v. Geoffrey M., Jr., 182 Conn. App. 22, 28, 188 A.3d 762 (2018).</p>	<p>"The state claims that the 'court erred in concluding that Ragin v. Lee, [supra, 78 Conn. App. at 848, 829 A.2d 93], provides a fourth and independent ground to open an acknowledgment of paternity,' apart from the requirements set forth in § 46b-172 (a) (2). The state contends that, pursuant to § 46b-172 (a) (2), absent a finding of fraud, duress, or material mistake of fact, the magistrate lacked the authority to open the judgment outside of the rescission period, and that the court 'erred in finding that the [f]amily [s]upport [m]agistrate... did not have to comply with the statutory criteria of ... § 46b-172.' In response, the plaintiff and the attorney for the guardian ad litem claim that the court properly concluded that the best interests of the child is a nonstatutory ground for opening an acknowledgment of paternity. We agree with the state."</p>
<p>Barss v. Harrelle, Superior Court, Judicial District, New London at Norwich, No. KNO FA-0129832 S (Nov. 25, 2005) (40 Conn. L. Rptr. 350) (2005 WL 3372868).</p>	<p>"The Rhode Island acknowledgement was authorized under R.I. Gen. Laws 15-8-3, which provides in relevant part that 'a man is presumed to be the natural father of a child if . . . a sworn acknowledgement of paternity of a child born out of wedlock is signed by both parents . . . and is forwarded to the state registrar of vital records for the purpose of amending the birth certificate. The sworn acknowledgement becomes a conclusive presumption if there is no court challenge to this document within sixty (60) days of the signing of this acknowledgment. The only defenses which may be raised to the signing of this acknowledgement after the sixty (60) day period are fraud, duress, or mistake of fact.' In <i>Pettinato v. Pettinato</i>, 582 A2d. 909 (R.I., 1990), Rhode Island's supreme court held that the presumption created by this statute could not be overcome by a mother who introduced the results of genetic blood testing proving that her husband had not fathered the older of her two children. The parties had utilized the statutory acknowledgement process because this child had been born prior to their marriage. The court indicated its concern about a ' . . . situation wherein a mother can tell a man that he is the father of the child . . . and then illegitimize the child . . . by attacking the presumption of paternity that she helped bring about . . .,' and relied upon the principle of equitable estoppel in deeming the blood test results to be, in this context, irrelevant. Legal paternity had been previously and sufficiently established. Connecticut law requires the same conclusion."</p>

<p>Connecticut Family Support Magistrate Decision</p>	<p>Hightower v. Barrett, Family Support Magistrate, Judicial District of Hartford at Hartford, Docket No. FA 11-4055296 (Sept. 12, 2014).</p> <p><i>Motion to Open Judgments of Paternity by Acknowledgement; Whether Acknowledgments Were Binding Where Defendant Claimed he was not Given Notice of the Rights Set Forth in General Statutes § 46b-172 (a) (1) When he Signed the Forms; DNA/Genetic Testing; Practice Book § 25a-17; Fraud; Mistake; Laches, Estoppel, Best Interests of the Children.</i></p>
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Section 2: Postjudgment Discovery — Motion to Open Based on Fraud

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources related to opening a judgment in family matters for the limited purpose of discovery.

SEE ALSO:

- [Table 2](#): Opening Judgment for the Limited Purpose of Discovery

DEFINITIONS:

- Scope of Discovery: **“In any civil action, in any probate appeal, or in any administrative appeal where the judicial authority finds it reasonably probable that evidence outside the record will be required, a party may obtain in accordance with the provisions of this chapter discovery of information or disclosure, production and inspection of papers, books, documents and electronically stored information material to the subject matter involved in the pending action, which are not privileged, whether the discovery or disclosure relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed.”** (Emphasis added.) Conn. Practice Book [§ 13-2](#) (2023).
- Discovery in Family Matters: “. . . the provisions of Sections [13-1](#) through [13-10](#) inclusive, [13-13](#) through [13-16](#) inclusive, and [13-17](#) through [13-32](#) of the rules of practice inclusive, shall apply to family matters as defined in Section [25-1](#).” Conn. Practice Book [§ 25-31](#) (2023).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2023).
 - [Chapter 13](#). Discovery and Depositions
 - [§ 13-1](#). Definitions
 - [§ 13-2](#). Scope of discovery; In general
 - [§ 13-15](#). Continuing Duty to Disclose
 - [Chapter 25](#). Superior Court —Procedure in Family Matters
 - [§ 25-31](#). Discovery and Depositions

FORMS:

- *Library of Connecticut Family Law Forms*, 2nd ed., edited by MacNamara, Welsh, and George, Connecticut Law Tribune, 2014.

Chapter 4. Discovery

CASES:

- [Cimino v. Cimino](#), 174 Conn. App. 1, 6, 164 A.3d 787 (2017). **“In considering a motion to open the judgment on the basis of fraud, then, the trial court must first determine whether there is probable cause to open the judgment for the limited purpose of proceeding with discovery related to the fraud claim. . . . This preliminary hearing is not intended to be a full scale trial on the merits of the [moving party's] claim. The [moving party] does not have to establish that he**

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will prevail, only that there is probable cause to sustain the validity of the claim.... If the moving party demonstrates to the court that there is probable cause to believe that the judgment was obtained by fraud, the court may permit **discovery.**' (Internal quotation marks omitted.) *Gaary v. Gillis*, 162 Conn. App. 251, 255–57, 131 A.3d 765 (2016); see also *Spilke v. Spilke*, 116 Conn. App. 590, 594–95, 976 A.2d 69, cert. denied, 294 Conn. 918, 984 A.2d 68 (2009)."

- [Reville v. Reville](#), 312 Conn 428, 442, n. 11, 93 A3d 1076 (2014). "We recently altered the standard for a party to obtain a new trial on the basis of fraud to require that party to show only a 'reasonable probability' that the result of a new trial will be different, rather than a 'substantial likelihood,' as our previous case law had held. See *Duart v. Dept. of Correction*, 303 Conn. 479, 491, 34 A.3d 343 (2012). A reasonable probability means 'a probability sufficient to undermine confidence in the outcome,' or that the nondisclosed information 'could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [judgment].' (Internal quotation marks omitted.) *Id.*, 492."
- [Brody v. Brody](#), 153 Conn. App. 625, 636, 103 A.3d 981 (2014), cert. denied, 315 Conn. 910. "The plaintiff's allegations of fraud arise from conduct subsequent to the entry of judgment and involve the defendant's allegedly wilful noncompliance with the court's outstanding orders. For that reason, no motion to open was needed to confer authority on the trial court to allow discovery, as the court's continuing jurisdiction over the matter necessarily conveyed upon it the authority to do so. See *Rozbicki v. Gisselbrecht*, supra, 152 Conn. App. at 847, 100 A.3d 909. We therefore disagree with Brody's proposition that the strictures of *Oneglia* should be extended to postjudgment motions for contempt alleging fraudulent conduct".
- [Spilke v. Spilke](#), 116 Conn. App. 590, 600, 976 A. 2d 69 (2009). "We conclude that, because the plaintiff was unable to meet the minimal evidentiary threshold of establishing her allegations of fraud beyond a mere suspicion, the court's ruling was proper."
- [Nolan v. Nolan](#), 76 Conn. App. 583, 585, 821 A.2d 772 (2003). "The court conducted a postjudgment probable cause hearing to determine whether any discovery, beyond the testimony of the parties, should be allowed in the future to substantiate the plaintiff's allegations of fraud. As a matter preliminary to such discovery, a plaintiff has the burden to substantiate allegations of fraud that are sufficient to open the judgment. [Oneglia v. Oneglia](#), 14 Conn. App. 267, 269, 540 A.2d 713 (1988)."
- [Mattson v. Mattson](#), 74 Conn. App. 242, 247-248, 811 A.2d 256 (2002). "We note, however, that we previously have

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rejected a claim identical to the defendant's, i.e., that a party seeking to open a judgment of dissolution on the basis of allegations of fraud has a right to conduct discovery based only on its filing of a motion to open. *Oneglia v. Oneglia*, 14 Conn. App. 267, 269, 540 A.2d 713 (1988). As we **explained, '[t]his is clearly an incorrect premise; until the court acts on a motion to open, the earlier judgment is still intact and neither our rules of practice nor our statutes provide for such a thing as postjudgment discovery.'** *Id.* 'If the [defendant] was able to substantiate [his] allegations of fraud beyond mere suspicion, then the court would open the judgment for the limited purpose of discovery, and would later issue an ultimate decision on the motion to open after **discovery had been completed and another hearing held.'** *Id.*, 270. Because the defendant in this case was unable to meet that minimal evidentiary threshold, the court's ruling **was proper."**

- [Billington v. Billington](#), 220 Conn. 212, 218, 595 A2d 1377 (1991). "In *Varley v. Varley* . . . we imposed four limitations on the granting of relief from a marital judgment secured by fraud: "(1) There must have been no laches or unreasonable delay by the injured party after the fraud was discovered. (2) There must have been diligence in the original action, that is, diligence in trying to discover and expose the fraud. (3) There must be clear proof of the perjury or fraud. (4) There must be a substantial likelihood that the result of the new trial will be different. . . . In this case, we are concerned only with the second of these limitations, namely, that the party seeking to open the judgment exercised diligence in the original action in order to discover and expose the fraud. *We are persuaded that the time has come to abandon that limitation.*" (Emphasis added.) (See [Reville v. Reville](#) **above, which changes "substantial likelihood" to "reasonable probability."**)
- [Oneglia v. Oneglia](#), 14 Conn. App. 267, 271-272, 540 A.2d 713 (1988). "In family matters, the court exercises its equitable powers. The balancing of equities is a matter which falls within the discretion of the **trial court**....For that reason, equitable remedies are not bound by formula but are molded **to the needs of justice.**" (Citations omitted.)
- 8A Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).

Chapter 52	Postjudgment Motions
§ 52:7	Motion to reopen or set aside judgment on the basis of fraud
§ 52:8	-Standard of proof for fraud
§ 52:9	-Discovery to pursue claim of fraud
§ 52.10	Fraud on the court distinguished
§ 52:11	Lack of jurisdiction
§ 52:12	Request for new trial

TEXTS & TREATISES:

You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the treatises cited.

References to online databases refer to in-library use of these databases.

- *A Practical Guide to Divorce in Connecticut*, Hon. Barry F. Armata and Campbell D. Barrett, editors, Massachusetts Continuing Legal Education, 2013, with 2018 supplement.
Chapter 4 Discovery - § 4.8 Litigation Misconduct

Table 2: Opening Judgment for the Limited Purpose of Discovery – Case Law

Opening Judgment for the Limited Purpose of Discovery	
<p><u>Port v. Port</u>, Superior Court, Judicial District of Fairfield at Bridgeport, No. FA04-4002839-S (Jun. 2, 2006).</p>	<p>“To prevail in an <i>Oneglia</i> hearing, the movant must substantiate his claim of fraud on the part of the defendant, beyond a mere suspicion. <i>Oneglia v. Oneglia</i>, 14 Conn. App. 267, 540 A.2d 713 (1988). If the moving party prevails the judgment is opened for the limited purpose of discovery. A second hearing is then conducted to determine whether there was fraud, based on the clear and convincing evidence standard.”</p>
<p><u>Cimino v. Cimino</u>, 174 Conn. App. 1, 6, 164 A.3d 787 (2017).</p>	<p>“In considering a motion to open the judgment on the basis of fraud, then, the trial court must first determine whether there is probable cause to open the judgment for the limited purpose of proceeding with discovery related to the fraud claim.... This preliminary hearing is not intended to be a full scale trial on the merits of the [moving party's] claim. The [moving party] does not have to establish that he will prevail, only that there is probable cause to sustain the validity of the claim.... If the moving party demonstrates to the court that there is probable cause to believe that the judgment was obtained by fraud, the court may permit discovery.”</p> <p>(Internal quotation marks omitted.) <i>Gaary v. Gillis</i>, 162 Conn. App. 251, 255–57, 131 A.3d 765 (2016); see also <i>Spilke v. Spilke</i>, 116 Conn. App. 590, 594–95, 976 A.2d 69, cert. denied, 294 Conn. 918, 984 A.2d 68 (2009).”</p>
<p><u>Oneglia v. Oneglia</u>, 14 Conn. App. 267, 271-272, 540 A.2d 713 (1988).</p>	<p>“In family matters, the court exercises its equitable powers. The balancing of equities is a matter which falls within the discretion of the trial court....For that reason, equitable remedies are not bound by formula but are molded to the needs of justice.” (Citations omitted.)</p>
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Table 3: Fraud – Case Law

Fraud: Case Law	
<p>Conroy v. Idlibi, 343 Conn. 201, 272 A.3d 1121 (2022).</p>	<p>"Specifically, the defendant claims that the trial court improperly denied his motion to open without first affording him an opportunity to present certain evidence that the plaintiff, Katie N. Conroy, had lied under oath about certain topics during the underlying proceedings." (p. 203)</p> <p>"Even if we were to accept the defendant's contention that the dissolution court was somehow factually mistaken about the true nature of the plaintiff's extramarital affair, such a mistake could not have been caused by the allegedly fraudulent response to the interrogatory, as the defendant claimed in his motion to open. In his brief to the Appellate Court in his initial appeal, the defendant acknowledged that the plaintiff had candidly confessed to the dissolution court that her response to the interrogatory denying the existence of a sexual relationship with another man during the marriage had been a lie. Specifically, the defendant argued before the Appellate Court that, '[o]n May 17, 2016, the plaintiff testified on direct examination by her counsel ... that she had an affair with a man ... prior to her filing of the divorce. The plaintiff further testified that she provided a false answer about her affair in her sworn answers to the defendant's interrogatories and request[s] for production.' Because the plaintiff openly admitted that the interrogatory response in question was false, it is reasonable to infer that this lie did not impact the dissolution court's judgment. See <i>Reville v. Reville</i>, supra, 312 Conn. at 441, 93 A.3d 1076 (movant must show that judgment was obtained by fraud)." (p. 206)</p>
<p>Karen v. Loftus, 210 Conn. App. 289, 296–297 (2022).</p>	<p>"On appeal, the plaintiff claims that the court utilized an incorrect legal standard in adjudicating her motion to open the judgment of dissolution. Specifically, the plaintiff argues that the court applied the standard for a motion for a new proceeding on the basis of newly discovered evidence, rather than the standard for a motion to open on the basis of fraud. We agree."</p>
<p>Zilka v. Zilka, 159 Conn. App. 167, 174, 123 A.3d 439 (2015).</p>	<p>Exception to Four Month Limitation: "Pursuant to General Statutes § 52-212a, 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....An exception to the four month limitation applies, however, if a party can show, inter alia, that the judgment was obtained by fraud." (Internal quotation marks omitted.)</p>

<p>Reville v. Reville, 312 Conn 428, 442, n. 11, 93 A3d 1076 (2014).</p>	<p>“We recently altered the standard for a party to obtain a new trial on the basis of fraud to require that party to show only a ‘reasonable probability’ that the result of a new trial will be different, rather than a ‘substantial likelihood,’ as our previous case law had held. See <i>Duart v. Dept. of Correction</i>, 303 Conn. 479, 491, 34 A.3d 343 (2012). A reasonable probability means ‘a probability sufficient to undermine confidence in the outcome,’ or that the nondisclosed information ‘could reasonably be taken to put the whole case in such a different light as to undermine confidence in the [judgment].’ (Internal quotation marks omitted.) <i>Id.</i>, 492.”</p>
<p>Reville v. Reville, 312 Conn 428, 442, 93 A3d 1076 (2014).</p>	<p>"There are three limitations on a court's ability to grant relief from a dissolution judgment secured by fraud: (1) there must have been no laches or unreasonable delay by the injured party after the fraud was discovered; (2) there must be clear proof of the fraud; and (3) there is a [reasonable probability] that the result of the new trial will be different." (Internal quotation marks omitted.)</p>
<p>Mattson v. Mattson, 74 Conn. App. 242, 245, 811 A.2d 256 (2002).</p>	<p>Fraud: “consists in deception practiced in order to induce another to part with property or surrender some legal right, and which accomplishes the end designed.... The elements of a fraud action are: (1) a false representation was made as a statement of fact; (2) the statement was untrue and known to be so by its maker; (3) the statement was made with the intent of inducing reliance thereon; and (4) the other party relied on the statement to his detriment.... A marital judgment based upon a stipulation may be opened if the stipulation, and thus the judgment, was obtained by fraud.’ (Citations omitted; internal quotation marks omitted.) <i>Billington v. Billington</i>, 220 Conn. 212, 217-18, 595 A.2d 1377 (1991). ‘A court's determinations as to the elements of fraud are findings of fact that we will not disturb unless they are clearly erroneous.’ <i>Anastasia v. Beautiful You Hair Designs, Inc.</i>, 61 Conn. App. 471, 478, 767 A.2d 118 (2001).”</p>
<p>Cimino v. Cimino, 174 Conn. App. 1, 9-10 (2017).</p>	<p>“Fraud by nondisclosure, which expands on the first three of [the] four elements [of fraud], involves the failure to make a full and fair disclosure of known facts connected with a matter about which a party has assumed to speak, under circumstances in which there is a duty to speak.... A lack of full and fair disclosure of such facts must be accompanied by an intent or expectation that the other party will make or will continue in a mistake, in order to induce that other party to act to her detriment.... In a marital dissolution case, the requirement of a duty to speak is imposed by Practice Book § [25-30], requiring the exchange and filing of financial affidavits ... and by the</p>

	nature of the marital relationship.” (Citation omitted; internal quotation marks omitted.) Id.
Sousa v. Sousa , 173 Conn. App. 755, 758 (2017).	Burden of Proof: “A party seeking to open a judgment beyond the passage of the four month limitation period from its rendering provided by General Statutes § 52-212a under an exception for judgments procured by fraud, bears the burden of proving fraud in all of its elements by clear and convincing evidence.”
Billington v. Billington , 220 Conn. 212, 214, 595 A.2d 1377 (1991).	Diligence in Original Action Not Needed: “The principal issue in this certified appeal is whether a party to a marital dissolution judgment must establish, in order subsequently to open the judgment based upon a claim of fraud, that she was diligent during the original action in attempting to discover the fraud. We conclude that the movant need not establish such diligence....”
Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can contact your local law librarian to learn about the tools available to you to update cases.	