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BEACH, J., concurring. I agree with the result reached by the majority and with all but one point of its well reasoned analysis. My point of departure is the majority's holding in part I of its opinion that a trial court may not, as a matter of law, enter an order of alimony pendente lite that the payer is unable to satisfy without invading assets.

I believe that *Simms v. Simms*, 283 Conn. 494, 927 A.2d 894 (2007), and *Graham v. Graham*, 25 Conn. App. 41, 592 A.2d 424, cert. denied, 220 Conn. 903, 593 A.2d 969 (1991), lead to a different conclusion. In *Simms*, our Supreme Court held that a court, in the context of a postjudgment motion to modify alimony, was not barred from modifying alimony in a manner that would require the obligor spouse to invade assets, even though property distributions were not statutorily authorized in the postjudgment context. *Simms v. Simms*, supra, 505. The court reasoned: "The trial court correctly noted that it had no authority to modify the division of the parties' property after the original dissolution judgment . . . or to order the defendant to sell his assets to satisfy his alimony obligation. This does not mean, however, that the court had no authority to consider the value of the parties' assets in determining the amount of the modification or, in appropriate circumstances, to order the defendant to pay alimony if doing so may require him to invade his assets." (Citation omitted.) *Id.*; see also *Graham v. Graham*, supra, 46 (alimony orders in some circumstances may contemplate invasion of "corpus" of assets).

Here, as in *Simms*, the court was without authority to order expressly the division of property. Nonetheless, an order of periodic alimony payments that required the invasion of assets was permissible; there, as here, there was no suggestion that a party was hiding assets or had an imputed income greater than declared income. Here, as in *Graham*, the parties had a history of invading assets to meet current living expenses. Policy considerations noted in *Simms* are relevant: "[I]f the trial court were not authorized to order a modification that might require an invasion of assets to meet the modified alimony obligation, then . . . the avoidance of alimony obligations by converting liquid assets and income producing property into nonincome producing assets could not be prevented. Such an order does not necessarily amount to an order requiring the sale or liquidation of the asset because other options, such as the conversion of an asset into an income producing asset or borrowing against the asset, are available." *Simms v. Simms*, supra, 283 Conn. 506–507 n.12. Other life scenarios are easily imaginable and not the least nefarious; for example, a retired couple may have little income but substan-

tial assets on which they rely.

I nonetheless agree with the remand. The court improperly ordered payments for college expenses and, in light of the necessary remand, reconsideration of the mosaic of the pendente lite financial orders is appropriate. Additionally, the court may well have abused its discretion in the overall amounts of periodic payments ordered.

For the foregoing reasons, I concur.
