STATE OF CONNECTICUT *v.* DEREK GEANURACOS
(AC 43565)

Bright, C. J., and Cradle and Suarez, Js.

Syllabus

Convicted, after a jury trial, of the crimes of burglary in the third degree and larceny in the third degree, the defendant appealed to this court, challenging the sufficiency of the evidence to support the charge of burglary. The defendant was involved in a relationship with V, whom he visited frequently at her home. After the defendant drove V home

from a medical appointment, he was in her bedroom with her while she was removing jewelry that she had been wearing. Shortly thereafter, V discovered that some of her jewelry was missing and she filed a police report. When V confronted the defendant, he admitted to stealing her jewelry. *Held* that the evidence adduced at trial was insufficient to support the defendant's conviction of burglary in the third degree: the state conceded that it failed to prove that the defendant entered or remained unlawfully in V's home; V testified to the contrary that the defendant was allowed in her home only when she or her children were present or with her permission, V did not contend that the defendant had ever entered her home without her permission, and the state did not present any evidence that the defendant had entered her home at any time without her permission; moreover, although the prosecutor argued that the defendant's permission to be in V's home was implicitly revoked when he stole her jewelry, the state did not present any evidence surrounding the actual circumstances of the theft of the jewelry, V did not know exactly when her jewelry was stolen, only that it had been stolen within a few days prior to her discovery that it was missing, and, because the defendant stole V's jewelry without her knowledge, the jury could not reasonably have concluded that he did so in a manner likely to terrorize her.

Submitted on briefs January 11—officially released March 23, 2021

Procedural History

Substitute information charging the defendant with the crimes of larceny in the second degree and burglary in the third degree, brought to the Superior Court in the judicial district of Danbury and tried to the jury before *D'Andrea, J.*; verdict and judgment of guilty of burglary in the third degree and of the lesser included offense of larceny in the third degree, from which the defendant appealed to this court. *Reversed in part; judgment directed.*

Joseph G. Bruckman, public defender, for the appellant (defendant).

Alexandra Arroyo, special deputy assistant state's attorney, with whom, on the brief, were *Stephen J. Sedensky III*, state's attorney, *Melissa Patterson*, senior assistant state's attorney, and *Warren C. Murry*, former supervisory assistant state's attorney, for the appellee (state).

Opinion

PER CURIAM. The defendant, Derek Geanuracos, appeals from the judgment of conviction, rendered after a jury trial, of burglary in the third degree in violation of General Statutes § 53a-103 (a).[1] On appeal, the defendant argues that the evidence adduced at trial was insufficient to support his conviction. We agree, and reverse in part the judgment of the trial court.

The jury reasonably could have found the following facts. In May, 2016, the defendant was involved in an intimate relationship with Marisa Vivaldi, whom he visited frequently at her home in Danbury. The defendant was not permitted to be in Vivaldi's home unless she or her children were present. On May 4, 2016, after the defendant drove Vivaldi home from a medical appointment, he was in her bedroom with her while she was removing jewelry that she had been wearing and putting it in her dresser. The defendant asked Vivaldi if all of her jewelry was made of gold. Vivaldi told the defendant that it was, and explained that it had either been gifted to her when she was a child, or she had inherited it from her mother.

On May 8, 2016, Vivaldi discovered that some of her jewelry was missing and she filed a police report. The investigating officers learned that the defendant had sold several pieces of Vivaldi's jewelry to CT Gold & Silver Brokers in New Milford for $724.75. When Vivaldi confronted the defendant, he admitted to stealing her jewelry, which Vivaldi valued at approximately $14,000, and apologized. He offered to reimburse her for a portion of the cost of the jewelry in exchange for her dropping the charges, but she declined.

Following a jury trial, the defendant was found guilty of larceny in the third degree in violation of General

[1] The defendant also was found guilty of larceny in the third degree in violation of General Statutes § 53a-124 (a) (2). He has not challenged that conviction.

Statutes § 53a-124 (a) (2) and burglary in the third degree in violation of § 53a-103 (a). The trial court sentenced him to identical, concurrent sentences on each conviction, resulting in a total effective sentence of five years of incarceration, execution suspended, followed by four years of probation. This appeal followed.

On appeal, the defendant challenges the sufficiency of the evidence underlying his burglary conviction. "In reviewing a sufficiency of the evidence claim, we apply a two part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt . . . . This court cannot substitute its own judgment for that of the jury if there is sufficient evidence to support the jury's verdict. . . .

"We note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Review of any claim of insufficiency of the evidence introduced to prove a violation of a criminal statute must necessarily begin with the skeletal requirements of what necessary elements the charged statute requires to be proved. . . . Once analysis is complete as to what the particular statute requires to be proved, we then review the evidence in light of those statutory requirements."

(Citations omitted; internal quotation marks omitted.) *State* v. *Marsan*, 192 Conn. App. 49, 61–62, 216 A.3d 818, cert. denied, 333 Conn. 939, 218 A.3d 1049 (2019).

Section 53a-103 (a) provides: "A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein." The defendant contends that the evidence adduced at trial was insufficient to prove that he "enter[ed] or remain[ed] unlawfully" in Vivaldi's home. On appeal, the state concedes that it did, in fact, fail to prove that requisite element of the defendant's burglary charge, and we agree.

"A person 'enters or remains unlawfully' in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so." General Statutes § 53a-100 (b). "[T]o remain unlawfully means that the initial entering of the building . . . was lawful but the presence therein became unlawful because the right, privilege or license to remain was extinguished." (Internal quotation marks omitted.) *State* v. *Stagnitta*, 74 Conn. App. 607, 612, 813 A.2d 1033, cert. denied, 263 Conn. 902, 819 A.2d 838 (2003). This court has held that, "even if one is lawfully admitted into a premises, the consent of the occupant may be implicitly withdrawn if the entrant terrorizes the occupants." *State* v. *Henry*, 90 Conn. App. 714, 726, 881 A.2d 442, cert. denied, 276 Conn. 914, 888 A.2d 86 (2005). In other words, for his "license to have been implicitly revoked in order to have remained unlawfully for purposes of burglary, the defendant must have committed larceny in a manner likely to terrorize occupants of the victim's home." (Internal quotation marks omitted.) *State* v. *Marsan*, supra, 192 Conn. App. 63.

Here, the state did not present any evidence that the defendant entered or remained in Vivaldi's home unlawfully. To the contrary, Vivaldi testified that the defendant was allowed in her home only when either she or

her children were present, and that he had otherwise been in her home on only one occasion, when she gave him a key and asked him to retrieve something for her. She did not contend at trial that the defendant had ever entered her home without her permission, and the state did not present any evidence that the defendant had entered her home at any time without her permission. To support the burglary conviction, the state was required to prove that the defendant remained in her home unlawfully. The prosecutor argued to the jury that the defendant "remained in the building unlawfully with the intent to commit a crime and the underlying crime had been larceny." In other words, the prosecutor argued that the defendant's permission or license to be in Vivaldi's home was implicitly revoked when he stole her jewelry. The state did not, however, present any evidence surrounding the actual circumstances of the theft of the jewelry. Vivaldi did not know exactly when her jewelry was stolen, only that it had been within the few days prior to her discovery that it was missing. Because the defendant stole Vivaldi's jewelry without her knowledge, the jury could not reasonably have concluded that he did so in a manner likely to terrorize her.[2] Accordingly, we conclude that there was insufficient evidence to sustain the defendant's conviction of burglary in the third degree.

The judgment is reversed as to the conviction of burglary in the third degree and the case is remanded with direction to render a judgment of acquittal on that charge; the judgment is affirmed in all other respects.

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[2] The prosecutor did not argue to the jury that the defendant committed the larceny in a manner likely to terrorize Vivaldi, nor did the court instruct the jury that it needed to find that he did so to find him guilty of burglary.

DAISY G. BATISTA *v.* ANGEL L. CORTES
(AC 43244)

Bright, C. J., and Lavine and Alexander, Js.*

Syllabus

The defendant filed a motion to modify custody of the parties' minor child. After a hearing, the court denied the motion, determining that it was in the best interests of the child for her primary residence to remain with the plaintiff. On appeal, the defendant claimed that the trial court erred in denying his motion to modify custody and in failing to examine his alleged overpayment of child support. *Held*:

1. The trial court did not err in denying the motion to modify custody of the parties' minor child because it determined that it was in the child's best interests for her primary residence to remain with the plaintiff: the court properly responded to allegations of the plaintiff's use of corporal punishment against the child by referring the matter to the Department of Children and Families and appointing a guardian ad litem, who participated in the hearing on the motion, and there was nothing in the record to support the defendant's allegation that the court failed to consider the plaintiff's admission to the use of physical discipline in making its best interests determination; moreover, the defendant's remaining arguments in support of his assertion were unreviewable, as he waived his claim of judicial bias, did not preserve for appeal his claim of failure to appoint proper representation for the child, and this court declined to disturb the trial court's determination of the credibility of one of the plaintiff's witnesses, as such a determination was for the trial court as trier of fact.

2. This court declined to review the defendant's challenge to the accuracy of the child support payment audits: the issue of past child support payments was not before the trial court, which analyzed his allegations of overpayment only in the context of its determination of the best interests of the child, did not issue any orders regarding the audits, and issued an order only concerning the defendant's future child support obligations; accordingly, there was no claim for this court to review on appeal.

Argued November 18, 2020—officially released March 23, 2021

Procedural History

Motion for modification of custody as to the parties' minor child, brought to the Superior Court in the judicial district of Hartford, where the court, *Prestley, J.*, denied

* The listing of judges reflects their seniority status on this court as of the date of oral argument.

the motion; thereafter, the court, *Olear*, *J.*, denied the defendant's motion for reconsideration, and the defendant appealed to this court. *Affirmed*.

Angel L. Cortes, self-represented, the appellant (defendant).

Opinion

LAVINE, J. The self-represented defendant, Angel L. Cortes (father), appeals from the judgment of the trial court denying his motion to modify his child's primary residence to his residence from that of the plaintiff, Daisy G. Batista (mother).[1] On appeal, the father (1) claims, in essence, that the court abused its discretion by concluding that it was in the child's best interests that she continue to reside primarily with her mother and (2) challenges the results of several payment audits showing that he owes an arrearage in child support. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties, who have never married one another, are the parents of a child born in 2004. The mother lives in Florida and the father lives in Connecticut. On December 7, 2006, the parties entered into a court-approved parenting plan agreement that provided that they share joint legal custody of the child, who lives primarily with the mother. An August 20, 2008 court order set forth a child support obligation of $71 per week for the father.

On May 7, 2018, the father filed a motion for contempt, seeking to revise the parenting plan agreement, which he alleged that the mother had violated by keeping the child from him. In that motion, the father also requested that the child reside primarily with him and that the mother repay him for what he alleged was his overpayment of child support over the years due to misrepresentations made by the mother. Following a hearing on

[1] The mother did not file a brief in this court. We therefore decide the appeal on the basis of the record and the father's brief and oral argument. See *Rosario* v. *Rosario*, 198 Conn. App. 83, 84 n.1, 232 A.3d 1105 (2020).

August 7, 2018, the court, *Prestley*, *J.*, ordered visitation for the father during the holidays. At that hearing, the father accused the mother of using corporal punishment against the child.[2] The court immediately indicated that it was referring the matter to the Department of Children and Families (department) and appointed a guardian ad litem to interview the child regarding the father's allegations.

On September 7, 2018, the father filed a motion to modify custody, which is the subject of the present appeal. In his motion, the father sought to modify the primary residence of the child, alleging that the guardian ad litem believed that it was in the child's best interests for her to live with him, that he had new employment that would permit him to spend time with the child, and that he had concerns about the child's physical safety while residing with her mother.[3] The father did not request a modification of child support in that motion.

The court held a hearing on the father's motion to modify custody, extending across two days on April 11, 2019, and June 3, 2019. During the course of the proceeding, further facts came to light concerning the father's previous allegation that he has been overpaying child support.[4] The court told the father that it could not rule on the issue of whether his arrearage was correct and that he needed to request that the child support enforcement office conduct audits of his past payments. The court, however, took the matter into consideration insofar as it related to the motion to modify custody before it. In doing so, the court heard evidence from child support enforcement officers regarding the accuracy of new audits the father had requested pursuant to the court's

[2] The father asserted that the mother had struck the child, which the mother acknowledged having done.

[3] The mother did not file a written response but participated in the hearing on the motion.

[4] The father contended that he had requested various child support audits over the years, all of which incorrectly failed to credit him for his payments.

direction. At the conclusion of the hearing, the court commended both parents for their devotion to the child but emphasized that it would need to make a difficult decision focused on the child's best interests. On June 12, 2019, the court issued a memorandum of decision denying the father's motion to modify custody.

In its decision, the court analyzed the child's situation with respect to both parents. The court found that the child wanted to live with her father to get to know him better. She reported feeling more "stressed" with her mother, who "has high expectations of [the child], wants her to go to college and they argue a lot." The mother worked two jobs to support her family, which reduced her availability to her children and resulted in frequent moves for the family and school changes for her children. She had received a promotion, however, which would allow her to work only one job and move to a larger apartment. The court found that the father's child support payments were then $6533.11 in arrears and that the mother's financial difficulties over the years were largely attributable to the father's failure to pay child support.

The court described the mother's belief that a move would cause upheaval in the child's life and that the child would not be college bound or realize her potential in the father's care. The court found that the guardian ad litem had "testified to her difficulty in making a recommendation on this motion because of the fact that the child is doing well academically in the [mother's] care, is a very good kid raised for the most part by the [mother] and that there are high expectations for her in her mother's care. At the same time, the child is a lot like her father, desires to come to Connecticut to live with him and her relationship with the [mother] can be difficult." The court found that the father had claimed that "on one occasion, the [mother] had struck the child in the face" and that the father's girlfriend had

expressed concerns that the child had "reported an instance when the [mother] pulled [the child's] hair and grabbed the back of her neck." The court, however, did not make further findings regarding these allegations.

The court applied the factors set forth in General Statutes § 46b-56 (c)[5] to determine the best interests of the child, emphasizing its consideration of "the child's past and present interactions with each parent and sibling, the importance of maintaining continuity in her home, school and community environment, the child and parent's preferences and the length of time that the child has lived in a stable and satisfactory environment." It found that the child has lived in the sole care of the mother for most of her life, is doing well in school, and has a younger brother with whom she could lose contact if she lived with the father. The child has spent time with her father in the summer when he had been unemployed, but he currently works a full-time job. The father has been supported by his significant other when he is not working and has paid little to no child support to the mother, resulting in her struggles to provide for the child. The court recognized the child's desire to spend more time with her father but pointed out that the early teenage years can be difficult for a child and that the beginning of high school is not the best time for a child to undertake a drastic change in living and family situations. The court thus denied the motion and ordered that the parties continue to share joint legal custody of the child, whose primary residence will continue to be in Florida with the mother and who will con-

[5] General Statutes § 46b-56 (c) sets forth sixteen factors for the court to consider in making orders concerning the custody, care, education, visitation and support of children and provides in relevant part that "[i]n making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors . . . . The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision."

tinue to visit the father.[6] The court also increased the father's weekly child support obligation to $95 per week, plus arrearage payments. On June 21, 2019, the father filed a motion for reconsideration, which was denied by the court, *Olear*, *J*.[7] This appeal followed.

On appeal, the father claims that the court erred in denying his motion to modify the child's primary residence and in failing to examine his alleged overpayment of child support. We do not agree.

The standard of review in family matters is well settled. "An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *LeSueur* v. *LeSueur*, 186 Conn. App. 431, 437–38, 199 A.3d 1082 (2018). "[Section] 46b-56 provides trial courts with the statutory authority to modify an order of custody . . . . Before a court may modify a custody order, it must find that there has been a material change in circumstances since the prior order of the court, but the ultimate test is the best interests of the child." (Citations omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *Clougherty* v. *Clougherty*, 162 Conn. App. 857, 868–70, 133 A.3d 886, cert. denied, 320 Conn. 932, 134 A.3d 621 (2016), and cert. denied, 320 Conn. 932, 136 A.3d 642 (2016).

[6] The court also issued orders concerning transportation costs, sibling contact, counseling, tax exemptions, insurance, and jurisdiction over post-majority educational support. None of those orders is at issue in this appeal.

[7] In his motion for reconsideration, the father disputed various factual findings made by Judge Prestley in her custody determination and insisted that he could provide further evidence with which he could prove the inaccuracy of the audits reviewed by the court showing his child support arrearage.

I

The father challenges the court's conclusion that it was in the child's best interests to remain with her mother in Florida. He raises four arguments in support, namely, that the court (1) failed to act properly in response to allegations that the mother engaged in corporal punishment, (2) exhibited bias against him and in favor of the mother, (3) failed to appoint proper representation for the child, and (4) improperly credited the testimony of the mother's witness.

The father first argues that the court "did not properly act" on learning that the mother had used corporal punishment, "because proper investigations were not completed; and the expected urgency was not in place." He asserts, without providing any evidence whatsoever, that no investigation resulted from the court's decision to refer the matter to the department in August, 2018, which he claims "goes against [General Statutes §] 46b-6."[8]

Our review of this matter discloses that the father has neither pointed to anything in the record to demonstrate that the department failed to act on the court's referral nor asked the trial court for an articulation concerning this referral. The trial court did not make any specific findings concerning the results of its referral to the department. The record demonstrates, however, that the court referred the matter to the department and that it appointed a guardian ad litem for the child, who testified extensively at the hearing on the motion to modify custody. Although the father relies on the fact that

[8] General Statutes § 46b-6 provides in relevant part: "In any pending family relations matter the court or any judge may cause an investigation to be made with respect to any circumstance of the matter which may be helpful or material or relevant to a proper disposition of the case. Such investigation may include an examination of the parentage and surroundings of any child, his age, habits and history, inquiry into the home conditions, habits and character of his parents or guardians and evaluation of his mental or physical condition. . . ."

the court's memorandum of decision does not address the department referral or discuss the mother's concession to having struck the child,[9] we are unable to assess what impact either the referral or the concession had on the court's decision.

This court cannot find facts. "As a reviewing court, [w]e cannot act as a [fact finder] or draw conclusions of facts from the primary facts found, but can only review such findings to determine whether they could legally, logically and reasonably be found, thereby establishing that the trial court could reasonably conclude as it did." (Internal quotation marks omitted.) *Osborn* v. *Waterbury*, 197 Conn. App. 476, 482, 232 A.3d 134 (2020), cert. denied, 336 Conn. 903, 242 A.3d 1010 (2021). The record clearly demonstrates that the court made the referral and that it appointed a guardian ad litem. The record also is clear that the father did not ask the court to articulate whether, or to what degree, it took into account in its best interests analysis the mother's admission and the results of the department referral. "It is the responsibility of the appellant to provide an adequate record for review." Practice Book § 61-10 (a); see also Practice Book § 60-5. "Absent evidence to the contrary, we assume that the trial court acted properly." *LeSueur* v. *LeSueur*, 172 Conn. App. 767, 785–86, 162 A.3d 32 (2017). The court's custody determination rests on multiple unchallenged factual findings, such as the child's academic performance, her relationship with her sibling, the parents' financial circumstances, and the history of the child's relationship with her mother. See General Statutes § 46b-56 (c). On the basis of the record provided, there is every indication that the court properly assessed the relevant factors, and there is nothing in the record to support the father's allegation that the court failed to consider in rendering its decision the

[9] Although the court's memorandum of decision did not mention the mother's admission of corporal punishment, we note that the court acknowledged in its decision the allegations of corporal punishment against the mother made by the father and his girlfriend.

referral it had made to the department or the mother's concession. Accordingly, we will not second-guess the court's conclusion, which is fully supported by the court's factual findings.

The father's second, third, and fourth arguments in support of his first claim, set forth previously, are unreviewable for the following reasons.

First, the father waived his argument that the court was "overly critical" of him and "did not give the same treatment" to the mother. He contends that, despite his multiple complaints concerning the mother, including that she had admitted to physically disciplining the child, the court demonstrated "presumptuous judgment" against him by ruling in favor of the mother. We construe this hard-to-interpret claim as one of judicial bias. At the outset, we note that "[a]dverse rulings do not themselves constitute evidence of bias." (Internal quotation marks omitted.) *In re Omar I.*, 197 Conn. App. 499, 571, 231 A.3d 1196, cert. denied, 335 Conn. 924, 233 A.3d 1091, cert. denied sub nom. *Ammar I.* v. *Connecticut*, U.S. , 141 S. Ct. 549, 208 L. Ed. 2d 173 (2020). "It is well settled that [c]laims alleging judicial bias should be raised at trial by a motion for disqualification or the claim will be deemed to be waived." (Internal quotation marks omitted.) *DeMattio* v. *Plunkett*, 199 Conn. App. 693, 724, 238 A.3d 24 (2020). At no time during the proceeding did the father ask the judge to recuse herself or move to disqualify the judge. He, therefore, has waived this complaint.

The father also contends that the court failed to appoint proper representation for the child pursuant to General Statutes § 46b-54.[10] We decline to address this claim because it was not preserved for appeal. Our review

[10] General Statutes § 46b-54 provides in relevant part: "(a) The court may appoint counsel or a guardian ad litem for any minor child . . . if the court deems it to be in the best interests of the child . . . . (b) Counsel or a guardian ad litem for the minor child or children may also be appointed . . . when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy . . . ."

of the record reveals that the parties consented to the guardian ad litem's appointment, the appointment was extended several times, and the guardian ad litem participated extensively in the proceedings. At no point during the proceedings did the father contest the appointment of the guardian ad litem or request that counsel be appointed for the child. "[A]n appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . [B]ecause our review is limited to matters in the record, we [also] will not address issues not decided by the trial court." (Internal quotation marks omitted.) *Silver Hill Hospital, Inc.* v. *Kessler*, 200 Conn. App. 742, 753, 240 A.3d 740 (2020); see also Practice Book § 60-5 ("[t]he court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial").

The father also challenges the credibility of Rachel Cortes, the child's aunt, whom the mother called as a witness. In its memorandum of decision, the court questioned the father's credibility, in part on the basis of Cortes' testimony. The father now argues that the court could not have credited the witness because she has had very little contact with the child during the previous three years. It is well settled that "[w]e must defer to the finder of fact's evaluation of the credibility of the witnesses that is based on its invaluable firsthand observation of their conduct, demeanor and attitude. . . . Because it is the sole province of the trier of fact to assess the credibility of witnesses, it is not our role to second-guess such credibility determinations." (Citation omitted; internal quotation marks omitted.) *State* v. *Shin*, 193 Conn. App. 348, 359, 219 A.3d 432, cert. denied, 333 Conn. 943, 219 A.3d 374 (2019). This court will not disturb the credibility determinations of the trier of fact.

II

The father's second claim on appeal is that the court did not properly consider his claim of child support

overpayment. In response to the mother's accusation that he was behind on child support payments, the father asserted that Florida and Connecticut had insufficiently credited him for payments he made and that the mother was receiving extra money and not reporting it. We construe the father's claim as a challenge to the accuracy of the child support payment audits he has received. Because the issue of past child support payments was not before the trial court and it did not rule on the audits, we decline to review the claim.

The following additional facts are relevant to our decision regarding the reviewability of this claim. The father insisted throughout the proceedings that he had requested new audits from the support enforcement office in accordance with the court's direction but that the audits continued to show an incorrect arrearage. The court, after directing the father on December 13, 2018, to consult child support enforcement, called representatives from the support enforcement office into the hearing on April 11 and June 3, 2019, to review the father's child support records.[11] Both support enforcement officers confirmed the accuracy of the father's arrearage, and the court credited their testimony, twice stating that the father would need to resolve any further disagreements on the matter with support enforcement. The court also reviewed the relevant documents on the record and heard testimony from the parties.

In its memorandum of decision, the court discussed the father's child support situation. Despite being ordered to pay child support of $71 a week—an obligation that the court noted was an amount "well below

[11] The court asked, at the start of the April 11, 2019 hearing, if the father had requested an accounting from support enforcement, to which the father replied in the affirmative. The court informed the father that his child support arrearage was an issue he would have to resolve with the state separately, rather than with the court during the motion to modify custody orders. At the resumption of the hearing on June 3, 2019, the father stated that he had consulted with support enforcement again.

a minimum wage child support order''—the father had an arrearage of $6533.11 in his support obligation as of May 15, 2019. The court found that "the [mother] has been unable to provide material things and optimal housing such as a separate room for the child, things provided by the [father] in Connecticut, because the [mother] has struggled financially as the sole supporter of this child for most of the child's life.'' The court questioned the father's credibility, finding that the father had "repeatedly claimed . . . that he has overpaid support for the child with *no evidence to support such a claim*." (Emphasis added.) Two separate audits of the father's payments in Connecticut and in Florida had supported the court's finding that an arrearage existed, but the father did not accept the audits' conclusion. The court modified the father's child support obligation in its order.

Our review of the record discloses that the trial court did not issue any orders regarding the audits of previous child support payment history, although it did issue an order directed to future payments. The present case came before the trial court on a motion to modify the allocation of physical custody.[12] The trial court thus analyzed the father's allegations of overpayment solely in the context of its best interests determination. The court's findings concerning child support were made in support of its determination that it was in the child's best interests to remain with her mother. All of its orders, save the order increasing the amount of future child support payments, deal with custody and parenting arrangements. The father's claim, in contrast, solely concerns the accuracy of child support audits of his previous payments.[13] Because the trial court issued no

[12] The father did not file a motion to address his alleged overpayment of child support. He previously challenged it in his May 7, 2018 postjudgment motion for contempt, but the trial court issued an order resolving that motion on August 7, 2018, and the father has not challenged that disposition.

[13] In his statement of the issues, the father specifically defines the issue as follows: "Did the trial court properly examine [his] claim of his *overpay-*

orders concerning audits of previous payments, only an order concerning the father's future child support payment obligations, there is nothing for this court to review on appeal.

The judgment is affirmed.

In this opinion the other judges concurred.

M. S. *v.* P. S.*
(AC 41790)

Bright, C. J., and Alvord and Alexander, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving his marriage to the plaintiff and from the order of that court awarding the plaintiff pendente lite attorney's fees. In the judgment dissolving the marriage, the court, inter alia, ordered the defendant to pay alimony to the plaintiff for a maximum term of six years and modified a relocation provision in the parties' agreed on pendente lite custody and parenting access plan to permit the plaintiff to relocate across state lines but within thirty-five miles of her current residence. *Held*:

1. The trial court did not abuse its discretion in fashioning its support orders; although the support orders account for approximately 90 percent of the defendant's net weekly income, the orders were not excessive in light of an essentially even distribution of the marital property, leaving the defendant valuable assets that he would be able to use to comply with the support orders and sustain his basic welfare, and the six year term for alimony, which was appropriate in light of the facts and circumstances of the case, and which could not be extended.
2. The trial court did not abuse its discretion or deprive the defendant of due process when it permitted the plaintiff to relocate across state

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ment of child support?'" (Emphasis added.) In the main portion of his brief, he sets forth the issue as: "The trial court did not properly consider the [father's] claim of overpayment of child support." He questions if the "numerous audits on his case . . . are done properly" and asks that "a proper audit be [conducted] of his child support payments with both the state of Connecticut and the state of Florida's histories." We thus construe his claim, as briefed, to challenge only the audits of *past* payments. He has not set forth a claim regarding the court's modification of his child support amount.

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

lines to within thirty-five miles of her then current residence: the court determined that it was in the children's best interests to allow the plaintiff to relocate in order to establish residency in the state of New York so that she could afford and attend a doctorate program, which would provide her a necessary opportunity for meaningful employment and income, and the court reasonably tethered the distance for the relocation to the plaintiff's home as she was the party seeking permission to relocate; moreover, the court's order did not deviate from the parties' expressed belief and agreement that it was in the children's best interests that the parties live within thirty-five miles of each other unless otherwise agreed in writing.

3. The trial court did not abuse its discretion in the amount of attorney's fees pendente lite that it awarded to the plaintiff: in assessing the reasonableness of the fee request, the court appropriately considered the services rendered by the plaintiff's counsel as well as her skill level and experience and corresponding billing rate, which were testified to by the plaintiff's counsel and reflected in fee affidavits with attached billing records; moreover, the court determined that certain billing entries were excessive and identified on the record examples of entries it reduced.

Argued December 3, 2020—officially released March 23, 2021

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Danbury, where the court, *Eschuk*, *J.*, granted in part the plaintiff's motion for pendente lite attorney's fees, and the defendant appealed to this court; thereafter, the court, *Hon. Sydney Axelrod*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief, from which the defendant filed an amended appeal; subsequently, the court, *Hon. Sydney Axelrod*, judge trial referee, issued articulations of its decision. *Affirmed*.

Logan A. Carducci, for the appellant (defendant).

Danielle J. B. Edwards, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendant, P. S., appeals from the judgment of dissolution and the pendente lite order of the court awarding the plaintiff, M. S., attorney's fees.[1]

[1] The defendant appealed from the court's pendente lite attorney's fee order on June 20, 2018. Following the court's November 30, 2018 judgment

On appeal, the defendant claims that the court abused its discretion in (1) entering an excessive support order that consumes approximately 90 percent of the defendant's income and leaves him with insufficient income to pay for his basic needs, (2) entering an order permitting the plaintiff to relocate thirty-five miles from her current residence rather than the mutually agreed upon thirty-five miles from the other party's residence, and (3) awarding the plaintiff attorney's fees when the amounts billed were excessive and unreasonable. We affirm the judgment of the court.

The record reveals the following relevant facts and procedural history. The parties were married on March 1, 2008, and are the parents of two minor children. The plaintiff initiated this dissolution action in September, 2017. The plaintiff also filed, pursuant to General Statutes § 46b-15, an application for relief from abuse seeking a temporary restraining order against the defendant. After a three day hearing, the court, *Hon. Sydney Axelrod*, judge trial referee, issued a restraining order on September 29, 2017.

On October 13, 2017, the plaintiff filed a motion for attorney's fees pendente lite, and the court, *Eschuk, J.*, held a hearing on February 5 and May 31, 2018. On May 31, 2018, the court ordered the defendant to pay $75,000 in attorney's fees to counsel for the plaintiff. On June 20, 2018, the defendant appealed from the attorney's fees order. Also on June 20, 2018, the plaintiff filed another motion for attorney's fees pendente lite. On November 30, 2018, following an eight day trial in the dissolution action, the court, *Hon. Sidney Axelrod*, judge trial referee, ordered the defendant to pay an additional $15,000 in attorney's fees to counsel for the plaintiff.

dissolving the parties' marriage, the defendant filed a second appeal, which was treated as an amended appeal by this court.

Also on November 30, 2018, the court issued its memorandum of decision, in which it dissolved the parties' marriage and entered various financial and custody orders. In its memorandum of decision, the court found that the plaintiff had obtained associate's and bachelor's degrees in fashion in 2000. Although she had worked in fashion prior to the marriage, she did not work in that industry during the marriage and did not intend to return to that industry. The plaintiff intended to pursue master's and doctorate degrees in clinical psychology at the University of Albany, and she had been notified that her application to that school had been approved. She could afford the program, which would take six years to obtain both degrees, if she were able to establish New York residency. The degrees obtained through the program would provide the plaintiff with a greater opportunity for employment and income.

At the time of the dissolution, the plaintiff's only source of income was the pendente lite support received from the defendant. Her financial affidavit reflected liabilities of $167,200, including $165,360 in fees owed to her counsel, $75,000 of which the defendant had been ordered to pay pendente lite. At the time of the dissolution, the defendant had paid $10,000 of the pendente lite fees to the plaintiff's attorney. The plaintiff held bank accounts totaling $1360 and an IRA with a balance of $7448. She previously had taken a distribution of $37,000 from her IRA to pay legal fees.

The parties owned a marital home located in Newtown. The title was held in both parties' names. The home was purchased in 2009 for $685,000. The defendant had paid 20 percent of the purchase price in cash, and the balance was paid by the defendant's father as a gift. At the time of dissolution, the home had a fair market value of $575,000 and the equity was $575,000. The parties also owned three vehicles. The plaintiff owned, in her name alone, a 2007 Honda with equity of $4000. The defendant owned, in his name alone, a 2016 Mazda CX9 with

a value of $25,273 and a loan balance of $25,273, and a 2016 Mazda CX5 with equity of $16,860.[2]

The defendant had obtained a bachelor's degree in engineering and mechanical industrial engineering in Rio de Janeiro in 2003, and a master's of business administration degree from the University of Chicago Booth School of Business in 2013. From January, 2007 through February, 2009, the defendant was employed by JP Morgan Securities, Inc., as an analyst. From February, 2009 through August, 2011, the defendant was employed by Syllogistic Management, LLC, which he founded and managed. From July, 2013 through February, 2014, the defendant worked as a research associate for Consumer Edge Research, LLC. From March, 2014 through June, 2016, the defendant worked as a research associate for CRT Capital Group (CRT), earning an annual base salary of $100,000 together with a discretionary bonus. In 2015, the defendant's income from CRT was a salary of $100,000 plus a $15,000 bonus. CRT ceased operations in June, 2016, and the defendant's total 2016 gross pay from CRT through that date was $80,063.83.

From November, 2016 through the time of dissolution, the defendant worked for Accordion Partners (Accordion) as a consultant. The defendant was first employed by Accordion as an associate, and "his compensation was at the rate of $4000 per week or $80 per hour for his performance of services for the company. On November 23, 2016, an addendum was entered into with an employment contract to change $4000 per week to $5000 and change his title from associate to vice president to be effective as of November 30, 2017." In calendar year 2017, the defendant earned from Accordion gross income of

[2] Although the defendant previously had included the 2016 Mazda CX5 on his financial affidavits, the defendant's September 18, 2018 financial affidavit did not include that vehicle. The court rejected as not credible the defendant's claim that the vehicle, although titled in his name, was owned by his father.

$133,934.20, which amounts to a gross weekly income of $2575.

Beginning January 1, 2018 through September 15, 2018, the defendant had earned from Accordion $30,604. The court rejected as not credible the defendant's claim that he earned less in 2018 because Accordion afforded him less opportunity to work. The court found that other than various trips he took,[3] the defendant had offered no valid reason why he had not worked more for Accordion in 2018. The court found that the defendant had an annual earning capacity of $110,000. The court also found that the income earned by the defendant was never enough to pay all of the household expenses and that the parties relied on the defendant's assets as well as gifts from the defendant's father to cover the shortfall. The court stated that the defendant received dividend income and interest income from Brazil that was not shown on many of his financial affidavits.

The court found that the defendant had total liabilities of $128,655, including tax liabilities for the years 2016 and 2017, reflecting years where he had not yet filed

[3] The defendant took five trips in 2018. The trial court found: "On April 10, 2018, the defendant flew from JFK to Sao Paulo to attend a wedding of a friend. The total airfare was $975.08. On June 5, 2018, the defendant flew from JFK to Panama City and on to Rio de Janeiro returning on June 12, 2018. The total cost of the airfare was $979.49. The reason for the trip was to spend his fortieth birthday in Brazil with friends. On June 23, 2018, the defendant flew from Newark Liberty International Airport to Frankfurt and on to Budapest. He returned from Budapest on July 5, 2018. The total fare was $2114.31. The reason for the trip was to take a vacation.

"On August 13, 2018, the defendant flew from Newark Airport to Berlin, Germany and returned on August 21, 2018. The purpose of the flight was to attend his brother's wedding. The cost of the flight was $2614.28 for two people since he took his daughter . . . with him. He also spent $300 to $400 for a wedding present for his brother. On August 31, 2018, the defendant flew from Hartford, Connecticut to San Francisco returning on September 3, 2018. The cost of the airfare was $320 plus the hotel expense of $706.02. The purpose of the flight was to attend a wedding of a friend. During the period of time that the defendant went on various vacations, he was not able to do any work for his employer."

his income tax return, and the plaintiff's counsel fees in the pendente lite amount of $75,000, which he had been ordered to pay. The court found that the defendant held bank accounts totaling $6285 and assets consisting of stocks, bonds and mutual funds with a value of $116,725. The defendant also held $112,907 in retirement accounts.

The court found that, at the time the parties married, the defendant held assets in Brazil with a fair market value of $913,260. At the time of the dissolution, the defendant retained certain of those premarital assets. Specifically, he held $117,375 in Brazilian stocks, mutual funds, and checking accounts. The defendant also owned in Brazil an apartment with a value of $96,691 and land with a value of $8190, both properties he had inherited from his mother in 1990. The court also found that the defendant owned a 25 percent interest in an apartment in the Top Life Housing Complex in Brazil, which proportional interest was valued at $26,522. Although the defendant did not consider this asset to be his own and he did not include it on his financial affidavit, the court found that he did own such an interest, citing evidence introduced at trial in the form of the defendant's 2007 Brazilian tax return affidavit listing the interest.

The court issued the following support orders. It ordered the defendant to pay $390 weekly in child support and 70 percent of unreimbursed medical and qualified daycare costs.[4] The court also ordered the defendant to provide medical and dental insurance for the parties' children. With respect to alimony, the court ordered the defendant to pay the plaintiff $600 weekly

[4] The court found that, under the child support guidelines, the presumptive support amount based on the defendant's financial affidavit of September 18, 2018, would be $9 per week and 89 percent of unreimbursed medical and qualified daycare costs. The court found that application of the guidelines would be inappropriate and inequitable and invoked the defendant's earning capacity as a deviation criterion.

until the death of either party, the remarriage of the plaintiff, or six years from the date of the court's memorandum of decision, whichever shall sooner occur.[5] The court stated that the provisions of General Statutes § 46b-86 (a) and (b) are applicable. The court further provided that the term of alimony could not be extended. The court found that the amount of alimony it ordered was not sufficient to maintain permanently the standard of living of the plaintiff at the level she enjoyed during the marriage and stated that an increase in income of the defendant will justify modification of the alimony order.

With respect to property division, the court assigned to the plaintiff all of the rights, title and interest of the defendant in the marital home, which the court ordered the plaintiff to sell. The court ordered $200,000 from the net proceeds of the sale to be distributed to the defendant and the remainder of the net proceeds to be distributed to the plaintiff. With respect to the parties' vehicles, the court awarded the plaintiff the 2016 Mazda CX9, and ordered the defendant to make the monthly loan payments with respect to that vehicle. The plaintiff was to pay the insurance, property tax, maintenance and repairs on the 2016 Mazda CX9. The court awarded the 2007 Honda to the plaintiff and the 2016 Mazda CX5 to the defendant.

The court awarded the defendant all bank accounts shown on his financial affidavit under category C and all stocks, bonds, mutual funds and bond funds shown on his financial affidavit under category D. The court

[5] The court noted the following gifts from the defendant's father: $548,000 for the purchase of the marital home, $35,200 on October 23, 2015, to purchase the 2016 Mazda CX5, $50,000 on May 3, 2017, for the defendant's birthday, $700 on October 16, 2015, $22,824 on April 27, 2016, and payment of the defendant's cost to attend the University of Chicago Booth School of Business in 2013, and the living expenses of the parties while he attended that school between 2011 and 2013. The court determined that such gifts were not received on a regular basis during the marriage and, therefore, it did not include the gifts in determining alimony.

awarded the plaintiff all bank accounts shown on her financial affidavit and the IRA shown on her financial affidavit. The court ordered all retirement plans shown on the defendant's financial affidavit under category F to be divided equally between the parties. The court also ordered: "All of the defendant's inheritances shown on his financial affidavit in Brazil are awarded to the defendant including his 25 percent interest in the Top Life Housing complex that is not shown on his financial affidavit."[6] The court ordered that each party be responsible for the liabilities listed on his or her financial affidavit.

With respect to custody, the court found that the parties' pendente lite July 19, 2018 custody and parenting access plan was in the best interests of the children with one exception. The court modified the relocation provision of the plan to permit the plaintiff to "relocate with the minor children to the state of New York provided it is not more than thirty-five . . . miles from her current residence." The defendant filed an appeal from the court's judgment, which was treated as an amended appeal by this court.

On March 20, 2019, the defendant filed a motion for articulation, in which he requested that the court articulate, inter alia, the factual basis for its support and alimony orders. On April 29, 2019, the court issued an

[6] In her appellate brief, the plaintiff argues that the court's award to the defendant of "all of the defendant's inheritances shown on his financial affidavit in Brazil," is an award of "the myriad Brazilian assets" identified in the defendant's 2007 Brazilian tax return affidavit, a document introduced into evidence at trial. The defendant responds that "the plaintiff seemingly misinterprets the phrase 'financial affidavit' in the property order to mean the defendant's 2007 Brazilian tax return affidavit . . . rather than the defendant's September 18, 2018 financial affidavit." We agree with the defendant that the plaintiff misconstrues the court's language, and we reject the plaintiff's argument that the court awarded the defendant additional unspecified Brazilian assets included in the defendant's 2007 Brazilian tax return affidavit but not reflected in his financial affidavit.

articulation, stating: "The court found that the defendant has [an] earning capacity of $110,000 per year. Under the child support guidelines, that amounts to a net weekly income of $1286 after deducting all of the guideline amounts including medical/hospital/dental insurance premiums of $491. That results in a basic child support obligation of $390 per week and a division for unreimbursed medical [costs] with the defendant paying 70 percent and the plaintiff paying 30 percent. The support order was entered based on the defendant's earning capacity as found by the court and the child support guidelines. The alimony order was entered considering the provisions of . . . § 46b-82."[7] Additional facts and procedural history will be set forth as necessary.

Before turning to the claims on appeal, we note the applicable standard of review. "The well settled standard of review in domestic relations cases is that this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case, such as demeanor and attitude of the parties at the hearing. . . . The test is whether the court could

[7] The defendant also requested, inter alia, that the court articulate its decision to divide the parties' marital assets approximately equally, despite the defendant's premarital contribution of his Brazilian assets and his father's contribution to the purchase of the marital home. With respect to the division of assets, the court stated: "In dividing the parties' marital assets, the court considered the defendant's Brazilian assets and his father's contribution to the purchase of the marital property. The court considered all of the provisions of General Statutes § 46b-81 (c) regarding the issue of property division. The defendant's premarital contribution of his Brazilian assets and his father's contribution to the purchase of the marital property were provisions that the court considered in dividing the marital property."

By motion dated May 20, 2019, the plaintiff sought articulation regarding the attorney's fees orders, and the court issued its articulation on June 4, 2019.

reasonably conclude as it did . . . indulging every presumption in its favor. . . . A trial court's conclusions are not erroneous unless they violate law, logic, or reason or are inconsistent with the subordinate facts in the finding. . . .

"Review of a trial court's exercise of its broad discretion in domestic relations cases is limited to whether that court correctly applied the law and whether it could reasonably conclude as it did. . . . The trial court must consider all relevant statutory criteria in a marital dissolution action but it does not have to make express findings as to the applicability of each criteria. . . . The trial court may place varying degrees of importance on each criterion according to the factual circumstances of each case." (Citation omitted; internal quotation marks omitted.) *Bevilacqua* v. *Bevilacqua*, 201 Conn. App. 261, 265, 242 A.3d 542 (2020).

I

The defendant's first claim on appeal is that the court's support orders are excessive in that they leave the defendant with only approximately 10 percent of his net income to pay for his basic needs. We disagree that the court's support orders constituted an abuse of discretion.

The following additional procedural history and facts are relevant to this claim on appeal. In its memorandum of decision, the court found that the defendant had an earning capacity of $110,000 annually,[8] which, after subtraction of the child support guideline deductions including but not limited to medical, hospital, and dental insurance premiums of $491, amounts to a net weekly income of $1286. The court ordered the defendant to

[8] At trial, the plaintiff requested that the court assign an earning capacity to the defendant of $140,000, and the defendant submitted that his earning capacity was $80,000. Neither party challenges on appeal the court's assignment of an earning capacity of $110,000.

pay the plaintiff $390 weekly in child support and $600 weekly in alimony. It also held the defendant responsible for the monthly loan payments on the 2016 Mazda CX9 that it had awarded to the plaintiff, which payment amounted to approximately $162 weekly.[9] After subtracting the support payments and vehicle loan payment from his net weekly income, $134 remains, which amounts to approximately 10 percent of his net weekly income.

Although the defendant does not challenge on appeal the court's orders regarding distribution of marital property, such orders are relevant. The court awarded the defendant $200,000 in proceeds from the sale of the marital home; $6285 in bank accounts; stocks, bonds, and mutual funds in the amount of $116,725; real estate and property in Brazil worth $131,409; $56,454 from his retirement accounts; and the 2016 Mazda CX5 valued at $16,860. The defendant was ordered to pay $90,000 in attorney's fees to the plaintiff's counsel. The court awarded the plaintiff $345,000 in equity in the marital home, $8808 in banking and IRA accounts, $56,454 from the defendant's retirement accounts, the 2007 Honda with equity of $4000, and the 2016 Mazda CX9 with a value of $25,273. Taking all of the above into account, the court ordered an essentially even distribution of the marital property, with each party receiving assets worth approximately $440,000.

[9] In his September 18, 2018 financial affidavit, the defendant stated that the loan payment on the 2016 Mazda CX9 was $182 weekly, while the plaintiff stated on her financial affidavit that the loan payment was $162 weekly. The trial court did not make a finding regarding the weekly loan payment on the vehicle. Although the defendant represented in his principal brief on appeal that the loan payment constituted $182 weekly, he stated in his reply brief that "[t]his discrepancy is not crucial to the defendant's argument on appeal and, therefore, the defendant will use the plaintiff's calculations of $162 for purposes of this reply brief." At oral argument before this court, the defendant's counsel stated that the defendant was willing to accept the $162 amount listed on the plaintiff's financial affidavit.

We next set forth relevant principles of law. Section 46b-82 (a) provides in relevant part: "At the time of entering the decree, the Superior Court may order either of the parties to pay alimony to the other, in addition to or in lieu of an award pursuant to section 46b-81. . . . In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment." "Trial courts . . . are afforded wide discretion in awarding alimony, provided that they consider all of the criteria enumerated in . . . § 46b-82." *Greco* v. *Greco*, 275 Conn. 348, 360, 880 A.2d 872 (2005). A party's "ability to pay is a material consideration in formulating financial awards." Id., 361.

In support of his claim that the trial court's support orders are excessive, the defendant relies on *Valentine* v. *Valentine*, 149 Conn. App. 799, 800, 90 A.3d 300 (2014). In *Valentine*, the trial court found the defendant's net weekly income to be $957.52 and ordered the defendant to pay $300 weekly in child support and $300 weekly in periodic alimony for fourteen years. Id., 805–806. It also ordered him to transfer his rights, title, and interest in the marital home to the plaintiff, and further ordered that he assume all future mortgage payments, costs, and fees associated with the property. Id., 806. It also ordered the defendant to make several other payments to satisfy prior outstanding court orders, including $928 for child support, $16,200 for discovery

noncompliance, $10,800 for parenting education noncompliance, $3250 for attorney's fees, $31,992 for mortgage arrearage, and $2400 for outstanding utilities, for total payments due in the amount of $65,570. Id. It also ordered the defendant to pay $10,000 toward the plaintiff's attorney's fees. Id. The court required the defendant to maintain a $500,000 life insurance policy, to provide health insurance for the plaintiff, to cover 62 percent of any uninsured medical expenses for the parties' two minor children, and to cover 50 percent of costs associated with the minor children's extracurricular activities. Id., 806–807. Significantly, the "court did not identify any valuable assets that the defendant could use to comply with its financial orders." Id., 807. This court determined that the court's financial orders were excessive, leaving the defendant with "little to no income to sustain his basic welfare." Id., 808.

The defendant also relies on *Greco* v. *Greco*, supra, 275 Conn. 362–63. In *Greco*, the trial court awarded the plaintiff 98.5 percent of the marital estate and ordered the defendant to pay the plaintiff $710 weekly in alimony and to maintain for the plaintiff's benefit two substantial insurance policies, which orders left the defendant with an annual net income deficit. Id., 360–61. Our Supreme Court held that the trial court's financial orders constituted an abuse of discretion because, "[u]nder the trial court's order, the defendant was forced to the brink of abject poverty by his obligations to pay the required alimony and insurance premiums, and then stripped of any means with which to pay them by the disproportionate division of the marital assets." Id., 363; see also *Pellow* v. *Pellow*, 113 Conn. App. 122, 124, 129, 964 A.2d 1252 (2009) (periodic alimony award of $4500 per month, which totaled more than $70,000 per year, was abuse of discretion where it would consume more than 90 percent of obligor's *gross* income, which trial court found to be $78,796).

We conclude that the facts of this case differ significantly from the facts in *Greco* and *Valentine*. In the present case, although the support and vehicle loan payment orders leave the defendant with net income of $134 weekly, which amounts to approximately 10 percent of his net weekly income, the support orders are not excessive in light of the duration of such orders and the assets awarded to the defendant in the dissolution. First, we note that the court ordered time limited alimony and found that, in light of the facts and circumstances of the case, a six year period of alimony was appropriate.[10] The court further ordered that the term of alimony could not be extended.

Second, the defendant received substantial assets in the dissolution, including $200,000 in proceeds from the sale of the marital home; $6285 in bank accounts; stocks, bonds, and mutual funds in the amount of $116,725; real estate and property in Brazil worth $131,409; $56,454 from his retirement accounts; and the 2016 Mazda CX5 valued at $16,860. Accordingly, the present situation is unlike that in *Greco* and *Valentine* because, here, the court awarded valuable assets from the marital estate to the defendant, which assets he could use to comply with the court's support orders and to sustain his basic welfare. The court expressly recognized the parties' history of using assets to meet their expenses, stating that "[t]he income earned by the defendant was never enough to pay all of the household expenses." Furthermore, unlike in *Greco* and *Valentine*, the distribution of assets was essentially even, with both parties receiving approximately 50 percent of the marital property. On

[10] The court has the discretion to structure its alimony award such that the recipient of the support has the opportunity to obtain the skills needed to achieve a standard of living outside the marriage that was enjoyed during the marriage. "[R]ehabilitative alimony, or time limited alimony, is alimony that is awarded primarily for the purpose of allowing the spouse who receives it to obtain further education, training, or other skills necessary to attain self-sufficiency." *Bornemann* v. *Bornemann*, 245 Conn. 508, 539, 752 A.2d 978 (1998).

the basis of the foregoing, we conclude that the support orders did not constitute an abuse of discretion.

II

We next address the defendant's claim that the court abused its discretion in entering a relocation order that the parties did not request. Specifically, he contends that the trial court improperly "unilaterally modified" language in the parties' pendente lite parenting plan to permit the plaintiff to relocate thirty-five miles from her current residence, where the parenting plan permitted relocation thirty-five miles from the other parent's residence. We disagree that the court abused its discretion.

The following additional facts and procedural history are relevant to this claim on appeal. The parties had entered into a pendente lite custody and parenting access plan dated July 19, 2018. The pendente lite plan provided joint legal and shared physical custody of the parties' children and designated the plaintiff as the primary residential parent. Article eleven of the plan discussed relocation and provided: "Neither party shall relocate with the minor children outside the state of Connecticut or more than thirty-five . . . miles from the other parent's residence, unless the parties agree otherwise in writing. Each party shall provide the other party with at least ninety . . . days advance notice of their intention to relocate providing the proposed relocation and the reason for said relocation. In the event the parties do not reach an agreement, in writing, either party may petition the court for a determination of same; however, in no event shall either party relocate until further order of the court."

At trial, the plaintiff testified regarding her educational plans related to ensuring her long-term financial stability. Specifically, she testified that she had been accepted into a doctorate program in clinical psychology at the University of Albany. In order to receive a discounted tuition rate, the plaintiff maintained that she

would need to be a resident of the state of New York. The plaintiff estimated that it would take her six years to complete the doctorate program. On the basis of her acceptance into the University of Albany program, the plaintiff requested a modification to the relocation provision of the pendente lite parenting plan.

In opening statements, the plaintiff's counsel stated that the plaintiff was requesting "that she be allowed to reside within the radius allowed . . . within [the] parenting plan; however, with one caveat. The radius right now is thirty-five miles *from . . . the parties' residence in Newtown, Connecticut.* She asks that it be also within the state of New York . . . ." During her testimony, the following exchange occurred between the plaintiff's counsel and the plaintiff:

"Q. Are you asking the court to slightly modify this plan?

"A. Yes, I am.

"Q. How so?

"A. I would just like to keep the parenting plan as is because I know that is important to the court and I would—I live on the border of New York so I would only ask that I would have an opportunity to relocate within those thirty-five miles on the border so that I can receive the tuition that this school offers and therefore I would be the one driving to school and taking the, you know, I would be taking the—I don't know what the word would be—the difficult driving time and not . . . make any—alter anybody else's schedule, basically.

"Q. So you mentioned thirty-five miles. Is there a relocation provision in this plan?

"A. It says that there's a *radius of thirty-five miles from our residence on this date.*

"Q. And it limits you from going outside of the state of Connecticut; is that correct?

"A. That's correct.

* * *

"Q. [D]o you know where the defendant wants to move?

"A. Yes, I do.

"Q. And where is that?

"A. Old Greenwich, Connecticut.

"Q. And giving his pending move to Greenwich does—do you think New York makes sense for you?

"A. Yes. Absolutely. It's on the border.

"Q. Might it be easier if the defendant was in Greenwich and you were just across the border?

"A. Yes, it would be." (Emphasis added.)

At trial, the defendant testified that he was "liv[ing] at [his] father's house temporarily" in Newtown. The plaintiff entered into evidence an August 29, 2018 letter from the defendant's counsel to the plaintiff's counsel stating that the defendant intended to relocate within thirty-five miles of the marital residence to Old Greenwich. The letter cited greater employment opportunities in the lower Fairfield County/New York City area than the greater Danbury area and indicated that an exact address would be provided to the plaintiff once a lease agreement was finalized.

While the plaintiff was testifying on cross-examination, the court clarified her request, stating: "But if I understand your request, which I have not said I agree or disagree with, as I understand your request was to be able to move within the thirty-five miles called for in the separation agreement, but you may have to cross the state line in New York but within that thirty-five mile

radius. Is that correct?" The plaintiff confirmed that the court's understanding was correct.

In its memorandum of decision, the court found that the parties' pendente lite July 19, 2018 custody and parenting access plan was in the best interests of the children with one exception. The court eliminated the reference to "outside the state of Connecticut" and ordered that "[t]he plaintiff has the right to relocate with the minor children to the state of New York provided it is not more than thirty-five . . . miles from her current residence."[11]

On appeal, the defendant argues that "the record did not support the trial court's conclusion that permitting the plaintiff to relocate thirty-five miles from her current residence, rather than the mutually agreed upon thirty-five miles from the other parent's residence, is in the minor children's best interests." (Emphasis omitted.) The defendant maintains that both parties made "pointed requests"—with the plaintiff requesting that the court remove the language prohibiting her from relocating outside Connecticut and the defendant requesting that the court retain that language. The defendant states that the court "made no mention or reference to the defendant's residence or the ample evidence in the record that he intends to relocate to Old Greenwich." (Emphasis omitted.) Thus, the defendant contends that the court abused its discretion in deciding a matter that was not put in issue by either party. He further argues that the court's order violated his right to due process, "as it denied him any notice of the issue and the opportunity to be heard on it."

[11] The court ordered restrictively "as long as the defendant is a resident of Connecticut that the plaintiff not file any motion in the state of New York having to do with custody and visitation. This includes a motion for protective order and restraining order. She is not to allow anyone to file any motions on behalf of the children." The court stated that this order was "not stayed in the event of an appeal."

We first set forth applicable legal principles and our standard of review. The authority of a trial court to render custody, visitation and relocation orders is set forth in General Statutes § 46b-56 (a), which provides in relevant part that "[i]n any controversy before the Superior Court as to the custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children . . . ."[12] "[Section] 46b-56

[12] Subsection (b) further provides: "In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child." General Statutes § 46b-56 (b).

Subsection (c) provides: "In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory

(c) directs the court, when making any order regarding the custody, care, education, visitation and support of children, to 'consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of [sixteen enumerated] factors. . . . The court is not required to assign any weight to any of the factors that it considers.' " *Noonan* v. *Noonan*, 122 Conn. App. 184, 189, 998 A.2d 231, cert. denied, 298 Conn. 928, 5 A.3d 490 (2010).

"Our standard of review of a trial court's decision regarding custody, visitation and relocation orders is one of abuse of discretion. . . . [I]n a dissolution proceeding the trial court's decision on the matter of custody is committed to the exercise of its sound discretion and its decision cannot be overridden unless an abuse of that discretion is clear. . . . The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. . . . In determining what is in the best interests of the child, the court is vested with a broad discretion. . . . [T]he authority to exercise the judicial discretion under the circumstances revealed by the finding is not conferred upon this court, but upon the trial court, and

environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision." General Statutes § 46b-56 (c).

. . . we are not privileged to usurp that authority or to substitute ourselves for the trial court. . . . A mere difference of opinion or judgment cannot justify our intervention. Nothing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference. . . .

"The trial court has the opportunity to view the parties [firsthand] and is therefore in the best position to assess the circumstances surrounding a dissolution action, in which such personal factors as the demeanor and attitude of the parties are so significant. . . . [E]very reasonable presumption should be given in favor of the correctness of [the trial court's] action. . . . We are limited in our review to determining whether the trial court abused its broad discretion to award custody based upon the best interests of the child as reasonably supported by the evidence." (Citations omitted; internal quotation marks omitted.) *Ford* v. *Ford*, 68 Conn. App. 173, 187–88, 789 A.2d 1104, cert. denied, 260 Conn. 910, 796 A.2d 556 (2002).

In the present case, the court determined that it was in the best interests of the parties' children for the plaintiff to be permitted to relocate just over the New York border, where she could establish residency and thus afford to pursue the doctorate program to which she had applied and been accepted. The court expressly found that this professional degree, which would take six years to complete, would provide the plaintiff a necessary opportunity for meaningful employment and income. Relatedly, as the court's alimony award was time limited, terminating after six years, there was a need for the court to craft an order reasonably assuring a plan for self-sufficiency at the expiration of those six years. The court retained the parents' acknowledgement, expressed in their pendente lite agreement, that a maximum of thirty-five miles between their homes was in the best interest of their children. The court

reasonably and logically tethered that distance limit to the plaintiff's current home in Newtown, as she was the party, during the dissolution hearing, seeking the court's permission to relocate. Accordingly, we are not persuaded that the court abused its discretion or deprived the defendant of due process.[13] Moreover, with respect to potential future residential relocations, we do not read the court's order as deviating from the parties' expressed belief and agreement that it is in the best interest of their children that the parties live within thirty-five miles of each other unless agreed otherwise in writing.

III

Lastly, we address the defendant's claim that the amount of the attorney's fees awarded reflected an abuse of the court's discretion. We disagree.

The following additional procedural history is relevant to this claim on appeal. On October 13, 2017, the plaintiff filed a motion for attorney's fees pendente lite. The court, *Eschuk*, *J.*, held a hearing on this motion on February 5 and May 31, 2018. Both parties filed financial affidavits and testified. The plaintiff's counsel, Attorney

[13] The defendant relies on the proposition that, "[i]n exercising its statutory authority to inquire into the best interests of the child, the court cannot sua sponte decide a matter that has not been put in issue, either by the parties or by the court itself. Rather, it must . . . exercise that authority in a manner consistent with the due process requirements of fair notice and reasonable opportunity to be heard." (Internal quotation marks omitted.) *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 515, 146 A.3d 26 (2016); see id., 518 (trial court's finding that start of school, which was not pleaded specifically in plaintiff's motion to modify custody, constituted material change in circumstances technically was improper). The defendant cites *Strohmeyer* v. *Strohmeyer*, 183 Conn. 353, 354–56, 439 A.2d 367 (1981), in which our Supreme Court concluded that the trial court erred in awarding the parties joint custody of the minor child, where the defendant did not contest in his pleadings or at trial the plaintiff's request for sole custody and the court stated at the end of trial that it would give sole custody to the plaintiff.

We conclude that the concerns in *Strohmeyer*, where the court awarded joint custody without a hearing on that issue, are not implicated here.

Danielle Edwards, submitted two affidavits of attorney's fees, one dated December 12, 2017, and another dated January 3, 2018. At the hearing on May 31, 2018, Attorney Edwards was cross-examined by the defendant's counsel as to her representation of the plaintiff. Attorney Edwards testified that the matter was originated by Attorney Paul Tusch, who was the supervising attorney. Attorney Edwards testified regarding her representation of the plaintiff in the temporary restraining order proceeding in September, 2017, for which the plaintiff was billed a total of $22,886.25. Attorney Edwards, who previously had not conducted a restraining order hearing, worked 68.5 hours on the matter, for which the client was billed $20,550, and Attorney Tusch spent four hours, for which the client was billed $2300.[14] With respect to the dissolution, Edwards testified, in response to questions from the defendant's counsel, regarding billing entries for conferences with other attorneys at her firm.

The defendant entered into evidence billing records of his attorney, Jill H. O'Connor, from September, 2017 through April, 2018. The total amount billed was $60,521.10, which included representation for the restraining order proceeding and dissolution proceedings. In closing argument on the fee request, the defendant's counsel argued, inter alia, that the fees requested were excessive and unreasonable because Attorney Edwards was inexperienced in family law and "a lot of the time" was spent being mentored by other attorneys in the firm. The defendant's counsel also argued that

[14] When questioned as to whether Attorney Tusch was training or advising her on the restraining order matter, Attorney Edwards testified that Attorney Tusch "wrote off time that might have fallen in the training category," however, she later testified that she did not know how much time he wrote off. With respect to advising, Attorney Edwards testified that "all of the time I spent with him was relevant to making sure that our case strategy was on point and being carried out at all times the way that was best for the client."

the fees should be equalized. Specifically, she contended that because the defendant had paid approximately $60,000 in attorney's fees, any award of attorney's fees to the plaintiff's counsel should be limited to the difference between the $60,000 the defendant had paid his attorney and the amount the plaintiff already had paid her attorney.

On May 31, 2018, the court issued an order in which it found no "egregious misconduct by either party, notwithstanding the lengthy temporary restraining order hearing." It found that the plaintiff had a right to have an attorney represent her in this case, and that she "does not have enormous assets with which to pay her attorney." It found that the plaintiff had selected Attorney Edwards, who, at the time, had one of the lowest hourly billing rates at the Cacace, Tusch, & Santagata law firm. The court found that it was "not unusual" for more experienced attorneys at the law firm to mentor Attorney Edwards "given her experience as a practicing attorney at the time." As to the requested fees of $82,151.09, the court found that some of the fees charged by more senior partners at the law firm were excessive. It further found that although the plaintiff's attorney's fees "are not easy to pay," the defendant has the assets to do so.

On the basis of these findings, the court adjusted the fees charged by more senior attorneys at the law firm and reduced the requested sum of $82,151.09 to $75,000.[15] It then ordered the defendant to pay the $75,000 by June 30, 2018.

[15] The court also explained its reduction during the hearing, stating: "[W]hile it might be that [the plaintiff] could have gotten a cheaper firm of attorneys, it is a good firm, and she's entitled within reason to select a competent firm that she feels comfortable with. She selected or had selected for her probably the lowest fee earner amongst those qualified as attorneys. That being the case, it is not inappropriate for the firm to have mentored Attorney Edwards to some extent. The extent, however, to which the mentorship took place should be something that is taken into consideration by the court. So, in going through the requested fees, I have reduced some of the

On appeal, the defendant claims that the fees ordered were unreasonable because Attorney Edwards was inexperienced in restraining order applications, and her inexperience was "reflected in the significant disparity between the hours billed by [the] plaintiff's counsel versus the hours billed by defense counsel." Acknowledging that the court "reduced a handful of the billing entries from other partners who had assisted" Attorney Edwards, the defendant contends that the court should have reduced Edwards' own entries, which he maintains were excessive and unreasonable. We disagree that the court abused its discretion.

"When making an order for the payment of attorney's fees, the court must consider factors that are essentially the same as those that must be considered when awarding alimony. . . . [General Statutes §] 46b-62 governs the award of attorney's fees in dissolution proceedings and provides that the court may order either spouse . . . to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in [§] 46b-82. . . . This reasonableness requirement balances the needs of the obligee spouse with the obligor spouse's right to be protected from excessive fee awards. . . .

"Courts ordinarily award counsel fees in divorce cases so that a party . . . may not be deprived of [his

fees charged by Attorney Tusch. Attorney Tusch is the—a senior partner, I believe, in the firm of Cacace, Tusch, and Santagata. His billing rate is specified to be $575 an hour. Attorney Malone, also a partner, was charging at $375 an hour. . . . I'm going to pick a couple of—of examples rather than going through this bill one by one. But for example on November 1st, 2017, I have reduced the amount charged by Attorney Tusch on October 2nd for . . . preparation for attending a hearing short calendar regarding temporary financial support, outside conference with counsel, meeting with Attorney Edwards, and the like from $4082 to $2130. I have made similar adjustments. For example, on October 13th there was a telephone conference followed up by office conferences with Attorney Tusch and Ms. Malone concerning [a] proposed visitation psychologist. Now while it might be entirely appropriate for the partners to mentor Attorney Edwards, the amount of $690 seems to the court to be a little excessive."

or] her rights because of lack of funds. . . . Where, because of other orders, both parties are financially able to pay their own counsel fees they should be permitted to do so. . . . An exception to the rule . . . is that an award of attorney's fees is justified even where both parties are financially able to pay their own fees if the failure to make an award would undermine its prior financial orders . . . . Whether to allow counsel fees [under §§ 46b-62 and 46b-82], and if so in what amount, calls for the exercise of judicial discretion. . . . An abuse of discretion in granting counsel fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." (Citations omitted; internal quotation marks omitted.) *Lynch* v. *Lynch*, 153 Conn. App. 208, 246–47, 100 A.3d 968 (2014), cert. denied, 315 Conn. 923, 108 A.3d 1124, cert. denied, 577 U.S. 839, 136 S. Ct. 68, 193 L. Ed. 2d 66 (2015).

"Courts have a general knowledge of what would be a reasonable attorney's fee for services which are fairly stated and described. . . . [C]ourts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award of attorney's fees. . . . The court [is] in a position to evaluate the complexity of the issues presented and the skill with which counsel had dealt with these issues. . . . While the decision as to the liability for payment of such fees can be made in the absence of any evidence of the cost of the work performed . . . the dollar amount of such an award must be determined to be reasonable after an appropriate evidentiary showing." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Panganiban* v. *Panganiban*, 54 Conn. App. 634, 644, 736 A.2d 190, cert. denied, 251 Conn. 920, 742 A.2d 359 (1999).[16]

[16] Rule 1.5 (a) of the Rules of Professional Conduct provides: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in

In the present case, the court had before it robust evidence from which to determine the reasonableness of the fees. Specifically, during the hearing on the plaintiff's motion for attorney's fees, Attorney Edwards testified as to the services she rendered, her level of experience, and her consultation with other attorneys at her firm. Moreover, the plaintiff's attorney submitted two fee affidavits with attached billing records.

The defendant's central challenge to the attorney's fees award is that the court should have reduced Attorney Edwards' billing entries on the basis that her alleged inexperience resulted in excessive billing. In making its award, the court justifiably considered the services rendered by the plaintiff's counsel and her skill level and corresponding billing rate. In fact, the court remarked during the hearing that, although a more experienced attorney would take less time to perform a task, the hourly rate of such attorney would be higher. The court further remarked that "while it might be that [the plaintiff] could have gotten a cheaper firm of attorneys, it is a good firm, and she's entitled within reason to select a competent firm that she feels comfortable with. She selected or had selected for her probably the lowest fee earner amongst those qualified as attorneys. That being the case, it is not inappropriate for the firm to have mentored Attorney Edwards to some extent." The court then determined that certain billing entries by partners

determining the reasonableness of a fee include the following: (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) The likelihood, if made known to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) The fee customarily charged in the locality for similar legal services; (4) The amount involved and the results obtained; (5) The time limitations imposed by the client or by the circumstances; (6) The nature and length of the professional relationship with the client; (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) Whether the fee is fixed or contingent."

of the firm were excessive, and identified on the record examples of entries it was reducing. Overall, the court reduced the fees requested by approximately $7000. Considering the foregoing, we conclude that the court appropriately considered Attorney Edwards' experience in assessing the reasonableness of the fee request and that its resulting award was not an abuse of its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

LISA R. JOHNSON *v.* PETER A. JOHNSON
(AC 42984)

Alvord, Cradle and Suarez, Js.

Syllabus

The defendant, whose marriage to the plaintiff had been dissolved, appealed to this court following the decisions of the trial court granting the plaintiff's motions for contempt and issuing certain other orders. After the trial court granted the plaintiff's motions for postsecondary educational support for the parties' son and for modification of the defendant's child support and alimony obligations, the court denied the defendant's motions for reargument, and he appealed to this court, which dismissed as untimely that portion of the appeal that pertained to the educational support and alimony and child support orders. The defendant then filed an amended appeal challenging the trial court's order that he reimburse the plaintiff for interest on funds she had to borrow as a result of his wilful noncompliance with the educational support order. The trial court then issued a correction to that order, and granted the plaintiff's motions for contempt as a result of the defendant's failure to comply with the educational support order or the child support and alimony orders. The defendant then filed a second amended appeal after which this court issued an order limiting the issues he could raise in this appeal as a result of his having listed the trial court's initial support orders on his amended appeal forms despite the previous dismissal of his appeal as to those orders. On appeal, the defendant claimed, inter alia, that the trial court misinterpreted the parties' separation agreement, which had been incorporated into the dissolution judgment, and, thus, erred in entering the associated support orders. *Held*:

1. The defendant could not prevail on his claim that the trial court committed plain error by imposing its own findings and interpretation of the separation agreement and acting in a manner that gave rise to the appearance of a lack of impartiality: the defendant's assertion as to the separation agreement and the associated support orders was based on a flawed interpretation of the law and was not properly before this court, the defendant having ignored this court's order limiting his appellate brief to the trial court's orders that were issued subsequent to the dismissal of that portion of his appeal that challenged the initial orders modifying his child support and alimony obligations and requiring him to pay educational support; moreover, the defendant did not raise a claim in his motion to reargue as to the trial court's interpretation of the separation agreement, and he failed to argue how that interpretation resulted in a manifest injustice or affected the fairness and integrity of and public confidence in the proceedings; furthermore, the defendant's claim of judicial bias arose solely from the adverse rulings against him, which may not form the basis for such a claim.
2. This court declined to review the defendant's inadequately briefed claims that the trial court abused its discretion when it issued contradictory findings without changing its modified orders and issued orders that were beyond a statutory time frame that he did not identify in his brief; furthermore, the defendant's claim that the court abused its discretion in finding him in contempt was unavailing, as he did not identify which contempt finding he was challenging and failed to provide legal or factual analysis in support of his claims, and, even if it were assumed that the defendant was challenging the contempt finding relative to the educational support order, his claim was belied by the record, which reflected that he was ordered to pay those expenses on the same day that the court modified his child support and alimony obligations, and the court's finding of wilful noncompliance with those unambiguous orders was amply supported by the record of the numerous hearings he was afforded on that issue.

Argued January 5—officially released March 23, 2021

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Stanley Novack*, judge trial referee; judgment dissolving the marriage and granting certain other relief; thereafter, the court, *Sommer*, *J.*, granted the plaintiff's motions for postsecondary educational support and modification of child support and alimony; subsequently, the court, *Sommer*, *J.*, denied the defendant's

motion for reargument; thereafter, the court, *Sommer*, *J.*, issued a supplement to its denial of the motion to reargue, and the defendant appealed to this court, which dismissed the appeal in part; subsequently, the court, *Sommer*, *J.*, issued certain orders as to its educational support and child support and alimony orders, and the defendant filed an amended appeal; thereafter, the court, *Sommer*, *J.*, issued an order of correction, and the defendant filed an amended appeal; subsequently, the court, *Sommer*, *J.*, granted the plaintiff's motions for contempt, and the defendant filed an amended appeal. *Affirmed.*

Maryam Afif, with whom, on the brief, was *Seth J. Arnowitz*, for the appellant (defendant).

Lisa R. Johnson, self-represented, the appellee (plaintiff).

Opinion

CRADLE, J. In this matter stemming from the dissolution of his marriage to the plaintiff, Lisa R. Johnson, the defendant, Peter A. Johnson, appeals from the trial court's postjudgment modification of child support and alimony, and entry of an educational support order. The defendant also appeals from the court's judgment finding him in contempt for failing to comply with those orders. On appeal, the defendant claims that the trial court (1) committed plain error "when it imposed its own findings and interpretation" of the parties' separation agreement, and "failed to act in a manner that projected impartiality," and (2) abused its discretion when it "issued numerous contradictory findings without changing its modified orders," entered orders "beyond the statutory time frame" and "found [him] in contempt without making [the] requisite findings." We affirm the judgment of the trial court.

The parties' eighteen year marriage was dissolved on March 15, 2016. At the time of dissolution, the court incorporated into its judgment a separation agreement signed by the parties and their respective counsel. The separation agreement provided that the defendant would pay child support and alimony to the plaintiff, in the amounts of $1451 per month and $2166.67 per month, respectively. The agreement further provided: "This amount does not take into account any of the [defendant's] income from the rental of real properties owned partially or wholly by him. In the interest of resolving the parties' dispute, the [plaintiff] is not pursuing her right to further discovery about the [defendant's] rental income at this time. In the event that it is determined that the [defendant] derives a benefit from rental income, the same shall be deemed a substantial change in circumstance[s] and this child support order shall be modified retroactive to the date such benefit was derived, but no earlier than the date of dissolution of the parties' marriage." The identical language was applied to the provision of the agreement pertaining to the defendant's alimony obligation.

The separation agreement also provided that the court would retain jurisdiction to enter educational support orders for the parties' children pursuant to General Statutes § 46b-56c.

On January 16, 2018, the plaintiff filed a motion for educational support to pay for the college expenses of the parties' son. On February 8, 2018, she filed a motion to modify child support and alimony on the ground that she had discovered that the defendant was receiving a benefit from rental income.[1] The court, *Sommer*, *J.*, held evidentiary hearings on the motions over the course of three days.[2]

[1] The defendant jointly owns with his sister three rental properties in Ossining, New York.

[2] Those hearings also addressed a motion for contempt filed by the plaintiff, which was denied, and a motion for modification of child support and

On December 21, 2018, the court issued a memorandum of decision granting the plaintiff's motions for postsecondary educational support and for modification of child support and alimony. The court found that the defendant receives a benefit from his rental properties and had received that benefit commencing prior to the date of dissolution. Specifically, the court found that the defendant's income was $938 per week higher than the income that he had disclosed at the time of dissolution. The court therefore concluded that the plaintiff had established a substantial change in circumstances in accordance with the parties' separation agreement, and modified the child support and alimony orders accordingly, retroactive to the date of dissolution. The court further ordered the defendant to pay 80 percent of the college expenses for the parties' son up to the statutory cap of the cost of in-state tuition and fees for a full-time student at the University of Connecticut pursuant to § 46b-56c (f).

On January 2, 2019, the defendant filed a motion to reargue, which the court heard on February 25, 2019. The court denied the motion orally from the bench and reiterated, also orally from the bench, its denial of that motion on February 27, 2019. The defendant and his attorney were present in court on both dates.

The defendant filed an amended motion to reargue on April 15, 2019, asking the court to address two issues, which he captioned "date of change in circumstances" and "imputed income." (Emphasis omitted.) On May 17, 2019, the court summarily denied the defendant's motion. On May 24, 2019, the court issued a "supplement" to its order denying the motion to reargue, explaining the bases for its rejection of the arguments raised in the defendant's motion.

alimony filed by the defendant, which also was denied. Those orders have no bearing on the issues presented in this appeal.

On May 24, 2019, the defendant filed an appeal from the orders issued on December 21, 2018, and May 17 and 24, 2019. On July 18, 2019, this court dismissed, as untimely, the portion of the defendant's appeal challenging the court's December 21, 2018 decision.

On July 12, 2019, the trial court found that the defendant had failed to pay the educational support order and that his noncompliance with the order was wilful. The court further found that, as a result of the defendant's violation of the court order, the plaintiff was required to borrow funds at an interest rate of 6 percent to pay for the education of the parties' son. The court ordered the defendant to reimburse the plaintiff for that interest. On July 23, 2019, in response to a motion for clarification filed by the plaintiff on the same day, the court issued an order clarifying the amounts of the child support and alimony arrearages due to the plaintiff, in addition to the amount of the defendant's portion of the educational support order. On July 24, 2019, the defendant filed an amended appeal to include a challenge to the court's July 12 and 23, 2019 orders. On August 1, 2019, the court issued a correction to its July 12, 2019 orders, in which it simply corrected various dollar amounts and calculations. On August 9, 2019, the defendant amended his appeal to include this order.

On July 25 and August 2, 2019, the plaintiff filed motions for contempt, alleging that the defendant had failed to comply with the educational support order or the modified child support and alimony orders. On December 20, 2019, the court granted both of the plaintiff's motions for contempt. On January 3, 2020, the defendant amended his appeal to include the court's December 20, 2019 rulings.

Despite this court's dismissal of the defendant's appeal from the trial court's December 21, 2018 orders, the defendant continued to list those orders on his amended appeal forms. On February 5, 2020, this court

issued an order limiting the issues to be raised in this appeal to the orders of the trial court issued on May 17, May 24, July 12, July 23, August 1 and December 20, 2019.

I

We begin with the defendant's claims of plain error. "[The plain error] doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. [T]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy. . . . In addition, the plain error doctrine is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . Plain error is a doctrine that should be invoked sparingly. . . . Implicit in this very demanding standard is the notion . . . that invocation of the plain error doctrine is reserved for occasions requiring the reversal of the judgment under review. . . .

"An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable. . . . This determination clearly requires a review of the plain error claim presented in light of the record.

"Although a complete record and an obvious error are prerequisites for plain error review, they are not,

of themselves, sufficient for its application. . . . [I]n addition to examining the patent nature of the error, the reviewing court must examine that error for the grievousness of its consequences in order to determine whether reversal under the plain error doctrine is appropriate. A party cannot prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice. . . . In *State* v. *Fagan*, [280 Conn. 69, 87, 905 A.2d 1101 (2006), cert. denied, 549 U.S. 1269, 127 S. Ct. 1491, 167 L. Ed. 2d 236 (2007)], we described the two-pronged nature of the plain error doctrine: [An appellant] cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is *both* so clear *and* so harmful that a failure to reverse the judgment would result in manifest injustice." (Emphasis in original; internal quotation marks omitted.) *Reville* v. *Reville*, 312 Conn. 428, 467–69, 93 A.3d 1076 (2014).

A

The defendant first contends that the trial court committed plain error "when it imposed its own findings and interpretation" of the parties' separation agreement in that it "impermissibly rewrote the agreement and imposed nonexistent or impossible conditions on the defendant." This argument clearly stems from the court's December 21, 2018 orders modifying the defendant's child support and alimony obligations and ordering him to contribute to the postsecondary educational expenses of the parties' son. The defendant's appeal from those orders was dismissed as untimely. He contends, nevertheless, that, because those orders are referenced in subsequent orders from which he did timely appeal, his claims that the court committed plain error in misinterpreting the parties' separation agreement and entering the associated support orders are properly before this court. This argument is not persuasive for two reasons. First, the defendant ignores this court's

order dismissing his appeal from the December 21, 2018 orders in addition to this court's order that his appellate brief should be limited to the court's subsequent orders. And, second, the argument is based on a flawed interpretation of the law.

It is well settled that "[w]hen a motion to open is filed more than twenty days after the judgment, the appeal from the denial of that motion can test only whether the trial court abused its discretion in failing to open the judgment and not the propriety of the merits of the underlying judgment. . . . This is so because otherwise the same issues that could have been resolved if timely raised would nevertheless be resolved, which would, in effect, extend the time to appeal." (Internal quotation marks omitted.) *JPMorgan Chase Bank, N.A.* v. *Eldon*, 144 Conn. App. 260, 272, 73 A.3d 757, cert. denied, 310 Conn. 935, 79 A.3d 889 (2013). Thus, the defendant's claims are limited to the issues raised by the defendant in his motion to reargue and the issues addressed by the court in response to it.

In his April 15, 2019 motion to reargue, the defendant argued that he had moved into the property at issue prior to the date of dissolution, and, therefore, the fact that he lived there "rent free" could not form the basis for a finding of a substantial change of circumstances. He also argued that the court improperly considered his assets as imputed income. The court rejected those arguments, and the defendant has not argued that the court committed plain error in doing so. Rather, the defendant argues that the court committed plain error in failing to recognize and properly interpret allegedly ambiguous language in the parties' separation agreement referring to his "benefit from rental income . . . ." That claim was not raised in the defendant's April 15, 2019 motion to reargue.

Moreover, aside from setting forth the legal principles that govern plain error review, the defendant has failed

to argue how the trial court's interpretation of the separation agreement resulted in a manifest injustice or constituted an error so obvious that it affected the fairness and integrity of and public confidence in the judicial proceedings. Accordingly, the defendant's claim fails.

B

The defendant also contends that the trial court committed plain error by acting in a manner that gave rise to the appearance of a lack of impartiality.[3] We disagree.

"In assessing a claim of judicial bias, we are mindful that adverse rulings, alone, provide an insufficient basis for finding bias even when those rulings may be erroneous. . . . [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Schimenti* v. *Schimenti*, 181 Conn. App. 385, 395–96, 186 A.3d 739 (2018).

[3] Although the defendant conceded at oral argument before this court that his claim of judicial bias was "not preserved in any way" before the trial court; see *Gillis* v. *Gillis*, 214 Conn. 336, 343, 572 A.2d 323 (1990) ("[i]t is a well settled general rule that courts will not review a claim of judicial bias on appeal unless that claim was properly presented to the trial court via a motion for disqualification or a motion for [a] mistrial"); we review his claim for plain error. See, e.g., *DeMattio* v. *Plunkett*, 199 Conn. App. 693, 724, 238 A.3d 24 (2020) (unpreserved claim of judicial bias reviewable under plain error doctrine).

Here, the defendant claims that the "statements and actions of the court imposing nonexistent obligations on [him], castigating [him] for failing to meet them, not considering the plaintiff's income, ordering [him] to pay more than he could afford, [and] supporting the plaintiff in making false representations to another state, all" reflected the court's bias. He further argues that the court "made numerous unfounded accusations that [he] was not forthcoming or truthful with the court . . . ." He contends that the court's granting of the plaintiff's motion for contempt without applying the correct standards also conveyed a lack of impartiality. It is clear that the defendant's claim of judicial bias arises solely from the adverse rulings entered against him, which may not form the basis for a claim of judicial bias. See, e.g., *Tracey* v. *Tracey*, 97 Conn. App. 278, 284–85, 903 A.2d 679 (2006) ("it is clear that adverse rulings by the judge do not amount to evidence of bias sufficient to support a claim of judicial disqualification"). Because the defendant has failed to demonstrate a deep-seated favoritism by the court, or an antagonism that would make a fair judgment impossible, his claim is unavailing.

II

The defendant also claims that the court abused its discretion when it "issued numerous contradictory findings without changing its modified orders," issued orders "beyond the statutory time frame," and found him in contempt without making the necessary findings. We disagree.

"In general, [an] abuse of discretion exists when a court could have chosen different alternatives but has decided the matter so arbitrarily as to vitiate logic, or has decided it based on improper or irrelevant factors . . . . Therefore, [i]n those cases in which an abuse of discretion is manifest or where injustice appears to have been done, reversal is required. . . . When reviewing claims under an abuse of discretion standard,

the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness . . . . Furthermore, we have stated in other contexts in which an abuse of discretion standard has been employed that this court will rarely overturn the decision of the trial court." (Citation omitted; internal quotation marks omitted.) *Stilkey* v. *Zembko*, 200 Conn. App. 165, 172, 238 A.3d 78 (2020).

A

The defendant first claims that the court abused its discretion when it "issued numerous contradictory findings without changing its modified orders," and "failed to correct support orders." The defendant appears to argue that the court abused its discretion in failing to correct an alleged inconsistency between its May 24, 2019 denial of his motion to reargue and the December 21, 2018 orders. In response to the defendant's motion to reargue, the court responded, inter alia: "[The] defendant's attempt to construe the court's finding regarding the defendant's assets as imputed income is wholly improper. The court did not impute income but instead relied on the defendant's sworn financial affidavits and such information as could be discerned from the limited self-serving materials submitted by the defendant to determine the defendant's living expenses and financial assets and expenses." The defendant now argues: "Accepting this as true, the court abused its discretion by not correcting the December 21, 2018 order."[4] The preceding statement represents the entirety of any challenge to the May 24, 2019 order, to the extent that it may be construed as a challenge. The defendant has provided no specific references to the May 24, 2019 order or to the

[4] The defendant also states: "Furthermore, the court fails to explain why an incorrect increase in salary constitutes a 'benefit from rental income.' " It is unclear how this statement is related to this claim. Rather, it appears to be a separate challenge to the court's December 21, 2018 orders, the appeal of which has been dismissed as untimely.

December 21, 2018 order from which any inconsistency may be ascertained, nor has he presented any factual or legal analysis in support of this claim. The defendant's claim is therefore inadequately briefed and we decline to review it. See *Starboard Fairfield Development, LLC* v. *Gremp*, 195 Conn. App. 21, 31, 223 A.3d 75 (2019) ("We are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than [mere] abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed." (Internal quotation marks omitted.)).

B

The defendant also claims that the court abused its discretion "when it entered incorrect orders beyond the statutory time frame."[5] The defendant has failed to cite any such time frame in his brief to this court.[6] Consequently, this claim also is inadequately briefed, and we decline to review it.[7]

C

Last, the defendant claims that the court "abused its discretion when it found [him] in contempt without making requisite findings." Although the defendant sets

[5] Within this claim, the defendant also argues that the court abused its discretion "when it entered the July 12, 2019 order with no predicate motion and no factual or evidentiary support." This statement is belied by the record, which reveals that the July 12, 2019 order was in response to the plaintiff's January 8, 2019 motion for clarification, and the court held an evidentiary hearing on that motion on January 22, 2019, at which both the defendant and his attorney were present.

[6] We note that the defendant also failed to allege a violation of any statutory time limits before the trial court.

[7] We note that the defendant's claim in this regard consists of two sentences that are devoid of any legal authority or analysis.

Although there are two additional paragraphs contained under the heading of this claim, they are seemingly unrelated to the first two sentences and cannot be construed, even liberally, as constituting an intelligible argument.

forth approximately two pages of legal principles pertaining to contempt, he fails to connect that legal authority to his argument or to specify which findings were lacking from the court's contempt judgment. His argument in this regard consists only of the following: "In this case, the court granted the plaintiff's motions for contempt of orders that are far from clear and have yet to be updated. Moreover, given the length of time in granting the motion and the effect of the plaintiff's collection orders in New York, the plaintiff has not met her evidentiary burden to show wilful noncompliance." Not only does the defendant fail to identify which contempt judgment he is addressing, he also fails to provide any legal or factual analysis in support of his claims. He also neglects to quantify the time lapse that he refers to or explain how that alleged delay, or efforts made by the plaintiff to collect from him in New York, had any bearing on the court's contempt judgment.

Moreover, if we were to assume that the subject of the present claim is the contempt finding related to the defendant's noncompliance with the educational support order to pay 80 percent of the college expenses of the parties' son, the defendant's claim is also belied by the record, which clearly reflects that the defendant was ordered on December 21, 2018, to pay 80 percent of such expenses. On that same date, the court modified child support and alimony, retroactive to the date of dissolution. The court found that the defendant failed to comply with its unambiguous orders and that the defendant's noncompliance was wilful. Those are the only findings necessary to a contempt determination; see *Puff* v. *Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020); and the court's findings in this case are amply supported by the record of the numerous hearings afforded to the defendant on this issue.

The judgment is affirmed.

In this opinion the other judges concurred.