A. D. *v.* L. D.*
(AC 44326)

Elgo, Suarez and Bear, Js.

Syllabus

The defendant father, whose marriage to the plaintiff mother previously had been dissolved, appealed to this court from the judgment of the trial court granting the plaintiff's motion to modify custody and visitation and awarding her sole legal and physical custody over the parties' minor children. The trial court found that there had been a material change in circumstances since the dissolution judgment warranting a modification of the child custody orders and that it was in the best interests of the minor children to modify the defendant's access and visitation schedule. *Held*:

1. The defendant could not prevail on his claim that the trial court's modified custody orders violated his federal constitutional right to family integrity: the orders did not effectively terminate his parental rights but, rather, suspended his access to the children and established a mechanism for him to reunify with his minor children, the orders provided the defendant with an opportunity to have dinner with his minor children each week if they elected to participate, permitted the minor children to contact the defendant, required the plaintiff to ensure that the minor children meet with a reunification therapist twice per year to assess the possibility of reunification, required the plaintiff to keep the defendant reasonably informed of her decisions regarding the children, and permitted the defendant to file a motion to modify the orders once he completed an intimate partner violence program, giving the defendant a course of action to reestablish his parenting access and contact with his minor children; moreover, the defendant's assertion that the only permitted potential access he may have to his children was controlled by the plaintiff who he claims had alienated the children from him was unsupported by the evidence in the record.
2. The defendant failed to demonstrate that the trial court abused its discretion by creating a near impossibility that he could ever regain visitation with his children: the modified custody orders did not require the defendant to engage in reunification therapy with his children, which the defendant claimed was nearly impossible to satisfy, before being able

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

to file a motion for modification of the orders, and imposed on the defendant only an obligation to complete an intimate partner violence program before he was able to file a motion for modification; moreover, the defendant has already completed the intimate partner violence program and has filed a motion for modification of the orders.

3. The trial court did not violate the defendant's due process rights by applying the well established fair preponderance of the evidence standard in considering the plaintiff's motion for modification of custody; under *Cookson* v. *Cookson* (201 Conn. 229), our Supreme Court addressed the issue of what standard of proof is required in child custody proceedings to satisfy the requirements of the due process clause of the United States constitution, and concluded that a fair preponderance of the evidence standard was the proper standard of proof when deciding a motion to modify custody required to satisfy due process under both the state and federal constitutions.

Argued October 6, 2022—officially released June 27, 2023

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Hon. James G. Kenefick, Jr.*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *Diana, J.*, granted the plaintiff's motion to modify custody and visitation, and the defendant appealed to this court. *Affirmed.*

Kenneth A. Votre, for the appellant (defendant).

Marianne J. Charles, for the appellee (plaintiff).

Opinion

SUAREZ, J. In this dissolution matter, the defendant, L. D., appeals from the judgment of the trial court granting a postjudgment motion to modify custody and visitation filed by the plaintiff, A. D. On appeal, the defendant claims that the court (1) violated his fundamental right to family integrity as guaranteed under the constitution of the United States, (2) created a near impossibility that he could ever regain visitation with his children,

and (3) violated his federal due process rights by applying an incorrect burden of proof to the plaintiff's motion to modify custody. We affirm the judgment of the court.

The following undisputed facts and procedural history are relevant to the resolution of this appeal. The parties were married on August 7, 1999, and there are six children issue of the marriage: G, D, V, S, N, and T.[1] On February 8, 2016, the plaintiff commenced a dissolution of marriage action. Following a highly contested trial held over twenty various days from July, 2017, through February, 2018, the court, *Hon. James G. Kenefick, Jr.*, judge trial referee, issued a memorandum of decision on June 11, 2018, in which it dissolved the marriage of the parties. With respect to custody, the court ordered that the "parties shall share joint legal custody of the six minor children. The [plaintiff] shall have primary physical custody and the [defendant] shall have parenting time pursuant to their parenting plan dated June 20, 2017 . . . their agreement of December 18, 2017 . . . and their stipulation of December 18, 2017 . . . all of which were approved and so ordered by the court."

Article II of the parenting plan governs the regular parenting schedule of the parties. It provides in relevant part that the defendant "shall have parenting time with the three minor children, [S, N, and T], every other weekend from Friday after school until Sunday at 7:00 p.m. . . . and every Wednesday from after school until 8:00 p.m. . . . The [defendant] and the three minor children, [G, D, and V] shall continue in weekly reunification therapy . . . for a period of at least one year." The parenting plan further provides that the schedule

[1] The record reflects that G was born in 2000; D was born in 2002; V was born in 2003; S was born in 2005; N was born in 2007; and T was born in 2008.

may be modified upon mutual written agreement of the parties.[2]

Since the date of judgment, the parties have engaged in ongoing postjudgment litigation. Following an evidentiary hearing spanning eighteen nonconsecutive days, the court, *Diana*, *J.*, issued a memorandum of decision on October 6, 2020, resolving forty-one outstanding postjudgment motions. Among the motions resolved by the court, and the subject of the present appeal, was a motion filed by the plaintiff on August 5, 2019, seeking to modify the June 11, 2018 custody orders by granting her sole legal and physical custody of the minor children.[3] In that motion, the plaintiff claimed that, since the date of judgment, there had been a substantial change in circumstances warranting a modification of the child custody orders and that it was in the best interests of the minor children to modify those orders. In support of her motion, the plaintiff alleged that the defendant refused to cooperate and/or communicate with the plaintiff regarding issues relating to the minor children, that the defendant's behavior had become increasingly erratic and volatile, that the minor children had limited contact with the defendant, and that the defendant had maintained a pattern of harassment, made numerous frivolous filings, and continuously sought ex parte motions for modification of custody.

[2] On July 19, 2018, the parties entered into a written agreement in which the defendant's parenting time was expanded to include "Wednesdays at 1 p.m. to Thursday return to school or if there is no school 10 a.m."

[3] In addition to the plaintiff's August 5, 2019 motion for a modification of custody, the court considered seven motions for modification of custody and three ex parte motions for custody filed by the defendant, all of which the court denied; eight motions for contempt filed by the plaintiff, which the court granted; two motions for contempt filed by the plaintiff, which the court denied; fifteen motions for contempt and a motion for order filed by the defendant, all of which the court denied; two motions for sanctions filed by the plaintiff and one motion for sanctions filed by the defendant, all of which the court denied; and a motion for attorney's fees filed by the plaintiff, which the court granted. The defendant appeals only from the granting of the plaintiff's August 5, 2019 motion for modification of custody.

In its October 6, 2020 memorandum of decision, the court found the following facts: "The three older children have not visited with the defendant since November, 2017, and the three younger children have not visited with the defendant since September 3, 2018.[4] On the preceding day, the defendant broke his son's phone and slapped two of the children, leaving a mark on his daughter's face. Since then, the defendant has arrived to pick up the children in an attempt to exercise his visitation without any success, as the children have summarily rejected his pleas. They tell him to leave, that they hate him and will not visit with him, and that he is not their father. The defendant has recorded . . . many of these troubling interactions, including his son kicking his car and taking air out of his tires. . . .

"This unhealthy behavior continues with the communication between the defendant and the children. The defendant sends each of the children a positive and uplifting text message most days, the majority of which never receive a reply. If there is communication from the children to the defendant, it is all extremely negative. The upset in this relationship between the defendant and his children is extremely dysfunctional and at a crisis stage." (Citation omitted; footnote added.)

The court further found that "[t]he children allege that their father abused them. He denies the allegations. They have told him how and why they feel the way they do. He refuses to listen to them. Instead, he informs the children that they have been poisoned and brainwashed by their mother who has alienated them from him.

"At this point, this chaos and upset caused by the defendant trying to force visitation and communication with [the] children who reject him has been going on

[4] At the time the court issued its memorandum of decision, only four of the children were minors.

for approximately two years. The result has harmed the children, who have acted out as a result of this forced relationship by being hysterical, hyperventilating, walking away from the defendant, crying and shaking, refusing his gifts and affection, having panic attacks, missing school, stopping participation in extracurricular activities, and calling the police. As such, the [local] police department and the . . . Department of Children and Families ([department]) have been involved, but to no avail. Protective orders were issued on behalf of a few of the children against the defendant after [he] was arrested. Those matters have since concluded, however, a protective order still remains on behalf of the parties' oldest daughter against the defendant. Additionally, on February 24, 2020, the court issued an interim order whereby the defendant was ordered not to go to the children's school(s) or the plaintiff's residence."

Moreover, the court found that "[t]he communication between the parties, as seen in multiple email exhibits, has also materially changed since the [June, 2018] memorandum of decision was issued. . . . Their ability to communicate has severely declined, going from bad to worse. The court finds the communication to be unhealthy and unproductive. The plaintiff is found to regularly inform the defendant of the children's activities. The defendant's responses are hostile, accusatory, and insulting. Numerous matters that seek and request a reply from the defendant go unanswered." (Citation omitted.)

The court found that the defendant and his children participated in reunification therapy as required by the parenting plan. However, the court found that the reunification therapy was terminated by the reunification therapist after only two sessions in the summer of 2019. According to the testimony at the hearing from the reunification therapist, not all families can be reunified.

The therapist testified that reunification therapy "was not appropriate to continue as the children were afraid, shaking, crying, and anxious." The court found that repeated efforts to reunify had been made and that continued efforts at reunification would be counterproductive and cause the children more harm and distress than good.

In addition to reunification therapy, the court found that "every other reasonable service has been exhausted in an effort to calm the tension and resolve the ongoing disputes between the parties. Those services include a guardian ad litem, a parent coordinator, [the department's] Intimate Partner Violence Program, Family Services Intensive Case management, the local police department, two binding arbitrations, and various protective orders, one of which is still in effect. All of these services, however, have been insufficient to help this family, in part, because of the defendant's attitude and belief that he is blameless.

"This belief and attitude, in part, stems from the defendant's obsession with trying to prove that the plaintiff was having an affair during the marriage. Judge Kenefick found no credible evidence to support this claim. . . . The defendant has not changed his behavior and continues to make the same claim to the children and to this court. . . . This same obsessive conduct is also found by this court in the defendant's repeated claim that the plaintiff has alienated the children from him. . . . The court finds that no credible evidence was presented to support this claim." (Citations omitted.)

Additionally, the court found that the defendant's lack of relationship with his children was "due to his own actions over the years, not due to the actions of the plaintiff. In fact, the court finds that the plaintiff has tried to encourage the children to visit with the defendant when they refuse. . . . Unfortunately, the

defendant's focus has been to prove alienation, not to repair his damaged relationship with the children. This can be seen in the communication between the defendant and the children, which shows how he is unable to understand and meet the needs of the children. . . . [The children] have consistently and clearly informed the defendant, the police, the school, the school resource officer, [the department], the reunification therapists, and the plaintiff that they do not want to have contact with the defendant. The defendant's reaction to hearing from the children that they do not want to have contact with him is to continue to contact them and to focus on their physical appearances as opposed to their emotional well-being." (Citation omitted.)

The court found the plaintiff to be credible and the defendant to be defiant and misguided regarding the plaintiff and the minor children. It described the defendant as "insistently rigid, faultless, [and] unable [to] follow court orders or professional instruction" and found that "[he] lacks any insight into how these same attributes interfere with his ability to have a relationship with [his] children." The court found that the defendant "actively disbelieves the children when they tell him how they think and feel, and therefore he is incapable of meeting their needs." The court ultimately found that there had been a material change in circumstances since the date of judgment regarding custody of the parties' four minor children and that it was in the best interests of the children to modify the defendant's access and visitation schedule.

The court granted the plaintiff's August 5, 2019 motion to modify custody and ordered that the plaintiff "shall have sole legal and physical custody of the parties' minor children." The court suspended the defendant's parenting schedule with the minor children until further order of the court and ordered that the defendant not "initiate contact with the children by any

means, including, but not limited to, text, email, phone call, or social media." The court further ordered that the children have the option of a dinner visit with the defendant every Wednesday from 5:30 to 7:30 p.m. at a local restaurant in the town where the children reside. The court ordered the plaintiff to advise the defendant by Tuesday as to whether any of the children chose to attend the Wednesday dinner visit. The court ordered the plaintiff to "ensure that the minor children meet with a reunification therapist twice a year . . . to reassess the initiation of reunification therapy." The court further ordered that, if "the defendant successfully completes [the department's] Intimate Partner Violence Program, he may file a motion with the court to modify this decision to reestablish parenting access and contact with his minor children." This appeal followed. Additional facts will be set forth as necessary.

We begin by setting forth the following relevant legal principles. "General Statutes § 46b-56 provides trial courts with the statutory authority to modify an order of custody or visitation. General Statutes (Rev. to 2019) § 46b-56 (c) directs the court, when making or modifying any order regarding the custody, care, education, visitation and support of children, to consider the best interests of the child, and in doing so [the court] may consider, but shall not be limited to, one or more of [sixteen enumerated] factors[5] . . . . The court is not

[5] "The statutory factors are as follows: '(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

required to assign any weight to any of the factors that it considers . . . .

"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 [authorized by § 46b-56] . . . is not conferred [on] this court, but [on] the trial court, and . . . 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 [that] discloses a clear abuse of discretion can warrant our interference. . . .

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 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.' General Statutes (Rev. to 2019) § 46b-56 (c)." *Dolan* v. *Dolan*, 211 Conn. App. 390, 398–99 n.6, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022).

"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; footnote in original; internal quotation marks omitted.) *Dolan* v. *Dolan*, 211 Conn. App. 390, 398–400, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022).

I

The defendant first claims that the court's modification of the custody orders violated his federal constitutional right to family integrity. He asserts that the court's termination of his custody, visitation, and access to his children effectively terminated his parental rights without any means to ensure reunification or reinstitution of his parental rights, and, therefore, the court's modification orders violated his fundamental right to family integrity. Specifically, he argues that the only permitted potential access he may have to his children is entirely controlled by the plaintiff, who, he maintains, has alienated the children from him. We are not persuaded.

"It is well established that the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court. . . . The rights to conceive and to raise one's children have been deemed essential . . . basic civil rights of man . . . and [r]ights far more precious . . . than property

rights . . . . The integrity of the family unit has found protection in the [d]ue [p]rocess [c]lause of the [f]ourteenth [a]mendment . . . the [e]qual [p]rotection [c]lause of the [f]ourteenth [a]mendment . . . and the [n]inth [a]mendment [to the United States constitution] . . . .'' (Citation omitted; internal quotation marks omitted.) *In re Zakai F.*, 336 Conn. 272, 291–92, 255 A.3d 767 (2020). Our Supreme Court has also stated that ''[t]he termination of parental rights is defined . . . as the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child[ren] and [their] parent.'' (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 324–25, 222 A.3d 83 (2019).

In the present case, the October 6, 2020 orders do not effectively terminate the defendant's parental rights. Rather, they suspend the defendant's access to the children and establish a mechanism for the defendant to reunify with his minor children. The October 6, 2020 orders provide the defendant with an opportunity to have dinner with his minor children each week if they elect to participate, and the orders also permit the minor children to contact the defendant. Moreover, the orders require the plaintiff to ensure that the minor children meet with a reunification therapist twice per year to assess the possibility of reunification and to keep the defendant reasonably informed of the plaintiff's decisions regarding the children. Additionally, the October 6, 2020 orders permit the defendant to file a motion to modify the custody and visitation orders once the defendant completes the department's Intimate Partner Violence Program, giving the defendant a course of action to reestablish his parenting access and contact with his minor children.

The defendant's assertion that the only permitted potential access he may have to his children is controlled by the plaintiff who has alienated the children

from him is unsupported by the evidence in the record. In his brief to this court, the defendant asserts that the court entirely ignored his concern that the plaintiff was alienating the children from him after hearing testimony from James Connolly, the court-appointed psychologist who performed the psychological evaluation of the family during the initial dissolution proceedings, who stated that "there is a high likelihood that the [plaintiff] would attempt to interfere with the contact and relationship of her soon to be ex-spouse with her children going forward." In its memorandum of decision, however, the court addressed both Connolly's testimony and the defendant's claim of alienation. The court specifically found that "no credible evidence was presented to support this claim." The court found that the defendant's lack of relationship with the children was "due to his own actions over the years" and not due to the actions of the plaintiff. The court specifically found that the plaintiff has encouraged the children to visit with the defendant after the children refuse to visit with him.

With respect to Connolly, the court found his testimony to be "unpersuasive and unreliable." Contrary to the defendant's assertion, the court noted that Connolly was not ordered by the court to perform an updated evaluation, nor was he provided with the essential and complete information to do so. Instead, the court found that "[t]he defendant and his counsel contacted [Connolly] directly contrary to Practice Book [2020] § 25-60A (b) and (c)[6] . . . [and that] he was only provided

[6] Practice Book (2020) § 25-60A governs court-ordered private evaluations and provides in relevant part: "(a) If the court orders a private evaluation of any party or any child in a family proceeding where custody, visitation or parental access is at issue, a state licensed mental health professional shall conduct such evaluation.

"(b) Notice of any orders relating to the evaluation ordered shall be communicated to the evaluator by the guardian ad litem or, where there is no guardian ad litem, by court personnel.

"(c) Until a court-ordered evaluation is filed with the clerk pursuant to Section 25-60 (b), counsel for the parties shall not initiate contact with the evaluator, unless otherwise ordered by the judicial authority. . . ."

with selected information from the defendant and/or his counsel." (Footnote added.) "[A]s a reviewing court, [w]e cannot . . . pass upon the credibility of the witnesses. . . . Rather, [i]t is within the province of the trial court, when sitting as the fact finder, to . . . determine the credibility and effect to be given the evidence." (Internal quotation marks omitted.) *In re Cameron H.*, 219 Conn. App. 149, 162, A.3d , cert. denied, Conn. , A.3d (2023).

In light of the foregoing, we conclude that the defendant has failed to demonstrate that the court's modified custody orders violated his right to family integrity. Accordingly, this claim fails.

II

The defendant next claims that the "court's orders create a near impossibility that [he] can ever regain visitation with his children." He argues that the provisions of the October 6, 2020 orders, which purport to provide a path for reunification with his children, are nearly impossible to satisfy. Specifically, the defendant asserts that the October 6, 2020 orders requiring him to complete the Intimate Partner Violence Program before he may file a motion to modify the orders, and the order requiring the plaintiff to ensure that the minor children meet with a reunification therapist twice per year, create a near impossibility for him to regain access to the minor children. With regard to the order concerning the Intimate Partner Violence Program, he asserts, without any reference to the record, that the program cannot be completed without the cooperation of the children and, potentially, the plaintiff. He argues that his inability to contact his children, coupled with the children's refusal to interact with him, makes the requirement that he complete the Intimate Partner Violence Program nearly impossible to satisfy. Moreover, the defendant argues that the provision requiring the

children to meet with a reunification therapist twice per year is "entirely in control of the plaintiff," who is not likely to ensure the children will attend the visits. Further, he maintains that, even if the children do meet with a reunification therapist, the reunification therapy is unlikely to further the goal of reunification if the children meet with the same therapist that the court previously appointed, who testified that not all families can be reunified.

This claim, which we consider under the abuse of discretion standard as previously set forth in this opinion, fails for two reasons.

First, the October 6, 2020 orders do not require the defendant to engage in reunification therapy with his children before he may file a motion for modification of the custody orders. The October 6, 2020 orders only impose on the defendant an obligation to complete the department's Intimate Partner Violence Program before he may file a motion for modification.

Second, the defendant has completed the Intimate Partner Violence Program and has filed a motion for modification of the October 6, 2020 orders.[7] Our careful

[7] The fact that the defendant has completed the Intimate Partner Violence Program does not give rise to any mootness concerns with respect to all or part of this appeal. The defendant relies, in part, on the court's order that he complete the program in an effort to demonstrate that the court placed before him an insurmountable burden to his ability to restore his parental role with his children. The defendant does not challenge the propriety of the order itself or whether he was required to comply with it. Thus, the defendant's completion of the program does not lead us to conclude that an actual controversy did not exist at the time the appeal was taken, that a controversy does not exist that is capable of being adjudicated in this court, or that this court is unable to provide any practical relief to the defendant if it were to agree with the merits of his claim. See *In re Allison G.*, 276 Conn. 146, 165, 883 A.2d 1226 (2005) ("[j]usticiability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant" (internal quotation marks omitted)).

review of the trial court's voluminous file, of which we take judicial notice,[8] reflects that on November 30, 2021, the defendant filed with the court a request for leave to file a motion for modification of the October 6, 2020 orders. In the November 30, 2021 request for leave, the defendant represented to the court that he completed the Intimate Partner Violence Program as a reason for leave to file a motion for modification.[9] On February 14, 2022, the defendant filed a second request for leave to file a motion for modification with an attached amended motion for modification of custody orders. In the attached amended motion for modification of custody orders, the defendant again represented that he "successfully completed [the] Intimate Partner Violence Program, as was ordered." On May 2, 2022, the court, *Connors*, *J.*, held a hearing on the defendant's request for leave to file a motion for modification and, after hearing from the defendant's witness, found that he "has proved to the satisfaction of the court that [he] has completed the [department's] Intimate Partner Violence Program ordered by the court . . . ." On October 5, 2022, the court, *Grossman*, *J.*, conducted a remote hearing on the defendant's motion for modification and denied the motion in a memorandum of decision issued on December 27, 2022. That court found: "The situation between the defendant and his children has declined. The defendant is distressed by his poor relationship with his children but unwilling to acknowledge his role in the circumstances. He has not changed his behavior or gained any insight into how his actions negatively impact his children. The defendant has elevated his

[8] "[I]t is well established that [this court], like the trial court, may take judicial notice of files of the Superior Court in the same or other cases." (Internal quotation marks omitted.) *Thunelius* v. *Posacki*, 193 Conn. App. 666, 669 n.1, 220 A.3d 194 (2019).

[9] We note that the defendant's brief to this court was filed on December 6, 2021, and does not mention his completion of the Intimate Partner Violence Program.

desire for vindication and punishment over his desire for a relationship with his children."

For the foregoing reasons, we conclude that the defendant has failed to demonstrate that the court abused its discretion.

III

The defendant's final claim is that the court's application of the preponderance of the evidence standard violates his due process rights.[10] He claims that the October 6, 2020 orders effectively terminated his parental rights and, therefore, the court was required to apply the clear and convincing standard of proof.[11] We are not persuaded.

Our Supreme Court, in *Cookson* v. *Cookson*, 201 Conn. 229, 514 A.2d 323 (1986), previously addressed the issue of what standard of proof is required in child custody proceedings to satisfy the requirements of the due process clause of the United States constitution. In doing so, our Supreme Court considered the three factors enumerated in *Santosky* v. *Kramer*, 455 U.S. 745, 754, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). In *Santosky*, the United States Supreme Court held that,

[10] In his brief to this court, the defendant asserts that "[i]t is not clear from the trial court's decision what standard of proof the trial court held the plaintiff to deciding her motion for modification . . . ." In its memorandum of decision, however, the court clearly states that it made "the following findings of fact throughout this decision by a preponderance of the evidence . . . ."

[11] The defendant relies heavily on our Supreme Court's decision in *In re Zakai F.*, supra, 336 Conn. 272, in support of this claim. *In re Zakai F.*, however, is easily distinguishable from the present case. In *In re Zakai F.*, our Supreme Court held that when a parent seeking reinstatement of guardianship rights establishes that the cause that existed for the removal of the parent as guardian no longer exists, that parent is entitled to a presumption that reinstatement is in the best interests of the child. Id., 276. The party opposing reinstatement must rebut this presumption by clear and convincing evidence. Id. The analysis in *In re Zakai F.* is inapplicable to a resolution of custody and visitation issues between parents.

in a hearing on a petition to terminate parental rights, due process requires that the state prove statutory termination criteria by clear and convincing evidence rather than by a fair preponderance of the evidence. Id., 769–70. "The three factors considered in *Santosky* to determine whether a particular standard of proof in a particular proceeding satisfies due process are: (1) the private interests affected by the proceeding; (2) the risk of error created by the chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure." *Cookson* v. *Cookson*, supra, 234–35. After discussing that standard, our Supreme Court concluded that a fair preponderance of the evidence standard was the proper standard of proof, when deciding a motion to modify custody, required to satisfy due process under both the state and federal constitutions. Id., 239–40.

The court reasoned: "This court in *In re Juvenile Appeal (83-CD)*, 189 Conn. 276, 455 A.2d 1313 (1983), dealt with the issue of the proper standard of proof to be applied in a temporary custody hearing. There we examined the reasoning in *Santosky* and concluded that the higher standard of 'clear and convincing evidence,' required by *Santosky*, was not required in a temporary custody hearing because '(1) the nature of the private interests concerned in the two kinds of hearings differs, and (2) the deprivation of rights in a temporary custody adjudication is neither final nor irrevocable.' . . .

"In the present case the nature of the private interests involved likewise differs substantially from those in *Santosky*. In this instance, prior to judicial intervention, neither parent had an exclusive right to the custody of the children; their rights were joint and equal. General Statutes [Rev. to 1985] § 45-43 . . . . This contrasts sharply with the situation in *Santosky* where the parents were pitted against the state and faced the prospect of losing the children permanently to a complete outsider

to the family unit. Further, the modification of a custody decree does not involve the same complete severance of the parent-child relationship that results from the termination of parental rights. . . . After the modification of a custody order the noncustodial parent, generally speaking, retains the right to maintain a relationship with the children and to participate, albeit to a more limited extent in their upbringing. See General Statutes [Rev. to 1985] § 46b-56 (e) . . . . Also a custodial determination is not a 'final and irrevocable' and immutably permanent decision as is that effected by a termination proceeding. . . . The court has continuing jurisdiction over a custody decree; see [General Statutes (Rev. to 1985)] § 46b-56 (a) and (b); and the noncustodial parent retains the option to move to modify custody based on a substantial change in circumstances affecting the welfare of the children. . . .

"In sum, while substantial, the private interests involved in a custody dispute between parents and the effect on those interests wrought by a judicial transfer of custody are not such that the constitution requires the use of a 'clear and convincing' standard of proof by the tribunal making the decision.

"We must also consider whether the possibility of an erroneous deprivation of custody by the use of a 'preponderance of the evidence' standard deprived the plaintiff of due process of law. The United States Supreme Court in *Santosky* stated that 'the relevant question is whether a preponderance of the evidence standard fairly allocates the risk of an erroneous [fact-finding] between these two parties.' . . . The court answered that question by determining that due process required a 'clear and convincing' standard in termination proceedings, based largely on what it perceived to be the unequal contest between the state and the parents from whom the state sought custody. It was the court's view that in a proceeding to terminate parental

rights the ability of the state to assemble its case almost 'inevitably dwarfs the parents' ability to mount a defense.' . . . Additionally, the court pointed out that in a termination proceeding there is a striking disproportion in the litigation options of the adversaries because the parents do not have a 'double jeopardy' defense against repeated state termination efforts. 'If the [s]tate initially fails to win termination, as New York did here . . . it can always try once again to cut off the parents' rights after gathering more or better evidence. Yet, even when the parents have attained the level of fitness required by the [s]tate, they have no similar means by which they can forestall future termination efforts.' . . .

"The United States Supreme Court found that those factors coupled with the use of a 'fair preponderance of the evidence' standard created a 'significant prospect of erroneous termination' . . . and that the consequent social cost of the complete destruction of the natural family by an erroneous termination of parental rights was too great a risk to assign to a 'preponderance of the evidence' standard, which allocates the risk of error nearly equally between destruction of the family unit and mere maintenance of the status quo of the children in a foster home.

"A custody dispute between parents does not present the same inherent disparity in resources, disproportionate litigation options or the risk of total destruction of the family unit which would constitutionally require the use of the higher standard of proof by 'clear and convincing' evidence.

"In *Santosky*, the final factor that the court addressed was the 'countervailing governmental interest supporting use of the challenged procedure.' . . . In a proceeding to determine custody between parents, since

the government is not a party, this factor would translate to whether the competing interests of those affected by the litigation support the use of a 'preponderance of the evidence' standard or require the use of a 'clear and convincing' standard.

"In a custody dispute between parents . . . each parent and the children have interests which conflict in varying degrees but have relatively equal weight on the societal scale. The custodial parent has an interest in retaining custody, the noncustodial parent has an interest in the well-being of the children, and the children have an interest in continuity of care. The overriding concern, however, is that the children be placed in an environment that secures their best interests.

"When the interests of the parents vis-à-vis each other and the children allegedly conflict, that conflict is best resolved by placing the burden on the [moving] parent to prove by a fair preponderance of the evidence that a [modification] of custody is in the best interests of the children. Where 'important interests affected by a proceeding are in relative equipoise . . . a higher standard of proof would necessarily indicate a preference for protection of one interest over the other.' *In re Juvenile Appeal (83-CD)*, supra, [189 Conn.] 298.

"Although we recognize the importance of continuity of care as a significant factor in the statutory mandate that custody disputes be resolved in accord with the 'best interests of the child,' we do not believe that this consideration requires implementation through departure from the normal standard of proof. . . .

"[A]lthough a 'clear and convincing' standard of proof is constitutionally required for the termination of parental rights . . . the burden of proof by a 'preponderance of the evidence' placed on the moving parent in a proceeding to determine custody comports with due process and serves adequately to protect the various interests involved. . . .

"[A] modification of custody hearing is not a proceeding that requires, constitutionally or otherwise, the judicial implementation of a burden of proof other than the familiar civil standard." (Citations omitted; footnotes omitted.) *Cookson* v. *Cookson*, supra, 201 Conn. 235–41.

In sum, we conclude that the court did not violate the defendant's due process rights by applying the well established fair preponderance of the evidence standard in considering the plaintiff's August 5, 2019 motion for modification of custody.

The judgment is affirmed.

In this opinion the other judges concurred.

TAMI G. STRAUSS *v.* MARK E. STRAUSS
(AC 44693)

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

Syllabus

The defendant, whose marriage to the plaintiff previously had been dissolved, appealed to this court from the judgment of the trial court denying his postjudgment motion to vacate a series of orders finding him in contempt for his failure to comply with the parties' separation agreement, which had been incorporated into the judgment of dissolution. The plaintiff filed two motions for contempt in 2014, alleging that the defendant failed to comply with the court's orders that had been issued in response to her fifteen prior motions for contempt. The defendant failed to appear for a hearing on the 2014 motions, and the court found him in contempt for his failure to provide to the plaintiff his life insurance information, to pay child support, to contribute to certain required expenses and to pay her attorney's fees. At a subsequent hearing, the court incarcerated the defendant for one week for his failure to purge the contempt. After a third hearing in 2014, the court found that the defendant was still in contempt and issued additional orders, from which the defendant neither appealed nor filed a motion to reargue. In 2019, the plaintiff filed another motion for contempt. In 2020, the defendant filed a motion to vacate the 2014 contempt orders, arguing that the orders were issued, and he was incarcerated, in violation of his constitutional rights because he was absent from the initial 2014 hearing due to a serious heart condition. The court denied the motion

to vacate, concluding that it lacked the authority to overturn a judgment of contempt rendered five years previously when the defendant alleged the court committed error in its judgment. Thereafter, the court denied the defendant's motion to stay the trial court proceedings during the pendency of this appeal. *Held*:

1. The defendant could not prevail on his claim that the trial court incorrectly concluded that it did not have the authority to vacate the 2014 contempt orders, which was based on his claim that a court retains inherent equitable authority to vacate a contempt order beyond the four month deadline imposed by the applicable statute (§ 52-212a) and rule of practice (§ 17-4 (a)): although trial courts have limited continuing authority to vacate an order of civil contempt on the ground that the contemnor purged the contempt, nothing in the case law relied on by the defendant suggested that courts have continuing authority to vacate a civil contempt finding on any other basis, and the defendant did not seek to vacate the 2014 contempt orders because he purged the contempt but, rather, because the court improperly found him in contempt; moreover, although trial courts have continuing authority to effectuate prior judgments, courts are not permitted to substantively modify or correct prior judgments, and, in this case, the defendant's motion to vacate did not seek to vindicate the 2014 orders but, rather, to vitiate them.
2. This court declined to review the defendant's claim that the trial court improperly denied his motion to stay the proceedings during the pendency of this appeal; the defendant's claim was not properly before this court because the defendant failed to file a motion for review of the trial court's decision pursuant to the applicable rule of practice (§ 66-6), and, although the defendant characterized his motion to stay not as a request for an appellate stay but, instead, as a request that the court continue a hearing on the 2019 motion for contempt until the conclusion of this appeal, this characterization was belied by the relief sought in his motion to stay and the claims raised in his principal appellate brief challenging the court's actions regarding the appellate stay.

Argued November 7, 2022—officially released June 27, 2023

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, *Hon. Sidney Axelrod*, judge trial referee, rendered judgment dissolving the marriage and granting certain other relief in accordance with the parties' separation agreement; thereafter, the court, *Winslow*, *J.*, found the defendant in contempt; subsequently, the court, *Hon. Heidi G. Winslow*, judge trial referee, denied the defendant's motion to open

and vacate the court's findings of contempt, and the defendant appealed to this court; thereafter, the court, *Nascimento*, *J.*, denied the defendant's motion to stay the proceedings, and the defendant filed an amended appeal. *Affirmed*.

James P. Sexton, with whom were *Thomas D. Colin*, and, on the brief, *Megan L. Wade*, for the appellant (defendant).

Alexander Copp, with whom was *Rachel A. Pencu*, for the appellee (plaintiff).

Opinion

ELGO, J. The defendant, Mark E. Strauss, appeals from the judgment of the trial court denying his post-judgment motion to vacate a series of orders finding him in contempt for his failure to comply with a separation agreement that he entered into with the plaintiff, Tami G. Strauss, in connection with the underlying judgment dissolving their marriage. On appeal, the defendant claims that the court improperly (1) concluded that it lacked authority to vacate its prior contempt orders, and (2) denied his motion to stay the trial court proceedings during the pendency of this appeal. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to our resolution of this appeal. In September, 2006, the court dissolved the marriage of the parties. The court incorporated into the judgment of dissolution the parties' comprehensive separation agreement (agreement). With respect to the parties' daughter, who was born in 2000, the agreement required that the defendant pay to the plaintiff weekly child support and to contribute a percentage of expenses, including day care, summer camp, insurance, and unreimbursed medical expenses. The agreement also

required the defendant to maintain life insurance, naming the plaintiff as trustee and their daughter as the beneficiary, and to furnish proof of this insurance to the plaintiff at her request, no more than twice annually.

Between 2007 and 2011, the parties engaged in a protracted contest regarding their obligations pursuant to the agreement, which resulted in more than 100 docket entries. During that time period, the plaintiff filed at least fifteen motions for contempt requesting that the defendant comply with his obligations pursuant to the agreement. The court granted relief with respect to at least five of the plaintiff's motions for contempt and ordered, inter alia, that the defendant provide to the plaintiff (1) past due child support, day care expenses, camp expenses, health insurance premiums, unreimbursed medical expenses, (2) proof of life insurance, and (3) attorney's fees incurred in the prosecution of the motions. The case then was dormant for three years.

On April 9, 2014, the plaintiff filed another motion for contempt in which she outlined the extensive procedural history of the case and contended that the defendant had failed to comply with the court's prior orders issued in response to her fifteen prior motions for contempt. As for relief, the plaintiff requested that the court order the defendant to pay her $112,573.53, which amount represented past due child support, day care expenses, camp expenses, health insurance premiums, unreimbursed medical expenses, and attorney's fees. The plaintiff also requested that the defendant be ordered to provide her with proof of life insurance, and that the defendant be incarcerated until he complied with the court's orders.

On June 30, 2014, the court held a hearing on the plaintiff's motion for contempt. At the hearing, the defendant requested a brief continuance so that he

could retain counsel,[1] and so that he could produce an updated financial affidavit because his financial situation was, in his view, "particularly complex . . . ." The court orally granted the defendant's request and continued the hearing on the motion for contempt to August 4, 2014. Also on June 30, 2014, the court issued an order requiring the defendant to pay child support by immediate wage withholding, produce certain financial documents to the plaintiff, and provide an updated financial affidavit by July 14, 2014. On July 25, 2014, the plaintiff filed another motion for contempt on the ground that the defendant failed to provide anything to the plaintiff in violation of the court's June 30, 2014 order. After several continuances at the request of the defendant, the court scheduled the hearing on the plaintiff's April 9 and July 25, 2014 motions for contempt for September 2, 2014, at 9:30 a.m.

Only the plaintiff and her counsel appeared at the September 2, 2014 hearing.[2] At the hearing, the plaintiff

[1] Although it is not clear from the trial court file, the defendant was represented by counsel from the outset of this dissolution action through April, 2009. The defendant then proceeded as a self-represented party from April, 2009, through May, 2015, when he again retained counsel.

[2] According to a memorandum to the trial court file authored by a temporary assistant clerk, the defendant called to inform the caseflow coordinator on the morning of the September 2, 2014 hearing that he would not be in attendance because he suffered a cardiovascular event that required emergency medical treatment. At 9:32 a.m., the caseflow coordinator conveyed the defendant's message to the clerk via email, however, the clerk did not read the email until noon during a recess. The clerk then informed the court of the defendant's message, but the matter already had been heard and the orders already had been issued.

At a hearing on October 14, 2014, the defendant entered into evidence a letter authored by the defendant's physician, Robert Labarre, of Cardiology Physicians of Fairfield County, LLC, addressing the defendant's cardiovascular condition. The letter explained that, on August 5, 2014, the defendant was sent from his oral surgeon's office to Stamford Hospital because he had very low blood pressure, and was near syncope, sweaty, and feeling dizzy. On the morning of September 2, 2014, the defendant called his physician before admitting himself to Stamford Hospital because he was suffering from similar conditions to those he experienced on August 5, 2014. The defendant then proceeded to the Cardiology Physicians of Fairfield County,

testified that the defendant had failed to comply with the terms of the agreement and the court's previous contempt orders. The plaintiff also testified that the defendant did not provide any documents in response to the court's June 30, 2014 order. On the same date, the court issued a written order finding the defendant in contempt for his failure to provide to the plaintiff his life insurance information, to pay child support, to contribute the required childcare expenses, and to pay her attorney's fees. The court ordered the defendant to be incarcerated, but it stayed the order for three weeks, until September 22, 2014, to provide the defendant an opportunity to purge the full amount that he owed to the plaintiff, $145,578.36.

On September 22, 2014, both parties appeared for a hearing to determine whether the defendant had purged the contempt. The defendant explained that he was unable to attend the September 2, 2014 hearing and offered to present medical documents supporting his absence. The court said it would "make a note of it," incarcerated the defendant because he failed to satisfy the purge amount, set his bond at $10,000, and continued the matter for one week.

On September 29, 2014, after the defendant had been incarcerated for one week, the parties appeared for another hearing. The defendant requested that the court lift the bond so that he could be released from incarceration and have time to speak to an attorney and to negotiate a payment schedule to settle his outstanding arrearage. The court did not modify its finding of contempt, but it lifted the bond and continued the matter for fifteen days to permit the defendant an opportunity to provide proof of life insurance, to make arrangements to pay

LLC, where an echocardiogram revealed a severe left ventricular outflow obstruction, and that his blood pressure was significantly elevated. The defendant was discharged with instructions to take prescribed medication, go home, rest, and not to drive.

the plaintiff, and to obtain an attorney. The court warned the defendant that he should make his best efforts to resolve this matter or else he would be at risk of being incarcerated again.[3]

On October 14, 2014, the parties again appeared before the court. At the hearing, the defendant provided to the plaintiff $1000 as a contribution toward the arrearage and presented satisfactory proof that he maintained life insurance. The defendant explained that, despite his poor financial circumstances, he actively was seeking employment and offered to prospectively pay the plaintiff $1000 per month to satisfy the arrearage. The defendant also entered into evidence a letter authored by his physician, which explained his cardiovascular condition. See footnote 2 of this opinion. At the conclusion of the hearing, the court found that the defendant was still in contempt due to his inadequate efforts to contribute toward the substantial arrearage that he owed to the plaintiff. The court additionally ordered the defendant to pay the plaintiff $1248.20 per month. The defendant did not file an appeal from or a motion to reargue the court's September 2, 22, and 29, and October 14, 2014 contempt orders (collectively, 2014 contempt orders).

Approximately five years later, on September 13, 2019, the plaintiff filed another motion for contempt contending that the defendant had failed and refused to remit the $1248.20 monthly payments to her. The

[3] Particularly, the court stated: "By the way, I have a relative who has [a medical] condition very similar to the health description that you gave me last time, so, I'm aware of what can or cannot be done with regard to your health issue. It's one of the reasons I had no hesitation about incarcerating you this past week. I do not want to hear any excuse whatsoever. You will be here on October 14 without fail." Although the propriety of this comment is not at issue in this appeal, we emphasize that "attitudes garnered from personal life experience cannot serve as a substitute for properly admitted evidence . . . ." *Schimenti* v. *Schimenti*, 181 Conn. App. 385, 402, 186 A.3d 739 (2018).

plaintiff represented that the outstanding amount totaled $222,205.71, which accounted for sporadic payments made by the defendant. On January 22, 2020, the defendant filed an opposition contending that the plaintiff could not prove that he wilfully violated any of the court's orders.

On January 22, 2020, the defendant filed a motion to vacate the court's 2014 contempt orders. The defendant argued that the 2014 contempt orders were issued, and he was incarcerated for one week, in violation of his constitutional rights because he was absent from the September 2, 2014 hearing due to a serious heart condition.

On January 22, 2020, the court heard arguments on the defendant's motion to vacate.[4] The plaintiff's counsel argued that the court should deny the motion to vacate because the court lacked the authority to vacate the 2014 contempt orders on the basis that those orders were entered more than five years ago, well beyond the four month time limitation for opening or setting aside a judgment pursuant to General Statutes § 52-212a.[5] In response, the defendant's counsel argued that the court had authority to consider the defendant's motion to vacate because the 2014 contempt orders were "fundamentally flawed" and "constitutionally infirm . . . ." The defendant's counsel also argued that the court has inherent authority to correct its judgments at any point in time. The court orally denied the motion to vacate, stating that, even if the contempt orders improperly were entered, there was "no basis in law,

[4] The hearing initially was intended to be only for the plaintiff's September 13, 2019 motion for contempt; nevertheless, the parties agreed that the court should first decide the defendant's motion to vacate.

[5] We note that § 52-212a was amended effective June 28, 2021, after the events at issue in this appeal; see Public Acts 2021, No. 21-104, § 44; those amendments, however, have no bearing on the merits of this appeal. In the interest of simplicity, we refer to the current revision of the statute.

fact or procedure for a motion to vacate five years after the fact."

On February 11, 2020, the defendant filed a motion to reargue the court's decision denying his motion to vacate. The defendant argued that the court has inherent authority to vacate the 2014 contempt orders as part of its power to vindicate prior judgments. The plaintiff filed an objection, arguing that the court should deny the motion to reargue because there was no basis to vacate the 2014 contempt orders five years after they were entered. After a hearing, on September 28, 2020, the court granted the defendant's motion to reargue and vacated its January 22, 2020 order denying the defendant's motion to vacate. The court stated that, "[u]pon reconsideration, the court agrees with the defendant that the court does have jurisdiction and continuing inherent authority to modify or vacate prior findings and rulings entered to enforce the court's judgments." Accordingly, the court scheduled an evidentiary hearing on the defendant's motion to vacate for October 27, 2020, which was continued to May 26, 2021.

Prior to that scheduled hearing, the court issued a memorandum of decision, dated April 28, 2021, in which it denied the defendant's motion to vacate.[6] The court

[6] We note that this April 28, 2021 order was the result of an uncommon sequence of events. Although Judge Winslow issued the 2014 contempt orders, Judge Truglia made the initial rulings on the defendant's motion to vacate, including the initial denial of that motion, the vacatur of that denial, and the scheduling of an evidentiary hearing on the motion. Then, it was Judge Winslow who issued the April 28, 2021 decision denying the motion to vacate prior to the hearing ordered by Judge Truglia. In response to a motion for articulation filed by the plaintiff during the pendency of this appeal, Judge Winslow explained, "[b]ecause it was a contempt order by Judge Winslow in 2014, that the defendant wished to vacate, Judge Truglia decided, with the concurrence of Judge Winslow, that the latter was the appropriate judge to consider the defendant's motion to vacate . . . . Judge Winslow reviewed the file. Judge Winslow approached Judge Truglia to inquire whether he felt his reversal of his initial decision on the motion to vacate was in any way binding on Judge Winslow, and whether an evidentiary hearing was mandatory or necessary if Judge Winslow made a contrary

concluded that it lacked the "authority to overturn and rehear a judgment of contempt rendered five years previously when the contemnor alleges the court committed error in the judgment." The court reasoned that the remedy for the defendant to challenge the 2014 contempt orders was to file an appeal, a motion to reargue, or a timely motion to open those orders in 2014. The court further held that, although there are statutes that permit the opening and modification of judgments in the "family law arena"—General Statutes §§ 46b-56, 46b-63, 46b-65, 46b-84, and 46b-86—none of these apply to a contempt order. This appeal followed.

During the pendency of this appeal, on February 24, 2022, the defendant filed with the trial court a motion to stay, pursuant to Practice Book § 61-11, in which he requested that the court either "[1] clarify that an automatic stay precludes the plaintiff or the court from [taking] any action on the plaintiff's September 13, 2019 motion for contempt, which seeks enforcement of [the] 2014 contempt orders, or, alternatively, to [2] order that any action regarding the plaintiff's September 13, 2019 motion for contempt be stayed during the pendency of the defendant's appeal."[7] On April 27, 2022, the plaintiff filed a memorandum of law in opposition contending

finding. Judge Truglia responded that Judge Winslow was not in any way bound by his decision and there were no restrictions whatsoever." On August 16, 2021, the defendant filed an expedited motion for supervision seeking to have Judge Winslow removed from the case, which this court denied. Nevertheless, the defendant does not raise a legal claim on appeal challenging the manner in which Judge Winslow exercised control over the proceedings on the motion to vacate.

[7] Previously, on November 24, 2021, the defendant filed a motion to stay requesting that the trial court stay the proceedings before it on the plaintiff's September 13, 2019 motion for contempt pending the resolution of his appeal from the court's denial of his motion to vacate. The parties fully briefed this motion, and it was scheduled to be heard on May 17, 2022. No action was taken on the defendant's November 24, 2021 motion to stay because he later filed the February 24, 2022 motion to stay, which amended and superseded the November 24, 2021 motion to stay.

that there is no appellate stay in effect and, alternatively, that there was no basis for the imposition of a discretionary appellate stay.

On May 17, 2022, the trial court, after hearing arguments from both parties, orally denied the defendant's motion to stay. The court reasoned that an automatic stay did not apply because Practice Book § 61-11 (c) exempts family matters from the automatic appellate stay. The court also held that a discretionary appellate stay was not appropriate because it was not sufficiently likely that the defendant would prevail in this appeal. The defendant filed an amended appeal to challenge this order. Additional facts will be set forth as necessary.

I

The defendant first claims that the court improperly concluded that it lacked authority to vacate the 2014 contempt orders. Specifically, the defendant argues that, although § 52-212a and Practice Book § 17-4 (a) require that a motion to vacate be filed within four months after the notice of the judgment it seeks to vacate was sent, a court retains inherent equitable authority to vacate a contempt order beyond this four month deadline. He contends that a trial court retains authority, in perpetuity, to vacate a judgment of contempt on the ground that the contemnor improperly was found in contempt. We disagree.

We begin with the standard of review and relevant legal principles. Whether the trial court had the authority to vacate a judgment is a question of law over which we exercise plenary review. See *Wells Fargo Bank, N.A.* v. *Treglia*, 156 Conn. App. 1, 9, 111 A.3d 524 (2015); *East Haven Builders Supply, Inc.* v. *Fanton*, 80 Conn. App. 734, 737, 837 A.2d 866 (2004).

"Generally, courts recognize a compelling interest in the finality of judgments which should not lightly be

disregarded. Finality of litigation is essential so that parties may rely on judgments in ordering their private affairs and so that the moral force of court judgments will not be undermined. The law favors finality of judgments . . . . This court has emphasized that due consideration of the finality of judgments is important and that judgments should only be set aside or opened for a strong and compelling reason. . . . It is in the interest of the public as well as that of the parties [that] there must be fixed a time after the expiration of which the controversy is to be regarded as settled and the parties freed of obligation to act further in the matter by virtue of having been summoned into or having appeared in the case. . . . Without such a rule, no judgment could be relied on." (Citations omitted; internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, 180 Conn. App. 818, 828, 184 A.3d 1254 (2018).

"Although it is undisputed that courts of general jurisdiction have the inherent power to open, correct, or modify their own judgments, the *duration* of this power is restricted by statute and rule of practice." (Emphasis added; internal quotation marks omitted.) Id., 829. In particular, both § 52-212a and Practice Book § 17-4 constrain "the trial court's general authority to grant relief from a final judgment" by mandating that a motion to open or to set aside must be filed within four months following the date on which the notice of judgment was sent. See id.; see also *D2E Holdings, LLC* v. *Corp. for Urban Home Ownership of New Haven*, 212 Conn. App. 694, 718, 277 A.3d 261, cert. denied, 345 Conn. 904, 282 A.3d 981 (2022). Section 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which the notice of judgment or decree was

sent. . . .” Likewise, Practice Book § 17-4 (a) provides: “Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court.”[8]

In the present case, the defendant filed his motion to vacate in January, 2020, more than five years after the 2014 contempt orders he sought to vacate. Recognizing that his motion to vacate was filed far beyond the four month limitation, the defendant argues that a trial court retains authority to vacate a judgment beyond the four month limitation on two different grounds.[9] First, he contends that a trial court retains authority to vacate a contempt order at any point in time. Second, he argues that a trial court has inherent equitable authority to vacate a contempt order so as to vindicate an underlying dissolution decree.

With respect to his first argument, the defendant relies exclusively on a quotation from *Eric S.* v. *Tiffany*

[8] Both § 52-212a and Practice Book § 17-4 (a), as well as the case law applying those provisions, characterize the issue as involving the trial court’s “jurisdiction.” Nevertheless, our Supreme Court has made clear that the four month rule pursuant to § 52-212a and Practice Book § 17-4 (a) “operates as a constraint, not on the trial court’s jurisdictional authority, but on its substantive authority to adjudicate the merits of the case before it.” *Kim* v. *Magnotta*, 249 Conn. 94, 104, 733 A.2d 809 (1999); see also *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 465–66, 239 A.3d 272 (2020) (recognizing “subtle, but critical, distinction” between trial court’s authority and subject matter jurisdiction).

[9] “It is [also] well established that [a] judgment rendered may be opened after the four month limitation . . . if it is shown that the judgment was obtained by fraud, in the absence of actual consent, or because of mutual mistake.” (Internal quotation marks omitted.) *Doe* v. *Bemer*, 215 Conn. App. 504, 514, 283 A.3d 1074 (2022). The defendant does not rely on these other exceptions to the four month limitation.

S., 143 Conn. App. 1, 9, 68 A.3d 139 (2013), in which this court stated: "After a finding of civil contempt, the court retains jurisdiction to vacate the finding or to give the contemnor the opportunity to purge the contempt by later compliance with a court order." (Internal quotation marks omitted.) Id., quoting *Monsam* v. *Dearington*, 82 Conn. App. 451, 456–57, 844 A.2d 927 (2004). We do not read this quotation, in isolation, as extending a court's continuing authority to vacate a contempt order, in perpetuity, on the basis that the contemnor contends they improperly were found in contempt. Instead, reading *Eric S.* and *Monsam* together, this quotation properly is understood as affording a trial court limited continuing authority to vacate an order of civil contempt on the *specific* ground that the contemnor has purged the contempt.

In both *Eric S.* and *Monsam*, this court articulated the distinction between criminal contempt and civil contempt. As for civil contempt, this court held that a contemnor has the opportunity to purge the contempt by later compliance with a trial court's order and, consequently, the trial court retains continuing authority to vacate a judgment of civil contempt on that basis because "[c]ivil contempt is designed to compel future compliance" and a trial court has the power to incarcerate contemnors in civil contempt cases until they purge themselves. *Eric S.* v. *Tiffany S.*, supra, 143 Conn. App. 9–11; *Monsam* v. *Dearington*, supra, 82 Conn. App. 456–57. On the other hand, criminal contempt is punitive in nature and the contemnor has no opportunity to purge the contempt and, thus, a trial court has no continuing authority to vacate a sentence imposed as a result of a criminal contempt. *Eric S.* v. *Tiffany S.*, supra, 10–11; *Monsam* v. *Dearington*, supra, 458–59. Accordingly, the applicable rule drawn from *Eric S.* and *Monsam* is that a trial court retains limited continuing

authority to vacate a civil contempt finding if the contemnor purges the contempt. Nothing in these cases suggests that the court has continuing authority to vacate a civil contempt finding on any other basis.

It is logical that a trial court would retain limited continuing authority to vacate a contempt order to permit the contemnor the opportunity to purge the contempt because a purge of contempt does not automatically vacate a contempt order. "[A] finding of contempt is not necessarily vacated because the violator has purged himself. On the contrary, a contempt finding has collateral consequences, even when no longer active, unless or until it is vacated or rendered invalid." (Internal quotation marks omitted.) *Johnson* v. *Clark*, 113 Conn. App. 611, 619, 967 A.2d 1222 (2009); see also *Kendall* v. *Pilkington*, 253 Conn. 264, 278 n.7, 750 A.2d 1090 (2000). "Although it could do so, a court is not required, however, to vacate its judgment after a contemnor has purged himself or herself of the contemptuous acts." *Hall* v. *Hall*, 182 Conn. App. 736, 755 n.11, 191 A.3d 182 (2018), aff'd, 335 Conn. 377, 238 A.3d 687 (2020).

Here, the defendant, in his motion to vacate, did not seek to vacate the 2014 contempt orders because he had purged his contempt but, rather, because the court improperly found him in contempt. Therefore, the defendant's motion did not fall within the court's continuing authority to vacate a contempt order pursuant to *Eric S.* and *Monsam*. The defendant has provided us with no authority, and we have found none, extending a court's continuing authority to vacate a contempt order in perpetuity on the basis that the contemnor contends that he improperly was found in contempt. This court, in fact, has previously held to the contrary. See, e.g., *CFM of Connecticut, Inc.* v. *Chowdhury*, 38 Conn. App. 745, 749, 662 A.2d 1340 (1995) (trial court lacked authority to vacate sanctions order stemming

from motion for contempt three years after finding of contempt because parties did not waive provisions of § 52-212a or otherwise submit to jurisdiction of trial court), aff'd, 239 Conn. 375, 685 A.2d 1108 (1996). In light of the compelling interest in the finality of judgments; *Ruiz* v. *Victory Properties, LLC*, supra, 180 Conn. App. 828; we decline to extend the court's limited continuing authority to vacate a contempt finding in perpetuity on the basis that the contempt finding was improper. Consequently, we disagree with the defendant's first argument.

With respect to his second argument, the defendant is correct that a trial court has continuing authority to effectuate its prior judgments. "[T]he trial court's continuing jurisdiction to effectuate its prior judgments, either by summarily ordering compliance with a clear judgment or by interpreting an ambiguous judgment and entering orders to effectuate the judgment as interpreted, is grounded in its inherent powers, and is not limited to cases wherein the noncompliant party is in contempt, family cases, cases involving injunctions, or cases wherein the parties have agreed to continuing jurisdiction." *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 246, 796 A.2d 1164 (2002). "Although ordinarily our trial courts lack jurisdiction to act in a case after the passage of four months . . . there are exceptions. One exception arises when the exercise of jurisdiction is necessary to effectuate prior judgments or otherwise enforceable orders." (Internal quotation marks omitted.) *Veneziano* v. *Veneziano*, 205 Conn. App. 718, 728, 259 A.3d 28 (2021); see also *Tracey* v. *Miami Beach Assn.*, 216 Conn. App. 379, 397, 288 A.3d 629 (2022) (trial court has equitable powers to fashion whatever orders are required to protect integrity of earlier judgment), cert. denied, 346 Conn. 919, 291 A.3d 1040 (2023).

Conversely, a trial court's continuing authority to effectuate its judgments beyond the four month period does not permit it to substantively modify or correct its prior judgments. See, e.g., *Almeida* v. *Almeida*, 190 Conn. App. 760, 765, 213 A.3d 28 (2019). "This court has explained the difference between postjudgment orders that modify a judgment rather than effectuate it. A modification is [a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. . . . In contrast, an order effectuating an existing judgment allows the court to protect the integrity of its original ruling by ensuring the parties' timely compliance therewith." (Internal quotation marks omitted.) *Walzer* v. *Walzer*, 209 Conn. App. 604, 615, 268 A.3d 1187, cert. denied, 342 Conn. 907, 270 A.3d 693 (2022); see also *Cunningham* v. *Cunningham*, 204 Conn. App. 366, 374, 254 A.3d 330 (2021).

In the present case, the defendant's motion to vacate did not seek to effectuate, vindicate, or protect the integrity of the 2014 contempt orders. To the contrary, the defendant's motion to vacate sought to do the complete opposite, namely, to vitiate the 2014 contempt orders. Therefore, the trial court did not have continuing authority to grant the motion to vacate because it represented an attempt to void, not to effectuate, the substantive terms of the 2014 contempt orders. We reject the defendant's second argument on this basis.

In sum, if the defendant wanted to challenge the court's 2014 contempt orders, his remedy was to file a timely appeal, a timely motion to reargue, or a motion to open or vacate within the four months following the 2014 contempt orders. The defendant having forgone those options, the trial court lacked the authority to vacate those orders on the ground that it had five years earlier improperly found the defendant in contempt.

We therefore conclude that the court properly denied the defendant's motion to vacate.

II

The defendant also claims that the trial court improperly denied his motion to stay the trial court proceedings during the pendency of this appeal. Specifically, the defendant argues that the court improperly concluded that there was no automatic appellate stay in effect pursuant to Practice Book § 61-11 and, alternatively, that the court improperly declined to impose a discretionary appellate stay. In response, the plaintiff contends that this court should decline to review this claim because a claim regarding an appellate stay cannot be raised on direct appeal.[10] We agree with the plaintiff and, accordingly, decline to review the defendant's claim.

"Pursuant to Practice Book § 61-14, [t]he sole remedy of any party desiring the court to review an order concerning a stay of execution shall be by motion for review under Section 66-6. Issues regarding a stay of execution cannot be raised on direct appeal." (Internal quotation marks omitted.) *Doe* v. *Bemer*, 215 Conn. App. 504, 528, 283 A.3d 1074 (2022). "Practice Book § 66-6 requires that [m]otions for review . . . be filed within ten days from the issuance of notice of the order sought to be reviewed. . . . If a party does not file a motion for review, that party is precluded from challenging the court's stay order by means of a direct appeal." (Internal quotation marks omitted.) *De Almeida-Kennedy* v. *Kennedy*, 207 Conn. App. 244, 258, 262 A.3d 872 (2021).

[10] On September 16, 2022, the plaintiff filed a motion to dismiss this aspect of the defendant's appeal on the same ground. On October 5, 2022, this court deferred decision on the plaintiff's motion to the panel considering the merits of the appeal. We now address the issue raised in the plaintiff's motion to dismiss, namely, whether the defendant improperly presented this claim for resolution on direct appeal because he failed to file a motion for review of the trial court's decision denying his motion to stay.

As outlined previously, on February 24, 2022, the defendant filed with the trial court a motion to stay pursuant to Practice Book § 61-11, in which he requested that the trial court either "[1] clarify that an automatic stay precludes the plaintiff or the court from [taking] any action on the plaintiff's September 13, 2019 motion for contempt, which seeks enforcement of [the] 2014 contempt orders, or, alternatively, to [2] order that any action regarding the plaintiff's September 13, 2019 motion for contempt be stayed during the pendency of the defendant's appeal." On May 17, 2022, the trial court, after hearing arguments from both parties, orally denied the defendant's motion to stay. The defendant filed an amended appeal to challenge this order, but he did not file a motion for review with respect to the court's denial of his motion to stay.

Applying the foregoing principles, we conclude that the defendant improperly presented this issue for resolution on direct appeal because he failed to file a motion for review of the trial court's decision denying his motion to stay. See, e.g., *U.S. Bank, National Assn.* v. *Bennett*, 195 Conn. App. 96, 110 n.4, 223 A.3d 381 (2019); *Lawrence* v. *Cords*, 165 Conn. App. 473, 479–80, 139 A.3d 778, cert. denied, 322 Conn. 907, 140 A.3d 221 (2016); *Clark* v. *Clark*, 150 Conn. App. 551, 576, 91 A.3d 944 (2014). In his appellate reply brief, the defendant characterizes his motion to stay not as a request for an appellate stay but, instead, as a request that the court continue a hearing on the plaintiff's September 13, 2019 motion for contempt until after this appeal concluded. This characterization is belied by the relief sought in his motion to stay and the appellate claims in his principal appellate brief challenging the court's actions regarding the appellate stay. We therefore decline to review his claim.

The judgment is affirmed.

In this opinion the other judges concurred.

R. H. *v.* M. S.*
(AC 45507)

Alvord, Moll and Suarez, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court granting an application for relief from abuse filed pursuant to statute (§ 46b-15) by the plaintiff, her former husband. On the same day that the plaintiff filed his application, the court issued an ex parte restraining order against the defendant and extended protection to the parties' minor children. In the plaintiff's application for relief from abuse, he did not check the box on the Judicial Branch form to request that any order issued to him also protect the parties' children, nor did his accompanying affidavit state any behaviors of the defendant directed toward the children. During the subsequent evidentiary hearing on the application, the plaintiff's mother testified that she observed the defendant parking in the area outside the plaintiff's house for approximately forty-five minutes in two different locations on the same day. The defendant did not testify nor offer the testimony of any witnesses; however, she did make an oral motion to dismiss the application, claiming that the court improperly extended the ex parte restraining order to the parties' children. The court denied her motion, stating that it was within the court's discretion to extend protection to the children notwithstanding the fact that the plaintiff did not make the specific request. The court granted the application for a civil restraining order for a period of one year on the basis that the defendant had stalked the plaintiff in person and found, inter alia, that the defendant had surveilled the plaintiff by parking her car outside the area of his home. The court noted in its memorandum of decision that it had extended the protection of the ex parte restraining order to the parties' children because the defendant's access to the children had been restricted by the dissolution judgment and that, based on that history and the type of behavior alleged, the court used its discretion to include the children within the scope of the ex parte order. *Held*:

1. The trial court abused its discretion in extending the protection of the ex parte restraining order to the children in the absence of any request that it do so or any statements that the defendant had engaged in conduct related to the children: there was nothing in the plaintiff's application

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, a protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

warranting such additional order of protection, and for the court's order to have been appropriate for the protection of the children, it necessarily needed the support of a statement in the application materials that related to those children, particularly as the plaintiff did not check the box available on the Judicial Branch form to request such protection; moreover, where statements contained in the affidavit supporting the request for ex parte relief do not implicate the parties' children, the dissolution court is the more suitable forum for adjudicating matters relating to those children; furthermore, although the ex parte restraining order had expired, the appropriate remedy to avoid collateral consequences to the defendant was to vacate the portion of that order that extended protection to the parties' children.

2. Contrary to the defendant's claim, the trial court did not abuse its discretion in concluding that the defendant's conduct in driving near the plaintiff's house and sitting in her vehicle in two different locations over the course of a forty-five minute time period constituted an act of stalking for purposes of § 46b-15; consistent with a witness' testimony that she saw the defendant pulled over on the side of the road a couple of houses down from the plaintiff's house and later saw the defendant parked in a different spot, farther down the road and facing a different direction, the court found that the defendant had surveilled the plaintiff by parking her car outside the plaintiff's house, and no evidence was presented to the court to refute that the defendant was near the plaintiff's house or to provide a benign explanation for her presence.

Argued May 2—officially released June 27, 2023

Procedural History

Application for relief from abuse, brought to the Superior Court in the judicial district of Middlesex, where the court, *Hon. Gerard I. Adelman*, judge trial referee, granted the application and issued a restraining order, and the defendant appealed to this court. *Affirmed in part*; *vacated in part.*

M. S., self-represented, the appellant (defendant).

Opinion

PER CURIAM. The self-represented defendant, M. S., appeals from the judgment of the trial court granting the application for relief from abuse filed by the plaintiff, R. H., her former spouse, pursuant to General Statutes

§ 46b-15.[1] On appeal, the defendant claims that the court improperly (1) extended the protection of the ex parte restraining order to the parties' children, and (2) found that the defendant had stalked the plaintiff.[2] We agree with the defendant's first claim and, thus, we vacate the ex parte restraining order to the extent that it extended protection to the parties' children. We affirm the judgment of the trial court issuing the one year restraining order.

The record reflects the following facts and procedural history. The parties are former spouses, and their marriage was dissolved in 2019. On April 28, 2022, the plaintiff filed an application for relief from abuse pursuant to § 46b-15, seeking a civil restraining order against the defendant. On that same day, the court issued an ex parte restraining order against the defendant and scheduled a hearing for May 12, 2022. At the May 12, 2022 evidentiary hearing, documentary evidence was received. The plaintiff testified and presented the testimony of E. H., the plaintiff's mother, and one additional witness.[3] The defendant did not testify or present the testimony of any witnesses.

During the hearing, E. H. testified regarding an April 23, 2022 incident. E. H., who lives on the same road as the plaintiff, saw the defendant in her vehicle on the road where the plaintiff's home is located. E. H. testified that she was driving to the grocery store and saw the defendant, with her head down and working on her phone, pulled over on the side of the road in a black

[1] The plaintiff did not file a brief or otherwise participate in the present appeal. On February 23, 2023, this court ordered that the appeal be considered on the basis of the defendant's brief, the record, and the defendant's oral argument.

[2] The defendant also claims that the trial court improperly found that she had accused the plaintiff of committing sexual abuse and that the plaintiff "lied on his ex parte affidavit." See footnotes 5 and 8 of this opinion.

[3] See footnote 5 of this opinion.

SUV a couple of houses down from the plaintiff's house. When she returned from the store forty-five minutes later, she saw the defendant parked in a different spot, farther down the road and facing a different direction, such that the defendant would have had to turn the car around. E. H. testified that, on prior occasions, she had seen the defendant "driving up the road," but not parked.

The hearing continued the next afternoon. At the close of the hearing, the court issued an oral decision, in which it granted the application for a restraining order on the basis of its finding that the defendant had stalked the plaintiff.[4] The court found, inter alia, that the defendant had surveilled the plaintiff by parking her car outside the area of his home.[5] This appeal followed.

[4] The court set the restraining order to expire one year later, on May 13, 2023. The defendant's appeal from the order granting the restraining order is not moot. See *V. V.* v. *V. V.*, 218 Conn. App. 157, 166 n.9, 291 A.3d 109 (2023) (expiration of domestic violence restraining order issued pursuant to § 46b-15 does not render appeal from that order moot due to adverse collateral consequences). The ex parte restraining order expired on May 12, 2022, with a one day continuation of the ex parte restraining order to May 13, 2022, when the hearing concluded. Despite the expiration of the ex parte restraining order in May, 2022, the defendant's appellate claim regarding that order is also not moot. See id.; see also *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 364–65, 190 A.3d 68 (2018) (fact that emergency ex parte order of custody was superseded by later order did not render appeal moot).

[5] The court also found that the defendant had "made unwanted messages to a third person, namely, she . . . has contacted a . . . business relationship of the plaintiff pretending to be a . . . reporter and indicating that a story was being written about the [plaintiff] for sexual abuse or . . . other negative issues." The evidence underlying this finding was the testimony of Peter Tiezzi III, who serves as the general manager of Motorsports for Whelen Engineering. Tiezzi testified to an incident that occurred on April 22, 2022, in which a person who identified herself as Samantha called him from the New York Times and "wanted to know the relationship between Whelen and [the plaintiff]" and stated that they were doing a story on the plaintiff "and four others, about domestic violence and referenced Jennifer's Law." There was evidence as to the telephone number from which this call was made and the defendant stipulated that this telephone number was, in fact, hers.

The defendant claims on appeal that the court, in making its finding, "slandered [her]," because she "never made any claims that the plaintiff

After filing her appeal, the defendant, pursuant to Practice Book § 64-1, requested that the trial court provide a statement of its decision with respect to several of the court's rulings. In its October 13, 2022 memorandum of decision, the court set forth that it previously had stated on the record the evidence it had found persuasive. It further stated: "The court also found that the respondent had stalked the applicant, both in person and electronically. That, the court found, was sufficient for the restraining order that was issued." Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims on appeal that the court improperly extended the protection of the ex parte restraining order to the parties' children. We agree that the court abused its discretion.

The following additional facts and procedural history are necessary to our resolution of this claim. The plaintiff, in his April 28, 2022 application for relief from

engaged in sexual abuse." The defendant further argues that the trial court's repetition of this finding rose "to the level of libel" and "show[ed] malice."

We conclude that the defendant's mere assertions of slander and libel, made in the context of an appeal from the granting of a restraining order and unaccompanied by citation of authorities, are inadequately briefed. The only citation to any legal authority in this section of her brief is a case involving an action for slander, which is plainly distinct from the present restraining order case. "We repeatedly have stated that [w]e 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. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022). Accordingly, we decline to review the defendant's claim.

abuse, did not check the box to request that any order issued as to him also protect the parties' minor children. Nor did the plaintiff's affidavit accompanying his application state any behaviors of the defendant directed toward the parties' children. Nevertheless, the court, in issuing the ex parte restraining order, extended protection to the parties' children.

At the start of the May 12, 2022 evidentiary hearing on the restraining order application, the defendant raised, by way of an oral motion to dismiss, her contention that the court improperly had extended the protection of the ex parte restraining order to the parties' children. The court orally denied the motion, stating that it was within its discretion to extend protection to the children notwithstanding the fact that the plaintiff did not make that specific request.

In its October 13, 2022 memorandum of decision, the court stated that it had "noted that the defendant's access to the minor children had been quite restricted by the divorce judgment issued by the court, and others, on November 18, 2021. Based on that history and type of behavior alleged, the court used its discretion to include the children within the scope of the ex parte order." (Footnote omitted.) In a footnote, the court stated: "The parties' dissolution action is a separate and distinct legal action from this restraining order. In [that action], the court . . . awarded sole custody of the parties' minor children to the plaintiff and ordered that the defendant shall have limited access to the children."

On appeal, the defendant claims that the court abused its discretion in extending the order to protect the children on the basis of what she alleges constituted an "independent investigation [that] unduly prejudiced the court."

We first set forth our standard of review and applicable legal principles. "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. . . . Likewise, [a] prayer for injunctive relief is addressed to the sound discretion of the court and the court's ruling can be reviewed only for the purpose of determining whether the decision was based on an erroneous statement of law or an abuse of discretion." (Internal quotation marks omitted.) *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 361, 190 A.3d 68 (2018).

Section 46b-15 (b) provides in relevant part: "The application [to the Superior Court for relief] shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order . . . . The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. . . ." Connecticut Judicial Branch Form JD-FM-137, entitled "Application for Relief from Abuse," provides the applicant the opportunity to request ex parte relief if the applicant "believe[s] there is an immediate and present physical danger to [him] and/or [his] minor children and/or animals owned or kept by [him]."

In the present case, we are convinced that the court improperly extended the protection of the ex parte restraining order to the parties' children in the absence of any request that it do so or any statements that the

defendant had engaged in any conduct related to the children. In other words, the court's order was not "appropriate for the protection of the . . . children" pursuant to § 46b-15 (b) because there was nothing in the plaintiff's application warranting such additional order of protection. See *Margarita O.* v. *Fernando I.*, 189 Conn. App. 448, 468, 207 A.3d 548 (reversing order requiring defendant to stay 100 yards away from plaintiff with exception for when both children are present, and noting, among other considerations, that there was nothing in application or evidence presented at hearing to support such order and plaintiff did not request that restraining order extend to parties' children), cert. denied, 331 Conn. 930, 207 A.3d 1051, cert. denied, U.S. 140 S. Ct. 72, 205 L. Ed. 2d 130 (2019). There must be an evidentiary basis to support the issuance of a restraining order. See *Jordan M.* v. *Darric M.*, 168 Conn. App. 314, 319, 146 A.3d 1041 (2016) (concluding that court improperly granted restraining order because there was no evidence from which court could find that defendant's behavior satisfied elements of § 46b-15), cert. denied, 324 Conn. 902, 151 A.3d 1287 (2016); *Gail R.* v. *Bubbico*, 114 Conn. App. 43, 47, 968 A.2d 464 (2009) (reversing judgment where record did not reflect factual basis to support court's decision granting restraining order); see also *S. B-R.* v. *J. D.*, 208 Conn. App. 342, 351, 266 A.3d 148 (2021) (reversing order of civil protection because of insufficient evidence as to one element of General Statutes § 46b-16a); *Fiona C.* v. *Kevin L.*, 166 Conn. App. 844, 854–55, 143 A.3d 604 (2016) (reversing judgment granting order of protection because there was insufficient evidence for court's finding regarding element of stalking, one of underlying predicate offenses set forth in § 46b-16a (a)). Just as a court may be found to have abused its discretion in issuing a restraining order following a hearing, where the factual basis to support the order is absent, a court may abuse

its discretion in issuing an ex parte restraining order where the application materials, including the affidavit, are devoid of a factual basis to support the order. For the court's order to have been "appropriate for the protection [of the minor children]" in the present case, it necessarily needed the support of a statement in the application materials that related to those children, particularly because this plaintiff did not check the box available on the judicial form to request "that the order protect [his] minor children." Connecticut Judicial Branch Form JD-FM-137.

We are cognizant that § 46b-15 (b) permits the court to consider relevant court records in its review of an application for ex parte relief. We are convinced, however, that the court's reliance on such records in the present case as the sole basis on which it extended protection to the children was improper. We note that "[t]he legislature promulgated § 46b-15 to provide an expeditious means of relief for abuse victims. . . . It is not a statute to provide a remedy in every custody and visitation dispute . . . ." (Internal quotation marks omitted.) *Jordan M.* v. *Darric M.*, supra, 168 Conn. App. 320. Where the statements contained in the affidavit supporting the request for ex parte relief do not implicate the parties' children, the dissolution court is the more suitable forum for adjudicating matters related to those children.

We therefore conclude that the court abused its discretion in extending the protection of the ex parte restraining order to the children. Despite the expiration of the ex parte restraining order; see footnote 4 of this opinion; we conclude that the appropriate remedy to avoid collateral consequences to the defendant is to vacate the ex parte restraining order to the extent that it extended protection to the parties' children. See *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 832–33, 3 A.3d 992 (2010).

II

The defendant next claims that the court improperly found that the defendant had stalked the plaintiff.[6] We are not persuaded.

"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. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Additionally, as we often have noted, [w]e do not retry the facts or evaluate the credibility of witnesses. . . . Rather, [i]n pursuit of its fact-finding function, [i]t is within the province of the trial court . . . to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Citations omitted; internal quotation marks omitted.) *D. S.* v. *R. S.*, 199 Conn. App. 11, 17–18, 234 A.3d 1150 (2020).

Pursuant to § 46b-15 (a), "[a]ny family or household member . . . who is the victim of domestic violence, as defined in section 46b-1, by another family or household

[6] The defendant principally argues that the evidence was insufficient to support a finding of "a continuous threat of present physical pain or physical injury." See General Statutes § 46b-1 (b) (1). That is but one of the definitions of domestic violence contained in § 46b-1. The defendant's argument fails on the fact that the court made a finding that the defendant stalked the plaintiff, which is a separately defined act within the definition of domestic violence. See General Statutes § 46b-1 (b) (2).

member may make an application to the Superior Court for relief under this section. . . .'' General Statutes § 46b-1 (b) defines ''domestic violence'' in relevant part as ''(2) stalking, including, but not limited to, stalking as described in section 53a-181d,[7] of such family or household member . . . .'' (Footnote added.)

The definition of stalking in § 46b-15 is not limited to, but, rather, is broader than, the definition of stalking provided in General Statutes § 53a-181d. Section 46b-15 does not ''define the ambit of this broader definition and, therefore, we look to commonly approved usage as expressed in dictionaries.'' See *K. D.* v. *D. D.*, 214

[7] General Statutes § 53a-181d, which criminalizes stalking in the second degree, provides in relevant part: ''(a) For the purposes of this section: (1) 'Course of conduct' means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media, (A) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates about or with or sends unwanted gifts to, a person, or (B) interferes with a person's property . . . .''

Subsection (b) of § 53a-181d provides: ''A person is guilty of stalking in the second degree when: (1) Such person knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to (A) fear for such specific person's physical safety or the physical safety of a third person; (B) suffer emotional distress; or (C) fear injury to or the death of an animal owned by or in possession and control of such specific person; (2) Such person with intent to harass, terrorize or alarm, and for no legitimate purpose, engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where (A) such conduct consists of the actor telephoning to, appearing at or initiating communication or contact to such other person's place of employment or business, including electronically, through video-teleconferencing or by digital media, provided the actor was previously and clearly informed to cease such conduct, and (B) such conduct does not consist of constitutionally protected activity; or (3) Such person, for no legitimate purpose and with intent to harass, terrorize or alarm, by means of electronic communication, including, but not limited to, electronic or social media, discloses a specific person's personally identifiable information without consent of the person, knowing, that under the circumstances, such disclosure would cause a reasonable person to: (A) Fear for such person's physical safety or the physical safety of a third person; or (B) Suffer emotional distress.''

Conn. App. 821, 828, 282 A.3d 528 (2022). This court previously looked to the commonly approved usage of the word stalking in *Princess Q. H.* v. *Robert H.*, 150 Conn. App. 105, 89 A.3d 896 (2014), and interpreted the statute in accordance with commonly accepted definitions of stalking, including " '[t]he act or an instance of following another by stealth. . . . The offense of following or loitering near another, often surreptitiously, to annoy or harass that person or to commit a further crime such as assault or battery.' . . . To 'loiter' means 'to remain in an area for no obvious reason.' " (Citation omitted.) Id., 115.

Notably, in *Princess Q. H.*, this court determined that the trial court did not abuse its discretion in determining that the defendant's conduct "in driving past [the plaintiff's] home, turning around, and immediately driving past her home a second time," without stopping the vehicle or interacting with the plaintiff or her daughter, who was present in the plaintiff's driveway, constituted an act of stalking. Id., 116. This court recognized that "the defendant's conduct might have been completely unrelated to stalking the plaintiff. The court, however, was not presented with evidence of such a benign explanation, but heard ample evidence about the parties' stormy relationship and the fact that the plaintiff and the defendant were adverse parties in a civil action at the time of this occurrence." Id.

In the present case, E. H. testified that she saw the defendant pulled over on the side of the road a couple of houses down from the plaintiff's house. She further testified that, when she returned from the store forty-five minutes later, she saw the defendant parked in a different spot, farther down the road and facing a different direction. Consistent with this testimony, the court found, at the conclusion of the hearing, that the defendant had stalked the plaintiff. Specifically, the court found that the defendant had surveilled the plaintiff by

parking her car outside his home. In its statement of decision, the court reiterated its finding that the defendant stalked the plaintiff in person. In light of the evidence presented to the trial court, we conclude that the court did not abuse its discretion in concluding that the defendant's conduct in driving near the plaintiff's home and sitting in her vehicle in two different locations over the course of a forty-five minute time period constituted an act of stalking.[8]

Importantly, as in *Princess Q. H.*, "the defendant did not testify as to any contrary explanation for [her] presence near [his] home." Id. Thus, the court was not presented with any evidence to refute that the defendant was near the plaintiff's home or evidence of a benign explanation for her presence.

Finally, we reiterate that "trial courts have a distinct advantage over an appellate court in dealing with domestic relations, where all of the surrounding circumstances and the appearance and attitude of the parties are so significant. . . . We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached . . . as [t]he conclusions which we might reach, were we

[8] The defendant claims on appeal that the plaintiff "lied on his ex parte affidavit." Specifically, she points to paragraph five of the affidavit accompanying his application for relief from abuse, in which he averred, in relevant part, that he had received a call from his "race team manager stating that one of [his] sponsors had informed him they would no longer sponsor the team. . . . Whelen has pulled their funding for the vehicle, severely affecting my business." The defendant contrasts this statement with the plaintiff's testimony, on cross-examination during the hearing, that Whelen was not funding him and "[t]here was no money involved." We conclude that we need not address the defendant's claim with respect to the plaintiff's affidavit in light of our separate and independent determination that the court did not abuse its discretion in concluding that the defendant committed an act of stalking, on the basis of evidence that the defendant drove near the plaintiff's home and sat in her vehicle in two different locations over the course of a forty-five minute time period, which conduct also was set forth in the plaintiff's affidavit.

sitting as the trial court, are irrelevant." (Internal quotation marks omitted.) Id., 116.

The judgment issuing the one year restraining order is affirmed; the ex parte restraining order, to the extent that it extended protection to the parties' children, is vacated.