COSMO IADANZA *v.* MOHAMMED TOOR ET AL.
(AC 45890)

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

Syllabus

The plaintiff landlord and the defendant tenant entered into a lease agreement with an option to purchase certain real property occupied by the defendant. Each party claimed that the other had breached the lease agreement, and the parties agreed to resolve their competing claims by way of a stipulated judgment, which provided, inter alia, that judgment of possession would enter for the plaintiff with a final stay of execution based upon certain conditions, including that the defendant could purchase the property if he deposited a certain sum into his attorney's trust account by an agreed upon deadline and that time was of the essence. Failure to make the deposit would void the defendant's right to purchase the property and the plaintiff could immediately obtain a summary process execution for possession without any additional court hearings. Shortly after the stipulated judgment was rendered, the plaintiff removed from an unoccupied accessory apartment several appliances that he believed he owned. The defendant complained about their removal and the plaintiff ultimately returned them. Shortly thereafter, the plaintiff filed an affidavit of noncompliance in which he averred that the defendant had materially breached the stipulated judgment by not making the deposit in accordance with the terms of the stipulation, and he requested that the court issue a summary process execution. After a hearing, the court granted the plaintiff's request and ordered the clerk's office to issue the execution, finding that the removal of the appliances was not a material violation of the stipulation. On the defendant's appeal, *held* that the defendant could not prevail on his claim that the trial court improperly found that the plaintiff's removal of the appliances was not a material breach of the stipulated judgment that relieved him of his

obligation to make the required deposit by the deadline: the court considered and applied the standards for materiality set forth in § 241 of the Restatement (Second) of Contracts and approved by the Supreme Court in *Bernstein* v. *Nemeyer* (213 Conn. 665), and, although the court did not specifically identify the standards of materiality it applied when assessing the plaintiff's removal of the appliances, it did plainly state that it found no material breach under the cases cited by the defendant; moreover, under the facts and circumstances of this case, which included the undisputed fact that the appliances were not mentioned in the stipulation, and there was no evidence of their value, this court could not say that it was clearly erroneous for the trial court to find that the removal of the appliances did not materially breach the stipulated judgment, as the temporary removal by the plaintiff of appliances from the accessory apartment did not deprive the defendant of a substantial benefit for which he had clearly bargained and which he had every reason to expect, and the removal of a limited number of used appliances did not substantially impact the nature of the stipulation even if wrongful, and, as such, the defendant was not relieved of his obligation to deposit the funds by the deadline.

Argued January 31—officially released July 23, 2024

Procedural History

Summary process action brought to the Superior Court in the judicial district of Stamford-Norwalk, Housing Session, where the named defendant filed a counterclaim; thereafter, the action was withdrawn as against the defendant Jane Doe et al.; subsequently, the matter was transferred to the Superior Court in the judicial district of Stamford-Norwalk, where the court, *Hon. Robert L. Genuario*, judge trial referee, rendered judgment in accordance with the parties' stipulation; thereafter, the court, *Hon. Robert L. Genuario*, judge trial referee, granted the summary process execution for possession filed by the plaintiff and denied the named defendant's motion to reargue, and the named defendant appealed to this court. *Affirmed.*

Ridgely Whitmore Brown, for the appellant (named defendant).

Joseph F. Mulvey, for the appellee (plaintiff).

Opinion

HARPER, J. This appeal arises from a stipulated judgment in an action by the plaintiff landlord, Cosmo Iadanza, against the defendant tenant, Mohammed Toor,[1] for breach of contract, serious nonpayment of rent,[2] and fraudulent misrepresentation relative to the defendant's tenancy at the residential property known as 501 Woodbine Road in Stamford (property).[3] According to the stipulation, judgment of possession entered in favor of the plaintiff "with a final stay of execution based upon" several conditions pertaining to an option the defendant had to purchase the property. The conditions established, among other things, that the defendant would be able to purchase the property for $950,000, provided that he deposited "with [his counsel] in trust pursuant to the terms of agreement the sum of $47,500 by August 26 [2022] [at] 4 p.m. eastern daylight time" and then satisfied certain conditions with respect to obtaining financing and closing by a date certain, and that time was of the essence "for all actions and requirements in the stipulated agreement." They

[1] The plaintiff also named Shagufta Toor as a defendant in the action but only with respect to count two of the operative amended complaint, which seeks immediate possession of the property allegedly occupied by Shagufta Toor and Mohammed Toor. Shagufta Toor is not a party to this appeal. The original complaint also named various other defendants, against whom the action was withdrawn or who are not participating in this appeal. For clarity, Mohammed Toor will be referred to as the defendant throughout this opinion.

[2] The cause of action for "serious nonpayment of rent" is an exception to the state residential "eviction moratorium" issued by Governor Ned Lamont in relation to his proclamation of a state of emergency due to the COVID-19 outbreak in the United States and Connecticut. See Executive Order No. 10A (3) (d) (February 8, 2021).

[3] The contract is a November 1, 2019 lease agreement pertaining to the property, executed by the parties on October 15, 2019. The plaintiff filed this case as a summary process action and it was transferred from housing court to the civil court for adjudication. The defendant asserted special defenses alleging, among other things, that the plaintiff breached his obligations under the lease, and he filed a counterclaim seeking specific performance.

further established that "[f]ailing to make the deposit will null and void the defendant's right to purchase the property, and the plaintiff may immediately file an affidavit stating this fact and immediately obtain a summary process execution for possession without any additional court hearings."

The dispositive issue in this appeal is whether the trial court properly ordered a summary process execution for possession to issue after the defendant failed to make the $47,500 deposit in accordance with the terms of the stipulated judgment.[4] The defendant claims that the plaintiff materially breached the stipulated judgment prior to the August 26, 2022 deadline and that, consequently, the defendant's obligation to make the deposit by that time had been excused. As such, he maintains that the plaintiff was not entitled to the execution. We disagree with the defendant and, accordingly, affirm the judgment of the trial court ordering the summary process execution.[5]

[4] The trial court's decision is an appealable final judgment. This appeal presents circumstances similar to those in *Cathedral Green, Inc.* v. *Hughes*, 174 Conn. App. 608, 166 A.3d 873 (2017), in which this court observed: "Although ordinarily an appeal will not lie from an execution issued in a summary process action because the execution merely effectuates the judgment of possession and, thus, is not itself an appealable order or judgment; see *Iannotti* v. *Turner*, 32 Conn. Supp. 573, 575, 346 A.2d 114, cert. denied, 169 Conn. 709, 344 A.2d 357 (1975); we construe the present appeal as more analogous to a challenge to the summary enforcement of a judgment, which, even in the case of a stipulated judgment, we have found constitutes an appealable final judgment. See *Bernet* v. *Bernet*, 56 Conn. App. 661, 664, 745 A.2d 827, cert. denied, 252 Conn. 953, 749 A.2d 1202 (2000)." *Cathedral Green, Inc.* v. *Hughes*, supra, 610 n.2.

[5] The defendant also claims that the court improperly "fail[ed] to consider and conclude that the plaintiff waived [the] time [is] of the essence requirement . . . ." That claim, however, is predicated on the defendant's contention that certain acts by the plaintiff constituted "a material breach which excused [the defendant's] performance [under the stipulation] as a matter of law, at least as far as time is of the essence is concerned." At oral argument before this court, the defendant's counsel conceded that, if we conclude that the court properly found that the plaintiff did not materially breach the stipulated judgment, that conclusion would be dispositive of this appeal. Because we conclude that the court properly found that the plaintiff did not

The following undisputed facts and procedural history are relevant to our resolution of this appeal. In an amended complaint, the plaintiff alleged that he and the defendant entered into a "Lease Agreement with Option to Purchase [the property]" on October 15, 2019. Each party claimed that the other had breached the lease agreement, and the parties agreed to resolve their competing claims by way of a stipulated judgment. At a hearing on August 17, 2022, the court, *Hon. Robert L. Genuario*, judge trial referee, read the following pertinent terms from the parties' agreement[6] into the record:

"One, judgment of possession may enter in favor of the plaintiff with a final stay of execution based upon the following conditions.

"Two, for all actions and requirements in the stipulated agreement time is of the essence.

"Three, the defendant may purchase [the property] which is the subject premises of the litigation for the sum of $950,000. . . .

"[F]our, the defendant is to deposit with [his counsel] in trust pursuant to the terms of agreement the sum of $47,500 by August 26 [2022] [at] 4 p.m. eastern daylight time. . . . Failing to make the deposit will null and void the defendant's right to purchase the property, and the plaintiff may immediately file an affidavit stating this fact and immediately obtain a summary process execution for possession without any additional court hearings.

materially breach the stipulated judgment, we do not reach the defendant's second claim.

[6] The court explained that the agreement was "captured in a typed document with some changes that we have made this morning. The typed document was prepared by [the plaintiff's counsel], [and] the changes were provided to the court by both [the plaintiff's counsel] and [the defendant's counsel] on behalf of their clients."

* * *

"Twelve, the parties to this agreement each state: (A) they were represented by counsel of their own choosing; (B) they had a full opportunity to discuss and consider all aspects and ramifications of this agreement; (C) they each acknowledge they were canvassed by the court and given an opportunity to inquire of the court as to any of their concerns and given a copy of this stipulated judgment . . . (D) they acknowledge each waiving their rights to have a trial on the merits of each party's claims and causes of action; (E) under all of the circumstances of this matter each party finds this . . . stipulation fair, just, and reasonable; [and] (F) each party states they have signed this agreement knowingly as their own free act and deed, [and] neither party was under any undue duress, pressure, or undue influence. . . ."

After the court read the agreement into the record, it solicited questions from the parties, and the defendant inquired about securing a key to an unoccupied accessory apartment to which he had no access. Following further discussions with the parties and their counsel about this issue, the court stated that "[the plaintiff] [will] today search for any keys he has to the accessory apartment and if he has them [he will provide] them to [the defendant]. If he cannot locate a key [he will retain] a locksmith by . . . Monday [August 22, 2022] to open the accessory apartment [and] provide [the defendant] with a key. Within forty-eight hours of [the defendant] receiving the key [the defendant] will have the following option: he can cancel the agreement completely if he's not satisfied with the condition of the accessory apartment in which case . . . he will vacate the property within thirty days. . . . If he is satisfied with the condition of the property the agreement will remain in force as previously read." The court explained that "what I do not want to have is . . . negotiations over whether

or not there should be a $10,000 adjustment because there's a hole in the wall. . . . You either buy the property for [$950,000] or you don't." The court then reiterated the terms with respect to the key and specified that "[a]ll other terms and adjustments including the cost if [the defendant] doesn't vacate will remain in effect or if [the plaintiff does not] hear from [the defendant] within forty-eight hours . . . the agreement will remain in full force and effect." The parties and their counsel confirmed their understanding and acceptance of these additional terms, and the parties swore under oath that they understood and agreed to the terms of the stipulation in its entirety. The court then rendered a "judgment of possession in favor [of] the plaintiff subject to the terms of the stipulation that I have read into the record."

The plaintiff delivered to the defendant's counsel the key to the unoccupied accessory apartment on August 22, 2022. Prior to doing so, he had removed from the accessory apartment certain appliances he believed he owned. The defendant did not cancel the agreement when he became aware that the appliances had been removed. Instead, he complained, through counsel, about their removal, and the plaintiff ultimately returned them. In the meantime, however, the defendant had not deposited $47,500 in trust with his attorney by 4 p.m. on August 26, 2022.

On August 29, 2022, the plaintiff filed an affidavit of noncompliance in which he averred that the defendant had materially breached the stipulated judgment by not making the deposit in accordance with the terms of the stipulation, and he requested that the court issue a summary process execution. The defendant did not oppose the plaintiff's affidavit or file one of his own. Instead, on September 8, 2022, he filed a verified lockout complaint and application for temporary injunction predicated on his contention that the plaintiff violated

both the stipulation and General Statutes § 47a-43[7] by removing the appliances.

On September 26, 2022, the court held a hearing regarding the plaintiff's request for an execution and the defendant's lockout complaint. At the hearing, the defendant's counsel argued that the plaintiff's removal of the appliances from the accessory apartment materially breached the stipulated judgment and excused the defendant's obligation to make the $47,500 deposit by the August 26, 2022 deadline but that the defendant had the funds and still wished to proceed with the transaction. The plaintiff, however, did not. He maintained that the execution should issue. The court granted the plaintiff's request and ordered the clerk's office to issue the execution. It explained that, "[w]ith regard to the removal of the appliances, what is clear is that no appliances were removed from the main residence where [the defendant] lived. I do not believe that the removal of the appliances, whether appropriately thought out or not, relieved [the defendant] of the obligation to post the $47,500 by August 26.

"The transcript is clear that time is of the essence, and the transcript is clear that if the funds were not posted with [the defendant's counsel] by August 26, that the plaintiff would be entitled to an execution upon the filing of an affidavit . . . . That affidavit was filed on August 29.

[7] General Statutes § 47a-43 provides in relevant part: "(a) When any person (1) makes forcible entry into any land, tenement or dwelling unit and with a strong hand detains the same, or (2) having made a peaceable entry, without the consent of the actual possessor, holds and detains the same with force and strong hand, or (3) enters into any land, tenement or dwelling unit and causes damage to the premises or damage to or removal of or detention of the personal property of the possessor, or (4) when the party put out of possession would be required to cause damage to the premises or commit a breach of the peace in order to regain possession, the party thus ejected, held out of possession, or suffering damage may exhibit his complaint to any judge of the Superior Court. . . ."

"Accordingly, the court finds that the plaintiff is entitled to an execution . . . ." The court "offer[ed] no opinion as to whether or not [the plaintiff's removal of the appliances] was in violation of any provisions of the stipulation, other than to say that it was not a material violation of the stipulation." It also "observe[d] that the original stipulation was based upon a writing that was prepared by the parties and reviewed by the parties before the approval of that stipulation was rendered by the court and that that writing was available to the parties and . . . contained all of the dates that money had to be posted . . . . So, the parties were well aware of it, the money was not posted, [and] the plaintiff is entitled to an execution."

On September 27, 2022, the defendant filed a motion to reargue the "[j]udgment for the plaintiff and the related order that execution shall issue . . . ." In that motion, he recited the "multifactor test" for determining whether a breach is material, as "set forth in [§ 241 of] the Restatement (Second) of Contracts" and "endorsed" by our Supreme Court in *Bernstein* v. *Nemeyer*, 213 Conn. 665, 672, 570 A.2d 164 (1990), and argued that its application to the undisputed facts in this case supported the conclusion that the removal of the appliances from the accessory apartment was a material breach of the stipulated judgment. (Internal quotation marks omitted.) The court denied the defendant's motion to reargue on October 3, 2022.

In its order denying the defendant's motion to reargue, the court stated that it had, "at the prior proceeding, ruled in favor of the plaintiff finding no material breach that relieved the defendant from the obligation to post the down payment." The court denied the motion to reargue because it found, among other things, that there was no "breach of the stipulation, let alone a material breach." It explained that "[t]he stipulation did not contain any reference either express or implied

as to whether these appliances were included in the sale. The plaintiff removed the washer, dryer, and refrigerator, presumably used, believing they were his, not a part of the sale and not needed in the unoccupied accessory apartment during the interim period" and that it was "unaware, nor was there any evidence, of customary inclusion of such appliance[s] in a contract for the sale of residential real estate."

The court further explained that, "under the cases cited by the defendant and the standards set forth in those cases, the court finds no material breach. The removal of a limited number of used appliances, with no evidence of their value and not mentioned in the stipulation, did not substantially impact the nature of the $950,000 bargain even if wrongful. The defendant could have been otherwise compensated. On the other hand, the timing of the required payments as expressly required was at the essence of the stipulation. The plaintiff wanted to be sure he had a deal and that it was moving forward in an orderly and expedited manner or he wanted possession of the property back. This is what the parties expressly agreed to. The defendant has breached those terms and the plaintiff is entitled to possession."[8] This appeal followed.

The defendant claims on appeal that the court improperly found that the plaintiff's removal of the appliances from the accessory apartment was not a material breach of the stipulated judgment that relieved him of his obligation to deposit the $47,500 by August

[8] The court also addressed and rejected the defendant's argument that the plaintiff's removal of the appliances constituted a lockout under applicable law. Although the defendant makes the single assertion in his opening brief to this court that "the actions of the plaintiff are recognized . . . as wrongful under the lockout statute," he has not raised this as an issue on appeal or briefed it beyond this assertion. As such, we do not address it. See *JPMorgan Chase Bank, National Assn.* v. *Essaghof*, 221 Conn. App. 475, 485, 302 A.3d 339, cert. denied, 348 Conn. 923, 304 A.3d 445 (2023).

26, 2022. Specifically, he argues that (1) the stipulated judgment was ambiguous and the court improperly concluded that it did not prohibit the removal of the appliances from the accessory apartment and (2) the court improperly concluded that, even if the stipulated judgment prohibited removal of the appliances, any such breach was not material. In response, the plaintiff argues that (1) the defendant raised the ambiguity argument for the first time on appeal and it is not properly preserved, and (2) the court properly concluded that any breach by the plaintiff was not material. We need not decide whether the defendant's ambiguity argument is properly preserved or whether the court properly concluded that the stipulated judgment did not prohibit the removal of the appliances from the accessory apartment, however, because we agree with the plaintiff that the court properly concluded that, even if the removal of the appliances was a breach, any such breach was not material. See also footnote 3 of this opinion.

We begin our analysis by setting forth the legal principles relevant to our resolution of this claim and our standard of review. "By their nature, stipulated judgments are the creation of the parties and, consequently, must be given effect according to the parties' terms. [A] stipulated judgment is not a judicial determination of any litigated right . . . [and] may be defined as a contract . . . . The essence of the judgment is that the parties to the litigation have *voluntarily entered into an agreement* setting their dispute or disputes at rest . . . . [A stipulated] judgment is different in nature from a judgment rendered on the merits because it is primarily the act of the parties rather than the considered judgment of the court. . . . [P]arties generally enter into a stipulated judgment only after careful negotiation has produced agreement on their precise terms." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Customers Bank* v. *CB Associates, Inc.*, 156 Conn. App. 678, 687–88, 115 A.3d 461 (2015).

The issue here is whether the court properly concluded that the plaintiff's removal of the appliances from the unoccupied accessory apartment was not a material breach of the stipulated judgment and thus did not excuse the defendant's failure to deposit with his counsel $47,500 by the August 26, 2022 deadline. See *Bernstein* v. *Nemeyer*, supra, 213 Conn. 672–73 ("[i]t follows from an uncured material failure of performance that the other party to the contract is discharged from any further duty to render performances yet to be exchanged"). "The determination of whether a contract has been materially breached is a question of fact that is subject to 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. . . . Although a finding of breach of contract is subject to the clearly erroneous standard of review, whether the court chose the correct legal standard to initially analyze the alleged breach is a question of law subject to plenary review." (Internal quotation marks omitted.) *Regional School District 8* v. *M & S Paving & Sealing, Inc.*, 206 Conn. App. 523, 531–32, 261 A.3d 153 (2021).

"In *Bernstein* v. *Nemeyer*, [supra, 213 Conn. 672], our Supreme Court approved the multifactor standards for materiality contained in § 241 of the Restatement (Second) of Contracts. In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the

likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; [and] (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. . . .

"The standards of materiality [are] to be applied in the light of the facts of each case in such a way as to further the purpose of securing for each party his expectation of an exchange of performances. [Section 241 of the Restatement (Second) of Contracts] therefore states circumstances, not rules, which are to be considered in determining whether a particular failure is material." (Citation omitted; internal quotation marks omitted.) *Strouth* v. *Pools by Murphy & Sons, Inc.*, 79 Conn. App. 55, 60, 829 A.2d 102 (2003).

The defendant does not challenge the facts upon which the court based its conclusion that the plaintiff's removal of the appliances from the unoccupied accessory apartment was not a material breach of the stipulated judgment.[9] Rather, he argues that the court "did not apply the correct standard with respect to the issue . . . ." Specifically, he argues that the court improperly "evaluate[d] the materiality of the breach by a simple comparison of the value of the entire property against the value or the replacement cost of the appliances removed"[10] when it was "required [instead] to undertake the analysis under the Restatement [(Second) of Contracts] as required by *Bernstein*." We disagree with

[9] Indeed, at oral argument before this court, the defendant's counsel maintained that "there were no underlying facts in dispute."

[10] We note that the defendant argues that the court's "conclusion that any breach was not material because the claimed value or replacement cost of the removed appliances was only $10,000 as compared to the purchase price of $950,000 was not legally and logically correct." It is not clear to us what the foundation for the $10,000 figure is. There is no citation in the defendant's brief to support this assertion and the court's order clearly states that there was "no evidence of [the appliances'] value . . . ."

the defendant. Our plenary review of the court's order denying the defendant's motion to reargue reveals that it considered and applied the standards for materiality our Supreme Court approved in *Bernstein*. See *Wheelabrator Bridgeport, L.P.* v. *Bridgeport*, 320 Conn. 332, 355, 133 A.3d 402 (2016) (interpretation of trial court judgment is question of law).

It is well settled that "a judicial opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding." (Internal quotation marks omitted.) *Tracey* v. *Miami Beach Assn.*, 216 Conn. App. 379, 395, 288 A.3d 629 (2022), cert. denied, 346 Conn. 919, 291 A.3d 1040 (2023). "Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The construction of a judgment is a question of law for the court. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The judgment should admit of a consistent construction as a whole. . . . To determine the meaning of a judgment, we must ascertain the intent of the court from the language used and, if necessary, the surrounding circumstances." (Internal quotation marks omitted.) *Wheelabrator Bridgeport, L.P.* v. *Bridgeport*, supra, 320 Conn. 355.

Although the court did not specifically identify the standards of materiality it applied when assessing the plaintiff's removal of the appliances, it did plainly state that "under the cases cited by the defendant and the standards set forth in those cases the court finds no material breach." As set forth herein, the cases the defendant cited include *Bernstein*, which articulated the standards set forth in § 241 of the Restatement (Second) of Contracts. See *Bernstein* v. *Nemeyer*, supra, 213 Conn. 672 n.8. We glean from the court's plain

statement, therefore, that it evaluated the alleged breach according to the standards our Supreme Court approved in *Bernstein*.

Moreover, the court's specific findings shed light on which factors, or standards, it considered and found significant. Its findings reflect that the court considered the criteria set forth in § 241 (a), (b), (c) and (e) of the Restatement (Second) of Contracts to reach its conclusion. See, e.g., *Strouth* v. *Pools by Murphy & Sons, Inc.*, supra, 79 Conn. App. 61 (discerning standards of materiality trial court applied from findings set forth in memorandum of decision). Specifically, the court found that (1) "[t]he stipulation did not contain any reference either express or implied as to whether these appliances were included in the sale," (2) "[t]he plaintiff removed the washer, dryer, and refrigerator, presumably used, believing they were his, not a part of the sale and not needed in the unoccupied accessory apartment during the interim period," (3) "[t]he removal of a limited number of used appliances, with no evidence of their value and not mentioned in the stipulation, did not substantially impact the nature of the $950,000 bargain even if wrongful," (4) "[t]he defendant could have been otherwise compensated," and (5) "the timing of the required payments as expressly required was at the essence of the stipulation. The plaintiff wanted to be sure he had a deal and that it was moving forward in an orderly and expedited manner or he wanted possession of the property back."

The court therefore considered (a) the extent to which the injured party (the defendant) would be deprived of a benefit he reasonably expected, (b) the extent to which the injured party (the defendant) could have been adequately compensated for the benefit of which he would have been deprived, (c) the extent to which the party failing to perform (the plaintiff) would

suffer forfeiture and (e) the extent to which the behavior of the party failing to perform (the plaintiff) comported with the standards of good faith and fair dealing when it concluded that the removal of the appliances did not materially breach the stipulation. See *Bernstein* v. *Nemeyer*, supra, 213 Conn. 672 n.8. The defendant's argument that the court did not consider any of these factors, and thus did not apply the proper standard in evaluating the materiality of the alleged breach, therefore fails.

Further, under the facts and circumstances of this case, which include the undisputed fact that the appliances are not mentioned in the stipulation, we cannot say that it was clearly erroneous for the court to find that the removal of the appliances from the unoccupied accessory apartment did not materially breach the stipulated judgment. See *Strouth* v. *Pools by Murphy & Sons, Inc.*, supra, 79 Conn. App. 60. The defendant voluntarily entered into the stipulated judgment, and his only stated concern with respect to the accessory apartment was that he be provided with a key in order to access it, which he was. As such, the temporary removal by the plaintiff of appliances from the accessory apartment did not deprive the defendant of a "substantial benefit for which [he] had clearly bargained and which [he] had every reason to expect." *Bernstein* v. *Nemeyer*, supra, 213 Conn. 672; see also *669 Atlantic Street Associates* v. *Atlantic-Rockland Stamford Associates*, 43 Conn. App. 113, 127–28, 682 A.2d 572 (trial court's finding that plaintiff's failure to meet environmental obligations did not deprive defendant of benefit it reasonably expected where parties contemplated transfer of environmentally contaminated properties was not clearly erroneous), cert. denied, 239 Conn. 949, 686 A.2d 126 (1996), and cert. denied, 239 Conn. 950, 686 A.2d 126 (1996). We agree with the court that "[t]he removal of a limited number of used appliances, with no evidence

of their value and not mentioned in the stipulation, did not substantially impact the nature of the $950,000 bargain even if wrongful." As such, the defendant was not relieved of his obligation to deposit the $47,500 by the August 26, 2022 deadline, and, when he failed to do so, the plaintiff was entitled to the execution.

The judgment is affirmed.

In this opinion the other judges concurred.

FRANCIS MARK WALD *v.* ANNE LOUISE CORTLAND-WALD
(AC 45329)

Bright, C. J., and Moll and Prescott, Js.*

Syllabus

The defendant appealed to this court from, inter alia, the trial court's judgment dissolving her marriage to the plaintiff. The court approved a pendente lite agreement in November, 2019, and, in April, 2021, the defendant filed an agreement for dissolution signed by both parties in which they agreed, inter alia, that the plaintiff would transfer twelve months of his G.I. Bill benefits to the defendant for her continuing education and pay 35 percent of his net military pension to her. The defendant thereafter withdrew her request for approval of the agreement, and the court found that the agreement was unenforceable. In October, 2021, the court ordered, inter alia, that the defendant should continue to receive 35 percent of the plaintiff's net military pension and 100 percent of his G.I. Bill benefits. At the time of the judgment in January, 2022, the parties' had one minor child, and they continued to live together in the marital home. The court awarded the parties' joint legal and shared physical custody of their child and ordered the plaintiff to pay $300 per week in child support, which was a downward deviation from the presumptive child support amount according to the child support guidelines, and it further ordered that the child support obligation would not commence until one week after the sale of the marital residence. *Held*:

* Although Judge Prescott was not present at oral argument, he has read the briefs and appendices and listened to a recording of the oral argument prior to participating in this decision.

1. The trial court abused its discretion in calculating the plaintiff's child support obligation:

   a. The trial court erred by decreasing the plaintiff's obligation based on the parties' shared physical custody of the minor child; the court failed to make the requisite findings as required by the applicable regulation (§ 46b-215a-5c (b) (6) (A)) that would support a deviation from the presumptive amount of child support, specifically, that the plaintiff or the defendant would have substantially increased or decreased expenses due to the shared parenting plan and that sufficient funds would remain for the parent receiving support to meet the needs of the child after deviation, or that both parties had substantially equal income.

   b. The trial court improperly delayed the commencement of the plaintiff's obligation to pay child support until after the sale of the parties' residence; the court's order did not reference the child support guidelines or the dollar amount of any expenses to be paid by the plaintiff on behalf of the minor child during the indeterminate period of time until the sale of the residence, and the court did not make a finding on the record, as required by statute (§ 46b-215b), that the application of the guidelines would be inequitable or inappropriate as determined under the deviation criteria.

   c. This court remanded the case to the trial court to refashion the entirety of the mosaic of financial orders; because the trial court on remand may issue a child support order that is substantially different from the original order, such an order will necessarily impact the court's related orders pertaining to alimony and property division.

2. The trial court did not abuse its discretion in its rulings on the defendant's motions for contempt:

   a. The trial court did not abuse its discretion in declining to adjudicate the plaintiff in contempt for failing to comply with the November, 2019 pendente lite orders; the parties' April, 2021 agreement and the court's October, 2021 order rendered the plaintiff's obligation to comply with the prior pendente lite orders unclear and ambiguous.

   b. The trial court properly exercised its discretion in denying the defendant's motion for contempt based on a violation of the automatic orders, as the court found that the plaintiff's practice of buying and selling motor vehicles was done in the usual course of business.

   c. The trial court did not abuse its discretion in ordering the plaintiff to pay $1000 in attorney's fees to the defendant after adjudicating him in contempt for failing to comply with its discovery orders; although the defendant's affidavit reflected attorney's fees and expenses of more than $17,000, this affidavit included fees related to the motions for contempt that the court denied.

Argued January 2—officially released July 23, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Diana*, *J.*; judgment dissolving the marriage and granting certain other relief, denying the defendant's motions for contempt, granting the defendant's motion for contempt, and awarding attorney's fees to the defendant, from which the defendant appealed to this court; thereafter, the court, *Diana*, *J.*, issued a postjudgment modification of the dissolution judgment, and the defendant filed an amended appeal. *Reversed in part*; *further proceedings*.

Maria McKeon, for the appellant (defendant).

Victoria K. Lanier, with whom was *Anna Hoberman*, for the appellee (plaintiff).

Opinion

PRESCOTT, J. The defendant, Anne Louise Cortland-Wald,[1] appeals from the judgment of the trial court dissolving her marriage to the plaintiff, Francis Mark Wald, and from certain postjudgment financial orders. On appeal, the defendant claims that the court improperly (1) deviated from the child support guidelines in entering its support orders, (2) found that the defendant had an annual earning capacity of $60,000, (3) modified pendente lite support orders, (4) failed to adjudicate the plaintiff in contempt for violating the court's pendente lite and automatic orders, (5) failed to award reasonable attorney's fees after adjudicating the plaintiff in contempt for failing to comply with discovery

[1] Although the dissolution complaint lists the defendant's name as Anne Louise Cortland-Wald, she has filed her brief and other documents using the name Anne Cortland. For convenience, we use the name Anne Louise Cortland-Wald, as it appears in the summons and complaint, in this opinion.

orders, (6) failed to award attorney's fees to the defendant to prosecute her appeal, and (7) issued a postjudgment modification of the dissolution judgment. We conclude that the court improperly deviated from the child support guidelines to calculate its child support orders and, accordingly, reverse in part the judgment of the court and remand the matter for a new trial on all financial orders. We affirm the judgment of the court as to the defendant's motions for contempt.[2]

The following facts and procedural history are relevant to our resolution of the present appeal. The parties were married on December 29, 2000, in Tucson, Arizona. The parties have a son, who was born in 2003, and a daughter, who was born in 2009.[3] On September 30, 2019, the plaintiff commenced this action seeking dissolution of his marriage to the defendant. On October 4, 2019, the defendant filed an answer and cross complaint. On November 13, 2019, the trial court, *Connors, J.*, approved a pendente lite agreement that required, in part, (1) the plaintiff to pay the defendant $500 twice per month and to pay "for all other family expenses including all children's expenses, home expenses and medical expenses" and (2) the defendant to actively search for employment.[4]

[2] Because we remand the matter for a new trial on all financial orders, we need not reach the defendant's claims that the court improperly (1) found that she had an earning capacity of $60,000, (2) modified its pendente lite support orders and (3) issued a postjudgment modification of the dissolution judgment, as these issues necessarily need to be considered on remand. We also need not reach the defendant's claim that the trial court improperly failed to award appellate attorney's fees. The award of attorney's fees is dependent upon the relative financial circumstances of the parties, as affected by the court's financial orders; for this reason, this issue must also be reconsidered in light of the new financial orders that the court will issue on remand in this case. See *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 555, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013).

[3] The parties' son had reached the age of majority at the time of judgment in this case.

[4] This agreement provided in relevant part:

"[The plaintiff] shall deposit $500 in accordance with his 2x monthly pay schedule to [the defendant's] bank account. [The defendant] will pay for

On April 23, 2021, the defendant filed an agreement for dissolution signed by both parties, a request for approval of a final agreement without court appearance, and an affidavit in support of her request for entry of judgment of dissolution of marriage.[5] The parties' agreement provided, in part, that the plaintiff was required to transfer twelve months of his G.I. Bill benefits[6] to the defendant for her continuing education at Bay Path University and to pay 35 percent of his net military pension to the defendant.

On May 26, 2021, the defendant withdrew her request for approval of the agreement. On September 3, 2021, following a hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, 225 Conn. 804, 626 A.2d 729 (1993),[7] the trial court, *Carrasquilla, J.*, found the April 23, 2021 agreement unenforceable. The defendant thereafter filed an "ex parte motion for hearing on child support, alimony, exclusive possession [of the marital home], and attorney's fees pendente lite." On October 7, 2021, the trial court, *Diana, J.*, in ruling on this motion, ordered, inter alia, that "[t]he defendant shall continue to receive 35 percent of the

groceries for the family with these funds. [The plaintiff] will pay for all other family expenses including all children's expenses, home expenses and medical expenses (includ[ing] [the defendant's] anticipated necessary medical expenses) to the extent that his income is sufficient to cover said expenses.

"[The defendant] is actively searching for employment and will continue to actively search. [The defendant] will promptly notify [the plaintiff] through attorneys when she obtains an offer of employment."

[5] The plaintiff also filed an affidavit in support of the request for entry of judgment.

[6] The plaintiff was entitled under provisions of the G.I. Bill to thirty-six months of in-state tuition payments and a housing allowance.

[7] A hearing pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, supra, 225 Conn. 804, "typically follows a party's filing of a motion to enforce a settlement agreement, and the hearing is conducted to determine whether the agreement is sufficiently clear and unambiguous to be summarily enforced." *Doe* v. *Bemer*, 215 Conn. App. 504, 524, 283 A.3d 1074 (2022).

plaintiff's net [military] pension as unallocated support" and "100 percent of the G.I. Bill benefits for her continuing education at Bay Path University."[8]

On January 19, 2022, following a four day trial, the trial court, *Diana, J.*, rendered judgment dissolving the parties' marriage. In its memorandum of decision, the court found that "[t]he plaintiff is fifty-two years old and in good health. He has a bachelor's degree from Arizona State University (2000) and a master's degree in National Security from the Naval Postgraduate School (2009). He enlisted in the Marine Corps in August, 1990, and retired in February, 2013, as a Major, after twenty-three years of service. . . . He moved to Connecticut in 2017, where he currently earns $145,000 [per] year. He also receives an annual military pension of $47,000 and an annual VA disability of $10,000. The plaintiff's current annual income is approximately $202,000. The plaintiff and the defendant continue to reside in the marital residence in Simsbury . . . with their daughter and son, when he is not in San Diego . . . at college. This is the plaintiff's second marriage; he also has a twenty-nine year old daughter.

"The defendant is fifty years old and in good health. She has her bachelor's degree from [State University of New York] Purchase (1997) and a master's degree in educational technology from Arizona State University (1999) and is currently completing her program of study for a master's degree in occupational therapy from Bay Path University. The defendant is not employed and has no earned income. She is receiving 35 percent of

[8] The court entered the following interim orders:

"1. The parties shall have joint legal custody of their minor child . . . primary residence shall remain the marital residence.

"2. The defendant shall continue to receive 35 percent of the plaintiff's net pension as unallocated support.

"3. The defendant shall maintain 100 percent of the G.I. Bill benefits for her continuing education at Bay Path University."

the plaintiff's military retirement, the G.I. Bill tuition payment through April, 2022, and a monthly housing allowance. This is the defendant's first marriage." (Footnotes omitted.)

The court also detailed the financial difficulties that the parties faced over the course of their marriage. It addressed the defendant's claim that the plaintiff exercised coercive control over the parties' finances, finding that "[t]he plaintiff supported the defendant in all her educational decisions and never prevented her from doing as she pleased." Regarding payment of the children's college expenses, the court found that the parties "had planned to allow the defendant to use the plaintiff's G.I. Bill in order for the defendant to obtain her PhD. Then, after the defendant secured gainful employment, the parties would pool their funds to pay for college from their income. After the defendant's original plan to pursue a doctorate changed, she decided on a new plan, but this was delayed because it required her to take science prerequisite classes in order to pursue a master's degree in occupational therapy. The plaintiff sought to secure a well paying job to support the family. The defendant changed her career, requiring more education and delaying her return to the workforce." (Footnote omitted.)

Regarding the defendant's income, the court found that "[t]he defendant needs to complete her program of study, her fieldwork and then take her boards to be certified and secure employment. Her best-case scenario if everything goes according to schedule is that she expects to be employed [in the fall of 2022]. The court finds that the defendant is resourceful, intelligent, and driven. The court finds the defendant to have an earning capacity initially of $60,000 with a real potential to increase that amount in the short term as the professional opportunities vary."

The court found the plaintiff's testimony to be credible and reliable. It found the defendant to be at fault for the breakdown of the marriage because she had engaged in an extramarital affair. The court noted that "[t]he parties and their children have continued to reside together while these [proceedings] have been pending for thirty months and counting. The delay, strain and tension has overwhelmed the defendant and their children."[9]

In its orders, the court awarded the parties joint legal custody and shared physical custody of their minor child.[10] It ordered the plaintiff to pay the defendant $300 per week in child support. The court acknowledged that this was a deviation from the presumptive amount of child support pursuant to the child support guidelines, but it found the presumptive amount of child support of $431 "to be inequitable and inappropriate due to the shared physical custody access schedule for the minor child." The court further ordered that the child support obligation "shall not commence until the week following the sale of the parties' Simsbury residence."[11] The court stated that "the pendente lite orders from October 7, 2021, shall continue with the plaintiff

[9] At oral argument before this court, counsel for the defendant indicated that the family was still living together in the marital residence.

[10] The court ordered that "[t]he plaintiff shall have access to the minor child every Sunday night until Wednesday morning; the defendant shall have access to the minor child every Wednesday morning until Friday night. The parties shall alternate access to the minor child from Friday night until Sunday night."

[11] The court ordered that "[t]he parties shall list and sell their Simsbury residence. The net proceeds after deducting normal and customary closing costs shall be divided 60 percent to the plaintiff and 40 percent to the defendant. Any dispute between the parties regarding the listing agent, listing price, terms of sale or accepting an offer for sale shall be decided by the plaintiff. No additional liens shall be placed upon this property. The court shall retain jurisdiction over the sale of this property. The defendant may remain living in the residence until it is sold." (Footnote omitted.)

paying the household expenses until the parties' residence in Simsbury is sold and title is transferred." (Footnote omitted.) The court further ordered the plaintiff to pay the defendant $200 per week in periodic alimony, stating that this obligation "shall not commence until the week following the sale of the parties' Simsbury residence."[12] Finally, the court ordered that the plaintiff retain 65 percent of his net military pension income and the defendant retain 35 percent of the plaintiff's net military pension income.

In its memorandum of decision, the court also denied the defendant's motions for contempt filed on November 8 and December 1, 2021. In those motions, the defendant had claimed that the plaintiff violated the pendente lite agreement that had been approved by the court on November 13, 2019, by failing to pay her $500 twice per month and had violated the automatic orders by buying and selling motor vehicles and other household items without her knowledge or consent. In denying these motions, the court effectively concluded that the parties' April 23, 2021 agreement had rendered the parties' obligation to comply with the prior support orders unclear and ambiguous. The court, however, granted the defendant's motion for contempt filed on December 21, 2021, in which she claimed that the plaintiff had violated certain discovery orders. Accordingly, it ordered the plaintiff to pay attorney's fees in the amount of $1000 to the defendant based on this finding of contempt.

The defendant filed the present appeal on February 28, 2022, and an amended appeal on December 19, 2022. Additional facts will be set forth as necessary.

[12] The order provides that the periodic alimony was to be paid "until the first of the following to occur: [the defendant] remarries, the death of either party or five years from [the] date of the first payment."

I

The defendant first claims that, in rendering its child support orders, the court improperly deviated from the presumptive amount of child support without using a permissible deviation criterion and by delaying the commencement of child support until the sale of the parties' residence. We agree with the defendant that the court improperly deviated from the presumptive amount of child support without using a permissible deviation criterion. We also agree that the court improperly ordered that the plaintiff's child support obligation would not commence until the sale of the parties' residence. We, therefore, remand this matter for a new trial on all financial orders.[13] See *Renstrup* v. *Renstrup*, 217 Conn. App. 252, 284, 287 A.3d 1095 ("the mosaic doctrine . . . allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property division or child support awards" (internal quotation marks omitted)), cert. denied, 346 Conn. 915, 290 A.3d 374 (2023).

Before addressing the defendant's claims regarding child support, we first note that, "[n]otwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling . . . may be reversed if . . . the trial court applies the wrong standard of law. . . . The question of whether, and to what extent, the child support guidelines apply . . . is a question of law over which this court should exercise plenary review. . . . Furthermore, although the trial court is vested with broad discretion in domestic relations matters, with respect to child support, the parameters of

[13] In light of this conclusion, we need not address the defendant's additional arguments that the trial court improperly failed to award a portion of the plaintiff's bonuses as part of the child support award and failed to apply the correct percentages for sharing unreimbursed medical expenses and childcare costs as required by the child support guidelines.

the court's discretion have been somewhat limited by the factors set forth in the child support guidelines." (Citations omitted; internal quotation marks omitted.) Id., 259–60.

A

We first consider whether the court improperly deviated from the child support guidelines without using a permissible deviation criterion. As indicated earlier in this opinion, the court found the presumptive amount of child support of $431 "to be inequitable and inappropriate due to the shared physical custody access schedule for the minor child." The trial court, therefore, ordered the plaintiff to pay the defendant $300 per week in child support, commencing after the sale of the parties' residence. The defendant argues that the court, in so doing, improperly deviated from the presumptive amount of child support without using a permissible deviation criterion.

We begin with a review of the statutory scheme regarding child support and the guidelines. General Statutes § 46b-84 provides in relevant part: "(a) Upon or subsequent to the . . . dissolution of any marriage . . . the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance. Any post judgment procedure afforded by chapter 906 shall be available to secure the present and future financial interests of a party in connection with a final order for the periodic payment of child support. . . .

"(d) In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and

sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child."

General Statutes § 46b-215a provides for a commission "to issue child support and arrearage guidelines to ensure the appropriateness of criteria for the establishment of child support awards and to review and issue updated guidelines every four years." General Statutes § 46b-215b (a) provides in relevant part that the "guidelines issued pursuant to section 46b-215a . . . and in effect on the date of the support determination shall be considered in all determinations of child support award amounts . . . . In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. *A specific finding on the record at a hearing, or in a written judgment, order, or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate in a particular case*, as determined under the deviation criteria established by the [c]ommission . . . under section 46b-215a, *shall be required in order to rebut the presumption in such case*." (Emphasis added.) See also Regs., Conn. State Agencies § 46b-215a-5c (a) ("The current support . . . amounts calculated under [the child support guidelines] . . . are presumed to be the correct amounts to be ordered. The presumption regarding each such amount may be rebutted by a specific finding on the record that such amount would be inequitable or inappropriate in a particular case. . . . Any such finding shall state the amount that would have been required under such sections and include a factual finding to justify the variance.").

"A court's failure to substantiate its decision to adjust the presumptive basic child support order by making the explicit findings in the record that are expressly required by the guidelines constitutes an incorrect application of the law . . . ." *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 272. Our Supreme Court "has stated that the reason why a trial court must make an on-the-record finding of the presumptive support amount before applying the deviation criteria is to facilitate appellate review in those cases in which the trial court finds that a deviation is justified. . . . In other words, the finding will enable an appellate court to compare the ultimate order with the guideline amount and make a more informed decision on a claim that the amount of the deviation, rather than the fact of a deviation, constituted an abuse of discretion." (Citation omitted; internal quotation marks omitted.) *Kiniry* v. *Kiniry*, 299 Conn. 308, 320, 9 A.3d 708 (2010).

"Only the deviation criteria stated in . . . subdivisions (1) to (6), inclusive, of subsection (b) of [§ 46b-215a-5c of the Regulations of Connecticut State Agencies] . . . shall establish sufficient bases [to justify a deviation from the presumptive amount of child support set forth in the guidelines]."[14] Regs., Conn. State Agencies § 46b-215a-5c (a). The deviation criteria listed in § 46b-215a-5c (b) (6) of the regulations, titled "Special circumstances," provides that, "[i]n some cases, there may be special circumstances not otherwise addressed in this section in which deviation from presumptive support amounts may be warranted for reasons of equity." Section 46b-215a-5c (b) (6) (A) of the regulations lists shared physical custody as one of the special

[14] The deviation criteria set forth in the regulations are: "(1) Other financial resources available to a parent . . . (2) [e]xtraordinary expenses for care and maintenance of the child . . . (3) [e]xtraordinary parental expenses . . . (4) [n]eeds of a parent's other dependents . . . (5) [c]oordination of total family support . . . [and] (6) [s]pecial circumstances . . . ." Regs., Conn. State Agencies § 46b-215a-5c (b).

circumstances that may justify a deviation from the presumptive support amount, providing that, "[w]hen a shared physical custody arrangement exists, it may be appropriate to deviate from the presumptive amounts when: (i) such arrangement substantially: (I) reduces expenses for the child, for the parent with the lower net weekly income, or (II) increases expenses for the child, for the parent with the higher net weekly income; and (ii) sufficient funds remain for the parent receiving support to meet the needs of the child after deviation; or (iii) both parents have substantially equal income."

The defendant contends that the trial court improperly deviated from the child support guidelines based on the special circumstance of "shared physical custody" as set forth in § 46b-215a-5c (b) (6) (A) of the regulations. She contends that no evidence was introduced at trial that either party would have substantially increased or decreased expenses by any type of shared parenting plan. The plaintiff counters that, because he is responsible for the minor child more than one half of the time, the shared physical custody arrangement substantially increases the expenses he incurs on her behalf. He further argues that, until the marital residence is sold, he is responsible for 100 percent of the housing expenses and, thus, the defendant has sufficient funds to meet the needs of the child after the deviation.[15] We agree with the defendant.

[15] As to the plaintiff's arguments, we first note that the court's order granted both parties approximately equal access to the minor child, with the plaintiff having access one more night per week than the defendant. See footnote 10 of this opinion. Furthermore, the preamble to the child support guidelines provides, as to "shared physical custody," that "[t]he commission continues to reject the notion of a mathematical formula based on the time spent with each parent to determine support amounts in the shared physical custody context. Application of such a formula would tend to shift the focus away from the best interests of the child and more toward financial considerations, which would be inconsistent with Connecticut law." Child Support and Arrearage Guidelines (2015), preamble, § (g) (3), p. xiii.

Finally, we note that, in its decision, the court stated that "[t]hese parties remain in one household out of necessity as they cannot afford to separate

A review of the court's memorandum of decision in the present case reveals that, although it cited the "shared physical custody access schedule for the minor child" as the reason it deviated from the presumptive support amount set forth in the guidelines, it did not make a specific finding to justify the downward deviation based on this criterion. It is, therefore, unclear how the trial court concluded that the plaintiff or the defendant would have substantially increased or decreased expenses due to the shared parenting plan and that sufficient funds would remain for the parent receiving support to meet the needs of the child after deviation, or that both parties have substantially equal income, as required by § 46b-215a-5c (b) (6) (A) of the regulations.

The failure to make the required finding is problematic because the parties strenuously disagree regarding the nature of the defendant's income and earning capacity and how that factored into the trial court's decision to deviate from the guidelines.[16] In this regard, the defendant contends that she has no income, except for the

at this time." Inasmuch as both parties continue to reside at the marital residence, the plaintiff's payment of household expenses necessarily includes payment of his own household expenses. Further, the court's order specifies that any disputes between the parties regarding the listing agent, listing price, terms of sale or acceptance of an offer of sale are to be decided by the plaintiff. See footnote 11 of this opinion.

[16] In its memorandum of decision, the court found that the defendant had an earning capacity of $60,000. The defendant argues that, although the court did not cite her earning capacity as the reason that it deviated from the child support guidelines, the court factored her earning capacity into its decision to deviate from the guidelines.

A parent's earning capacity is considered part of the "[o]ther financial resources available to a parent" that would justify a deviation from the child support guidelines. See Regs., Conn. State Agencies § 46b-215a-5c (b) (1) (B). "A party's earning capacity is a deviation criterion under the guidelines, and, therefore, a court must specifically invoke the criterion and specifically explain its justification for calculating a party's child support obligation by virtue of the criterion instead of by virtue of the procedures outlined in the guidelines." (Internal quotation marks omitted.) *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 268. In the present case, although the court found

$14,400 that she receives from the defendant's military pension, while the plaintiff claims that the defendant was receiving the entirety of his G.I. Bill for her education, which included a housing allowance of up to $1650 monthly, as well as 35 percent of his military pension equaling approximately $1200 monthly.

The plaintiff further argues that, pursuant to the judgment, as long as the parties remain in the marital home, the defendant has no housing or utility expenses, as he is responsible for all household expenses. Regardless of the parties' disagreement regarding the defendant's income, the court failed to make the requisite findings that would support a deviation based on the shared

that the defendant had an earning capacity of $60,000, that finding was not the basis for its deviation from the child support guidelines. Rather, the court specifically found that the presumptive amount of child support would be inequitable or inappropriate "due to the shared physical custody access schedule for the minor child." This deviation criterion is found in § 46b-215a-5c (b) (6) (A) of the regulations.

On November 8, 2022, the defendant filed a motion for permission to file a late motion for articulation in which she requested, in part, that the court articulate "the factual and legal basis for imputing $60,000 income to [her] when she was in a full-time graduate program and could not earn any income." On December 7, 2022, this court denied the defendant's motion for permission to file a late motion for articulation and ordered, sua sponte, that the court articulate the basis for its finding that the defendant had an earning capacity of $60,000. The court issued its articulation on December 15, 2022.

Notwithstanding the defendant's motion for permission to file a late motion for articulation and the court's response to this court's sua sponte articulation order, the defendant did not request that the court articulate whether its decision to deviate from the child support guidelines was based, in part, on its finding that the defendant had an earning capacity of $60,000. "Absent an articulation regarding the legal basis for the trial court's decision, a claim of error cannot be predicated on the assumption that the trial court acted erroneously." *In re Kyara H.*, 147 Conn. App. 855, 871 n.11, 83 A.3d 1264, cert. denied, 311 Conn. 923, 86 A.3d 468 (2014). Accordingly, we limit our consideration to whether the court improperly deviated from the guidelines based on the special circumstance of "shared physical custody" as indicated by the court in its memorandum of decision and as set forth in § 46b-215a-5c (b) (6) (A) of the regulations.

physical custody of the parties' minor child, specifically, that the plaintiff or the defendant would have substantially increased or decreased expenses due to the shared parenting plan, and that sufficient funds would remain for the parent receiving support to meet the needs of the child after deviation, or that both parties have substantially equal income, as required by § 46b-215a-5c (b) (6) (A) of the regulations. Without the specific findings that would support a deviation based on the shared physical custody of the minor child, it is impossible to ascertain how the court determined that application of the child support guidelines was inequitable and inappropriate due to this criterion. We conclude, therefore, that the court improperly deviated from the presumptive amount of child support without making the required findings. See *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 272–73 (trial court abused its discretion when it deviated from child support guidelines without making required findings); *Zheng* v. *Xia*, 204 Conn. App. 302, 308, 312, 253 A.3d 69 (2021) (trial court abused its discretion when its reason for deviating from guidelines failed as matter of law and it made no other findings explaining why guidelines were inequitable or inappropriate).

B

We next consider the defendant's claim that the court improperly delayed the commencement of child support payments until the sale of the parties' residence.[17] She contends that, because the court specifically ordered that payment of child support would not commence until after the house was sold, it effectively

[17] In her brief, the defendant also argues that the court improperly delayed commencement of *alimony* until the residence is sold. Because we conclude that the court improperly delayed the commencement of child support until after the sale of the parties' residence, we need not address whether the court also erred in delaying commencement of alimony until after the sale of the parties' residence.

forced her to choose between taking an appeal or receiving child support. The plaintiff counters that the court properly awarded child support by requiring him to be responsible for all household expenses in the marital home where the parties continue to reside together. We conclude that the court improperly delayed the commencement of child support until the sale of the parties' residence.

As set forth earlier in this opinion, the court ordered the plaintiff to pay the defendant $300 per week in child support. The court further ordered that the child support obligation "shall not commence until the week following the sale of the parties' Simsbury residence" and that "the pendente lite orders from October 7, 2021, shall continue with the plaintiff paying the household expenses until the parties' residence in Simsbury is sold." (Footnote omitted.)

On June 22, 2022, the defendant filed a motion to terminate the appellate stay in which she requested, inter alia, "that the automatic stay be terminated with respect to the . . . child support [order] which currently [requires] that no payment be made until the marital home is sold . . . ." The plaintiff objected to the defendant's motion, contending that she "seeks relief of a stay that does not exist" and appears to be attempting a "backdoor approach to seeking a modification of the orders that are currently pending appeal." The plaintiff further argued that the mosaic of the financial orders in the court's memorandum of decision would be undermined if the court granted the defendant's motion.

A hearing on the defendant's motion to terminate the appellate stay took place on August 22, 2022. At that hearing, the defendant testified, inter alia, that the plaintiff was not paying for her groceries, car expenses, dental expenses, clothing for her work, student loans,

and some activities for her daughter. The plaintiff acknowledged during this hearing that he had received a promotion since the date of the dissolution judgment, resulting in a raise of $25,000 annually.[18] At the conclusion of the hearing, the court stated: "[The defendant] is entitled to take an appeal, but what that did with the structure of this since she's allowed to stay in the house and she's relieved of paying those expenses, she—there is a benefit of being able to live in the house without paying the household expenses. . . . And now we fast-forward . . . several months and here we are today, and [the plaintiff's] got a better situation, and [the defendant's] got a worse situation. That's the reality."

Following the hearing, the trial court denied the defendant's motion in an order dated August 22, 2022, finding that "the mosaic of financial orders in the decision provide the defendant with no financial obligation for the household expenses where she resides. The plaintiff is solely paying these expenses." The court further clarified that the financial obligations for the term "household expenses" as used in the memorandum of decision include "the mortgage, real estate taxes and insurance, the utilities (oil, electric, water and sewer), household improvements, home phone, Internet and trash collection."[19] The court thereafter issued a supplemental order stating that "[n]o automatic stay

[18] Although the plaintiff did not list any bonuses in his financial affidavit filed in connection with the defendant's motion to terminate the appellate stay, he included a note on the affidavit indicating: "2021 net bonus received 3/15/22 $13,299.75—used to pay IRS for 2021 tax due ($9357) + $3000 atty fees."

[19] At the hearing on August 22, 2022, the court similarly stated: "I'm going to clarify something that I think needs to be clarified based on the testimony. When the court referred to household expenses, the court is referring to mortgage, [principal] interest, taxes, insurance, any special assessments on the real estate if they exist, the utilities at the residence, including oil, electric, gas, water, or sewer, any household improvements, any home phone, including any Internet at the house, any trash collection that may exist."

applies to child support . . . nor was a stay ever ordered," and "[t]he plaintiff's financial support to the defendant is being paid by way of the household expenses on real property that she owns an equitable interest in."

We agree with the trial court that no automatic appellate stay applies to orders of child support. See Practice Book § 61-11 (c) ("[u]nless otherwise ordered, no automatic stay shall apply . . . to orders of periodic alimony, support, custody or visitation in family matters"). Furthermore, the trial court's order specifically stated that it did not order a stay in this case. The issue, therefore, is whether the court's order, providing that the plaintiff's child support obligation did not commence until the sale of the parties' residence and that, until that time, the plaintiff was responsible for payment of the household expenses where the parties reside, complies with the applicable procedures regarding the payment of child support. We conclude that it does not.[20]

We begin our analysis by noting that "[t]he fundamental purpose of child support . . . is to provide for the care and well-being of minor children . . . . Thus, the [statutory] duty on divorced parents to support the minor children of their marriage . . . creates a corresponding *right in the children* to such support." (Citation omitted; emphasis in original; internal quotation

[20] To the extent that the defendant contends, as part of her argument, that the court improperly denied her motion to terminate the appellate stay, we note that "[i]ssues regarding a stay of execution cannot be raised on direct appeal. The sole remedy of any party desiring . . . [review of] . . . an order concerning a stay of execution shall be by motion for review . . . ." (Internal quotation marks omitted.) *Lawrence* v. *Cords*, 165 Conn. App. 473, 479, 139 A.3d 778, cert. denied, 322 Conn. 907, 140 A.3d 221 (2016). In this regard, on September 2, 2022, the defendant filed a motion for review of the court's August 22, 2022, order denying her motion to terminate the appellate stay and her motion for appellate attorney's fees. On October 5, 2022, this court denied this motion. On December 13, 2022, this court denied the defendant's motion for reconsideration en banc of this court's order denying her motion for review.

marks omitted.) *Blondeau* v. *Baltierra*, 337 Conn. 127, 172, 252 A.3d 317 (2020). "Both state and national policy has been, and continues to be, to ensure that all parents support their children and that children who do not live with their parents benefit from adequate and enforceable orders of child support. . . . Child support is now widely recognized as an essential component of an effective and comprehensive family income security strategy. . . . As with any income source, the effectiveness of child support in meeting the needs of children is, of necessity, increased when payments are made regularly and without interruption." (Citations omitted; internal quotation marks omitted.) *Mulholland* v. *Mulholland*, 229 Conn. 643, 651–52, 643 A.2d 246 (1994). "Where the need for child support is established and ordered by the court, it is of the utmost importance for the welfare of the child that such payments be made in a timely fashion. It is also in the interest of society that the child be supported by those obligated to support the child and that the child not be required to seek public assistance to satisfy those needs unless otherwise necessary." (Internal quotation marks omitted.) Id., 652.

In the present case, the trial court ordered that the plaintiff's child support obligation would not commence until the week following the sale of the parties' Simsbury residence and that the pendente lite orders from October 7, 2021, continued in effect with the plaintiff paying the household expenses until the parties' residence was sold. It is unclear, based on the foregoing, whether the court was ordering that the plaintiff had no child support obligation until the sale of the parties' residence or whether it was ordering a temporary, 100 percent downward deviation from the child support guidelines during an indeterminate period until the sale of the parties' home. Under either of these scenarios,

we conclude that the court improperly delayed commencement of the plaintiff's obligation to pay child support.

As previously set forth in this opinion, "the [child support] guidelines provide that the support amounts calculated thereunder are the correct amounts to be ordered by the court unless rebutted by a specific finding on the record that the presumptive support amount would be inequitable or inappropriate. . . . The finding *must* include a statement of the presumptive support amount and explain how application of the deviation criteria justifies the variance." (Citation omitted; emphasis in original; internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 550, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 66 A.3d 500 (2013).

The court's order in the present case does not reference the child support guidelines or the dollar amount of any expenses to be paid by the plaintiff on behalf of the minor child during the indeterminate period until the sale of the parties' residence. Although the plaintiff contends that his obligation to pay the household expenses totaled $940 weekly, the court's order is silent regarding the percentage of household expenses that are attributable to the child, the plaintiff and the defendant.[21] Furthermore, with regard to the indeterminate

[21] The trial court made no finding regarding the total amount to be paid by the plaintiff as household expenses. The plaintiff's financial affidavit, however, provides the following weekly expenses that are included in the court's definition of household expenses:

Home (Rent or mortgage):	$696
Home (Household improvements):	52
Utilities (Oil)	57
Utilities (Electricity)	54
Utilities (Water and Sewer)	28
Utilities (Telephone/Cell):	29
Utilities (TV/Internet)	24
	$940

period prior to the sale of the parties' residence, the court did not make a finding on the record, as required by § 46b-215b, that the application of the guidelines would be inequitable or inappropriate as determined under the deviation criteria established by the Commission for Child Support Guidelines. Considering the applicable statutory framework, the child support guidelines previously set forth, as well as the fundamental purpose of child support " 'to provide for the care and well-being of minor children' "; *Blondeau* v. *Baltierra*, supra, 337 Conn. 172; we conclude that the trial court improperly ordered that the plaintiff's child support obligation did not commence until the sale of the parties' residence and that, during the indeterminate period of time until the sale of the marital residence, the plaintiff's support to the defendant was being paid by way of the household expenses where the parties both reside. See *Maturo* v. *Maturo*, 296 Conn. 80, 118, 995 A.2d 1 (2010) ("[t]he . . . guidelines shall be considered in *all* determinations of child support amounts within the state" (emphasis in original; internal quotation marks omitted)); *Y. H.* v. *J. B.*, 224 Conn. App. 793, 803, 313 A.3d 1245 (2024) (trial court abused its discretion in declining to award child support without reference to child support guidelines based on its conclusion that support had not been requested); *Chowdhury* v. *Masiat*, 161 Conn. App. 314, 322–23, 128 A.3d 545 (2015) (trial court, without reference to applicable statutes and child support guidelines, improperly declined to award child support for parties' oldest child); *O'Brien* v. *O'Brien*, supra, 138 Conn. App. 555 (trial court abused its discretion in entering unallocated award of alimony and child support without considering and applying guidelines or principles espoused therein).

C

In light of our conclusion that the trial court improperly deviated from the child support guidelines without

using a permissible deviation criterion and delayed the commencement of the plaintiff's child support obligation until the sale of the parties' residence, we turn to the question of the appropriate relief. "Individual financial orders in a dissolution action are part of the carefully crafted mosaic that comprises the entire asset reallocation plan. . . . Under the mosaic doctrine, financial orders should not be viewed as a collection of single disconnected occurrences, but rather as a seamless collection of interdependent elements. Consistent with that approach, our courts have utilized the mosaic doctrine as a remedial device that allows reviewing courts to remand cases for reconsideration of all financial orders even though the review process might reveal a flaw only in the alimony, property distribution or child support awards. . . .

"Every improper order, however, does not necessarily merit a reconsideration of all of the trial court's financial orders. A financial order is severable when it is not in any way interdependent with other orders and is not improperly based on a factor that is linked to other factors. . . . In other words, an order is severable if its impropriety does not place the correctness of the other orders in question. . . . Determining whether an order is severable from the other financial orders in a dissolution case is a highly fact bound inquiry." (Citation omitted; internal quotation marks omitted.) *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 284.

Upon remand in the present case, the court may issue a child support order that is substantially different from the original order, including a potential arrearage. Any such order will necessarily impact the court's related orders pertaining to alimony and property division. See *Valentine* v. *Valentine*, 149 Conn. App. 799, 802–803, 90 A.3d 300 (2014) ("In dissolution proceedings, the court must fashion its financial awards in accordance

with the criteria set forth in [General Statutes] § 46b-81 (division of marital property), [General Statutes] § 46b-82 (alimony) and § 46b-84 (child support). All three statutory provisions require consideration of the parties' *amount and sources of income* in determining the appropriate division of property and size of any child support or alimony award." (Emphasis in original; internal quotation marks omitted.)). Because it is uncertain whether the court's other financial orders will remain intact after reconsidering the child support order in a manner consistent with this opinion, we conclude that the entirety of the mosaic must be refashioned. See *Renstrup* v. *Renstrup*, supra, 217 Conn. App. 285. Accordingly, the court must consider all the financial orders on remand, including the alimony and property distribution awards.

II

The defendant next raises three issues pertaining to the court's rulings on her motions for contempt. Specifically, the defendant claims that the court abused its discretion by failing (1) to hold the plaintiff in contempt for failing to comply with the pendente lite orders dated November, 2019, (2) to hold the plaintiff in contempt based on his failure to comply with the automatic orders, and (3) to award reasonable attorney's fees after holding the plaintiff in contempt for his refusal to comply with discovery orders. We address these claims in turn.

The following additional facts are relevant to our analysis of these claims. As previously set forth in this opinion, on November 13, 2019, the trial court, *Connors, J.*, approved a pendente lite agreement that required, in part, (1) the plaintiff to pay the defendant $500 twice per month and to pay "for all other family expenses including all children's expenses, home expenses and medical expenses" and (2) the defendant to actively

search for employment. See footnote 4 of this opinion. On April 23, 2021, the defendant filed an agreement for dissolution signed by both parties, a request for approval of a final agreement without a court appearance, and an affidavit in support of her request for the entry of a judgment of dissolution of marriage.

The parties' agreement, which set forth the terms for dissolving the parties' marriage, included a requirement that the plaintiff transfer twelve months of his G.I. Bill benefits to the defendant and pay the defendant 35 percent of his military pension. This agreement further provided that the defendant was entitled to 100 percent of the value of the Pioneer Investment Account listed on the parties' financial affidavits. Article XXII of this agreement provided that the agreement "shall become effective and binding immediately upon its execution by the parties without regard to the status of the dissolution action." Article XXIII of this agreement contained a "Gap in Time" clause pursuant to which the parties agreed to be bound by the agreement notwithstanding that there may be a gap in time between the date of the execution of the agreement and its approval by the court.[22] On May 26, 2021, the defendant withdrew her

[22] Article XXIII of the agreement, captioned "Gap in Time Clause," provides:

"Each party has executed this Agreement for Judgment knowingly, intelligently and voluntarily, with the assistance of effective and competent counsel, free of any duress, coercion, or undue influence.

"The parties understand, recognize, and acknowledge that there may be a gap in time between the date of the execution of this Agreement for Judgment and its approval by the court. Notwithstanding any such gap in time, the parties agree that they shall each be bound by the terms of this Agreement of Judgment in the same manner as if this Agreement of Judgment had been filed with, and approved by, the Connecticut Superior Court. Until such time as this Agreement of Judgment is approved by the Connecticut Superior Court, it shall have the same full force and effect as an Order of the Court. This shall include, but not be limited to, the ability of each party to seek the appropriate remedies under section 46b-87 of the Connecticut General Statutes."

request for approval of the agreement. On September 3, 2021, the trial court, *Carrasquilla*, *J.*, found the April 23, 2021 agreement unenforceable because it had been withdrawn by the defendant before she could be canvassed regarding whether it was fair and equitable.[23]

The defendant thereafter filed an "ex parte motion for hearing on child support, alimony, exclusive possession [of the marital home], and attorney's fees pendente lite." On October 7, 2021, the trial court, *Diana*, *J.*, in ruling on this motion, ordered, inter alia, that "[t]he defendant shall continue to receive 35 percent of the plaintiff's net pension as unallocated support" and the "defendant shall maintain 100 percent of the G.I. Bill benefits for her continuing education at Bay Path University." See footnote 8 of this opinion.

On November 8, 2021, the defendant filed a motion for contempt claiming that the plaintiff wilfully violated the November 13, 2019 pendente lite orders by failing to pay her $500 twice per month and by failing to pay for certain household expenses. She also contended that the plaintiff repeatedly had violated the automatic orders by buying and selling motor vehicles and other household items without her knowledge and consent. On December 1, 2021, the defendant filed another motion for contempt claiming that the plaintiff had violated the automatic orders by buying another vehicle without her consent. On December 21, 2021, the defendant filed a motion for contempt based on the plaintiff's failure to provide complete discovery to her.

In its memorandum of decision, the court denied the motion for contempt regarding the plaintiff's failure to comply with the November 13, 2019 pendente lite orders, specifically finding that "none of the court orders between the parties were clear and unambiguous after the parties signed their divorce agreement in April,

[23] Neither party challenges the court's decision in this regard.

2021." The court further found that "the plaintiff did not fail to comply with the court orders. . . . The plaintiff has paid 35 percent of his military retirement to the defendant since April, 2021, based upon the parties' agreement that was not found to be unenforceable until September, 2021. . . ." (Footnote omitted.) The court also denied the defendant's motion for contempt based on the plaintiff's failure to comply with the automatic orders and granted the defendant's motion for contempt as to the discovery orders, finding, inter alia, that the plaintiff wilfully had violated the discovery orders by not producing documents as ordered. The court ordered the plaintiff to pay the defendant attorney's fees in the amount of $1000 based on this finding of contempt.

A

The defendant first claims that the court abused its discretion by failing to adjudicate the plaintiff in contempt for failing to comply with the pendente lite orders dated November 13, 2019. The plaintiff counters that the court properly determined that none of the court orders were clear and unambiguous after the parties signed the April 23, 2021 agreement and that, without a determination that the orders were clear and unambiguous, there can be no finding of contempt. We agree with the plaintiff.

Our review of this claim is guided by the following principles. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order]

declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby. . . . To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review. . . . If we answer that question affirmatively, we then review the trial court's determination that the violation was wilful under the abuse of discretion standard." (Internal quotation marks omitted.) *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 68–69, 290 A.3d 825 (2023). "[A]n order of the court must be obeyed until it has been modified or successfully challenged." (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, 258 Conn. 713, 719, 784 A.2d 890 (2001).

According to the defendant, the court improperly determined that "none of the court orders between the parties were clear and unambiguous after the parties signed their divorce agreement in April, 2021." This is so, the defendant claims, because the April 23, 2021 agreement was found to be unenforceable on September 3, 2021. The defendant contends that, once the April 23, 2021 agreement was found to be unenforceable, the plaintiff had an obligation to pay all amounts due under the November, 2019 pendente lite order yet refused to do so from April, 2021 through the end of trial in January, 2022. At oral argument before this court, the defendant argued that the trial court, in issuing its orders, forgot about the November, 2019 pendente lite order.

The plaintiff counters that he complied with the November, 2019 order until the parties executed the

agreement for dissolution in April, 2021, and that the agreement for dissolution implicitly terminated the parties' obligations under the November, 2019 order. The plaintiff relies on the "Gap in Time" clause in the parties' agreement, pursuant to which the parties agreed to be bound by the agreement notwithstanding a gap in time between the date of the execution of the agreement and its approval by the court. See footnote 22 of this opinion. The plaintiff further contends that the actions of the defendant, specifically, her withdrawal of funds from the parties' joint investment account, which took place after she withdrew her affidavit in support of approval of the April, 2021 agreement, demonstrate that she was acting in accordance with, and received the benefit from, the April, 2021 agreement.

The issue before this court is whether, in light of the agreement executed by the parties in April, 2021, the court properly concluded that the November, 2019 order was no longer clear and unambiguous.[24] In this regard, the court specifically found that both parties had acted in accordance with the April, 2021 agreement, stating: "The parties signed an agreement to dissolve their marriage on April 21, 2021. Up until then the plaintiff has paid all the household bills. In April, 2021, he started paying 35 percent of his military retirement to the defendant based upon their divorce agreement. This same amount was court-ordered to be paid after a hearing in October, 2021. On May 26, [2021], the defendant

[24] We disagree with the defendant's contention that the court forgot about the November, 2019 agreement. We conclude, rather, that the trial court's statement that "none of the court's orders were clear and unambiguous after the parties signed their divorce agreement in April, 2021," reflected its understanding that, in light of the April, 2021 agreement, any orders prior to that time were no longer clear and unambiguous. See *O'Brien* v. *O'Brien*, 326 Conn. 81, 113, 161 A.3d 1236 (2017) ("[w]hen construing a trial court's memorandum of decision, [e]ffect must be given to that which is clearly implied as well as to that which is expressed" (internal quotation marks omitted)).

withdrew her affidavit in support of the request for approval of the final agreement. After trial briefs were filed and a . . . hearing [pursuant to *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, supra, 225 Conn. 804] conducted, the agreement was found to be unenforceable on September 3, 2021. On May 28, 2021, the defendant withdrew $33,880 from the parties' joint investment account leaving a balance of $52.22. This asset was going to be retained by her as part of their divorce agreement that the defendant had vacated. She did not return these funds but used them as she decided. Now the defendant is seeking retroactive financial orders based upon the pendente lite agreement from November, 2019, which required her to actively search for employment. This selective enforcement request, seeking to have the plaintiff follow the first agreement while she benefitted substantially from the second agreement that she had vacated, lacks merit."[25] (Footnotes omitted.)

We conclude, under the circumstances of this case, that the plaintiff's obligation to comply with the November, 2019 pendente lite agreement was rendered unclear by the April, 2021 agreement. Indeed, the April, 2021 agreement provided: "Notwithstanding any . . . gap in time [between the date of the execution of this Agreement for Judgment and its approval by the court] the parties agree that they shall each be bound by the terms

[25] In denying the defendant's motion for contempt, the court later stated that it "gives great latitude to the conduct after the parties had a signed divorce agreement. The court finds that the defendant cashed in and retained their entire joint investment account after she sought to vacate their April, 2021 divorce agreement which gave her that same asset. She did not return those joint funds. The defendant's claims about not having money during this time to buy their daughter a winter coat is unsupported by the facts. She had $5000 to spend on Botox, the spa, nails, and products from April, 2021, through December, 2021. In October, 2021, the plaintiff was ordered by the court to pay the defendant 35 percent of his military retirement while he continued to pay all household expenses." (Footnote omitted.)

of this Agreement of Judgment in the same manner as if this Agreement of Judgment had been filed with, and approved by, the Connecticut Superior Court. Until such time as this Agreement of Judgment is approved by the Connecticut Superior Court, it shall have the same full force and effect as an Order of the court." The April, 2021 agreement, however, was silent regarding the parties' obligation to comply with the court's 2019 pendente lite orders if the court declined to approve the parties' 2021 agreement.

Furthermore, we also note that the court issued an order on October 7, 2021, prior to the filing of the defendant's motion for contempt, requiring the plaintiff to pay the defendant 35 percent of his net pension as unallocated support and providing that the defendant was to maintain 100 percent of the G.I. Bill benefit for her continuing education. Under these circumstances, it was unclear whether the plaintiff was still obligated to pay the defendant $500 twice per month and to pay all other family expenses pursuant to the November, 2019 agreement.

The present case is similar to *Forcier* v. *Sunnydale Developers, LLC*, 84 Conn. App. 858, 862, 856 A.2d 416 (2004). In *Forcier*, we concluded that a defendant could not be adjudicated in contempt for violating the underlying judgment because the "court's subsequent orders [had] rendered the judgment ambiguous" and "subsequent orders [had] clouded the court's original judgment granting specific performance . . . ." Id. As in *Forcier*, we conclude that the April, 2021 agreement and the court's October 7, 2021 order in the present case rendered the plaintiff's obligation to comply with the prior pendente lite orders unclear and, accordingly, affirm the trial court's decision to decline to hold the plaintiff in contempt for violating the pendente lite orders.[26]

[26] To be clear, the parties' April, 2021 agreement did not render the court's November, 2019 pendente lite orders unenforceable. Our conclusion, rather,

B

The defendant next claims that the court abused its discretion by failing to hold the plaintiff in contempt for failing to comply with the automatic orders prohibiting him from buying and selling vehicles during the pendente lite period and incurring debt to purchase such vehicles. The plaintiff counters that the court properly concluded that he did not violate the automatic orders when he continued his practice of buying and selling used vehicles. We agree with the plaintiff.

Practice Book § 25-5 (b) (1) provides: "Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, *except in the usual course of business* or for customary and usual household expenses or for reasonable attorney's fees in connection with this action." (Emphasis added.) The automatic orders further provide that

is that, under the unique circumstances of this case, the court properly found that the parties' April, 2021 agreement had rendered the plaintiff's obligations pursuant to the November, 2019 orders unclear and, thus, not supportive of an adjudication of contempt. The plaintiff's obligation to comply with the November, 2019 orders was further clouded by the court's October 7, 2021 interim orders. Under these circumstances, the court properly declined to adjudicate the plaintiff in contempt for violation of the November, 2019 pendente lite orders.

Finally, we note that, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Internal quotation marks omitted.) *O'Brien* v. *O'Brien*, 326 Conn. 81, 99, 161 A.3d 1236 (2017). Citing this principle, the defendant argues that, *even in the absence of a finding of contempt*, the court should have remedied the situation by requiring the plaintiff to make the payments pursuant to the pendente lite agreement. We note that the defendant did not make this argument in her motion for contempt based on the plaintiff's failure to comply with the pendente lite orders. More importantly, however, under the circumstances set forth in this opinion, we cannot conclude that the court abused its discretion in failing to order the plaintiff to make payments pursuant to the November, 2019 order.

"[n]either party shall encumber . . . any property"; Practice Book § 25-5 (b) (3); and "[n]either party shall incur unreasonable debts . . . ." Practice Book § 25-5 (b) (5). Whether a transaction has been conducted in the usual course of business and is, therefore, exempt from the automatic orders, is a question of fact to be determined by looking at the circumstances of each case. See *O'Brien* v. *O'Brien*, 326 Conn. 81, 115, 161 A.3d 1236 (2017). "Whether a transaction is conducted in the usual course of business does not turn solely on the type of asset or transaction but on whether the transaction at issue was *a continuation of prior activities* carried out by the parties before the dissolution action was commenced." (Emphasis in original; internal quotation marks omitted.) *Leonova* v. *Leonov*, 201 Conn. App. 285, 318–19, 242 A.3d 713 (2020), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021).

In its memorandum of decision, the court stated: "The plaintiff buys, sells and trades used cars and motorcycles. This practice is not new; it has been a source of contention throughout the marriage as these used vehicles break down routinely." Referring to the plaintiff as a "gearhead," the court detailed the plaintiff's spending regarding these vehicles, noting that it was "not extravagant."[27] The court also noted that the defendant "resented the plaintiff for buying and selling used

[27] The court stated: "The plaintiff buys, sells and trades used cars and motorcycles. This practice is not new; it has been a source of contention throughout the marriage as these used vehicles break down routinely. The defendant sought a newer, more reliable vehicle that does not break down. He is currently spending $1400 a month financing $56,500 in loans for these motor vehicles. He is a gearhead; this is his style, it is not extravagant; he has three used cars and two used motorcycles. Last summer, while this action was pending, the plaintiff traded a used motorcycle that he was trying to sell for another used motorcycle, a 2001 Moto. Last fall, while this action was pending, the plaintiff's primary vehicle, a 2006 Jeep, broke down and he bought another used vehicle, a 2007 Toyota. The financing for the parties' son's vehicle is included above." (Footnotes omitted.)

cars. It annoyed the defendant not to be consulted to which he would reply, 'Get a job.' " (Footnote omitted.) The defendant acknowledges that the plaintiff bought and sold vehicles during the parties' marriage. She contends, however, that, because this was a continued source of contention between the parties and she did not approve of the transactions, the "usual course of business" exception to Practice Book § 25-5 (b) (1) does not apply. We disagree.

In discussing the "usual course of business" exception to the automatic orders, our Supreme Court has stated: "We do not suggest . . . that the usual course of business exception is reserved only for transactions made in connection with a party's business or profession; rather, because the automatic orders are intended to maintain the status quo between the parties, the exception would appear to extend to personal transactions, but only if such transactions are conducted in the normal course of the parties' ordinary activities, such that both parties would fully expect the transactions to be undertaken without prior permission or approval." *O'Brien* v. *O'Brien*, supra, 326 Conn. 115 n.12. "Thus, personal transactions . . . will meet the exception only if they previously were conducted in the normal course of the parties' ordinary activities, *such that both parties would fully expect the activity to be undertaken without the actor obtaining prior consent.*" (Emphasis added.) *Leonova* v. *Leonov*, supra, 201 Conn. App. 319.

On the basis of the foregoing, once the trial court found that the plaintiff's practice of buying and selling motor vehicles was done in the usual course of business, it properly declined to adjudicate the plaintiff in contempt for violating the automatic orders. We, therefore, conclude that the court properly exercised its discretion in denying the defendant's motions for contempt based on a violation of the automatic orders.

C

The defendant next claims that the court abused its discretion by failing to award reasonable attorney's fees after adjudicating the plaintiff in contempt for refusing to comply with discovery orders. The defendant contends that the court's imposition of only $1000 in attorney's fees punishes her for the plaintiff's transgressions and rewards the plaintiff for violating clear court orders. The plaintiff counters that the court entered an award that was reasonable and took the entirety of the parties' financial situation into account.

General Statutes § 46b-87 grants the court the discretion to award attorney's fees to the prevailing party in a contempt proceeding. "The award of attorney's fees in contempt proceedings is within the discretion of the court. . . . An abuse of discretion in granting the counsel fees will be found only if this court determines that the trial court could not reasonably have concluded as it did. . . . Importantly, where contempt is established, the concomitant award of attorney's fees properly is awarded pursuant to § 46b-87 and is restricted to efforts related to the contempt action." (Citation omitted; internal quotation marks omitted.) *Malpeso* v. *Malpeso*, 165 Conn. App. 151, 184, 138 A.3d 1069 (2016).

The following additional facts are necessary for the resolution of this claim. On December 13, 2021, the trial court, *Nastri*, *J.*, issued an order, following a hearing, requiring the plaintiff to comply with outstanding discovery requests by December 20, 2021. On December 21, 2021, the defendant filed the motion for contempt at issue, stating that the plaintiff had failed to comply with the December 13, 2021 order, and the plaintiff filed a notice of compliance with the outstanding discovery requests. On January 4, 2022, the defendant filed a request for a status conference due to the plaintiff's failure to comply with all discovery requests, and the

plaintiff filed another notice of compliance providing additional documents. The plaintiff also filed an objection to the defendant's request for a status conference, contending that he had complied with all outstanding discovery.[28] The court granted the defendant's request for a status conference and overruled the plaintiff's objection.

On January 10, 2022, the defendant filed a motion in limine pendente lite, in which she requested, in part, that the court order sanctions pursuant to Practice Book § 13-14 due to the plaintiff's failure to comply with discovery. On the first day of trial, counsel for the defendant argued that the plaintiff had provided some but not all documents by December 20, 2021. Counsel for the plaintiff indicated her belief that her client's discovery responses had been complete, and she indicated that she would continue to review the requests with the plaintiff to produce any missing documents. The court indicated that the outstanding motions for contempt and motion in limine would be taken up during the course of the trial.

During closing arguments at the conclusion of trial, counsel for the plaintiff reiterated that her client had complied with the discovery requests; counsel for the defendant, however, argued that she had "never seen a bigger lack of compliance on discovery" and that, notwithstanding that counsel for the plaintiff had certified compliance with the discovery requests, documents were still missing. She also stated that she received "hundreds of pages of documents after [December 20, 2021]," when they "should have been provided well before that." In its decision, the court stated that "[t]he plaintiff is found to have wilfully violated the discovery orders by not producing documents

[28] On January 5, 2022, the defendant filed a reply to the plaintiff's objection to her request for a status conference, listing the documents that had not been provided, despite the plaintiff's representations to the contrary.

as ordered; some of the documents were produced during this trial."[29] (Footnote omitted.) Although counsel for the defendant had filed an affidavit reflecting attorney's fees and expenses in the amount of $17,282.50 related to her motions for contempt, the court ordered the plaintiff to pay $1000 in attorney's fees to the defendant as a result of its finding of contempt.

According to the defendant, the court abused its discretion in ordering the plaintiff to pay only $1000 in attorney's fees when her affidavit of attorney's fees reflected fees and expenses in the amount of $17,282.50. Although we agree that the defendant's affidavit reflected attorney's fees and expenses in the amount of $17,282.50, we also note that this affidavit included fees related to the motions for contempt that were denied by the trial court. Specifically, the affidavit stated, in part, that the attorney's fees were "related to the various *motions* for contempt" and included fees for "[l]egal research regarding contempt motions, automatic orders and court action on same, [e]xtensive discussion with client [regarding] plaintiff's purchase of vehicles, review of photos of vehicles, [and] [r]eview of records and court orders [regarding] obligation to pay for various items under agreements."[30] We are unable to conclude that the court abused its discretion by failing to award attorney's fees based on motions for contempt that the court properly denied.

Furthermore, although the defendant relies on *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007), as support for her argument that the court's actions effectively penalized the innocent party and rewarded

[29] The court did not specify which documents had been produced and which documents were still missing.

[30] The defendant had filed a prior affidavit of legal fees on December 13, 2021, reflecting $3557.50 as the total amount of fees and expenses "related to the attorney's fees with respect to the discovery matters at issue in the December 13, [2021] hearing."

the party who abused the discovery process, that case is readily distinguishable from the present case. In *Ramin*, our Supreme Court concluded that the trial court had abused its discretion in refusing to consider a plaintiff's motion for contempt and request for sanctions based on the defendant's repeated failure to comply with discovery requests. Id., 330. In the present case, the court did not decline to act on the defendant's motion for contempt. The court, rather, granted the defendant's motion for contempt and ordered the plaintiff to pay $1000 to the defendant as a result of the contempt.[31] Additionally, it was undisputed in *Ramin* "that the case was rife with discovery misconduct by the defendant." Id., 340. The trial court's decision in *Ramin* explicitly noted, with respect to the defendant's misconduct during trial, "the defendant's pattern of deceit and disdain for the legal process." Id., 356. There is no such finding in the present case.

"[I]t is not the role of this court to exercise discretion to determine what attorney's fees, if any, are just if contumacious conduct has been proven, but to review the trial court's exercise of discretion in this regard." *Mitchell* v. *Bogonos*, supra, 218 Conn. App. 70. On the basis of our review of the proceedings in the present case, we cannot conclude that the court abused its discretion in ordering the plaintiff to pay the defendant $1000 in attorney's fees after adjudicating him in contempt for failing to comply with the court's discovery orders.

The judgment is reversed only as to the financial orders, and the case is remanded for a new trial on all

[31] The defendant contends that the trial court never ruled on her motion in limine. As to this motion, the court stated, at the commencement of trial on January 10, 2022: "So, that's my order on the motion in limine, docket entry 200.00. The [c]ourt will consider issuing an interim order if it deems it appropriate based on the evidence." The court's order on the motion in limine, dated January 10, 2022, states: "No action necessary."

financial issues; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.

DAVID L. TRENT *v.* KATIA R. TRENT
(AC 46247)

Bright, C. J., and Clark and Seeley, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed to this court from the trial court's judgments granting the defendant's motion for contempt, which alleged that the plaintiff had failed to pay his share of child care expenses, denying the plaintiff's motion for contempt, which alleged that the defendant had failed to comply with a discovery order, and denying the plaintiff's motion to modify alimony and child support. *Held*:

1. The trial court abused its discretion when it granted the defendant's motion for contempt: the defendant failed to establish by clear and convincing evidence that the plaintiff had violated the court order that required him to pay 76 percent of qualifying child care expenses and that any such violation was wilful because she failed to satisfy her burden of proving that the child care costs for which she sought reimbursement were qualifying costs that were necessary to allow her to maintain her employment; moreover, because the defendant failed to comply with the plaintiff's requests for documentation verifying that the child care expenses for which she sought reimbursement were necessary to maintain her employment, the record, at best, demonstrated that the plaintiff ceased reimbursing the defendant for such expenses due to a good faith dispute over whether those costs were eligible for reimbursement under the applicable child support regulation (§ 46b-215a-2c (g) (2)).
2. The trial court did not err in denying the plaintiff's motion for contempt; the evidence in the record that the defendant did not have knowledge of the trial court's discovery order because she did not receive correspondence from her attorney was sufficient to support the court's finding that the plaintiff had failed to prove by clear and convincing evidence that the defendant's noncompliance with that order was wilful.
3. The trial court abused its discretion in denying the plaintiff's motion to modify alimony and child support: the trial court's finding that there was not a substantial change in circumstances with respect to the plaintiff's request to modify alimony was based solely on its clearly erroneous finding regarding the defendant's 2022 earnings, as the plaintiff had introduced undisputed documentary evidence subpoenaed from the

defendant's employer that refuted the defendant's financial affidavit; moreover, there was no authority for the trial court's conclusion that the plaintiff's request to modify child support was improper because he sought only to reduce his contributions to child care expenses and health care expenses rather than to amend the child support award in its entirety.

Argued March 4—officially released July 23, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Grossman*, *J.*, rendered judgment dissolving the parties' marriage and granting certain other relief in accordance with, inter alia, an arbitration award; thereafter, the court, *Moses*, *J.*, granted the defendant's motion for contempt and denied the plaintiff's motions for contempt and to modify alimony, child support and visitation, from which the plaintiff appealed to this court. *Reversed in part*; *judgment directed in part*; *further proceedings*.

Richard W. Callahan, for the appellant (plaintiff).

Opinion

CLARK, J. In this postdissolution matter, the plaintiff, David L. Trent, appeals from certain judgments of the trial court stemming from two postdissolution motions filed by him and one postdissolution motion filed by the defendant, Katia R. Trent.[1] On appeal, the plaintiff claims that the court improperly (1) granted the defendant's motion for contempt, which alleged that the plaintiff failed to pay his share of child care expenses, (2) denied his motion for contempt, which claimed that the defendant failed to comply with a discovery order, and (3) denied his motion to modify alimony and child

[1] The defendant did not participate in this appeal. Counsel for the defendant filed correspondence with the court on January 5, 2024, indicating that the defendant "takes no position in this appellate matter and will not be filing a brief."

support. We agree with the plaintiff on his first and third claims but disagree with him on his second claim. Accordingly, we reverse the court's judgment of contempt and the judgment denying the plaintiff's motion for modification as to alimony and child support. We affirm the judgment denying the defendant's motion for contempt.

The following undisputed facts and procedural history are relevant to the plaintiff's claims. The parties were married on July 31, 2004. They have twin children who were born in October, 2013. On March 24, 2017, the plaintiff commenced a dissolution action, alleging that the marriage had broken down irretrievably.

On May 4, 2018, the parties filed an agreement with the court indicating their desire to settle the matter through binding arbitration. Specifically, they agreed to have an arbitrator "decide any and all financial matters submitted to the arbitrator by either party." The same day, the court, *Wenzel*, *J.*, approved the parties' stipulation, indicating that "[t]he only matter reserved is that of child support" and that "[t]he pendente lite orders of the court will remain in effect until the parties return after arbitration."

On June 19, 2018, the arbitrator issued her decision requiring the plaintiff to pay the defendant $800 per week in periodic alimony "for a period of eight years, to sooner terminate on the death of either party or the defendant's remarriage." Upon the request of the parties to provide a recommendation as to child support, the arbitrator found "the presumptive child support under the [child support] guidelines to be paid by the plaintiff to the defendant to be $545 per week based on [the plaintiff's] base salary." Furthermore, the arbitrator stated: "The plaintiff should pay the defendant 77 percent of all health expenditures not paid by insurance

and day care necessary for the defendant's work."[2] On June 22, 2018, the defendant filed a motion to confirm the arbitration award, requesting the court to "enter a dissolution of marriage in accordance with the arbitration decision."

On July 5, 2018, the defendant filed with the court a child support guidelines worksheet. The worksheet provided, inter alia, for a presumptive child support order of $545 per week to be paid by the plaintiff to the defendant. It further provided that the plaintiff would be responsible for 76 percent of the children's unreimbursed medical expenses and child care expenses, and the defendant would be responsible for 24 percent of those expenses. The plaintiff did not object to the calculations in the worksheet. On the same date, the parties filed with the court an agreement, which provided in part: "The parties agree [that] in addition to the weekly child support of $545 per week per the child support guidelines, the plaintiff shall [pay] 22.66 percent of the

[2] At the time of the parties' dissolution, Connecticut law did not allow for child support, visitation, or custody to be decided through arbitration. See, e.g., General Statutes (Rev. to 2017) § 52-408 ("[a]n agreement in any written contract . . . or an agreement in writing between the parties to a marriage to submit to arbitration any controversy between them with respect to the dissolution of their marriage, *except issues related to child support*, visitation and custody, shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally" (emphasis added)). The arbitrator, therefore, could only make a recommendation as to child support, which was, of course, subject to the court ultimately deciding the issue.

General Statutes § 52-408, however, no longer excludes issues related to child support, visitation, and custody from being arbitrated, subject to certain requirements. See General Statutes § 52-408 ("[a]n agreement in any written contract . . . or an agreement in writing between the parties to a marriage to submit to arbitration any controversy between them with respect to the dissolution of their marriage shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally, subject to the requirements of subsection (e) of section 46b-66 in the case of an award with respect to a dissolution of marriage").

net [of] all bonuses received." The same day, the court, *Grossman*, *J.*, rendered judgment dissolving the parties' marriage, incorporating into its judgment of dissolution the arbitration award, the parties' July 5, 2018 agreement, and the parties' parenting plan.[3] Although neither the judgment nor the parties' July 5, 2018 agreement expressly required the plaintiff to contribute to qualifying child care expenses, the parties agree that the judgment incorporated the arbitrator's recommendation with respect to qualifying child care expenses but modified the plaintiff's obligation from 77 percent to 76 percent of such expenses in accordance with the defendant's child support worksheet.

On March 15, 2021, the plaintiff filed a postjudgment motion to modify alimony, child support, and parenting time. As to the modification of child support and alimony, the plaintiff alleged that there had been a substantial change in circumstances, namely, that the defendant had obtained employment since the date of the dissolution judgment.[4] The defendant filed an objection to the plaintiff's motion.

On September 16, 2022, the defendant filed a motion for contempt, alleging that the plaintiff was wilfully violating the court's order requiring him to pay 76 percent of qualifying child care costs. On December 6, 2022, the plaintiff filed a motion for contempt on the ground that the defendant had failed to comply with the trial court's November 8, 2022 order to respond to all outstanding discovery requests on or before November 22, 2022.

On January 19, 2023, the trial court, *Moses*, *J.*, issued its order on the plaintiff's March 15, 2021 postjudgment

[3] The parties filed a "final parenting plan" with the court on May 4, 2018.

[4] In his March 15, 2021 motion to modify, the plaintiff also requested a modification of his visitation schedule because it was likely that his employer would require him to relocate to Florida in order to maintain his employment. The court's order as to visitation is not at issue in this appeal.

motion to modify alimony, child support and visitation. The court denied the plaintiff's request to modify child support, stating: "[T]his court denies the plaintiff's request to modify only the child support order to reduce his contributions to child care expenses and health care expenses, as it is improper given the fact that the plaintiff is not seeking to amend the child support award in its entirety." Further, the court denied the plaintiff's request to modify alimony, ruling that it "does not find a substantial change in circumstances given the fact that the defendant is earning well under $30,000 a year."

In separate orders also issued on January 19, 2023, the court granted the defendant's September 16, 2022 motion for contempt and denied the plaintiff's December 6, 2022 motion for contempt. As to the defendant's motion for contempt, the court found that the plaintiff wilfully failed to comply with the court's order requiring him to pay 76 percent of the child care expenses. The court ordered the plaintiff to "reimburse the defendant for 76 percent [of] all child care expenses incurred during the time of his noncompliance." The court also awarded the defendant attorney's fees. As to the plaintiff's motion for contempt, the court denied the motion, concluding that the defendant's noncompliance with the court's order to respond to the plaintiff's discovery requests was not wilful. This appeal followed.

I

The plaintiff's first and second claims of error concern the court's rulings on two motions for contempt, one filed by him and one filed by the defendant. First, the plaintiff claims that the court erred in granting the defendant's September 16, 2022 motion for contempt because the defendant failed to establish by clear and convincing evidence that he wilfully violated the court order that required him to pay 76 percent of qualifying child care expenses. Second, he claims that the court

erred in denying his December 5, 2022 motion for contempt because, among other things, he established by clear and convincing evidence that the defendant's failure to comply with the discovery order was wilful. We address each claim in turn.

We begin with the relevant legal principles and our standard of review. "Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [C]ivil contempt is committed when a person violates an order of court which requires that person in specific and definite language to do or refrain from doing an act or series of acts. . . . In part because the contempt remedy is particularly harsh . . . such punishment should not rest upon implication or conjecture, [and] the language [of the court order] declaring . . . rights should be clear, or imposing burdens [should be] specific and unequivocal, so that the parties may not be misled thereby." (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 222 Conn. App. 855, 866, 307 A.3d 923 (2023).

"To constitute contempt, it is not enough that a party has merely violated a court order; the violation must be wilful. . . . It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. . . . The question of whether the underlying order is clear and unambiguous is a legal inquiry subject to de novo review." (Internal quotation marks omitted.) *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 68–69, 290 A.3d 825 (2023). "[I]f we conclude that the underlying court order was sufficiently clear and unambiguous, we must then determine whether the trial court abused its discretion in issuing, or refusing to issue, a judgment of contempt, which includes a review of the trial court's determination of whether the violation was wilful or excused by a good

faith dispute or misunderstanding." *In re Leah S.*, 284 Conn. 685, 693–94, 935 A.2d 1021 (2007). "Under the abuse of discretion standard of review, [w]e will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did." (Internal quotation marks omitted.) *Landry* v. *Spitz*, 102 Conn. App. 34, 59, 925 A.2d 334 (2007).

A

The plaintiff claims that the court erred when it granted the defendant's motion for contempt because the defendant failed to establish by clear and convincing evidence that the plaintiff wilfully violated the court order that required him to pay 76 percent of qualifying child care expenses. Specifically, he claims that the defendant failed to prove that the child care expenses at issue were eligible for reimbursement as "qualifying costs," as defined in § 46b-215a-2c (g) of the Regulations of Connecticut State Agencies, because the defendant failed to prove that the child care was "necessary" for her to maintain her employment. He therefore contends that the defendant failed to prove any violation of the court's order. In addition, the plaintiff claims that, even if he did violate the order, the defendant failed to prove that any violation was wilful because he reasonably requested, but the defendant refused to provide, documentation of her work hours so that he could confirm that the child care reimbursements that she requested from him were in fact qualifying costs. For the reasons that follow, we agree with the plaintiff.

The following additional facts and procedural history are relevant to the plaintiff's claim. In addition to filing the arbitration decision with the court, the defendant

also filed a child support guidelines worksheet with the court reflecting, among other things, that the plaintiff would be responsible for 76 percent of the children's unreimbursed medical expenses and child care expenses and that the defendant would be responsible for 24 percent of those expenses. See footnote 2 of this opinion. The plaintiff did not file an objection to the calculations in the worksheet.

On September 16, 2022, the defendant filed a motion for contempt, claiming that "[t]he plaintiff was ordered to pay 76 percent of child care for the minor children, which he has wilfully failed to pay." The child care expenses at issue represented the cost of an extended day program at the children's school. At the hearing on the motion for contempt on January 17, 2023, the plaintiff's counsel argued, inter alia, that the defendant failed, upon request, to provide him with documentation to verify that the extended day program was necessary for her to maintain her employment and that the plaintiff did not have an obligation to reimburse the defendant for child care that is not necessary to allow her to maintain employment.

The testimony of the parties revealed that the children's normal school day starts at 8:30 a.m. and ends at 3:20 p.m. The defendant testified that, if the children were to take the school bus to and from school, the school bus would pick them up from home at approximately 8:10 a.m. and drop them back off at approximately 3:30 p.m. The defendant testified, however, that the children no longer take the bus to school because she enrolled them in an extended day program that provides before and after-school care. She explained that she typically drops the children off to the program at approximately 7:30 a.m. or 7:40 a.m. and that she picks them up from the after-school program at approximately 4:45 p.m. She testified that the program in which she has the children enrolled requires her to elect at

the beginning of school year whether they will enroll in the program. She testified that families can choose before or after-school care, or both, but the election must be made in the beginning of the school year. It cannot be switched daily or weekly.

The plaintiff testified that, until approximately August, 2022, he was current in reimbursing the defendant for his portion of child care expenses. He testified, however, that, in or about September, 2022, he stopped reimbursing the defendant for the child care costs that she requested from him because, from what he could tell from documents obtained through discovery, the extended day program was not necessary for the defendant's employment because she was not working during the time the children were in the program.

Specifically, the plaintiff testified that, prior to the time he stopped reimbursing the defendant for child care expenses, he had made numerous requests to the defendant to produce documents verifying her work hours. He testified that she failed to comply with those requests.[5] Indeed, when the defendant was asked by the plaintiff's counsel at the hearing whether she provided the plaintiff with her time card reports when he asked for information regarding her work hours in order to resolve their disagreement about her requests for reimbursement of child care expenses, she responded, "I guess not."

After he stopped reimbursing the defendant for child care expenses due to her failure to provide him with documentation verifying her work hours, the plaintiff subpoenaed the defendant's employer for her employment records. Through the subpoena, the plaintiff

[5] The record shows that, on August 11, 2021, the plaintiff filed a motion to compel with the court seeking the defendant's compliance with his request for disclosure and production postjudgment. It does not appear that the August 11, 2021 motion was ever acted upon by the court.

obtained the defendant's time cards and pay stubs.[6] When questioned at the hearing about her time cards, the defendant explained that she worked from home approximately twenty-five hours per week and acknowledged that her time cards reflected that she, in almost all instances, worked no later than 3 p.m. on any given day even though her children remained in the after-school program until 4:45 p.m. The time cards admitted into evidence confirmed this testimony, revealing that she ended work on most days no later than 2:30 p.m., with many days ending earlier than that. When asked by the plaintiff's counsel whether her start time and end time were flexible, the defendant stated, "I believe so if I ask."[7]

In his closing argument, the plaintiff's counsel argued that the "crux of the matter, Your Honor, is the child care costs incurred by the defendant have to be work-related. And Your Honor has her time cards specifically, which I had to subpoena and get, which show that there are extremely rare circumstances where she is ever working past 3 p.m., maybe a handful of time[s] in an entire year and a half period of time worth of time cards. So, I don't think that it is reasonable or necessary for the defendant to incur these costs and ask that my client pay 76 percent of the bill when the costs could

[6] As we discuss in greater detail in part I B of this opinion, the plaintiff also filed a motion for order of compliance with the court on November 4, 2022, requesting that the court order the defendant to comply with the plaintiff's request for disclosure and production. On November 8, 2022, the court, *Truglia*, *J.*, granted the motion, ordering the defendant to comply with "all outstanding discovery requests on or before November 22, 2022." The defendant did not comply with that order.

[7] The plaintiff's counsel asked that, "if, for example, you asked your employer if you could clock in and begin your workday at 8:15, that may not be an issue with them. Is that fair to say?" The defendant responded: "I believe that the phones start at eight." The plaintiff's counsel then asked: "Okay. So, theoretically then, you could ask them to begin your workday at eight?" The defendant responded: "I could."

have been avoided and are not necessary in the first place. . . .

"Now, in terms of the morning program, though, Your Honor also heard testimony that she has enough flexibility in her job and that the kids get on the bus at about 8:10 in the morning where if she wanted to clock in at 8 o'clock in the morning and the kids get on the bus at 8:10, she could do that. But instead, she chooses to drop the kids off at the extended day program. She works from home. . . .

"[T]here is no testimony from the defendant that she wouldn't be able to do that, that she wouldn't be able to see them off onto the bus and have a ten minute gap of when she has to begin her work and begin taking calls versus dropping them off early in the morning for the extended day program. So, I don't think in the mornings either [is] a necessity. It's something that's simply a convenience for the defendant."

On January 19, 2023, the court, *Moses*, *J.*, issued an order stating: "The court finds by clear and convincing evidence that the plaintiff had notice of the court's orders on child support [docket entries ##168.00 and 169.00], which required the plaintiff to pay 76 percent of the child care for the minor children. The court finds by clear and convincing evidence that the order was clear and unambiguous in its direction for the plaintiff to pay a certain percentage towards child care. The court further finds that the plaintiff failed to comply with the aforesaid order in that he refused to pay child care expenses. The court finds the plaintiff's noncompliance wilful. The court ORDERS the plaintiff to reimburse the defendant for 76 percent [of] all child care expenses incurred during the time of his noncompliance. The court orders the defendant's counsel to file an affidavit regarding attorney's fees."

The plaintiff does not dispute that the court's dissolution judgment was clear and unambiguous as to his obligation to pay 76 percent of child care costs in accordance with the child support guidelines. Instead, the plaintiff claims that the court abused its discretion in issuing the contempt order because the defendant failed to establish by clear and convincing evidence that he violated the order or that, if he did violate the order, that any such violation was wilful. We agree.

The record in this case makes clear that the plaintiff's child care contribution amount was calculated in accordance with the child support and arrearage guidelines on a worksheet filed with the court. Although the worksheet itself does not define or explain which child care costs qualify for contribution, the child support guidelines expressly address this. See Regs., Conn. State Agencies § 46b-215a-2c (g) (2). Specifically, in "[d]etermining the child care contribution," the regulations state that "[c]hild care costs shall qualify for a contribution from the noncustodial parent only to the extent that they: (i) are reasonable, (ii) are necessary to allow a parent to maintain employment, (iii) are not otherwise reimbursed or subsidized, and (iv) do not exceed the level required to provide quality care from a licensed source. . . ." Id. The preamble of the child support guidelines reiterates that child care costs "subject to noncustodial parent reimbursement must be reasonable and necessary for the custodial parent to maintain employment." Child Support and Arrearage Guidelines (2015), preamble, § (g) (5) (B), p. xiv; see also *Maturo* v. *Maturo*, 296 Conn. 80, 92–93, 995 A.2d 1 (2010) ("[t]he guidelines are accompanied by a preamble that is not part of the regulations but is intended to assist in their interpretation"). Consistent with these definitions of reimbursable child care costs, the arbitrator's recommendation concerning child support, which was incor-

porated into the judgment, required the plaintiff to pay the defendant for "day care *necessary for the defendant's work*." (Emphasis added.) The plaintiff in this case was therefore required to contribute 76 percent of child care costs that were reasonable and necessary to allow the defendant to maintain employment, that were not otherwise reimbursed or subsidized, and that did not exceed the amount required to provide quality care from a licensed source.

In the context of the defendant's motion for contempt, it was the defendant's burden, as the party seeking the order of contempt, to prove, by clear and convincing evidence, the plaintiff's allegedly wilful noncompliance with the child care order. See *Puff* v. *Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020). To satisfy that burden, the defendant was required to show by clear and convincing evidence that the child care costs for which she sought reimbursement were qualifying costs, namely, that they were, inter alia, necessary to allow her to maintain employment, and that the plaintiff wilfully violated his obligation to pay those costs. See Regs., Conn. State Agencies § 46b-215a-2c (g) (2); cf. *Schull* v. *Schull*, 163 Conn. App. 83, 97, 134 A.3d 686 ("there has been no showing [by the plaintiff] that these bills are 'unreimbursed medical expenses' for which she is entitled to be 'reimbursed' by the defendant"), cert. denied, 320 Conn. 930, 133 A.3d 461 (2016). On the basis of our review of the record in this case, we conclude that she failed to satisfy her burden of proving by clear and convincing evidence that the plaintiff violated the order much less *wilfully* violated the order.

At the hearing on the motion for contempt, the plaintiff introduced into evidence the defendant's time card reports that he subpoenaed from the defendant's employer, which unambiguously showed that the defendant ended her workday earlier than 3 p.m. nearly every day. The plaintiff's counsel also called the defendant

as a witness. In response to questions from the plaintiff's counsel about whether her work hours were flexible, the defendant testified that her employer likely would be flexible with respect to when she started and finished her workday. The defendant also testified that she runs personal errands and does grocery shopping some days when the children are in the after-school program. Although the defendant testified that every forty-five days or so she needed to attend a work meeting in person in Shelton for "five to seven hours," this infrequent commitment does not demonstrate that the children's enrollment in the before and after-school program five days a week was reasonable and necessary for her to maintain her employment. In short, she made little effort at the hearing to show that the child care costs in question were necessary to allow her to maintain her employment, leaving an evidentiary lacunae linking the child care costs to her work schedule. On this record, we conclude that she failed to satisfy her burden of proving by clear and convincing evidence that the child care costs for which she sought reimbursement were qualifying costs. It necessarily follows that she also failed to prove that the plaintiff violated the court's child care order because he had no obligation to reimburse her for nonqualifying child care costs.

Furthermore, even if the defendant had satisfied her burden of demonstrating that the costs for which she sought reimbursement were qualifying costs and that the plaintiff violated the support order by failing to reimburse her for those costs, we cannot, on this record, conclude that there was clear and convincing evidence that the plaintiff *wilfully* violated the order. The record shows that, for approximately one year, the plaintiff asked the defendant for documentation verifying that the child care expenses for which she sought reimbursement were necessary for her to maintain employment. The defendant failed to comply with those requests and

the plaintiff suspended reimbursements. Thus, at best, the record demonstrates that the plaintiff ceased reimbursing the defendant for child care expenses due to a good faith dispute over whether those costs were eligible for reimbursement under the child support regulations. See, e.g., *In re Leah S.*, supra, 284 Conn. 694 ("we must . . . determine whether the trial court abused its discretion in issuing, or refusing to issue, a judgment of contempt, which includes a review of the trial court's determination of whether the violation was wilful *or excused by a good faith dispute or misunderstanding*" (emphasis added)). Accordingly, the trial court's judgment of contempt must be reversed and the orders stemming from that judgment are vacated.

B

We next address the plaintiff's claim that the trial court erred in denying his motion for contempt. He contends that the defendant admitted that she failed to comply with a discovery order and that the court should not have credited her excuse for failing to comply with that order. He further contends that attempts by the defendant's attorney to assume blame for the defendant's noncompliance should not be countenanced. The plaintiff argues that the record is clear that the defendant's noncompliance was wilful and that the court erred in concluding that it was not. We are not persuaded.

The following additional facts and procedural history are relevant for our resolution of this claim. On December 6, 2022, the plaintiff filed a motion for contempt regarding the defendant's alleged failure to comply with the plaintiff's discovery requests. Specifically, he alleged that he filed a postjudgment motion for modification of alimony, child support, and visitation on March 15, 2021, and that the plaintiff served on the defendant his request for disclosure and production

postjudgment on April 6, 2021. He further alleged that, although the defendant partially complied with the April 6, 2021 request, she did not fully comply. In addition, he alleged that, on September 20 and October 18, 2022, he requested via email updated production documents from the defendant for the period December 7, 2021, to September 20, 2022. According to the plaintiff, as of December 6, 2022, the defendant had not produced the requested updated documents to the plaintiff. The plaintiff noted that he filed a motion for compliance on November 4, 2022, and that the defendant was ordered to comply fully with all outstanding discovery requests on or before November 22, 2022. Because the defendant allegedly had not complied with the court's order to comply with producing all outstanding discovery, the plaintiff requested, inter alia, an order of contempt.

At the January 17, 2023 hearing on the motion for contempt, the defendant acknowledged that there was a motion to compel her discovery responses and a subsequent ruling issued by Judge Truglia ordering her to produce all responsive documents by November 20, 2022. When asked by the plaintiff's counsel whether she complied with Judge Truglia's order, she testified that she did not. She acknowledged that her noncompliance caused the plaintiff's counsel to subpoena her employment records from her employer and certain financial records from her bank. In response to questions from her own counsel, the defendant testified that "I guess you guys called me several times—I never got a call on my phone—or emailed me, and I think you had the wrong email." The defendant's counsel then asked: "Did we discover just recently that our emails were going into a spam or junk email?" The defendant responded, "Yes," and indicated that she had not received emails from her counsel. The defendant's counsel then asked the defendant, "You weren't physically in court before Judge Truglia, were you?" The

defendant answered that she was not. When asked by her counsel whether his firm's attempts to communicate Judge Truglia's orders got through to the defendant, the defendant testified, "No, they did not."

On January 19, 2023, the court issued an order denying the plaintiff's motion for contempt. It stated that it did "not find evidence that the defendant's noncompliance was wilful."

The plaintiff claims that the court erred in denying his motion for contempt because the court improperly determined that the defendant's noncompliance was not wilful. He contends that the defendant's uncorroborated excuse that she lacked knowledge of the trial court's orders because the emails from her attorney were going into her spam folder while at the same time the calls from her attorney were not being recorded on her cell phone, are simply too far-fetched to be deemed credible. The plaintiff points out that the defendant was able to speak to her attorney to authorize the filing of a motion for contempt on September 16, 2022, but nevertheless claims that, four days later, both her email and her phone stopped receiving communications from her attorney for three months. The plaintiff therefore claims that the court abused its discretion in concluding that the defendant's noncompliance was not wilful. We disagree.

There is evidence in the record that the defendant did not have knowledge of the discovery order for which she did not comply because she did not receive correspondence and communications from her attorney. That evidence is sufficient to support the court's finding that the plaintiff had failed to prove by clear and convincing evidence that the defendant's noncompliance was wilful. See *In re Leah S.*, supra, 284 Conn. 692 (judgment of civil contempt is improper if "the contemnor, through no fault of his [or her] own, was unable

to obey the court's order" (internal quotation marks omitted)). Although the plaintiff argues that the defendant's testimony was not credible, this court does not retry the facts or evaluate the credibility of witnesses. Rather, "[t]he trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony and, therefore, is free to accept or reject, in whole or in part, the testimony offered by either party." (Internal quotation marks omitted.) *Kasowitz* v. *Kasowitz*, 140 Conn. App. 507, 512, 59 A.3d 347 (2013). On this record, we cannot conclude that the court abused its discretion in concluding that the defendant's noncompliance was not wilful.

II

The plaintiff's final claims pertain to the court's denial of his motion for modification as it relates to alimony and child support. As to the alimony portion of his motion for modification, the court concluded that the plaintiff had failed to prove a substantial change in circumstances "given the fact that the defendant is earning well under $30,000 a year." The plaintiff claims that the court's sole finding that the defendant "is earning well under $30,000 a year" is clearly erroneous, as the documentary evidence introduced at the hearing showed that defendant was in fact making more than $30,000.

As to the plaintiff's motion for modification of child support, he requested that his child care contribution and unreimbursed medical contributions be reduced.[8] The court denied the motion for modification of child support, indicating that it was "improper given the fact

[8] In the plaintiff's motion for modification filed with the court, he argued that the circumstances warranted modification of the "child support orders, including the orders concerning child care, health care expenses and extracurricular activity expenses." During the hearing on his motion for modification, the plaintiff limited his modification request to child care and unreimbursed medical and dental expenses.

that the plaintiff [was] not seeking to amend the child support award in its entirety." The plaintiff claims that the court erred, as a matter of law, in concluding that he could not seek modification as to only one or two components of the child support award without seeking modification of the other components of the child support award. We address the plaintiff's claims in turn.

We begin with our well known standard of review. Our appellate courts "will not disturb the trial court's ruling on a motion for modification of alimony or child support unless the court has abused its discretion or reasonably could not conclude as it did, on the basis of the facts presented." (Internal quotation marks omitted.) *Budrawich* v. *Budrawich*, 200 Conn. App. 229, 245–46, 240 A.3d 688 (2020), cert. denied, 336 Conn. 909, 244 A.3d 561 (2021). "Furthermore, [t]he trial court's findings [of fact] are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . 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." (Internal quotation marks omitted.) *Moore* v. *Moore*, 216 Conn. App. 179, 189, 283 A.3d 994 (2022). "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. . . . To the extent that the [plaintiff] has raised legal issues within his overarching claim[s], we review those claims de novo." (Citation omitted; internal quotation marks omitted.) *Giordano* v. *Giordano*, 200 Conn. App. 130, 135, 238 A.3d 113, cert. denied, 335 Conn. 970, 240 A.3d 286 (2020).

"[General Statutes §] 46b-86 governs the modification or termination of an alimony or support order after the

date of a dissolution judgment. When, as in this case, the disputed issue is alimony [or child support], the applicable provision of the statute is § 46b-86 (a), which provides that a final order for alimony [or child support] may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred. . . . To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order." (Internal quotation marks omitted.) *De Almeida-Kennedy* v. *Kennedy*, 224 Conn. App. 19, 30–31, 312 A.3d 150 (2024).

A

The plaintiff claims that the court's determination that there was not a substantial change in circumstances to modify alimony was predicated on the sole finding that the defendant "is earning well under $30,000 a year." He further claims that, because the court's sole finding with respect to his motion was clearly erroneous, the court abused its discretion in denying his motion and that reversal is warranted. We agree.

In the present case, the defendant filed with the court a financial affidavit in which she averred that her gross income from wages per week was $450, or $23,400 per year. The plaintiff, however, introduced undisputed documentary evidence subpoenaed from the defendant's employer that refuted the defendant's financial affidavit. Specifically, the defendant's 2021 W-2 showed that the defendant made $27,416.75 from wages that

year. The defendant testified, however, that she did not start her employment until February, 2021, meaning that her gross earnings on her 2021 W-2 reflected only ten months of work. The plaintiff also introduced into evidence the defendant's pay stubs from 2022 for the period from January 1 through December 3, 2022. The pay stubs show that the defendant earned $30,629.25 by December 3, 2022, with remaining paychecks to follow. When presented with this evidence at the hearing, the defendant conceded that her gross weekly pay was approximately $625 instead of the $450 that she had indicated on her financial affidavit. Furthermore, during closing arguments, the defendant's counsel explained to the court that "[m]y client earns about $30,000 a year." The court's finding that the defendant was "earning well under $30,000 a year" was therefore clearly erroneous.

Because the court's finding that there was not a substantial change in circumstances was predicated solely on the court's clearly erroneous factual finding, we are left with no choice but to conclude that the court abused its discretion in denying the motion for modification as it pertained to alimony. See, e.g., *Berman* v. *Berman*, 203 Conn. App. 300, 313, 248 A.3d 49 (2021) ("lack of an evidentiary basis in the record for the court's finding of an exchange of assets or equity for lifetime alimony, on which its ultimate decision denying the plaintiff's motion for modification was based at least in part, compels us to find that the court abused its discretion in denying the plaintiff's motion"). As a result, this matter must be remanded to the trial court for a new hearing on the plaintiff's motion for modification as it relates to alimony. See *Steller* v. *Steller*, 181 Conn. App. 581, 598, 187 A.3d 1184 (2018) (because trial court's decision on motion for modification was based, in part, on clearly erroneous finding, case was remanded for new hearing on motion for modification). At the rehearing, the trial

court must determine whether the plaintiff established a substantial change in circumstances and, if so, what modification of alimony, if any, is appropriate.[9]

B

The plaintiff's final claim is that the court erred in denying his motion to modify child support. He notes that the court's sole stated basis for denying his motion was that " 'the plaintiff's request to modify only the child support order to reduce his contributions to child care expenses and health care expenses' " was " 'improper given the fact that the plaintiff [was] not seeking to amend the child support award in its entirety.' " He contends that there is no authority for the court's conclusion. We agree.

The question of whether, and to what extent, a child support order can be modified is a question of law over which this court's review is plenary. See *Maturo* v. *Maturo*, supra, 296 Conn. 88.

The law is clear that child support in Connecticut is generally comprised of four components, or awards, which include current support payments, health care coverage, child care contribution, and periodic payments on arrearages. Indeed, General Statutes § 46b-215b (a) provides in relevant part that "[t]he child support and arrearage guidelines . . . shall be considered in all determinations of child support award amounts, including any current support, health care coverage, child care contribution and past-due support amounts,

[9] Superior Court judges making postjudgment dissolution rulings are encouraged, in accordance with our rules of practice, to set forth in detail the factual and legal bases for their rulings, including an explanation of the evidence considered and relied upon and the credibility determinations of witnesses. See Practice Book § 6-1 (a) ("[t]he judicial authority's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor"); Practice Book § 64-1 (a) ("[t]he court's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor").

and payment on arrearages and past-due support within the state. . . .'' The law further provides in relevant part: ''In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. . . .'' General Statutes § 46b-215b (a).

The regulations reiterate the mandates of § 45b-215b. They define ''child support award'' as ''the entire payment obligation of the noncustodial parent, as determined under the child support and arrearage guidelines, and includes current support payments, health care coverage, child care contribution and periodic payments on arrearages.'' Regs., Conn. State Agencies § 46b-215a-1 (6). The regulations further provide in relevant part that ''[t]he current support, health care coverage contribution, and child care contribution amounts calculated under section 46b-215a-2c of the Regulations of Connecticut State Agencies, and the amount of the arrearage payment calculated under section 46b-215a-3a of the Regulations of Connecticut State Agencies, are presumed to be the correct amounts to be ordered. . . .'' Regs., Conn. State Agencies § 46b-215a-5c (a).

Section 46b-86 (a) governs the modification of a child support order after the date of a dissolution judgment. It provides in relevant part: ''[A]ny final order for the periodic payment of permanent alimony or support . . . may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to [General Statutes §] 46b-215a, unless there was a specific finding on the record at a hearing, or in a written judgment, order or

memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate. . . .'' General Statutes § 46-86 (a). This court has explained that, pursuant to that provision, a court may modify a child support order in one of two alternative circumstances: upon a showing of a substantial change in the circumstances of either party or a substantial deviation from the child support guidelines. See *Brown* v. *Brown*, 199 Conn. App. 134, 153, 235 A.3d 555 (2020); *Righi* v. *Righi*, 172 Conn. App. 427, 433, 160 A.3d 1094 (2017).

The plaintiff argues that there is no authority for the court's conclusion that it was improper for him to seek modification of just one or two components of the child support award. We agree. On the basis of our review of the modification statute and the relevant case law, we have found no authority prohibiting a party from seeking to modify a child support award through a change to just one or two components of the total child support award instead of seeking to modify *all* components of a child support award. Significantly, § 46b-86 (a) includes no such limitation. That statute simply provides that a court may modify ''*any* final order for the periodic payment of . . . support'' upon the showing, inter alia, of a substantial change in the circumstances of either party. (Emphasis added.) General Statutes § 46b-86 (a). There can be little dispute that orders requiring a noncustodial parent to pay a percentage of child care expenses and unreimbursed medical expenses are orders of ''support'' subject to modification under § 46b-86 (a). Although child care orders and health care orders are often included in an omnibus award containing the orders as to each of the four components of child support, we see no reason why a party cannot seek modification of some but not all of the components that comprise the total child support award.

Of course, a party seeking modification of only one or two of the child support components must still demonstrate a substantial change in circumstances. See *Brown* v. *Brown*, supra, 199 Conn. App. 157 ("[t]he party seeking modification bears the burden of showing the existence of a substantial change in the circumstances" (internal quotation marks omitted)). If a court finds a substantial change has occurred, it may then properly consider what, if any, modification is warranted. See *Berman* v. *Berman*, supra, 203 Conn. App. 304; *Syragakis* v. *Syragakis*, 79 Conn. App. 170, 174, 829 A.2d 885 (2003).

Because the court improperly denied the plaintiff's motion for modification on the basis that he sought to reduce the order of support through a reduction to just two components of the total child support award, we must remand the matter to trial court to determine whether the plaintiff established a substantial change in circumstances and, if so, whether and to what extent a modification of the child support award is appropriate.

The judgment of contempt is reversed and the orders stemming from that judgment are vacated, and the case is remanded with direction to deny the defendant's motion for contempt; the judgment denying the plaintiff's motion to modify alimony and child support is reversed and the case is remanded for further proceedings consistent with this opinion; and the judgment denying the plaintiff's motion for contempt is affirmed.

In this opinion the other judges concurred.

ERNEST J. NEDDER *v.* LAUREN E. NEDDER
(AC 45654)

Elgo, Cradle and Westbrook, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court dissolving her marriage to the plaintiff and entering certain financial orders. *Held*:

1. The defendant could not prevail on her claim that the trial court did not have the authority to order the plaintiff to use specific assets to pay certain expenses and debt; it was legally and logically correct for the court to equitably divide the parties' property and to order the three financial accounts at issue to be used for their originally intended and historical purposes, as the court derived its authority to enter those orders from the statute (§ 46b-81 (a)) governing the assignment of property and the responsibility for debts when entering an order dissolving a marriage.
2. The defendant could not prevail on her claim that the trial court abused its discretion in failing to assign a value to the plaintiff's quasi-pension account prior to dividing the parties' property: this court presumed that the parties' property interest in the account was considered by the trial court when it made its equitable division of property; moreover, although the court did not state which valuation method it used, it was not required to do so, and, because the defendant failed to file a motion for articulation to clarify any potential ambiguity in how the court valued the parties' property, there was no evidence in the record supporting the defendant's claim.
3. The defendant could not prevail on her claim that the trial court abused its discretion in fashioning its alimony orders:

   a. The defendant's claim that the trial court based its alimony orders on the plaintiff's gross income without considering his net income failed; the plaintiff's net income was easily ascertainable, the court had exhibits in evidence showing the plaintiff's net earnings for each of the four years prior to the dissolution hearing, the court's memorandum of decision mentioned net income when determining the amount of child support, and the court stated that it was adopting the plaintiff's proposal as to the amount of alimony to award, which was calculated as a percentage of the plaintiff's net income averaged over the last four years.

   b. The trial court did not abuse its discretion in the amount of alimony it ordered; the record revealed that the court properly considered the criteria in the statute (§ 46b-82 (a)) for determining what amount of alimony to award, and, as it was within the court's discretion to place various degrees of importance on each criterion according to the factual circumstances of the case, this court could not conclude, on the basis

of the facts, evidence and findings in the record, that the trial court ordered an insufficient alimony award.

Argued November 9, 2023—officially released July 23, 2024

Procedural History

Action for the dissolution of a marriage, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendant filed a cross complaint; thereafter, the matter was tried to the court, *Moukawsher*, *J.*; judgment dissolving the marriage and granting certain other relief, from which the defendant appealed to this court. *Affirmed*.

Tara C. Dugo, with whom was *Melissa A. Bohl*, for the appellant (defendant).

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

Opinion

ELGO, J. In this appeal from a marital dissolution judgment, the defendant, Lauren E. Nedder, claims that the trial court erred in (1) ordering that the plaintiff, Ernest J. Nedder, use specific assets to pay certain expenses and debt, (2) failing to assign a value to a quasi-pension account prior to dividing the parties' property, and (3) fashioning its alimony orders. We affirm the judgment of the trial court.

The following facts and procedural history are relevant to this appeal. The parties were married on June 18, 2005, and have five children together. On November 19, 2020, the plaintiff brought an action for dissolution of marriage, stating that the marriage had broken down irretrievably with no hope for reconciliation, to which the defendant agreed. A trial was held over the course of four days in June, 2022. The court heard testimony from both parties and various other witnesses, including, inter alia, financial experts for both parties. Both

parties filed proposed orders that contained their respective proposals for property division, child support, and alimony.

In his proposed orders, the plaintiff requested, inter alia, that he be awarded three accounts—the "Fidelity HSA #0811" (health savings account), the "Ameriprise brokerage #1133" (brokerage account), and the "RSM US LLP Draw account" (draw account)—with the understanding that they would be used for the limited purpose of funding the children's medical expenses, the children's postmajority educational expenses, and tax payments made in 2022, respectively. At trial, the court questioned the plaintiff about these accounts. Following a colloquy with the plaintiff's counsel, the court indicated that it understood the plaintiff's intention to "distinguish [those accounts] as not being necessarily entirely for his benefit"; at the same time, the court recognized that, to effectuate the proposed use of those accounts, it "still [has] to allocate [them] to him." The defendant at that time did not object or raise any issue with the plaintiff's proposal. The court also heard extensive testimony regarding the plaintiff's quasi-pension account (PVA account) from the plaintiff and from the parties' respective financial experts.

On June 28, 2022, the court rendered a judgment of dissolution ending the parties' seventeen year marriage. The court agreed with the parties' custody and parenting agreement and incorporated it as a court order, such that the parties would share joint legal custody of their five minor children, who then ranged in age from three years old to sixteen years old. The court entered orders dividing the marital estate, which provided, inter alia, that the defendant would retain the marital home and receive a total "property payment" of $75,000 payable in twelve monthly installments. The plaintiff received the parties' vacation property located

in New Jersey. The court divided ownership of the parties' bank accounts, and ordered that the plaintiff was to retain the following accounts with specific limitations: (1) the health savings account was "to be used solely for the children's medical expenses," (2) the brokerage account was "to be used solely for the children's postsecondary educational expenses," and (3) the draw account was "to be used solely for tax payments in 2022." The court ordered that a 401k account belonging to the plaintiff was to be equally divided between the parties, and permitted the plaintiff to retain the IRA and retirement brokerage accounts he had owned prior to the marriage. The court also awarded to the plaintiff an "RSM Capital Account" and the PVA account. The court ordered that the defendant was to receive $5034 in weekly child support, and a monthly alimony payment of $5000. The alimony was to be paid for eight years. This appeal followed. Additional facts will be set forth as necessary.

I

The defendant first claims that the court erred when it ordered the plaintiff to use specific assets to pay a specific debt or liability.[1] The defendant does not dis-

[1] In his brief, the plaintiff argues that this court lacks subject matter jurisdiction to adjudicate this claim due to the defendant's lack of aggrievement. Because aggrievement is a basic requirement of standing, and standing implicates subject matter jurisdiction, we briefly address this threshold issue.

It is axiomatic that "only an aggrieved party may appeal." *Newman* v. *Newman*, 235 Conn. 82, 94, 663 A.2d 980 (1995). "Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved. . . .

"The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: [F]irst, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the challenged action] . . . . Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]. . . . Aggrievement is established if there is a *possibility*, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Emphasis added; footnote omitted; internal quotation

pute that the court had the authority to award the health savings account, the brokerage account, or the draw account to the plaintiff, nor that it had the authority to require him to pay for the children's medical expenses, postsecondary educational expenses, or to make tax payments. Rather, the defendant asserts that the court did not have the authority to order the plaintiff to use these specific accounts to pay for the named liabilities and committed reversible error in doing so.[2] We disagree.

marks omitted.) *Handsome, Inc.* v. *Planning & Zoning Commission*, 317 Conn. 515, 525–26, 119 A.3d 541 (2015).

The defendant meets the first prong of classical aggrievement because she has a specific, personal, and legal interest in the equitable division of the marital property. The three accounts at issue in the defendant's first claim constitute marital property. The second prong of classical aggrievement is a relatively low threshold, as the defendant need only show a *possibility* of being adversely affected by the court awarding these three accounts to the plaintiff and directing that they be used for prescribed, limited purposes.

The defendant claims her legal interest in these accounts is adversely affected because any "additional funds" that might remain in the accounts upon satisfying the stated obligations or liabilities "cannot be utilized by either party pursuant to the court's limiting order. This harms both parties, as it leaves assets undivided." The defendant may still claim an interest in any funds remaining in these accounts even though they were awarded to the plaintiff. This is because, upon a careful review of the record, it is evident that a possibility exists that the court did not take the funds into account when equitably dividing the parties' assets. On the first day of the trial, the plaintiff's counsel agreed that the funds in those three accounts "shouldn't be considered part of the total balance between the parties in terms of money," "because it's our claim that they'll be set aside for" the specific proposed purposes. The court acknowledged that the plaintiff was asking the court "to think about these [accounts] differently," and advised counsel to "save it for closing argument or some other time, but . . . don't forget [to say that] if you're just adding up who gets what number, you shouldn't be treating this as equal weight to that." Although the record is devoid of any indication of whether the court removed the value of these accounts in the equitable division of assets, the possibility that any potential remainder would be undivided between the parties is sufficient to meet the minimal threshold requirement of standing. See *Handsome, Inc.* v. *Planning & Zoning Commission*, supra, 317 Conn. 525 (" '[s]tanding requires no more than a colorable claim of injury' ").

[2] In the concluding paragraphs of the defendant's discussion of her first claim in her principal appellate brief, she raises two ancillary arguments—

When a party "challenges the legal authority of the court to issue [an] order, [the] claim raises a question of law that is subject to . . . plenary review." *Rosato* v. *Rosato*, 77 Conn. App. 9, 17, 822 A.2d 974 (2003). "[T]he court's authority to transfer property appurtenant to a dissolution proceeding requires an interpretation of the relevant statutes. Statutory construction, in turn, presents a question of law over which our review is plenary." *Smith* v. *Smith*, 249 Conn. 265, 272, 752 A.2d 1023 (1999).

The parties agree that the court derives its authority to order that the plaintiff retain the disputed accounts from General Statutes § 46b-81 (a), which provides in relevant part: "At the time of entering a decree annulling or dissolving a marriage . . . the Superior Court may

that "the practical effect of such orders makes them unworkable" and that "the trial court's orders leave assets undivided and liabilities unpaid." For several reasons, we decline to review these ancillary contentions. First, those contentions are inadequately briefed because they are "without substantive discussion or citation of authorities . . . ." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022). The defendant also did not provide any analysis indicating how these contentions related to the issue raised on appeal, which is whether the court lacked the authority to enter the orders in question. Finally, although a potential remainder in the three accounts constituted the possibility of an undivided interest sufficient to establish standing; see footnote 1 of this opinion; it was incumbent upon the defendant to file a motion for articulation in accordance with Practice Book § 66-5 to clarify whether the court did, in fact, value the accounts in its equitable division of the parties' property. "It is a well established principle of appellate procedure that the appellant has the duty of providing this court with a record adequate to afford review. . . . Where the factual or legal basis of the trial court's ruling is unclear, the appellant should seek articulation pursuant to Practice Book § [66-5]. . . . Accordingly, [w]hen the decision of the trial court does not make the factual predicates of its findings clear, we will, in the absence of a motion for articulation, assume that the trial court acted properly." (Internal quotation marks omitted.) *Blum* v. *Blum*, 109 Conn. App. 316, 331, 951 A.2d 587, cert. denied, 289 Conn. 929, 958 A.2d 157 (2008). Here, in the absence of any evidence to the contrary and because the defendant failed to file a motion for articulation to clarify the court's order, we assume the court intended that the plaintiff keep any funds remaining in these accounts after the named liabilities have been satisfied.

assign to either spouse all or any part of the estate of the other spouse. . . .'' The defendant concedes that § 46b-81 authorizes the court to order that a party be responsible for the payment of debts and liabilities. See *Carroll* v. *Carroll*, 55 Conn. App. 18, 27, 737 A.2d 963 (1999) (''[§] 46b-81 authorizes one party to assume the joint liabilities of the parties'').

The defendant nonetheless relies on *Zilkha* v. *Zilkha*, 159 Conn. App. 167, 123 A.3d 439 (2015), to support her argument that the court acted ''well beyond [its] statutory authority'' when ''requiring the [plaintiff] to utilize specific assets to pay said debts, liabilities and expenses . . . .'' The plaintiff counters by arguing that *Zilkha* is inapposite to the present case. We agree with the plaintiff.

In her brief, the defendant posits that, in *Zilkha*, this court held that ''the trial court lacks the authority to order that fees be paid from a specific asset, regardless if said asset is owned solely by the party that is directed to make the payments.'' However, the defendant fails to consider that the reason ''the court lacked authority to distribute the escrow funds [was] because the judgment of dissolution had not been opened.'' *Zilkha* v. *Zilkha*, supra, 159 Conn. App. 172.

In *Zilkha*, the trial court had rendered a judgment of dissolution after dividing the property of the parties in accordance with § 46b-81 (a). Id., 169. Three years later, the plaintiff filed a motion to open and set aside the dissolution judgment after the defendant received a vast sum of money from a claim that allegedly was fraudulently undisclosed during the pendency of the dissolution action. Id. The court granted a motion to order part of the defendant's money from the claim to be ''held in escrow pending the outcome of the plaintiff's postjudgment motion to open,'' but because the plaintiff

took no action to conduct discovery or gather information regarding the alleged fraud, no decision was made regarding the postjudgment motion to open, and the motion remained pending. Id., 170–71. Years later, when a postjudgment motion for fees and retainers was filed to compel payment, the trial court ordered that the funds still held in escrow be used to pay for some of those fees. Id., 171–72. On appeal, this court held that "the court could not make orders for funds to be distributed from the escrow account because those funds belonged solely to the defendant, *until and unless*, *the court opened the judgment and distributed the escrow funds*, if at all. Accordingly, the court was without authority to disburse funds from the escrow account." (Emphasis added; footnote omitted.) Id., 175.

It is axiomatic that "[c]ourts have no inherent power to transfer property from one spouse to another; instead, that power must rest upon an enabling statute." (Internal quotation marks omitted.) *Smith* v. *Smith*, supra, 249 Conn. 272. Once a dissolution of marriage has been rendered, the judgment "may not be opened or set aside unless a motion to open or set aside is filed" in accordance with our statutory rules. General Statutes § 52-212a. In *Zilkha*, the court did not have the authority under § 46b-81a to transfer the defendant's *property*—specifically, the funds in the escrow account—to pay the fees because the judgment had already been rendered. *Zilkha* v. *Zilkha*, supra, 159 Conn. App. 169. Section 46b-81 (a) may only be used "[a]t the time of *entering* a decree annulling or dissolving a marriage . . . ." (Emphasis added.) This court was clear in stating that, "although the court was free to order that the defendant pay some or all of the fees . . . it lacked the authority to direct that these payments be made from the escrowed funds." *Zilkha* v. *Zilkha*, supra, 174–75. This is because the escrowed funds were specific property that "belonged solely to

the defendant . . . .'' Id., 175. Thus, ''until . . . the court opened the judgment . . . [it] was without authority to disburse funds from the escrow account.'' (Footnote omitted.) Id. For these reasons, *Zilkha* is inapposite to the present case.

Here, the parties each submitted proposed orders prior to the commencement of trial. The defendant proposed that the health savings, brokerage, and draw accounts should be equally divided between the parties, and that the plaintiff should pay 75 percent of the children's uninsured medical expenses going forward. The defendant also asked that the court retain jurisdiction to enter educational support orders for the children's college education. Conversely, the plaintiff's proposed orders requested that he retain the three accounts in question, provided that they be used for the limited purposes of ''the children's medical expenses . . . the children's postmajority educational expenses . . . [and] to be used for tax payments in 2022.'' At trial, the plaintiff testified that the health savings and the brokerage accounts were created with the intention of using the funds for the children's medical expenses and the children's college expenses, respectively, and that the draw account was historically used to pay taxes. During his testimony, he requested that these accounts be designated for use only for those intended and historical purposes, and that they be distinguished as not existing for his personal benefit. The defendant did not raise an objection or express any concern regarding the propriety of the plaintiff's proposed use of those accounts.

The defendant argues that, although § 46b-81 provides a court with the authority to assign assets or the responsibility of debts to a spouse during dissolution, it does not allow ''the trial court to order debts, liabilities and expenses [to] be serviced from specified assets.'' The defendant's only cited authority is *Zilkha* v. *Zilkha*,

supra, 159 Conn. App. 167, which is inapposite to this case. Contrary to the defendant's assertion, we conclude that the court *did* have authority under § 46b-81 (a) because it was dividing the parties' property and rendering the judgment dissolving the marriage. "The purpose of a property assignment is to divide the ownership of the parties' property equitably. . . . [E]quitable remedies are not bound by formula but are molded to the needs of justice. . . . Further, we presume that the trial court properly considered all of the evidence submitted by the parties." (Internal quotation marks omitted.) *Szegda* v. *Szegda*, 97 Conn. App. 426, 436, 904 A.2d 1266, cert. denied, 280 Conn. 932, 909 A.2d 959 (2006). As our Supreme Court repeatedly has stated, "trial courts are empowered to deal broadly with property and its equitable division incident to dissolution proceedings." (Internal quotation marks omitted.) *Bender* v. *Bender*, 258 Conn. 733, 743, 785 A.2d 197 (2001).

On the basis of our plenary review of the record, we conclude that it was legally and logically correct for the court to equitably divide the parties' property and order the accounts at issue to be used for their originally intended and historical purposes. Because § 46b-81 empowered the court to enter these orders, the defendant's argument fails.

II

The defendant's second claim is that the court abused its discretion by failing to assign a value to the PVA account prior to dividing the parties' property. She argues that awarding an asset entirely to one party necessitates using a present value method so that the value of the asset can be properly offset with other marital assets. Because the PVA account was awarded solely to the plaintiff, the defendant claims that the court necessarily used a present value methodology of

valuation, and its failure to assign a value to the account constituted an abuse of discretion. We disagree.

The following additional facts are relevant to this claim. The plaintiff "is a partner and national tax leader in a large public accounting firm." The PVA account is a quasi-pension program available only to the partners of his firm that provides for an allocation of a future payout to those reaching retirement status, if multiple contingent factors are met. At trial, both parties presented expert witnesses to testify regarding the PVA account. The plaintiff's witness testified that, taking into account multiple risk factors, and assuming the plaintiff works until the retirement age of sixty-three years old,[3] the after tax, present value of the PVA account was $520,000. The defendant's witness testified that he was only retained to issue a rebuttal, and that it was his opinion that "it's impossible to value" the PVA account because there "were too many variables" and it was "overly speculative." Each party submitted proposed orders regarding how to divide the marital estate. With respect to the PVA account, the defendant proposed a formula to be used in entering a domestic relations order ultimately allowing 50 percent of the benefit to be paid to her. The plaintiff's proposed orders suggested a 60/40 division of assets in his favor, with the PVA account being retained by him as part of this division. Alternatively, the plaintiff supplied an amended proposed order "[i]n accordance with the court's . . . request . . . which represents an alternative asset division in the event the court elects not to present value the plaintiff's PVA [account] and offset it with other assets," which also proposed that the account be awarded exclusively to him.

During the trial, the plaintiff offered extensive testimony regarding the PVA account. The plaintiff testified

[3] During the trial, the plaintiff testified that he was fifty-two years old.

that, contrary to the defendant's proposal, "the firm could not do a domestic relations order" by making payments to her from the PVA account because payments may only be made to those "in the capacity as owners or partners in the firm," and could not be made to the defendant because doing so "would bring along . . . regulatory issues around [Securities and Exchange Commission] independence, around conflicts, around . . . anything and all that we're required to comply with as partners in our firm would then be applied to her." During the plaintiff's testimony regarding the PVA account, the court interjected many times to ask clarifying questions and engaged in a prolonged colloquy with the plaintiff that spanned nine pages of the transcript. At one point, the following exchange took place:

"The Court: But the more important point is . . . there's no account with this money in it. You can't hand it over. It's subject to contingencies. You can't even define exactly what the dollar amount would [be] ultimately . . . [going into] your hands. That's your testimony."

"[The Plaintiff]: Yes, Your Honor."

The court ultimately awarded the PVA account to the plaintiff without fixing it with a monetary value or stating which methodology of valuation it used.

It is well established that "[a]n appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *Bender* v. *Bender*, supra, 258 Conn. 739–40.

The parties do not dispute that, when a court uses the present value method, the court is required to "determine the present value of the pension benefits, decide the portion to which the nonemployee spouse is entitled, and award other property to the nonemployee spouse as an offset to the pension benefits to which he or she is otherwise entitled." (Internal quotation marks omitted.) *Kent* v. *DiPaola*, 178 Conn. App. 424, 435, 175 A.3d 601 (2017). The parties additionally agree that "a trial court, in valuing the parties' assets upon dissolution, has considerable discretion in selecting and applying an appropriate valuation method." *Krafick* v. *Krafick*, 234 Conn. 783, 799, 663 A.2d 365 (1995). The contention lies between the defendant's assertion that, because the court awarded the PVA account solely to the plaintiff, it *necessarily* used the present value method, and the plaintiff's argument that the court never indicated it was using the present value method, therefore, as long as the court acted equitably by taking the value of the account into consideration when calculating its financial orders, there is no requirement to assign a numerical value to the account.

"[W]e note that, as a general proposition, the trial court need not necessarily specify a valuation method used." (Internal quotation marks omitted.) *Anderson* v. *Anderson*, 160 Conn. App. 341, 352, 125 A.3d 606 (2015). In *Krafick*, our Supreme Court highlighted "three widely approved methods of valuing and distributing pension benefits"; *Krafick* v. *Krafick*, supra, 234 Conn. 800; but acknowledged that "[t]hese methods are not exclusive. A trial court retains discretion to select any other method to take account of the value of a pension asset 'that might better address the needs and interests of the parties' "; id., 804; so long as the court does not "[remove the] property interest from the scales in determining an equitable division of all of the property before the court." Id., 806. The court does "need to

consider the economic value of the parties' estates. The court need not, however, assign specific values to the parties' assets." *Bornemann* v. *Bornemann*, 245 Conn. 508, 531, 752 A.2d 978 (1998).

Here, the court did not explicitly state which valuation method was used when dividing the parties' assets, nor did it assign a specific value to the PVA account. The defendant asserts that, because the court awarded the account entirely to the plaintiff, it necessarily used a present value method. However, the defendant provides no authority, and we can find none, indicating that awarding an asset entirely to one party is proof that a valuation was conducted using the present value method.

In this case, the record clearly reveals that significant time and effort were spent considering how to value and equitably divide the parties' property given the complexity of the PVA account. As previously stated, in relation to the PVA account, the evidence before the court included testimony from two experts, as well as proposed orders, an amended proposed order at the court's request showing an alternative division of the PVA account, and the court's own detailed examination of the plaintiff during the trial. Unlike in *Krafick* where, "[d]espite . . . repeated attempts, the trial court refused to state the basis of its property distribution or to articulate the value" during a hearing on "a motion to open and clarify the trial court's judgment"; *Krafick* v. *Krafick*, supra, 234 Conn. 790–91; here the defendant did not attempt to clarify any ambiguity in the court's order by filing a motion for articulation in accordance with our rules of practice. See Practice Book § 66-5; see also *Mitchell* v. *Bogonos*, 218 Conn. App. 59, 67, 290 A.3d 825 (2023) ("Until the contrary is shown, the law presumes that judges have acted in accordance with the law. We do not presume error." (Internal quotation marks omitted.)). Further, the defendant's own expert

witness declined to place a value on the account, testifying that it was "impossible" to do as a result of the "overly speculative" and variable nature of the account. "[W]hen a party neglects to provide the court information regarding the value of his or her assets, that person cannot later complain about the court's valuation." *Brooks* v. *Brooks*, 121 Conn. App. 659, 670, 997 A.2d 504 (2010). Neither may a party argue the impossibility of assigning a value to an asset, then later cry foul when the court declines to assign a value to the same asset.

On the basis of our careful review of the record, we may reasonably presume that the parties' property interest in the PVA account was firmly on the scales as the court made its equitable division of the property. Although the court did not state which valuation method it used, it was not required to do so. Because the defendant failed to file a motion for articulation to clarify any potential ambiguity in how the court valued the parties' property, there is no evidence in the record supporting her claim that the court abused its discretion by failing to assign a value to the plaintiff's PVA account.

III

The defendant's final claim is that the court abused its discretion regarding the alimony order by (1) improperly basing it on the plaintiff's gross income as opposed to net income, and (2) awarding an improper alimony amount because the court improperly factored in the child support orders when calculating alimony, and because the amount ordered, "when viewed through the lens of the [plaintiff's] net annual income . . . as well as the family's station and standard of living," was inadequate. We disagree.

When a party calls into question a court's dissolution orders, the standard of review is an abuse of discretion. We reiterate that, "[i]n determining whether a trial court

has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *Olson* v. *Mohammadu*, 310 Conn. 665, 671, 81 A.3d 215 (2013).

A

The parties do not dispute that "[a] trial court must base periodic alimony and child support orders on the available net income of the parties." (Internal quotation marks omitted.) *Ludgin* v. *McGowan*, 64 Conn. App. 355, 358, 780 A.2d 198 (2001). The defendant argues that this case is similar to *Ludgin* because, as in *Ludgin*, the court did not make an explicit finding in its memorandum of decision as to the parties' respective incomes, and because the court only mentions gross income, and not net income, in the memorandum of decision. The defendant thus asserts that it must be inferred that the court abused its discretion by improperly relying on gross income in fashioning the support orders.

Our review of the record reveals that this case is not comparable to *Ludgin*. In *Ludgin*, the plaintiff's income was "difficult to determine because he [was] a sole practitioner and had not yet filed his federal tax return at the time of the hearing." Id., 357. Additionally, "[t]he court's memorandum of decision [was] devoid of any mention of the parties' net incomes," and the court "repeatedly referred to and compared the parties' gross incomes" in its decision. Id., 358–59. Here, the plaintiff is *not* a sole practitioner, and his net income *was* easily ascertainable. The trial court had exhibits in evidence showing the plaintiff's net earnings for each of the four years prior to the dissolution hearing. Further, while the decision in *Ludgin* repeatedly references and compares the gross incomes of the parties, here, the court's memorandum of decision only alludes to the plaintiff's gross

income one time, and that was in the context of stating that the plaintiff is a high income earner and not in the context of entering support orders. This case is further distinguishable from *Ludgin* because here, the court *does* mention net income in its decision when determining the amount of child support. Although it does not repeat the mention of net income when awarding alimony, the court states that it "adopts [the plaintiff's] proposal that he pays [the defendant] $5000 a month in alimony." The plaintiff's proposed alimony order clearly states that it is calculated as a percentage "of his *net* income averaged over the last four years." (Emphasis added.) For these reasons, the defendant's claim that the court based its alimony orders on the plaintiff's gross income without considering his net income fails.

B

The defendant's final argument is that the court erred in the amount of alimony it ordered. The defendant first states that the court erroneously factored in the child support orders when calculating alimony and thus improperly conflated the orders. The defendant also contends that the amount of alimony ordered was insufficient. We disagree.

"In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties and the award, if any, which the court may make pursuant to section 46b-81, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment." General Statutes

§ 46b-82 (a). "[T]he trial court may place varying degrees of importance on each criterion according to the factual circumstances of each case. . . . There is no additional requirement that the court specifically state how it weighed the statutory criteria or explain in detail the importance assigned to each statutory factor." (Internal quotation marks omitted.) *Ingles* v. *Ingles*, 216 Conn. App. 782, 795, 286 A.3d 908 (2022).

In its memorandum of decision, the court provided insight into its reasoning for awarding alimony. Specifically, the court stated: "There is no question that [the defendant] has given up any career options she may have had to raise a family, and it is desirable that she continue for a time to do so. She has very limited future job prospects, and she has been married to [the plaintiff] for over seventeen years. These factors favor alimony. But considering her repeated misbehavior and lies about it, the court finds the fault factor tips solidly against granting her request for significant percentages of [the plaintiff's] income. . . .

"Instead, mindful that it has granted more child support than he proposed, the court adopts [the plaintiff's] proposal that he pay [the defendant] $5000 a month in alimony. For many years, she will have over $260,000 in annual child support and $60,000 of annual alimony. She will have a house with a reasonable mortgage on it and the benefit of additional property orders [equaling a total of $75,000]. This is a reasonable sum when the court considers all the statutory factors against the facts of the case. . . . [The defendant] will be amply provided for given that her household will be supported for many years by substantial child support and alimony, and she will have all the equity in the marital home—an amount both parties agree is around $560,000."

The defendant argues that the court improperly combined the child support and alimony orders, "assum[ing]

that the child support will be utilized by [the defendant] to cover her personal expenses and support her needs." However, the court's mention of the ample child support when crafting the alimony orders may be reasonably understood as evidence that the court was considering the required factors in § 46b-82 (a), including the "amount and sources of income" and the "needs of each of the parties . . . ." The plaintiff's net income will be significantly reduced by the high amount of child support awarded in this case. Additionally, the marital home and its equity is awarded to the defendant. The court's mentioning of these factors is relevant as they affect its determination of how much to award in alimony, and not necessarily because the court combined the child support and alimony orders. In light of the foregoing, we conclude the defendant's argument that the court conflated the child support and alimony orders is without merit.

We also reject the defendant's argument that the alimony orders were erroneous as to the amount, representing an inadequate amount "when viewed through the lens of [the plaintiff's] net annual income . . . ." The defendant states that the $60,000 per year alimony award would not allow her "to live and have an opportunity to become self-sufficient after years of raising children."

"In determining whether alimony shall be awarded, and the . . . amount of the award, the court shall consider the evidence presented by each party . . . and needs of each of the parties and the award, if any, which the court may make pursuant to [§] 46b-81 . . . ." General Statutes § 46b-82 (a). A court is "free to credit or reject all or part of the testimony given by the [parties]. On review, we do not reexamine the court's credibility assessments." *Zilkha* v. *Zilkha*, 167 Conn. App. 480, 489, 144 A.3d 447 (2016).

Here, the court did not credit the defendant's testimony. In assessing the defendant's credibility, the court stated: "[W]hen it was time to preserve evidence in the wake of the divorce filing, [the defendant] disposed of her mobile phone with whatever pictures and messages might have been on it. She claims she lost it and couldn't recover anything from it. Considering her other lies and the obvious advantage to her of this all too typical loss, the court doesn't believe her. It also doesn't believe her because of her tone and demeanor as a witness. She had canned explanations for her conduct. Her testimony seemed more practiced than sincere, and the court recognized no convincing remorse over her betrayals or her lying. [The plaintiff] made the opposite impression—wounded, candid, and regretful. [The defendant's] perjury, her affairs, and her destruction of evidence have statutory weight under §§ 46b-81 and 46b-82 . . . . They make [her] claims in the lawsuit starkly unappealing." The court also did not credit her testimony regarding her need for a larger alimony award. Specifically, the court stated that the defendant's claim for support "is disproportionate to her needs, it disregards her fault, and it gives no fair recognition to [the plaintiff's] considerable financial achievements." Finally, the court stated that the defendant "will be supported for many years" when taking into account the support orders and that she was awarded the marital home, including its equity of approximately $560,000. In its discretion, the court stated that the alimony orders represented "a reasonable sum when the court considers all the statutory factors against the facts of the case."

The record reveals that the court properly considered the criteria for determining what amount of alimony to award in accordance with § 46b-82 (a). It is within a court's discretion to place "varying degrees of importance on each criterion according to the factual circumstances of each case." (Internal quotation marks omitted.) *Ingles* v. *Ingles*, supra, 216 Conn. App. 795. On

the basis of the facts, evidence, and findings in the record, we cannot agree that the court abused its discretion by ordering an insufficient alimony award.

The judgment is affirmed.

In this opinion the other judges concurred.

ANGEL C. *v.* COMMISSIONER OF CORRECTION*
(AC 46052)

Suarez, Seeley and Vertefeuille, Js.

Syllabus

The petitioner, who had previously been convicted of sexual assault and risk of injury to a child in connection with the sexual abuse of his stepdaughter, sought a writ of habeas corpus, claiming that his criminal trial counsel, J, had provided ineffective assistance by failing to contact his two minor children to investigate whether they could support the petitioner's theory of consent and that she failed to call his children as witnesses at the criminal trial. The petitioner's theory of defense during his criminal trial was that he had a consensual relationship with his stepdaughter and that the sexual activity occurred after she was sixteen years old. During the habeas trial, the petitioner attempted to offer testimony from his now adult children to support his claim of deficient performance. The respondent, the Commissioner of Correction, objected to the children's testimony on the ground of relevance, and the habeas court sustained the objection. The habeas court thereafter denied the petition and, on the granting of certification, the petitioner appealed to this court. *Held*:

1. The habeas court did not abuse its discretion in precluding the petitioner's children from testifying at the habeas trial: the petitioner's counsel failed to articulate for the habeas court any substantive facts that the children would be expected to discuss during their testimony, and the petitioner, for the first time on appeal, argued that his children would "presumably" have testified as to certain topics, without articulating the specific exculpatory information each child would have been able to testify to at the habeas trial; moreover, there was no merit to the petitioner's claim that the habeas court should have looked to the broader record when considering the relevance of the children's testimony, specifically, that

* In accordance with our policy of protecting the privacy interests of the victims of sexual abuse and the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

the testimony of the petitioner's former wife and the children's mother, who testified at the habeas trial just before the petitioner's counsel attempted to present the children's testimony, would have made their testimony relevant, as the petitioner's habeas counsel never articulated a connection between the former wife's testimony and the children's potential testimony.

2. The habeas court did not err in denying the petition for a writ of habeas corpus: the petitioner failed to overcome the presumption that, under the circumstances, J's performance was within the wide range of reasonable professional assistance and was not deficient; moreover, the testimony of a private investigator, who worked alongside J, as well as the petitioner's own testimony, established that the petitioner did not provide J with any reference to any witnesses who had exculpatory evidence, and, given that the defense was based on a theory of consent, even if J had interviewed and learned of the substance of the testimony of the petitioner's children, it was objectively reasonable to conclude that calling them as witnesses was unnecessary and inconsistent in light of that strategy; furthermore, even assuming that J's performance was deemed deficient, the petitioner failed to demonstrate that such deficiency prejudiced him, as the petitioner failed to demonstrate that there was a reasonable probability that, but for the J's deficient performance, the result of the proceedings would have been different.

Argued January 18—officially released July 23, 2024

Procedural History

Amended petition for a writ of habeas corpus, brought to the Superior Court in the judicial district of Tolland and tried to the court, *M. Murphy, J.*; judgment denying the petition, from which the petitioner, on the granting of certification, appealed to this court. *Affirmed.*

Cheryl A. Juniewic, assigned counsel, for the appellant (petitioner).

Melissa L. Streeto, senior assistant state's attorney, with whom, on the brief, were *Sharmese Hodge*, state's attorney, and *Erin Stack*, assistant state's attorney, for the appellee (respondent).

Opinion

SUAREZ, J. Upon a grant of certification to appeal, the petitioner, Angel C., appeals from the judgment of

the habeas court denying his petition for a writ of habeas corpus. The petitioner claims that the habeas court (1) abused its discretion in precluding him from presenting the testimony of his adult children at the habeas trial, and (2) improperly concluded that he had not established that his trial counsel was ineffective for having failed to contact and call his children as witnesses at the underlying criminal trial. We affirm the judgment of the habeas court.

The following facts and procedural history are relevant to the petitioner's claims. In 2009, following a jury trial, the petitioner was convicted of sexual assault in the first degree in violation of General Statutes § 53a-70 (a) (1), sexual assault in the second degree in violation of General Statutes § 53a-71 (a) (4), sexual assault in the third degree in violation of General Statutes § 53a-72a (a) (1), and risk of injury to a child in violation of General Statutes § 53-21 (a) (2). The court, *Dewey*, *J.*, imposed a total effective sentence of thirty years of incarceration, ten years and nine months of which were mandatory. Prior to and throughout his criminal trial, the petitioner was represented by Attorney Claudia Jones, a public defender. The petitioner subsequently brought a direct appeal to this court, which affirmed the judgment of conviction. *State* v. *Angel C.*, 137 Conn. App. 84, 87, 46 A.3d 1020, cert. denied, 307 Conn. 916, 54 A.3d 180 (2012).

In its decision affirming the judgment of conviction, this court set forth the following facts that the jury reasonably could have found: "In 1996, when the female victim was six years of age, the [petitioner] and the victim's mother [B] began a long-term romantic relationship while living in Peru. The [petitioner] and [B] later had two children together, moved to East Hartford and were married. The victim lived at the family residence with her half-siblings, [B] and the [petitioner]. The [petitioner] exercised a great deal of influence and control

over what occurred in the household, such that the victim was subservient to him and feared him. From the time that the victim was ten years of age, the [petitioner] forcibly engaged in frequent and secretive sexual activities with her. These activities began with the [petitioner] touching the victim's private parts over her clothing with his hands and penis. They escalated to the [petitioner] digitally penetrating the victim's vagina. The [petitioner] compelled the victim to view pornography and to masturbate him. Finally, from the time that the victim was fourteen years of age until she was eighteen years of age, the [petitioner] engaged in penile-vaginal intercourse with the victim on nearly a daily basis.

"For many years, the victim, who was emotionally traumatized by the [petitioner's] assaultive conduct, did not bring the [petitioner's] activities to light because of the [petitioner's] role as the head of the family, her fear that doing so would tear the family apart and her fear that the [petitioner] would abuse her siblings. Additionally, the [petitioner] often told the victim that he loved her and bought gifts for her. When the victim was a senior in high school, she began to experience panic attacks. During an ensuing psychiatric evaluation, she revealed the sexual abuse committed by her stepfather, the [petitioner]. The [petitioner's] arrest followed."[1] Id., 86–87.

On December 16, 2016, the petitioner filed a petition for a writ of habeas corpus. On June 4, 2021, the petitioner, represented by counsel, filed an amended petition alleging that Attorney Jones rendered ineffective

[1] "At [the criminal] trial, the [petitioner] testified, in relevant part, that he had sexual intercourse with the victim on nearly a daily basis after she became sixteen years old. He testified that the victim initiated the relationship and that the victim falsely accused him of sexual assault because she sought attention and was upset with his decision to end the relationship." *State* v. *Angel C.*, supra, 137 Conn. App. 87 n.2.

assistance during his criminal trial.[2] On June 7, 2021, the respondent, the Commissioner of Correction, filed a return, leaving the petitioner to his proof with respect to his claims of ineffective assistance of counsel.

On April 25, 2022, the court, *M. Murphy*, *J.*, held a trial on the habeas petition. The petitioner presented his own testimony, as well as testimony from Forte Ruscito, a public defender investigator who assisted Attorney Jones on the case; B, his former wife and the mother of the victim; and Gisella C., one of his sisters. Attorney Jones did not testify, as she was deceased at the time of the habeas trial. The petitioner attempted

[2] Specifically, the petitioner alleged that Attorney Jones' performance was deficient in that she "(a) failed to secure, subpoena or otherwise arrange to have witnesses know[n] to the trial counsel available for trial to provide exculpatory testimony on behalf of the petitioner who would have undermined the credibility of the state's witnesses and who would have provided testimony which would have been helpful in supporting and/or corroborating the petitioner's defense; (b) failed to offer and/or submit into evidence letters from the petitioner's ex-wife that would have demonstrated to the jury that he was innocent of the charges; (c) failed to utilize a specialized Spanish interpreter in her dealings and representation of the petitioner during the course of his criminal matters and throughout the course of the trial proceedings; (d) failed to meaningfully explain the plea offer to the petitioner by not advising the petitioner and ensuring that the petitioner understood the strength of the state's evidence, the elements of the offense, potential defenses, the chances of acquittal and actual exposure upon a conviction of charges, knowing the petitioner's educational limitations and the language barrier; (e) failed to adequately investigate the petitioner's family members, friends, as well as the [victim] and her family members and friends who could have testified concerning the events surrounding the offenses; (f) failed to offer into evidence at trial any expert testimony, medical testimony or documentation of the complaining victim's history of mental impairment, disabilities and/or previous sexual activity; (g) failed to retain expert witnesses for the defense to counter the state's evidence and/or testimony of its witnesses at trial; [and] (h) failed to conduct an adequate investigation of the state's cases in the preparation of the petitioner's criminal trial." Although, as we explain subsequently in this opinion, the court rejected all of the petitioner's claims of ineffective assistance of counsel, the petitioner, in this appeal, challenges only the habeas court's rejection of his claim that Attorney Jones was ineffective in that she failed to investigate his two children during her preparation of the defense and that she failed to present their testimony at the criminal trial.

to offer testimony from his now adult children[3] to support his claim that Attorney Jones rendered deficient performance because she never contacted the children to investigate whether they could support the defendant's theory of consent and she failed to call them as witnesses at the criminal trial. The respondent objected to their testimony on the ground of relevance, and the habeas court sustained the objection. In addition to the testimony that was offered by the petitioner, the parties also introduced numerous exhibits, including a certified copy of the trial court file and the transcripts from the underlying criminal proceedings. After the conclusion of the evidence, the petitioner and the respondent filed posttrial briefs.

On October 12, 2022, the court issued a memorandum of decision in which it denied the habeas petition. With respect to each claim, the court concluded that the petitioner failed to prove deficient performance of trial counsel. The court also concluded that, even if trial counsel had performed deficiently, the petitioner had failed to prove that he was prejudiced thereby.[4] Thereafter, the petitioner filed a petition for certification to appeal from the denial of the amended petition for a writ of habeas corpus, which the court granted. This appeal followed. Additional facts and procedural history will be provided as necessary.

I

The petitioner first claims that the habeas court abused its discretion by precluding the testimony of

[3] The record reflects that the petitioner has three other children, who resided in Peru at the time of the criminal trial. He has two children with B whose testimony he attempted to introduce at the habeas trial. We refer only to these two children in this opinion.

[4] On March 24, 2023, the petitioner filed a motion for articulation regarding a variety of issues. Relevant to this appeal, the petitioner sought an articulation with respect to the court's ruling to preclude him from presenting the testimony of his adult children. The respondent filed an opposition to this motion on March 31, 2023, and, on April 18, 2023, the habeas court denied the motion.

two of his now-adult children on relevancy grounds. The petitioner argues that, in light of the evidence that he presented to the court during the habeas trial before calling the children to testify, particularly the testimony of B, the habeas court should have taken a particularly broad view of the relevance of the children's testimony as set forth in his proffer. We are not persuaded.

At the habeas trial, the petitioner presented evidence of the following facts relevant to this claim. B is the petitioner's former spouse. The petitioner and B have two children together, a daughter and a son, who were eleven and nine years of age, respectively, during the underlying criminal trial. The two children were not contacted for investigative purposes by Attorney Jones during the course of her representation of the petitioner, nor were they called as witnesses at their father's criminal trial. At the habeas trial, the petitioner sought to present testimony from his children in an attempt to demonstrate that Attorney Jones' failure to investigate them in preparing the defense and failure to present their testimony at the criminal trial amounted to deficient performance that prejudiced his defense. When the petitioner's counsel called the petitioner's son as a witness, the respondent objected to his testimony on the ground of relevance. The following colloquy between the court, the petitioner's counsel, and the respondent's counsel took place:

"[The Respondent's Counsel]: Your Honor, just briefly before we get started, we are asking for an offer of proof about this witness before he testifies. He did not testify at the criminal trial. He was a minor when the allegations were—when the allegations happened. So, we're just asking for an offer of proof as to what the relevance is.

"The Court: All right. So—so, Mr.—you can take a seat for a minute while I hash this out with the attorneys.

So, [Petitioner's Counsel], is this one of the children of—

"[The Petitioner's Counsel]: Yes, Your Honor.

"The Court: [The petitioner]?

"[The Petitioner's Counsel]: Yes, Your Honor.

"The Court: All right. And what's the offer of proof of this young man, what he's going to say?

"[The Petitioner's Counsel]: Well, the offer would be simply, Your Honor, really, you know, as you know, Your Honor, any criminal trial doesn't matter how old a possible witness is but there is a duty of an attorney to, at least, contact the person and discuss with them what they know or don't know even—just because he was underage doesn't mean anything really, as you know.

"The Court: So—so—so, get to your point.

"[The Petitioner's Counsel]: It's whether or not—

"The Court: What is the offer of proof? What do you expect him to testify about that's going to be helpful to me as the [trier] of fact?

"[The Petitioner's Counsel]: That he wasn't contacted by Attorney Jones basically.

"The Court: And what is he going to say that he would have had information that—what information would he have had that would have helped Attorney Jones?

"[The Petitioner's Counsel]: Well, whether he had knowledge of the allegations.

"The Court: All right. So, that's not good enough. That offer of proof is—is—it's not, you know, I'm not finding that he has anything that's relevant here today that's going to help me as a [trier] of fact. So, I'm, you know, I'd—that's it. All right. Next witness.

"[The Petitioner's Counsel]: And the—it would be my client's daughter.

"The Court: All right. Same thing—

"[The Respondent's Counsel]: And I would raise the same objection, Your Honor.

"The Court: All right. Do you have anything else—

"[The Petitioner's Counsel]: It would be the same, Your Honor.

"The Court: —for this witness that would be different?

"[The Petitioner's Counsel]: It would be the same.

"The Court: All right. So, I don't see that there's any need for them to—to testify here. I don't think it's—it would be helpful."

We begin by setting forth our standard of review and applicable legal principles. "We review the [habeas] court's decision to admit [or exclude] evidence, if premised on a correct view of the law . . . for an abuse of discretion. . . . We will make every reasonable presumption in favor of upholding the [habeas] court's ruling, and only upset it for a manifest abuse of discretion. . . . The [habeas] court has wide discretion to determine the relevancy [and admissibility] of evidence . . . . In order to establish reversible error on an evidentiary impropriety . . . the [petitioner] must prove both an abuse of discretion and a harm that resulted from such abuse. . . .

"Relevant evidence means evidence having any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence.

Conn. Code Evid. § 4-1. As it is used in our code, relevance encompasses two distinct concepts, namely, probative value and materiality. . . . Conceptually relevance addresses whether the evidence makes the existence of a fact material to the determination of the proceeding more probable or less probable than it would be without the evidence. . . . In contrast, materiality turns upon what is at issue in the case, which generally will be determined by the pleadings and the applicable substantive law. . . . If evidence is relevant and material, then it may be admissible. . . .

"Relevance does not exist in a vacuum. . . . To determine whether a fact is material . . . it is necessary to examine the issues in the case, as defined by the underlying substantive law, the pleadings, applicable pretrial orders, and events that develop during the trial. Thus, relevance of an offer of evidence must be assessed against the elements of the cause of action, crime, or defenses at issue in the trial. The connection to an element need not be direct, so long as it exists." (Citation omitted; internal quotation marks omitted.) *Glen S.* v. *Commissioner of Correction*, 223 Conn. App. 152, 161–62, 307 A.3d 951, cert. denied, 348 Conn. 951, 308 A.3d 1038 (2024).

It is the obligation of the party seeking to have the evidence admitted to demonstrate its relevance to the habeas court. *State* v. *Barnes*, 232 Conn. 740, 747, 657 A.2d 611 (1995). "Unless such a proper foundation is established, the evidence . . . is irrelevant." (Internal quotation marks omitted.) Id. Moreover, appellate "review of evidentiary rulings made by the trial court is limited to the specific legal ground raised in the objection." (Internal quotation marks omitted.) *State* v. *Robinson*, 227 Conn. 711, 739, 631 A.2d 288 (1993); see also *Corbett* v. *Commissioner of Correction*, 133 Conn. App. 310, 317 n.5, 34 A.3d 1046 (2012) (evidentiary claim is not properly preserved when party relies on one

theory of admissibility at trial and on appeal relies on different theory of admissibility).

In the present case, the petitioner's counsel argued before the habeas court that the testimony was relevant because it would show that Attorney Jones did not contact the petitioner's children and that they could testify as to whether they had knowledge of the allegations made by the victim against their father. The petitioner's counsel did not articulate for the court his belief that the petitioner's children would testify as to facts that made the victim's allegations of abuse more or less probable. In fact, beyond stating that he expected the children to testify that Attorney Jones did not contact them, the petitioner's counsel failed to articulate *any* substantive facts that the children would be expected to discuss during their testimony.

In his brief before this court, the petitioner argues, for the first time, that his children "*presumably* . . . would also have testified as to their relationship with the petitioner, the relationship between the [victim] and the petitioner, and whether or not the petitioner ever assaulted either of them, if they ever saw the petitioner assault the [victim], or if the relationship between the [victim] and the petitioner was consensual." (Emphasis added.) Even if it would be proper for this court to consider these new grounds to support his claim of relevance, they do not include any substantive facts. The petitioner merely identifies topics that the children "presumably" would be able to testify about without articulating the specific information each child would have been able to testify to at the habeas trial. On appeal, the petitioner baldly asserts that "[the children] had valuable and exculpatory testimony in the form of character evidence." This, however, was not the argument made by counsel at the habeas trial, and, moreover, it fails to identify the "valuable and exculpatory" nature of the proposed testimony.

The petitioner also asserts that the habeas court should have looked to the broader record when considering the relevance of the children's testimony, claiming that the testimony of B, who testified at the habeas trial just before the petitioner's counsel attempted to present their testimony, would have made their testimony relevant. The petitioner's habeas counsel, however, never articulated a connection between B's testimony and the children's potential testimony during the offer of proof at the habeas trial.

For the foregoing reasons, we conclude that the petitioner has failed to demonstrate that the habeas court abused its discretion in precluding the petitioner's children from testifying at the habeas trial.

II

The petitioner next claims that the habeas court erred in denying his petition for a writ of habeas corpus. Specifically, the petitioner asserts that the habeas court erred in concluding that Attorney Jones' failure to contact and call his children as witnesses at the underlying criminal trial did not constitute deficient performance and that he failed to demonstrate how he was prejudiced by the deficient performance. We are not persuaded.

We begin by setting forth the well settled standard of review and legal principles related to claims of ineffective assistance of counsel. "It is well established that [t]he habeas court is afforded broad discretion in making its factual findings, and those findings will not be disturbed unless they are clearly erroneous. . . . Historical facts constitute a recital of external events and the credibility of their narrators. . . . Accordingly, [t]he habeas [court], as the trier of facts, is the sole arbiter of the credibility of witnesses and the weight to be given to their testimony. . . . The application of the habeas court's factual findings to the pertinent legal

standard, however, presents a mixed question of law and fact, which is subject to plenary review." (Internal quotation marks omitted.) *Skakel* v. *Commissioner of Correction*, 329 Conn. 1, 40–41, 188 A.3d 1 (2018), cert. denied, U.S. , 139 S. Ct. 788, 202 L. Ed. 2d 569 (2019).

"The sixth and fourteenth amendments to the United States constitution, as well as article first, § 8, of the Connecticut constitution, guarantee a criminal defendant the assistance of counsel for his or her defense. . . . It is axiomatic that the right to counsel is the right to the effective assistance of counsel. . . . A claim of ineffective assistance of counsel consists of two components: a performance prong and a prejudice prong. To satisfy the performance prong, a claimant must demonstrate that counsel made errors so serious that counsel was not functioning as the counsel guaranteed . . . by the [s]ixth [a]mendment. . . . When a [habeas petitioner] complains of the ineffectiveness of [trial] counsel's assistance, the [petitioner] must show that counsel's representation fell below an objective standard of reasonableness. . . . In other words, the petitioner must demonstrate that [trial counsel's] [performance] was not reasonably competent or within the range of competence displayed by lawyers with ordinary training and skill in the criminal law. . . . Moreover, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." (Citations omitted; internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, 341 Conn. 279, 286–88, 267 A.3d 120 (2021) (citing *Strickland* v. *Washington*, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

Although our review of the habeas court's ultimate conclusion is plenary, "[j]udicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's

assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable . . . . A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; *that is, the* [*petitioner*] *must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy*. . . . Indeed, our Supreme Court has recognized that [t]here are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way. . . . [A] reviewing court is required not simply to give [the trial attorney] the benefit of the doubt . . . but to affirmatively entertain the range of possible reasons . . . counsel may have had for proceeding as [he] did . . . ." (Emphasis in original; internal quotation marks omitted.) *Morales* v. *Commissioner of Correction*, 220 Conn. App. 285, 305–306, 298 A.3d 636, cert. denied, 348 Conn. 915, 303 A.3d 603 (2023).

It must be emphasized that the standard of reasonableness regarding performance is an objective one. *Harrington* v. *Richter*, 562 U.S. 86, 110, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011); *Jordan* v. *Commissioner of Correction*, supra, 341 Conn. 287. As such, "our plenary review requires us, first, affirmatively to contemplate the possible strategic reasons that might have supported [the trial counsel's] decisions . . . and, second, to consider whether those reasons were objectively

reasonable." *Jordan* v. *Commissioner of Correction*, supra, 291–92.

This inquiry is not altered when the trial counsel whose performance is at issue has died prior to the habeas trial. Id., 289–90. Although this necessarily means that the trial attorney cannot offer testimony regarding the reasons behind her decisions, the fact that the court must "contemplate the possible strategic reasons that might have supported" the challenged action; id., 290; and then "consider whether those reasons were objectively reasonable"; id.; means that the inquiry may be done without an investigation into " 'counsel's subjective state of mind.' " Id., 291. Rather than being mere speculation, the contemplation of trial counsel's possible strategic reasons for acting is an integral part of the standard analysis. Id., 304–305.

Then, "[t]o satisfy the prejudice prong, a claimant must demonstrate that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. . . . [T]he question is whether there is a reasonable probability that, [without] the errors, the [fact finder] would have had a reasonable doubt respecting [the petitioner's] guilt. . . . A reasonable probability is a probability sufficient to undermine confidence in the outcome. . . . In making this determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. . . . Although a petitioner can succeed only if he satisfies both prongs, a reviewing court can find against a petitioner on either ground." (Citations omitted; internal quotation marks omitted.) Id., 287–88.

We first consider whether trial counsel performed deficiently. "[T]he right to the effective assistance of counsel applies no less to the investigative stage of a

criminal case than it does to the trial phase. . . . Counsel's strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; [but] strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." (Citation omitted; internal quotation marks omitted.) *Grant* v. *Commissioner of Correction*, 225 Conn. App. 55, 68–69, 314 A.3d 1, cert. granted, 349 Conn. 912, 314 A.3d 1018 (2024). Therefore, the failure to investigate and the failure to call as witnesses persons not investigated are deeply intertwined.

"[A] particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments. . . . [A] court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further. . . . In addition, in contrast to our evaluation of the constitutional adequacy of counsel's strategic decisions, which are entitled to deference, when the issue is whether the investigation *supporting* counsel's [strategic] decision to proceed in a certain manner was itself reasonable . . . we must conduct an objective review of [the reasonableness of counsel's] performance. . . . Thus, deference to counsel's strategic decisions does not excuse an inadequate investigation . . . ." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 69.

"When a petitioner alleges that counsel has provided ineffective assistance on the basis of counsel's failure to call a witness, [d]efense counsel will be deemed

ineffective only when it is shown that a defendant has informed his attorney of the existence of the witness and that the attorney, without a reasonable investigation *and without adequate explanation*, failed to call the witness at trial. The reasonableness of an investigation must be evaluated not through hindsight but from the perspective of the attorney when [s]he was conducting it." (Emphasis in original; internal quotation marks omitted.) *White* v. *Commissioner of Correction*, 209 Conn. App 144, 157, 267 A.3d 289, cert. denied, 341 Conn. 904, 268 A.3d 78 (2021).

The possible adequate explanations for a counsel's failure to investigate and call witnesses at trial include the following: "(1) counsel learns of the substance of the witness' testimony and determines that calling that witness is unnecessary or potentially harmful to the case; (2) the defendant provides some information, but omits any reference to a specific individual who is later determined to have exculpatory evidence such that counsel could not reasonably have been expected to have discovered that witness without having received further information from his client; or (3) the petitioner fails to present, at the habeas hearing, evidence or the testimony of witnesses that he argues counsel reasonably should have discovered during the pretrial investigation." (Footnotes omitted.) *Gaines* v. *Commissioner of Correction*, 306 Conn. 664, 681–82, 51 A.3d 948 (2012). In sum, "[c]ounsel does not engage in deficient performance by failing to call witnesses to testify in instances in which jurors likely would have found the testimony unreliable, inconsistent, or unpersuasive in light of the state's evidence against the petitioner." (Internal quotation marks omitted.) *White* v. *Commissioner of Correction*, supra, 209 Conn. App. 158.

The following additional facts are relevant to the resolution of this claim. At the habeas trial, Ruscito, an investigator with the Division of Public Defender

Services, testified that he assisted Attorney Jones in the preparation of the defense for the petitioner's criminal trial. He testified that he and Attorney Jones visited with the petitioner while he was in prison numerous times before trial to discuss the case and any potential defenses. He further testified that, had the petitioner informed him and Attorney Jones of potential helpful witnesses, they would have made attempts to locate them and would have spoken with them. The petitioner, however, never brought any such witnesses to their attention. Moreover, the petitioner himself testified at the habeas trial and admitted that he suggested only calling B as a witness during his meetings with Attorney Jones and Ruscito. When asked by habeas counsel whether he told Attorney Jones of any other potential witnesses, he testified that he told her to review the victim's medical records.

In its memorandum of decision, the habeas court stated: "[T]rial counsel's theory of defense was a defense of consent. The petitioner testified at his criminal trial that he and the victim, his stepdaughter, were in love and had a consensual sexual relationship that did not begin until the victim was sixteen years old. The record further shows that Attorney Jones' trial strategy involved attacking the victim's credibility. During her cross-examination of the victim, Attorney Jones highlighted discrepancies in the victim's timeline of events and repeatedly questioned the victim as to why she did not disclose various details about the assaults prior to her testimony at trial. Based on the foregoing, the court finds that the petitioner did not overcome the presumption that Attorney Jones' actions constituted sound trial strategy. As a result, the petitioner failed to sustain his burden of proving that Attorney Jones' performance was deficient as to these claims. Moreover, the petitioner failed to prove that, had trial counsel investigated

or subpoenaed additional defense witnesses, the outcome of the underlying proceedings would have been different."

The petitioner argues before this court that, if Attorney Jones had presented the testimony of the children at the criminal trial, they "presumably" would have testified "as to their relationship with the petitioner, the relationship between the [victim] and the petitioner, and whether or not the petitioner ever assaulted either of them, if they ever saw the petitioner assault the [victim], or if the relationship between the [victim] and the petitioner was consensual." As we determined in part I of this opinion, the habeas court, on relevancy grounds, properly precluded the children from testifying at the habeas trial. However, the testimony of Ruscito and the petitioner establishes that the petitioner did not provide Attorney Jones with "any reference to a specific individual who [was] later determined to have exculpatory evidence such that counsel could not reasonably have been expected to have discovered that witness without having received further information from [her] client." *Gaines* v. *Commissioner of Correction*, supra, 306 Conn. 682. Moreover, given that the defense's strategy was based upon a theory of consent, even if Attorney Jones had interviewed and learned of the substance of the children's testimony, it is objectively reasonable to conclude that calling them as witnesses was unnecessary and inconsistent in light of that strategy. We therefore conclude that the petitioner has failed to overcome the presumption that, under the circumstances, Attorney Jones' performance was within the wide range of reasonable professional assistance and was not deficient.

Moreover, even if it was necessary for us to reach the issue of whether the habeas court properly determined that the petitioner failed to demonstrate that

Attorney Jones' performance was deficient, the petitioner has failed to prove how her allegedly deficient performance prejudiced him. The failure of defense counsel to investigate a potential witness does not constitute ineffective assistance of counsel unless the petitioner can demonstrate specific information that the trial "counsel failed to uncover," and how that information would have benefitted his defense. *Hilton* v. *Commissioner of Correction*, 161 Conn. App. 58, 68, 127 A.3d 1011 (2015), cert. denied, 320 Conn. 921, 132 A.3d 1095 (2016); see also *Norton* v. *Commissioner of Correction*, 132 Conn. App. 850, 858–59, 33 A.3d 819, cert. denied, 303 Conn. 936, 36 A.3d 695 (2012). Additionally, "[t]he failure of defense counsel to call a potential defense witness does not constitute ineffective assistance unless there is some showing that the testimony would have been helpful in establishing the asserted defense." (Internal quotation marks omitted.) *Robinson* v. *Commissioner of Correction*, 129 Conn. App. 699, 703, 21 A.3d 901, cert. denied, 302 Conn. 921, 28 A.3d 342 (2011). The petitioner must be able to "demonstrate that there is a reasonable probability that, but for counsel's [failures], the result of the proceeding would have been different." (Internal quotation marks omitted.) *Jordan* v. *Commissioner of Correction*, supra, 341 Conn. 287. "The likelihood of a different result must be substantial, not just conceivable." *Harrington* v. *Richter*, supra, 562 U.S. 112.

In the present case, the petitioner's counsel argued to the habeas court that the children were not contacted by Attorney Jones and that they had knowledge of the allegations against their father, but the petitioner's counsel did not articulate the specific knowledge that would have supported the petitioner's theory of defense that the sexual activity occurred after the victim was sixteen years old and was consensual. For those reasons, the habeas court precluded their testimony on

the grounds of relevance. The petitioner did not present any other admissible evidence as to how Attorney Jones' failure to investigate and present their testimony at the criminal trial harmed his defense. Therefore, the petitioner has failed to demonstrate that there is reasonable probability that, but for Attorney Jones' alleged deficient performance, the result of the proceeding would have been different.

Accordingly, the habeas court properly concluded that Attorney Jones did not render ineffective assistance.

The judgment is affirmed.

In this opinion the other judges concurred.