

326 Conn. 81

JUNE, 2017

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O'Brien v. O'Brien

quotation marks omitted.) *O'Brien v. O'Brien*, supra, 161 Conn. App. 592.

Because the trial court had not found contempt or dissipation, the Appellate Court concluded that the trial court did not have the authority to compensate the defendant for the plaintiff's transactions, even though those transactions had violated the automatic orders. *Id.*, 593. The Appellate Court reversed the trial court's judgment with respect to its financial orders and remanded the case for a new hearing on all financial matters. *Id.*

We then granted the defendant's petition for certification to decide whether the Appellate Court correctly concluded that the trial court should not have considered the plaintiff's violations of the automatic orders in its division of the marital assets because the court had not held the plaintiff in contempt for those violations. *O'Brien v. O'Brien*, supra, 320 Conn. 916. We answer the certified question in the negative. The plaintiff also has raised three alternative grounds for affirming the Appellate Court's judgment, all of which we reject.

## I

We begin with the certified question. The defendant claims that the Appellate Court incorrectly concluded that the trial court lacked the authority to afford her a remedy for the plaintiff's violations of the automatic orders in the absence of a contempt finding. In support of this claim, the defendant contends that the trial court has the power to consider the plaintiff's actions under § 46b-81, which governs a trial court's distribution of marital assets in a dissolution proceeding and empowers the trial court to divide marital assets between the parties upon consideration of "the contribution of each of the parties in the acquisition, *preservation* or *appreciation* in value of" the marital assets. (Emphasis added.) General Statutes § 46b-81 (c). The defendant further contends that the plaintiff's unilateral decision to swap a substantial equity stake—along with its poten-

NOTE: These pages (326 Conn. 95 and 96) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 27 June 2017.

tial for increase in value and dividends—for an asset like cash is the antithesis of preservation and appreciation, and thus may be considered by a court when it divides property under the statute.

We agree with the defendant that the trial court had the authority to consider the plaintiff's transactions when distributing the marital property, but for reasons different from those advanced by the defendant. Applying plenary review to this question of law; see, e.g., *Maturo v. Maturo*, 296 Conn. 80, 88, 995 A.2d 1 (2010); we conclude in part I A of this opinion that a trial court possesses inherent authority to make a party whole for harm caused by a violation of a court order, even when the trial court does not find the offending party in contempt. In part I B of this opinion, we conclude that the trial court properly exercised that authority in the present case.<sup>5</sup>

#### A

It has long been settled that a trial court has the authority to enforce its own orders. This authority arises from the common law and is inherent in the court's function as a tribunal with the power to decide disputes. *Papa v. New Haven Federation of Teachers*, 186 Conn. 725, 737–38, 444 A.2d 196 (1982). The court's enforcement power is necessary to “preserve its dignity

<sup>5</sup>In her brief to this court, the defendant did not specifically argue that the trial court possessed discretion, pursuant to its *inherent* authority, to address the plaintiff's violations but instead focused her arguments on the trial court's *statutory* authority under § 46b-81. We nevertheless resolve the present appeal in reliance on the trial court's inherent authority because (1) the defendant raised this ground in her brief to the Appellate Court, (2) the Appellate Court decided the case in part on this ground, concluding that the trial court lacked the inherent authority in a contempt proceeding to afford the defendant a remedy for the plaintiff's violations unless it first found contempt; *O'Brien v. O'Brien*, supra, 161 Conn. App. 589–91; (3) this ground falls within the scope of the certified question, which was not limited to the trial court's statutory authority but more broadly asked whether “the Appellate Court correctly determine[d] that the trial court [had] abused its discretion when it considered the plaintiff's purported violations of the automatic orders in its decision dividing marital assets”; *O'Brien v. O'Brien*, supra, 320 Conn. 916; and (4) at oral argument before this court, the plaintiff's counsel acknowledged that the trial court had inherent authority to address the plaintiff's violations of the automatic orders and clarified that the plaintiff was disputing only how the trial court exercised that authority in the present case. See, e.g., *McManus v. Commissioner of Environmental Protection*, 229 Conn. 654, 661 n.6, 642 A.2d 1199 (1994) (“We recognize that although this precise claim was raised and briefed before the trial court, it was neither considered by the Appellate Court nor explicitly briefed before this court. Nevertheless, this court may consider claims that fall within the scope of the certified question.”).