
The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

LAVERY, C. J., dissenting in part. I respectfully disagree with the conclusion of the majority because I believe that it was wholly within the equitable power of the court to fashion the rational, common sense solution that it imposed on the parties in this case. The court's order did nothing but hold the parties to the terms of their original stipulation and protect the integrity of the judgment incorporating that stipulation and, as such, it was not an impermissible modification of a property assignment. Furthermore, in crafting its offset order, the court had the authority to displace the order of the family support magistrate requiring the defendant to pay \$15 per week toward the child support arrearage for the parties' fifteen year old daughter for the next thirty-two years.

It is well established that a court, subsequent to a dissolution judgment, may not revisit and modify the distribution of property effected by that judgment. General Statutes § 46b-86 (a); *Bunche v. Bunche*, 180 Conn. 285, 289, 429 A.2d 874 (1980). Nonetheless, our case law draws a distinction between orders that result in improper modification and those that serve merely to enforce the original decree.

In *Roberts v. Roberts*, 32 Conn. App. 465, 629 A.2d 1160 (1993), the parties stipulated in the dissolution decree that they would sell the marital residence and divide the proceeds, but the defendant was impeding the sale by listing the property at too high a price and by refusing the Realtor reasonable access. In response to the plaintiff's motions for contempt and to expedite the sale by order to lower the asking price, the trial court ordered that the residence be sold by auction and appointed a committee to conduct that auction. Noting that the original decree unquestionably ordered that the property be sold and "recogniz[ing] that it is within the equitable powers of the trial court 'to fashion whatever orders [are] required to protect the integrity of [its original] judgment' "; *id.*, 471; this court concluded that the trial court properly granted the plaintiff's motion "as it sought only an effectuation of the judgment rather than a modification of it." *Id.*, 472. "Both parties continue[d] to be entitled to 50 percent of the proceeds of the sale"; *id.*; as contemplated by the original decree.

Similarly, in *Clement v. Clement*, 34 Conn. App. 641, 643 A.2d 874 (1994), we concluded that in ordering the plaintiff to pay the defendant \$29,500, the trial court did not improperly modify the terms of a prior property distribution, but rather was enforcing it. As part of the dissolution decree, the defendant was awarded the entire interest in the family residence, and the plaintiff was required to hold the defendant harmless on two of three outstanding mortgages on the residence. When

the plaintiff failed to make the mortgage payments, a judgment of strict foreclosure entered against the defendant, and the plaintiff no longer was required to make mortgage payments. In response to the defendant's motion for contempt, the trial court ordered the plaintiff to pay her \$29,500, an amount which represented the defendant's lost equity in the residence. This court concluded that the trial court acted properly and within its jurisdiction because its order did not change the property assignment but, rather, preserved the integrity of the original judgment. *Id.*, 646.

The majority recognizes this distinction but nonetheless concludes that the court's order, which offset the child support arrearage owed by the defendant against the amount owed by the plaintiff pursuant to the property distribution agreement, was improper. It does so on a ground not raised in the trial court or argued by the parties on appeal. The majority reasons that the court, in crediting the defendant's \$24,505 arrearage against the \$30,000 due and owing by the plaintiff, effected a "modification" of the order issued by the magistrate some three weeks prior such that the court first needed to find a substantial change in the parties' circumstances. This elevates form over substance and will result in wasteful use of scarce judicial resources.

I believe that the court had the power to displace the magistrate's support arrearage order. In ordering the offset, the court was not acting on a request for modification, but on the defendant's motion to hold the plaintiff in contempt for failure to abide by the terms of the parties' property settlement agreement. General Statutes § 46b-231 (q) provides in relevant part that "[w]hen an order for child or spousal support has been entered against an obligor by the Superior Court in an action originating in the Superior Court, such order shall *supersede* any previous order for child or spousal support against such obligor entered by a family support magistrate" (Emphasis added.) This makes sense because a court has jurisdiction to consider a much broader range of issues than does the magistrate, issues that might best be resolved when considered together.¹ The contempt matter originated in the Superior Court. "Supersede" is defined by the Merriam-Webster Dictionary as "replace," "displace" or "to take the place of." The court's order, therefore, did not "modify" the magistrate's order but *replaced* it and, as such, there was no need for the court to find a substantial change in circumstances.

"The paramount role of a court when considering domestic relations cases is one of a 'court of equity.' The court's equity powers are essential to its ability to fashion the appropriate relief in domestic relations cases. The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances which arise out of the dissolution

of a marriage. Without this wide discretion and broad equitable power, the courts in some cases might be unable fairly to resolve the parties' dispute" (Internal quotation marks omitted.) *Labow v. Labow*, 13 Conn. App. 330, 351, 537 A.2d 157, cert. denied, 207 Conn. 806, 540 A.2d 374 (1988). The opinion of the majority unnecessarily constrains the power of the trial court to order the equitable relief appropriate under the circumstances of this case.

I would affirm the judgment.

¹ In this case, as noted in the trial testimony reproduced in footnote 2 of the majority opinion, the magistrate was not authorized to consider the defendant's motion for contempt. The magistrate's jurisdiction generally is limited to support matters. See General Statutes § 46b-231 (m).
