GRUENDEL, J., dissenting in part. Because this case concerns an antenuptial agreement entered into by the parties prior to the passage of General Statutes §§ 46b-36a to 46b-36j, it is governed by common-law principles.[1] In *McHugh* v. *McHugh*, 181 Conn. 482, 436 A.2d 8 (1980), our Supreme Court set forth those principles, which are used by trial courts in determining the enforceability of such antenuptial agreements in this state. That decision is the controlling law for pre-1995 agreements, binding on trial courts and on this court. In today's decision, the majority concludes that the only basis on which the trial court determined that the parties' antenuptial agreement should not be enforced was the finding that the economic circumstances of the parties had changed dramatically from the time the parties had entered into the agreement. It then concludes that the facts in the record do not support such a finding and that, therefore, the court should have enforced the antenuptial agreement. My reading of the trial court's decision is not so limited. First, I believe that the court's determination not to enforce the agreement was based on a variety of findings, and a change in economic circumstances was but one of those findings. Second, I believe that there is evidence in the record to support the facts as found by the court. Moreover, even if there were insufficient facts in the record to support the court's finding that there was a dramatic change in the economic circumstances of the parties, the court made other findings of fact that are sufficient to support its conclusion not to enforce the antenuptial agreement. I, therefore, dissent from that portion of the majority opinion that holds that the court incorrectly determined that the parties' antenuptial agreement was unenforceable. I concur with the remainder of the majority's analysis.

In *McHugh*, our Supreme Court articulated a three-pronged test for determining the enforceability of antenuptial agreements. Only the third of those prongs is relevant to this appeal. "Antenuptial agreements relating to the property of the parties, and more specifically, to the rights of the parties to that property upon the dissolution of the marriage, are generally enforceable where . . . the circumstances of the parties at the time the marriage is dissolved are not so beyond the contemplation of the parties at the time the contract was entered into as to cause its enforcement to work injustice." Id., 485–86. That third prong requires a court considering the enforceability of an antenuptial agreement to take into account two things: whether the circumstances of the parties had changed since their entry into the agreement and, if so, whether its enforcement would work an injustice. The *McHugh* court set forth a number of circumstances that could preclude the

enforcement of antenuptial agreements. It concluded by stating: "Finally, an antenuptial agreement will not be enforced where the circumstances of the parties at the time of the dissolution are so far beyond the contemplation of the parties at the time the agreement was made as to make enforcement of the agreement work an injustice. . . . Thus, where a marriage is dissolved not because it has broken down irretrievably, but because of the fault of one of the parties, an antenuptial waiver of rights executed by the innocent party may not be enforceable, depending upon the circumstances of the particular case and the language of the agreement. . . . Likewise, where the economic status of the parties has changed dramatically between the date of the agreement and the dissolution, literal enforcement of the agreement may work injustice." (Citations omitted.) Id., 489.

The majority narrows the *McHugh* analysis by focusing solely on a change in the *economic* circumstances between the signing of the agreement and the dissolution of the marriage, rather than the broader analysis of change in circumstances mandated by *McHugh* and correctly employed by the trial court. It does so because it concludes that the court's finding that there was a dramatic change in the economic circumstances of the parties was the only "*McHugh* factor" on which the court based its decision not to enforce the agreement. That analysis, however, ignores the other factual findings made by the court, and detailed in its memorandum of decision, that support a finding of a change in circumstances such that enforcement of the antenuptial agreement would work an injustice. *McHugh* stands for the proposition that an antenuptial agreement will be enforced unless there are changes in the circumstances of the parties that would make its enforcement at the time of the dissolution inequitable. Change in economic circumstances is only one such change in circumstance, and the only one requiring a "dramatic" change. *McHugh* v. *McHugh*, supra, 181 Conn. 489.

I begin my analysis with a discussion of the appropriate standard of review. In this appeal, our task is to determine whether the court properly concluded that the antenuptial agreement was unenforceable. That determination, being an order from the family court, is one that should be subject to the abuse of discretion standard of review. *Ranfone* v. *Ranfone*, 103 Conn. App. 243, 246, 928 A.2d 575, cert. denied, 284 Conn. 940, 937 A.2d 698 (2007); see also *Weinstein* v. *Weinstein*, 280 Conn. 764, 774–75, 911 A.2d 1077, after remand, 104 Conn. App. 482, 934 A.2d 306 (2007), cert. denied, 285 Conn. 911, A.2d (2008). Nevertheless, the majority states that the court's conclusion is a mixed question of law and fact and, as such, should be subject to plenary review. See *Winchester* v. *McCue*, 91 Conn. App. 721, 726, 882 A.2d 143, cert. denied, 276 Conn. 922, 888 A.2d 91 (2005).[2] Even under the plenary standard of review,

however, this court's duty is to decide whether the trial court's legal conclusion is legally and logically correct and finds support in the facts that appear in the record. See id. The only legal conclusion made by the court was its determination not to enforce the antenuptial agreement in accordance with the test set out in *McHugh*. Whether the parties' financial circumstances had changed since they entered into the agreement is a question of fact that this court will overturn only if the trial court's finding was clearly erroneous. See *Brycki* v. *Brycki*, 91 Conn. App. 579, 589, 881 A.2d 1056 (2005). "A factual finding is clearly erroneous when it is not supported by any evidence in the record or when there is evidence to support it, but the reviewing court is left with the definite and firm conviction that a mistake has been made. . . . Simply put, we give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses." (Internal quotation marks omitted.) Id. If there is any evidence in the record to support the court's findings of fact, they must stand.

In the present case, in concluding that it would be inequitable to enforce the antenuptial agreement, the court made various factual findings. The court found that "the marriage has broken down irretrievably, and that ample evidence exists that both parties have contributed to said breakdown. However, the court finds that . . . the [defendant, Stephen Crews] must bear a disproportionately greater share of responsibility for the breakdown, since it was he [who] set the tone, starting with the antenuptial agreement [and] the segregation of assets, particularly the marital home . . . ."[3] The court also found that the defendant placed a "heavy double burden . . . upon the [plaintiff, Melinda Crews] to obtain gainful employment and to maintain the household, including the responsibility for rearing the [parties'] two children, one of whom had learning disabilities." Moreover, the court found that the evidence supported a finding "that during the early years, the marriage was a partnership between two hardworking, career oriented people with demanding jobs, and that when the children came along, the [plaintiff] literally wore herself to a frazzle, with little help and virtually no appreciation of her efforts by the [defendant]." Finally, the court found that "the economic circumstances of the parties have changed dramatically between the date of the agreement and the dissolution, in particular the economic circumstances of the [defendant], due in substantial part to the efforts of the [plaintiff]." Contrary to the majority's contention that these findings have no bearing on whether the agreement should be enforced, taken together, these facts satisfy the *McHugh* test for determining that the circumstances of the parties had changed so far beyond their contemplation at the time the agreement was made that enforcement of the antenuptial agreement would work

an injustice.

These factual findings are supported by the record. There was evidence in the record that the plaintiff testified that her day began at 2 a.m. and ended well into the following evening; that she was responsible for the defendant's hunting dogs and took the family trash to the dump; that the defendant traveled 60 to 70 percent of the time; that the defendant provided the plaintiff little help with the primary household duties and child rearing; that the defendant insisted that the plaintiff communicate through his secretary while he was away and did not share his travel itinerary with her; that the defendant had a longtime sexual relationship with a business colleague; that the defendant viewed pornography both on video and on the Internet; and that the defendant had a temper and drank. In addition, the court heard testimony regarding the finances of both the plaintiff and the defendant, including the value of the marital home, their respective incomes and investments.

After making its findings, the court concluded that "given the length of the marriage, the birth of two children, and the substantial financial and nonfinancial contributions of the [plaintiff] from employment outside of the home to her parenting and homemaking efforts, it would be inequitable to enforce the terms of the prenuptial agreement of the parties." Although the court did not use the words found in *McHugh* v. *McHugh*, supra, 181 Conn. 485–86, that the changes were "so beyond the contemplation of the parties at the time the contract was entered into," in concluding that it would be inequitable to enforce the antenuptial agreement, it necessarily found that the circumstances of the parties were not within their contemplation at the time they entered into the antenuptial agreement. "The fact that the trial court did not utter the talismanic words . . . does not indicate that it did not make such a determination." *State* v. *Robinson*, 227 Conn. 711, 731, 631 A.2d 288 (1993). To conclude otherwise is to elevate form over substance. Because the court necessarily had to find that the changed circumstances were so far beyond the contemplation of the parties at the time they entered into the agreement in order to find that enforcement of the antenuptial agreement was inequitable, I conclude that, in substance, the court made this necessary finding.[4] Affording the necessary deference that our law requires, I would conclude that because there was support in the record for the court's factual findings, they were not clearly erroneous. As such, the court did not abuse its discretion when it determined, on the basis of those findings, that the enforcement of the antenuptial agreement would work an injustice.

Accordingly, I respectfully dissent from that portion of the majority opinion that holds that the trial court incorrectly determined that the parties' antenuptial

agreement was unenforceable. I concur with the remainder of the majority's analysis.

[1] General Statutes § 46b-36j provides: "Nothing in sections 46b-36a to 46b-36j, inclusive, shall be deemed to affect the validity of any premarital agreement made prior to October 1, 1995."

[2] Although in *Winchester* v. *McCue*, supra, 91 Conn. App. 721, a case also involving a pre-1995 antenuptial agreement, this court applied a plenary standard of review to an issue it characterized as a mixed question of law and fact, our Supreme Court has not definitively addressed the standard of review to be applied when reviewing a court's determination not to enforce an antenuptial agreement according to *McHugh*.

[3] The majority reads this finding by the court to mean that the court did not find either party at fault for the marital breakdown. We are not free, in my view, to pick and choose among the trial court's factual findings to bolster our analysis.

[4] After the judgment, but prior to the appeal, the defendant filed a motion for articulation requesting that the court explain the unforeseen nature of the change the court had found in the economic circumstances of the parties. As there was no appeal filed, the court declined to articulate its decision at that time but stated that it would grant a motion for articulation if and when an appeal was filed. The defendant subsequently filed his appeal but failed to request an articulation from the court. To the extent that the court's decision is ambiguous in this regard, it was the defendant's responsibility to seek to have it clarified. See Practice Book §§ 61-10 and 66-5. "[W]e read an ambiguous record, in the absence of a motion for articulation, to support rather than to undermine the judgment." (Internal quotation marks omitted.) *Zabaneh* v. *Dan Beard Associates, LLC*, 105 Conn. App. 134, 142, 937 A.2d 706 (2007).