BISHOP, J. dissenting. Because there is a patent flaw central to the trial court's decision, and the parties were given the opportunity to file supplemental briefs on the issue, I believe that we should address that issue in accordance with the path typically taken by this court in such circumstances, and, doing so, I would reverse the judgment of the trial court. The central facts are not in dispute. As noted by the majority and acknowledged by both parties in their supplemental briefs, it is clear that in making its determination that there had been a substantial change in the parties' financial circumstances, the court compared the value of the current assets of the defendant, Maureen E. Gosselin, with the value of the assets she held *prior* to her marital dissolution instead of the values *as of the date of the* dissolution. Both parties and the majority appear to acknowledge, as they must, that the comparison utilized by the court was legally incorrect.[1] Notwithstanding this patent error, the majority affirms the judgment on the ground that the application of the plain error doctrine; see Practice Book § 60-5; precludes us from reversing on this ground. I believe, respectfully, that the majority has misconstrued the plain error doctrine.

As noted by the majority, once this court noted the flaw in the trial court's judgment, we invited counsel to brief the question of whether the court had abused its discretion in finding a substantial change of circumstances and also whether the court should address the issue, as neither party had initially made this specific argument on appeal. As to the prudential question of whether we should reach the issue, the plaintiff, Roger H. Gosselin, responded by arguing that we should not reach the claim because it was not asserted by the defendant in her initial brief or in oral argument. In claiming that we should not reach the issue, the plaintiff relies on our plain error jurisprudence and cites *Small* v. *South Norwalk Savings Bank*, 205 Conn. 751, 535 A.2d 1292 (1988), for the proposition that plain error reversals should be reserved for "truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity and public confidence in the judicial proceedings." (Internal quotation marks omitted.) Id., 759. Although tacitly acknowledging the court's miscalculation of the defendant's assets, the plaintiff also argues that the error should not cause reversal because a correct comparison of the plaintiff's assets between the date of the marital dissolution and the date of modification could also support a finding of a substantial change in her financial circumstances.

My difficulty with the plaintiff's argument and the majority's adoption of it is twofold: (1) plain error analysis is inappropriate to the issue in question; and (2)

it is not within our ken to determine that a correct calculation would have been sufficient for the court to find a substantial change of circumstances.

As has been often stated, the plain error doctrine is a rule of reversibility, not reviewability, and it will be invoked "in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy. . . . The plain error doctrine is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A party can not prevail under plain error unless it has demonstrated that the failure to grant relief will result in manifest injustice." (Internal quotation marks omitted.) *State* v. *Lawrence*, 282 Conn. 141, 183, 920 A.2d 236 (2007); see also Practice Book § 60-5. "When the parties have neither briefed nor argued plain error . . . we will not afford such review." (Internal quotation marks omitted.) *State* v. *Klinger*, 103 Conn. App. 163, 169, 927 A.2d 373 (2007).

Here, the defendant has not requested plain error review, nor was she required to do so because the doctrine is inapplicable to the facts at hand. Unlike cases in which the plain error doctrine is invoked, neither party claims that the defendant failed to preserve this issue at trial. The plaintiff's motion for modification was based on a substantial change in circumstances. In moving for modification, the plaintiff was required to prove a substantial change in the defendant's circumstances, and the defendant sought to disprove the plaintiff's claim. Indeed, a review of the record reveals that both parties presented various demonstrative evidence at the modification hearing in the form of graphs, and although the parties made differing arguments on the basis of these graphs, they both argued from the correct base point regarding the defendant's assets. Notwithstanding the parties' presentations, however, the court issued a memorandum of decision in which it patently based its analysis on incorrect criteria following which the defendant timely appealed. The issue of substantial change in circumstances, specifically regarding the change in the values of the defendant's assets was, therefore, before the court and was, in fact, addressed by the court.[2] Because this issue was decided at trial, and plain error review is afforded only when requested, I agree with the majority, albeit for different reasons, that we should not reverse the judgment of the trial court on the basis of the plain error doctrine.[3]

That conclusion, however, does not end our responsibility. As a matter of fairness, we are bound to give notice to the parties of an issue or claim not raised by either on appeal but which we believe may be significant to the proper determination of the case. Here, we did

just that, and gave the parties the opportunity to brief the issue. See *State* v. *Dalzell*, 282 Conn. 709, 715, 924 A.2d 809 (2007) (if reviewing court decides to address issue not previously raised or briefed, it may do so only after requesting supplemental briefs from parties or allowing argument regarding that issue). Having received the briefs of counsel and having been given no legally pertinent reason not to consider the correct application of the law, I am aware of no decisional law that suggests that we should turn a blind eye toward it. To do so represents an avoidance of our responsibilities to decide cases in accordance with the law and a departure from our normal path under similar circumstances.[4]

Because I can find no principled reason to distinguish the procedural facts at hand from those many instances in which this court or our Supreme Court has asked for supplemental briefs and thereafter considered the issue in formulating its opinion, I would reach the issue of the court's misapplication of the statutory criteria for a modification of alimony. In reaching this issue, I believe I would be compelled to reverse the court's judgment because, in reaching its decision, the court clearly did not apply the criteria set forth in General Statutes § 46b-86.

Recognizing this deficiency in the court's reasoning, the plaintiff nevertheless urges us to affirm the judgment on the ground that the actual change, on the basis of a correct comparison of income and asset values, warrants a finding of a substantial change in financial circumstances. The difficulty with this argument is that we are in no position to determine whether the evident error in calculation was harmless because such an analysis would require us to find facts. Thus, even if the record reveals that there has been an increase in the value of the defendant's assets since the time of the marital dissolution, whether that change is substantial is a fact bound question that is not the province of this court to answer. If we were to find from the record that the facts presented to the court established a substantial change of circumstances, we would be engaged in fact finding, a function not the province of this court. See *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 494, 934 A.2d 306 (2007), cert. denied, 285 Conn. 911, 943 A.2d 472 (2008). Thus, because the court's finding that the defendant's assets had increased 1000 percent is clearly erroneous, the court abused its discretion in granting the plaintiff's motion for modification. For this reason I would reverse the judgment of the trial court and remand this matter for a further hearing in accordance with the proper application of the law.

Accordingly, I respectfully dissent.

[1] In making the determination that there was a substantial change of circumstances warranting a modification of alimony, the court stated in its memorandum of decision: "The defendant's income has increased, and the value of her assets has increased almost 1000 percent." Earlier in its decision,

in comparing the parties' past and present financial circumstances, the court compared the financial affidavit filed by the defendant at the time of dissolution, which showed total assets of $60,000, to the current financial affidavit showing a total value of assets of approximately $500,000. The difficulty with the court's stated analysis is that a significant portion of the assets held by the defendant at the time of the modification hearing was granted to her in the dissolution judgment. The court's statement that the value of the defendant's assets has increased "almost 1000 percent" can only logically and fairly be read as a comparison of the value of the defendant's predissolution assets as stated on her financial affidavit filed at the time of the marital dissolution hearing and the value of her assets as of the date of the modification hearing. Thus, in determining that there had been a substantial change in the parties' financial circumstances, the court made an incorrect comparison and failed to examine the parties' financial circumstances since the date the original decree entered in accordance with General Statutes § 46b-86. See *Borkowski* v. *Borkowski*, 228 Conn. 729, 736, 638 A.2d 1060 (1994) (when party seeks postjudgment modification of dissolution decree, he or she must demonstrate that substantial change in circumstances has arisen subsequent to entry of dissolution decree or earlier modification).

[2] I note, as well, that the defendant did raise, in her initial brief and during oral argument, the claim that the court erroneously concluded that there had been a substantial change of financial circumstances warranting a modification of periodic alimony. The issue of substantial change of circumstances, therefore, has been before this court since the appeal was filed. We ordered supplemental briefs, however, because the specific claim we identified within that issue was not briefed or argued by either party. In doing so, I can find no principled distinction between the procedural posture of this case and those found in our recent opinion in *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 934 A.2d 306 (2007), cert. denied, 285 Conn. 911, 943 A.2d 472 (2008).

[3] The majority cites *Lynch* v. *Granby Holdings, Inc.*, 230 Conn. 95, 644 A.2d 325 (1994), for the proposition that the plain error doctrine is reserved for truly extraordinary circumstances. Although I agree with that proposition, the Supreme Court in *Lynch* reversed this court's judgment because this court's opinion in that case articulated no reason why plain error review was appropriate, the parties were not given the opportunity to brief the issue and the claim of error did not implicate interests of public welfare or of fundamental justice between the parties. Id., 99. It is unclear, however, in reviewing this court's opinion in *Lynch* that plain error review was accorded. In that opinion, this court simply, sua sponte, reached an issue not raised by the parties and did not give the parties the opportunity to brief the issue. See *Lynch* v. *Granby Holdings, Inc.*, 32 Conn. App. 574, 578–79, 630 A.2d 609 (1993), rev'd, 230 Conn. 95, 644 A.2d 325 (1994).

Our Supreme Court similarly reversed such action by this court in *Sabrowski* v. *Sabrowski*, 282 Conn. 556, 923 A.2d 686, after remand, 105 Conn. App. 49, 935 A.2d 1037 (2007), and *State* v. *Dalzell*, 282 Conn. 709, 715, 924 A.2d 809 (2007). The teaching of these cases is twofold: a reviewing court should act with restraint when confronted with an issue not raised at trial, reaching it only when justice and judicial integrity demand that the error be corrected, and, if the court fastens on an issue not briefed or argued on appeal, it must give the parties an opportunity to brief or argue the issue as a matter of fairness and notice. In the case at hand, because the issue was raised at trial, we need deal only with the latter portion of that formulation.

[4] See *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 934 A.2d 306 (2007) (supplemental briefs on whether court abused discretion in modifying child support without finding either substantial change in circumstances of either party or that guideline indicated amount was at least 15 percent greater than guideline indicated amount at time of last order), cert. denied, 285 Conn. 911, 943 A.2d 472 (2008); *State* v. *Russell*, 101 Conn. App. 298, 922 A.2d 191 (supplemental briefs on whether claim before court should more properly be framed as one of insufficiency rather than instructional error), cert. denied, 284 Conn. 910, 931 A.2d 934 (2007); *Remax Right Choice* v. *Aryeh*, 100 Conn. App. 373, 918 A.2d 976 (2007) (supplemental briefs on impact of party's failure to timely file motion to vacate arbitration award); *Gorelick* v. *Montanaro*, 94 Conn. App. 14, 891 A.2d 41 (2006) (supplemental briefs regarding authority of successor judge when trial judge has died); *Segale* v. *O'Connor*, 91 Conn. App. 674, 881 A.2d 1048 (2005) (supplemental briefs on whether general verdict rule applied to claim on appeal); *Lovan C.* v. *Dept. of Children & Families*, 86 Conn. App. 290, 860 A.2d 1283 (2004) (supplemental briefs on parent's right to use reasonable physical force in disciplining child); *State* v. *Johnson*, 75 Conn. App. 643, 817 A.2d 708 (2003)

(supplemental briefs in regard to irregularity in probation form discovered by this court on review); *Cumberland Farms, Inc.* v. *Zoning Board of Appeals*, 74 Conn. App. 622, 814 A.2d 396 (supplemental briefs on authority of estate's trustee regarding certain piece of property), cert. denied, 263 Conn. 901, 819 A.2d 836 (2003); *Collard & Roe, P.C.* v. *Klein*, 72 Conn. App. 683, 806 A.2d 580 (2002) (supplemental briefs on issues raised by court during oral argument but not set forth in opinion), on appeal after remand, 87 Conn. App. 337, 865 A.2d 500, cert. denied, 274 Conn. 904, 876 A.2d 13 (2005); *Rosengarten* v. *Downes*, 71 Conn. App. 372, 802 A.2d 170 (supplemental briefs on whether it was plain error for trial court to dismiss action without giving parties notice and hearing), cert. granted on other grounds, 261 Conn. 936, 806 A.2d 1066 (2002) (appeal dismissed as moot December 31, 2002); *Gould* v. *Mellick & Sexton*, 66 Conn. App. 542, 785 A.2d 265 (2001) (supplemental briefs on whether trial court had authority to render summary judgment under circumstances of case), rev'd on other grounds, 263 Conn. 140, 819 A.2d 216 (2003); *Krevis* v. *Bridgeport*, 64 Conn. App. 176, 779 A.2d 838 (2001) (supplemental briefs regarding propriety of oral motion for summary judgment), rev'd on other grounds, 262 Conn. 813, 817 A.2d 628, on remand, 80 Conn. App. 432, 835 A.2d 123 (2003), cert. denied, 267 Conn. 914, 841 A.2d 219 (2004); *Munroe* v. *Zoning Board of Appeals*, 63 Conn. App. 748, 778 A.2d 1007 (2001) (supplemental briefs regarding whether zoning board of appeals lacked jurisdiction to hear appeal from issuance of certificate of compliance by zoning enforcement officer), rev'd on other grounds, 261 Conn. 263, 802 A.2d 55 (2002), after remand, 75 Conn. App. 796, 818 A.2d 72 (2003).

Although this list enumerates recent cases in which this court has ordered supplemental briefs on issues or claims not raised by counsel, our practice is not unique. Our Supreme Court has taken a similar approach. See *Small* v. *Commissioner of Correction*, 286 Conn. 707, 946 A.2d 1203 (2008) (supplemental briefs concerning standard of review in certain types of habeas cases); *State* v. *Kalphat*, 285 Conn. 367, 939 A.2d 1165 (2008) (supplemental briefs concerning standing of defendant to challenge legality of search); *State* v. *Davis*, 283 Conn. 280, 929 A.2d 278 (2007) (same); *Brown* v. *Soh*, 280 Conn. 494, 909 A.2d 43 (2006) (supplemental briefs on impact of prior decision on exculpatory contracts signed by public users of commercial recreation services); *State* v. *DeCaro*, 280 Conn. 456, 908 A.2d 1063 (2006) (supplemental briefs regarding whether, in light of trial court's finding regarding compliance with subpoena, judgment should be affirmed); *State* v. *Kirby*, 280 Conn. 361, 908 A.2d 506 (2006) (supplemental briefs on whether certain statements properly admitted at trial); *Dark-Eyes* v. *Commissioner of Revenue Services*, 276 Conn. 559, 887 A.2d 848 (supplemental briefs on impact of United States Supreme Court decision involving city's assessment of property taxes against Indian tribe), cert. denied, U.S. , 127 S. Ct. 347, 166 L. Ed. 2d 26 (2006); *Almada* v. *Wausau Business Ins. Co.*, 274 Conn. 449, 876 A.2d 535 (2005) (supplemental briefs on impact of prior decision on emotional distress claim); *Location Realty, Inc.* v. *General Financial Services, Inc.*, 273 Conn. 766, 873 A.2d 163 (2005) (supplemental briefs on applicability of particular statute to issue on appeal); *Bloom* v. *Gershon*, 271 Conn. 96, 856 A.2d 335 (2004) (supplemental briefs on impact of prior decision on whether claims commissioner had authority to permit apportionment complaint against state); *Nussbaum* v. *Kimberly Timbers, Ltd.*, 271 Conn. 65, 856 A.2d 364 (2004) (supplemental briefs on whether enforceability of arbitration provision in contract is question to be decided in first instance by arbitrator); *Pikulski* v. *Waterbury Hospital Health Center*, 269 Conn. 1, 848 A.2d 373 (2004) (supplemental briefs on applicability of recently issued appellate opinion to issue at hand); *Mandell* v. *Gavin*, 262 Conn. 659, 816 A.2d 619 (2003) (supplemental briefs on meaning of statutory term "consideration"); *Cox Cable Advisory Council* v. *Dept of Public Utility Control*, 259 Conn. 56, 788 A.2d 29 (supplemental briefs on whether federal legislation preempted action of state advisory council), cert. denied, 537 U.S. 819, 123 S. Ct. 95, 154 L. Ed. 2d 25 (2002); *Darien* v. *Estate of D'Addario*, 258 Conn. 663, 784 A.2d 337 (2001) (supplemental briefs on meaning of statutory terms and relationship of certain statutes to one another); *Quarry Knoll II Corp.* v. *Planning & Zoning Commission*, 256 Conn. 674, 780 A.2d 1 (2001) (supplemental briefs on whether statutory amendment should be retroactively applied); *Ghant* v. *Commissioner of Correction*, 255 Conn. 1, 761 A.2d 740 (2000) (supplemental briefs on standard to be applied in assessing certain ineffective assistance of counsel claim); *Oxford Tire Supply, Inc.* v. *Commissioner of Revenue Services*, 253 Conn. 683, 755 A.2d 850 (2000) (supplemental briefs on whether statutory amendment should be retroactively applied).

The foregoing lists only recent cases and is not meant to be exhaustive.

In compiling this list of cases in which this court or the Supreme Court has ordered supplemental briefs on issues raised by the court, I have purposefully omitted those cases in which the issue raised by the court implicated the court's subject matter jurisdiction because it is axiomatic that the court can always raise the question of its subject matter jurisdiction. I also have omitted those cases in which the Supreme Court has ordered supplemental briefs on a question of policy it has decided to review.