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FLYNN, J., dissenting. The majority holds that where a trial court grants a party's motion to terminate or to reduce alimony such that, at a minimum, alimony must accordingly be terminated or reduced, the court may simultaneously grant an opposing motion to increase alimony. Because I believe that these actions are inherently inconsistent and, further, would vitiate the purpose of General Statutes § 46b-86 (b), I cannot agree with the majority. Therefore, I respectfully dissent.

If a party remarries after divorce, the remarriage terminates the alimony such a party receives. Human nature being what it is, some parties who had been divorced entered cohabiting relationships rather than remarrying, to avoid termination of alimony received from a former spouse. To avoid such arrangements which took unjust advantage of a former spouse, the legislature enacted a reform in adopting § 46b-86 (b). Subsection (b) "is a separate and independent statutory basis for the modification of alimony" (Internal quotation marks omitted.) *Taylor v. Taylor*, 17 Conn. App. 291, 292–93, 551 A.2d 1285 (1989). It is a distinct statutory basis for such modifications from § 46b-86 (a), which authorizes modifications for other reasons. "Section 46b-86 (b) was enacted to correct the injustice of making a party pay alimony when his or her ex-spouse is living with a person of the opposite sex, without marrying, to prevent the loss of support." (Internal quotation marks omitted.) *Duhl v. Duhl*, 7 Conn. App. 92, 94, 507 A.2d 523, cert. denied, 200 Conn. 803, 509 A.2d 517 (1986), quoting *Connolly v. Connolly*, 191 Conn. 468, 473–74, 464 A.2d 837 (1983). It consists of two prongs. First, the divorced party receiving the alimony must have commenced living with another person, and, second, the former spouse's financial needs have been altered and decreased because of the cohabitation.

The plaintiff and Kane admitted cohabiting with one another and the court so found. The court found that they had ceased living together only because the defendant had filed a motion to terminate or to reduce alimony. In addition, the court found that the way the plaintiff and Kane had "orchestrated" their financial lives satisfied the second prong of § 46b-86 (b). So, the defendant's motion to terminate or to modify alimony under § 46b-86 (b) was well within the court's discretion and properly was granted. Although the court did not specify whether it was terminating or ordering a reduction of alimony, these were the court's only two alternatives when it granted the defendant's motion. This appeal is before us because after the defendant filed a § 46b-86 (b) motion because the plaintiff was living with another man and her financial needs had been altered,

the plaintiff filed a § 46b-86 (a) motion to increase her alimony because the defendant's income had increased. The court, after having granted the defendant's subsection (b) motion, nonetheless granted the plaintiff's motion to increase alimony based on this increase in the defendant's income.¹

This last action is inconsistent with the first. If a divorced former spouse is found to be living with another person and her needs are altered and diminished, but said former spouse can avoid a diminution or decrease in alimony simply by the expedient of making a motion to increase alimony because the former spouse is making more money than at the time of the dissolution, then the legislature's attempt in enacting § 46b-86 (b) to remedy the unjust taking advantage of a former spouse, would be of no force or effect. I therefore would conclude that the increase in alimony ordered pursuant to § 46b-86 (a) was an abuse of discretion under the facts that the court found and would reverse that judgment. The defendant ex-husband has suffered an injustice where, in order to avoid alimony termination, the plaintiff entered a relationship with another person without benefit of marriage, and then, after termination or modification should have occurred, he suffered an increase in alimony because his income had increased.

¹ In ruling on the plaintiff's motion, the court noted that it did not consider the plaintiff's increased health insurance costs in determining whether there had been a substantial change in financial circumstances because the parties had contemplated the plaintiff's medical needs in forming their separation agreement under which the defendant paid the plaintiff's COBRA costs for three years. The plaintiff's diagnosis of leukemia was known at the time of the dissolution.
