LAVINE, J., concurring in part and dissenting in part. I agree with the majority's resolution of the appeals in AC 30067, AC 30070, AC 30636 and AC 30636, as amended. I concur in the result of AC 30069, but on different grounds.

I respectfully disagree, however, that it was improper for the court to deny the motion, and the amended motion, to modify child support, health insurance and life insurance (motions to modify) filed by the plaintiff, Maria F. McKeon, and therefore I dissent in AC 30068.

The following detailed procedural history is relevant to AC 30068 and AC 30069. On December 31, 2007, following a ten day trial in which both parties were represented by counsel, the court issued a twenty-five page memorandum of decision dissolving the parties' marriage.[1] At the time of dissolution, two of the parties' three children were minors, and the court issued the following child support order.[2]

The defendant, William P. Lennon, "shall pay to [the plaintiff] $439 per week as child support for the two minor children. *Said support is in accordance with the . . . child support guidelines* [(guidelines)].[3]

"The parties shall share (50 [percent plaintiff] and 50 [percent defendant]) the cost for: [1] work-related after-school care and school transportation; and [2] extracurricular activities for the minor children, in excess of $150 per activity, which shall be agreed upon in writing or by [e-mail]; and [3] the parties shall continue to employ a child care assistant ([assistant]). The parties shall use the [assistant] for the same type of services as she has provided in the past. The [assistant] shall continue to work [thirty] hours per week plus 200 miles per week to provide flexibility for both parents to work, to be with another child, or because they are otherwise unavailable (i.e., medical reasons, counseling appointments, teacher meetings, school functions, etc.). The parties shall share the cost of her salary, employment taxes, [gasoline] at the [Internal Revenue Service] allowable mileage reimbursement, vacation pay, pension and any other costs associated with the [assistant's] employment [fifty-fifty]. The [plaintiff] shall be required to file all tax forms necessary to forward all employment taxes related to the [assistant's] employment. She shall provide a copy of all such filings to [the defendant] within five days of filing.

"*Private School*. The [parties] shall equally divide the tuition for their [older] son . . . at Loomis Chaffee School, for his upcoming [tenth, eleventh and twelfth] grade years, which tuition is currently $30,000 per year. The [parties] shall equally divide the tuition for their [younger] son . . . at Renbrook School, for his upcom-

ing [sixth, seventh and eighth] grade years, which tuition is currently $26,000 per year. When and if [the younger son] attends Loomis Chaffee School (or a similar private high school as agreed to by both parents), the parents shall equally pay the tuition.

"The cost of extracurricular activities and books, fees, sports equipment, calculators, any computers required for school, testing fees, school trips, field trips and bus transportation for private school over $150 shall be shared equally between the [parties] with the [plaintiff] paying for anything less than $150. This section shall be modifiable based on a substantial change of financial circumstances."[4] (Emphasis added.)

On January 18, 2008, the plaintiff filed a forty-one page motion for reconsideration and/or reargument (motion for reconsideration).[5] About five and one-half pages of the motion fall under the heading of "child support amount not in compliance with guidelines." The motion states that "[t]he award of $439 per week for the two minor children is not in accordance with the [guidelines] for the following reasons . . . ."[6]

The court denied the motion for reconsideration in a memorandum of decision dated March 27, 2008.[7] It noted that the "purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . A reconsideration implies reexamination and possibly a different decision by the [court] which initially decided it. . . . While a modification hearing entails the presentation of evidence of a substantial change in circumstances, a reconsideration hearing involves consideration of the trial evidence in light of outside factors such as new law, a miscalculation or a misapplication of the law." (Citations omitted; internal quotation marks omitted.) *Jaser* v. *Jaser*, 37 Conn. App. 194, 202–203, 655 A.2d 790 (1995). Reargument "may be used to address . . . claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple . . . ." (Citation omitted; internal quotation marks omitted.) *Opoku* v. *Grant*, 63 Conn. App. 686, 692–93, 778 A.2d 981 (2001).

The court found that, during trial, the plaintiff had submitted proposed orders, amended proposed orders, revised and amended proposed orders and final revised proposed orders. The defendant also submitted proposed orders. In issuing its orders, the court incorporated directly many of the proposed orders from each party. The court also found that much of the plaintiff's motion for reconsideration relied on facts that were not admitted into evidence or arguments that the court already had considered. The court found that it had neither misapplied any principle of law nor overlooked

any evidence.[8] It noted that a court reviewing a motion to reargue is not permitted to order postjudgment modification of a property distribution award. See General Statutes § 46b-81; *Magowan* v. *Magowan*, 73 Conn. App. 733, 742, 812 A.2d 30 (2002), cert. denied, 262 Conn. 934, 815 A.2d 134 (2003). After clarifying certain medical coverage issues, the court denied the plaintiff's motion for reconsideration. Neither party appealed from the judgment of dissolution or the denial of the motion for reconsideration.

On April 28, 2008, the plaintiff, an attorney by profession, representing herself, filed a motion to open, postjudgment (motion to open).[9] That motion states, in part, that the "[p]*laintiff attempted to have the items raised in this Motion to Open corrected through a Motion to Reargue.*" (Emphasis added.) The defendant filed an objection to the motion to open and requested attorney's fees if the court found the motion to open frivolous, duplicative and without merit.

The court ruled on the motion to open in a memorandum of decision filed June 10, 2008. The court found that, under the heading of "[m]ortgage and [m]ortgage [r]ate [l]eave [p]laintiff and [c]hildren [f]inancially [p]inned," the plaintiff was seeking to reargue a property distribution. The court, however, identified four financial issues that required an evidentiary hearing and ordered the parties to secure a trial date from the family case flow manager for a hearing on those four issues.[10] The court reserved judgment on the defendant's request for attorney's fees until the outstanding issues were resolved. See footnote 10 of this dissent.

*Before the court had ruled on the plaintiff's motion to open*, however, the self-represented plaintiff, on May 8, 2008, filed a motion entitled, "[m]otion to [m]odify [c]hild [s]upport, [h]ealth [i]nsurance and [l]ife [i]nsurance—[p]ostjudgment," which contained a laundry list of seven requests. Request number one stated that "the child support orders of $439 per week . . . be modified to provide an increased amount of child support as the current amount substantially deviates from the [guidelines] as provided in . . . General Statutes § 46b-86 (a) which states that a modification may be made 'upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a . . .' and that the awarded amount does not comply with the requirements of [General Statutes] § 46b-84 which states that 'upon dissolution, the parents of a minor child of the marriage, shall maintain the child according to their respective abilities,' and that the amount provided does not allow the children to maintain their lifestyle as provided in the [g]uidelines."[11] The plaintiff sought an increase in child support to $1700 per week and an order that the parties share equally all costs for their sons' educations at the Renbrook School and the

Loomis Chaffee School, recreational activities and transportation to and from school, and the assistant and the older son's motor vehicle. The plaintiff also asked the court to rescind its order regarding her life insurance obligation and to place certain conditions on the defendant's life insurance obligation.

The defendant objected to the plaintiff's motion for modification, arguing that the plaintiff could not prove a factual or legal basis for modification under § 46b-86, (file) as the motion for modification did not comply with Practice Book § 25-26 (e)[12] and merely contained a list of certain requests. Specifically, the defendant contended that the plaintiff did not claim that her motion for modification should be granted due to a substantial change of circumstances since the date of dissolution. As to the plaintiff's claim that the child support order substantially deviated from the guidelines, the defendant pointed out that, in its dissolution judgment, the court found that the child support order was in accord with the guidelines. Moreover, although the plaintiff raised the deviation claim in her motion for reconsideration, the court denied that portion of the motion. The plaintiff did not appeal from that denial. The defendant therefore asserted that the issue of deviation from the child support guidelines is res judicata. The defendant also pointed out that the plaintiff admitted that, with respect to five of the eight issues raised, she was seeking to reargue issues raised in her motion for reconsideration. The defendant requested attorney's fees to defend against the motion if the court found the motion frivolous, duplicative and without merit.

The parties appeared in court to argue the plaintiff's motion to modify on May 27, 2008, at which time the plaintiff filed an amended motion to modify child support, health insurance and life insurance. The court continued the matter to give the defendant an opportunity to respond to the plaintiff's amended motion. Again, the plaintiff claimed that the court's child support order deviated from the guidelines. She also claimed the following substantial change in circumstances: the cost of gasoline and heating oil had increased, the plaintiff's mortgage payment had increased by $88 per month, the defendant's income had increased since 2007 due to bonus, stock options and restricted stock, the housing market had decreased, thereby devaluing the plaintiff's home and the cost of the children's education had increased in excess of $10,000.

The defendant objected to the amended motion. The defendant noted that "each motion for modification shall state the specific factual and legal basis for the claimed modification and shall include the outstanding order and the date thereof to which the motion for modification is addressed. . . . Practice Book § 25-26 (e). Only the issues properly presented to the [c]ourt, pursuant to the requirements of . . . Practice Book

§ 25-26 (e), may be considered by the [c]ourt in its adjudication of a motion to modify a dissolution of marriage judgment. See *Gaffey* [v. *Gaffey*, 91 Conn. App. 801, 804 n.1, 882 A.2d 715, cert. denied, 276 Conn. 932, 890 A.2d 572 (2005)]." (Citations omitted; internal quotation marks omitted.) The defendant argued that the plaintiff could not demonstrate a substantial change since the court issued its dissolution orders and that the court's child support, health insurance and life insurance orders had to be contextualized in light of the total family support awards to the plaintiff and the parties' children, and the court's safe harbor provision.[13] See also footnote 2 of this dissent.

On June 10, 2008, the court issued a memorandum of decision denying the motions to modify. The court found that the plaintiff sought an increase in child support from $439 per week to $1700 per week. It also found that at the time of trial, the plaintiff submitted guideline worksheets requesting child support in the amount of $553 per week. Moreover, in its dissolution judgment, the court found that the plaintiff had an earning capacity of $100,000 per year, the defendant had an earning capacity of $225,000 per year and that the child support figure of $439 per week was appropriate and complied with the guidelines. Although the plaintiff claimed that the court's order of child support "substantively deviates" from the guidelines, the court made a specific finding in its dissolution judgment that the order, in fact, complied with the guidelines. The plaintiff failed to take an appeal from that judgment, and the court found the claim to be res judicata.

The court also noted the plaintiff's claim that there have been financial changes since the December 31, 2007 judgment but concluded that it was "hard-pressed to deem them to be substantial changes. The factual changes enumerated by the plaintiff include the price of gasoline, the cost of heating oil, a mortgage payment increase of $88 per month, the devaluation of the plaintiff's home due to the housing market and the rising cost of the children's education expenses." The court found that the factual changes identified by the plaintiff "are not substantial, and many of them affect the defendant equally." The court also found that the plaintiff's request to modify the allocation of the cost of their sons' educations at the Renbrook School and the Loomis Chaffee School, recreational activities and motor vehicle expenses and the cost of the assistant were considered at great length during the ten day trial and were addressed in the dissolution judgment. The court found that the plaintiff essentially was "attempting to reargue those very points by way of a motion to modify." The court concluded that the plaintiff had failed to demonstrate a substantial change in circumstances since the memorandum of decision in the dissolution judgment.

With respect to the plaintiff's request that the parties' older son be permitted to see his out of network counselor, the court found that the issue was argued at trial and raised again in the plaintiff's motion for reconsideration. The court quoted from its memorandum of decision on the motion for reconsideration and concluded that "inasmuch as this issue has already been ruled on twice, the motion to modify is denied." As to the plaintiff's request that the court rescind its order that she maintain $500,000 in life insurance and modify its order requiring the defendant to maintain $2 million in life insurance, the court noted that § 46b-86 governs modifications of dissolution judgments and requires a substantial change in circumstances. The court stated that "[a] careful reading of the plaintiff's motion to modify dated May 8, 2008, and plaintiff's [amendment] to [the] motion to modify dated May 27, 2008, reveals no such showing. The motions are essentially a list of requests for the court to change its mind regarding issues which it has carefully considered and reconsidered. See memorandum of decision regarding motion to reargue dated March 27, 2008. The motion to modify and the amendment to the motion to modify are denied." The court also found that the motions were filed without a good faith basis and that attorney's fees were warranted.

I

AC 30068

The plaintiff claims that it was improper for the court to deny her motions to modify child support without holding a hearing and to conclude that her claim related to the guidelines was res judicata. Under the circumstances of this case, I conclude that the court properly determined that the plaintiff's motions to modify "are essentially a list of requests for the court to change its mind regarding issues which it . . . carefully considered and reconsidered." On the basis of my plenary review of the record, I conclude that the court properly denied the motions to amend.

A

The plaintiff claims that the court improperly denied her motions to modify by failing to hold a hearing. The plaintiff's claim fails because the court denied the motions on the basis of their substance, not the title of the motions.

"The interpretation of pleadings is an issue of law. As such, our review of the court's decision in that regard is plenary." (Internal quotation marks omitted.) *Gaffey* v. *Gaffey*, supra, 91 Conn. App. 804 n.1; see also *Miller* v. *Egan*, 265 Conn. 301, 308, 828 A.2d 549 (2003). "In considering a motion [to modify] that involves only a question of law and not one of fact . . . a trial court is not obligated to conduct an evidentiary hearing." *Eckert* v. *Eckert*, 285 Conn. 687, 698, 941 A.2d 301 (2008)

(construction of stipulation). Here, the court denied the plaintiff's motions to modify on the basis of their substance, not the titles affixed thereto. Appellate review of the substance of the motions must be viewed through the lens of the trial court, not the limited claim on appeal.

Section 46b-86 "governs the modification . . . of [a] . . . support order after the date of a dissolution judgment." *Borkowski* v. *Borkowski*, 228 Conn. 729, 734, 638 A.2d 1060 (1994). "It is . . . well established that when a party, pursuant to § 46b-86, seeks a postjudgment modification of a dissolution decree . . . she must demonstrate that a substantial change in circumstances has arisen subsequent to the entry of [judgment]. . . . In general the same sorts of [criteria] are relevant in deciding whether the decree may be modified as are relevant in making the initial award of [support]. They have chiefly to do with the needs and financial resources of the parties." (Citations omitted; internal quotation marks omitted.) Id., 736. "The party seeking modification bears the burden of showing the existence of a substantial change in the circumstances. . . . When presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties. . . . Second, if the court finds a substantial change in the circumstances, it may properly consider the motion and, on the basis of the [General Statutes § 46b-82] criteria, make an order for modification." (Citation omitted; internal quotation marks omitted.) *Mundell* v. *Mundell*, 110 Conn. App. 466, 472–73, 955 A.2d 99 (2008). "Each motion for modification shall state the specific factual and legal basis for the claimed modification . . . ." Practice Book § 25-26 (e).

"The well settled standard of review in domestic relations cases is that this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Internal quotation marks omitted.) *Schade* v. *Schade*, 110 Conn. App. 57, 62, 954 A.2d 846, cert. denied, 289 Conn. 945, 959 A.2d 1009 (2008). "Moreover, 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." (Internal quotation marks omitted.) *Fitzsimons* v. *Fitzsimons*, 116 Conn. App. 449, 459, 975 A.2d 729 (2009).

In this case, the court determined that the plaintiff's motions for modification essentially were lists of requests for the "court to change its mind regarding issues which it has carefully considered and reconsid-

ered."[14] "Numerous cases provide support for the proposition that a motion is to be decided on the basis of the substance of the relief sought rather than on the form or the label affixed to the motion." *State* v. *Taylor*, 91 Conn. App. 788, 791–92, 882 A.2d 682 (motion to correct sentence sought relief in form of new presentence investigation), cert. denied, 276 Conn. 928, 889 A.2d 819 (2005); see also *Bauer* v. *Bauer*, 130 Conn. App. 185, 21 A.3d 964 (2011) (motion for clarification was motion for modification); *Tobet* v. *Tobet*, 119 Conn. App. 63, 65, 986 A.2d 329 (2010) (motion entitled motion for modification, in essence, motion for allocation of responsibility for daughter's education); *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 261 n.4, 865 A.2d 488 (motion for child support in essence motion for modification), cert. denied, 273 Conn. 916, 871 A.2d 372 (2005); *Jaser* v. *Jaser*, supra, 37 Conn. App. 202–203 (motion for reargument decided as motion for modification). It is the substance of a motion that governs its outcome, rather than how it is characterized in its title by the movant. *Ocwen Federal Bank, FSB* v. *Charles*, 95 Conn. App. 315, 320 n.7, 898 A.2d 197, cert. denied, 279 Conn. 909, 902 A.2d 1069 (2006).

The plaintiff's position on appeal is that because she invoked the words modification of child support, the court had no discretion to decide the motions to modify without first holding a hearing to determine whether there had been a substantial change in circumstances in the four months since the court dissolved the parties' marriage. In denying the motion for reconsideration, the court noted that it had tried the case on ten days over seven months. Clearly, the court had an opportunity to observe the parties and assess the factors significant to the dissolution, including the prospect that the defendant would do well in his career. See *Schade* v. *Schade*, supra, 110 Conn. App. 62. In denying the plaintiff's motion for reconsideration, the court found that it did not overlook any evidence or misapply the law.

Moreover, in denying the motions for modification, the court was well aware of the series of motions that the plaintiff had filed postjudgment, including a motion to open the judgment in which the plaintiff stated that she previously had tried to have some of the items raised therein "corrected" through a motion to reconsider. The plaintiff's admission that she filed the motion to open as a means to "correct" the dissolution judgment is contrary to the purpose of a motion for reargument and reconsideration. "[A] motion to reargue . . . is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." (Internal quotation marks omitted.) *Opoku* v. *Grant*, supra, 63 Conn. App. 692–93. Modifying the court's judgment on such an argument would constitute an impermissible modification. See *Dombrowski* v. *Noyes-Dombrowski*, 273 Conn. 127, 133, 869 A.2d 164

(2005).

Moreover, the plaintiff had raised questions regarding child support and insurance previously. The court found that it had considered those issues in the two earlier motions and had not misapplied the law. In its judgment, the court stated that its child support orders did not deviate from the guidelines and the plaintiff took no appeal from that determination, even after the court reaffirmed that determination in ruling on the motion for reconsideration. As to the allegations of financial changes, the plaintiff included the price of gasoline, the cost of heating oil, a mortgage payment increase of $88 per month and the devaluation of the plaintiff's home due to the depressed housing market and the rising cost of the children's education.[15] The court found that those changes did not constitute a substantial change and that most affected the parties equally.

Under the circumstances of this case, given the plaintiff's filing of numerous motions within approximately four months of the judgment of dissolution, I conclude that the interrelationship of the motions and the significant difference between the plaintiff's motion to modify and her amended motion required the court to determine the essence of the relief the plaintiff was seeking. I agree with the court that in filing a motion for modification, the plaintiff was looking for a procedural vehicle pursuant to which she could compel the court to change its judgment of dissolution. I find it highly significant that the plaintiff admitted in her motion to open that she was seeking another means to have the court alter its judgment. I conclude that the court correctly found, on the face of the motions to modify, that the facts articulated by the plaintiff failed to demonstrate that there was a substantial change of circumstances[16] and that the plaintiff merely was seeking to have the court change its carefully considered dissolution judgment. A review of the order page attached to the amended motion; see footnote 14 of this dissent; indicates that the plaintiff was not seeking relief in the form of modified child support pursuant to the guidelines, but absolute payment of a sum certain per week and one half of certain expenses related to the children's education and activities. The relief the plaintiff was seeking did not comply with the guidelines.

B

The plaintiff also claims that the court improperly concluded that her claim that the dissolution order regarding child support fell outside the guidelines was barred by the doctrine of res judicata. I disagree.

"The doctrine of res judicata, or claim preclusion, prevents a litigant from reasserting a claim that has already been decided on the merits. . . . Under claim preclusion analysis, a claim—that is, a cause of action—includes all rights of the plaintiff to remedies against

the defendant with respect to all of any part of the transaction, or series of connected transactions, out of which the action arose. . . . Moreover, claim preclusion prevents the pursuit of any claims relating to the cause of action which were actually made or might have been made. . . . The doctrine of res judicata [applies] . . . as to the parties and their privies in all other action in the same or any other judicial tribunal of concurrent jurisdiction . . . and promotes judicial economy by preventing relitigation of issues or claims previously resolved." (Citations omitted; internal quotation marks omitted.) *DiPietro* v. *Farmington Sports Arena, LLC*, 123 Conn. App. 583, 590, 2 A.3d 963, cert. granted on other grounds, 299 Conn. 920, 10 A.3d 1053 (2010).

The doctrine of res judicata is applicable to dissolution actions. *Borkowski* v. *Borkowski*, supra, 228 Conn. 738. "This policy of avoiding duplicitous litigation is particularly important in the context of family law where courts should welcome the opportunity to ease the burden of post-divorce litigation over enforcement or modification of alimony claims . . . and attempt to foster amicable dissolution and certainty." (Citation omitted; internal quotation marks omitted.) Id., 738–39.

To briefly restate the procedural history relevant to the plaintiff's claim, in its judgment of dissolution the court awarded the plaintiff $439 per week as child support and found that the amount of support was in accord with the guidelines. In her motion for reconsideration, the plaintiff appropriately cited *Wasson* v. *Wasson*, 91 Conn. App. 149, 161, 881 A.2d 356, cert. denied, 276 Conn. 932, 890 A.2d 574 (2005), noting that "a reconsideration hearing involves consideration of the trial evidence in light of outside factors such as new law, a miscalculation or a misapplication of the law." (Internal quotation marks omitted.) The plaintiff contended that the award of $439 per week for the two minor children was not in accord with the guidelines because the guidelines provide for a maximum net income of $4000 per week. The parties' combined net weekly income is $4370, which exceeds the guidelines. The plaintiff complained that the child support award provided less than $23,000 a year for two children. The court denied the motion for reconsideration, and the plaintiff did not appeal. In her motion to modify, the plaintiff requested "that the child support orders of $439 per week ($22,828 per year) be modified to provide an increased amount of child support as the current amount substantially deviates" from the guidelines established pursuant to General Statutes § 46b-215a. In her amended motion to modify, the plaintiff focused her arguments on a substantial change of circumstances under § 46b-86 (a), not § 46b-215a-2 (b) of the Regulations of Connecticut State Agencies relating to a substantial deviation from the guidelines.

The defendant objected to the motions to modify on the basis of a deviation from the guidelines, claiming that the issue was res judicata and that the plaintiff had failed to take an appeal. The court denied the plaintiff's motions to modify regarding the claim that the child support award deviated from the guidelines pursuant to the doctrine of res judicata.[17] After reviewing the record, I conclude that the court properly denied the motions to modify on the basis of the plaintiff's guidelines claim. The parties submitted guideline calculations at trial, and the court made an award that it concluded complied with the guidelines. The court denied the plaintiff's motion to reconsider, which included a deviation claim, and the plaintiff did not appeal. The issue of whether the court's child support order complies with the guidelines therefore was litigated.

On appeal, the plaintiff relies on *Levine* v. *Levine*, 88 Conn. App. 795, 871 A.2d 1034 (2005), to support her claim. *Levine*, however, is distinguishable in that the relevant facts in *Levine* are prospective and the facts here are retrospective. *Levine* concerns an alimony provision in a dissolution agreement, to wit: "Ten years from the date hereof, unless sooner terminated, alimony shall be reduced to [$1] per year, modifiable upwards only in the event of the Wife's medical disability which prevents the Wife from gainful employment . . . ." (Internal quotation marks omitted.) Id., 803. Several months prior to the end of the ten year period, the wife filed a motion for modification claiming that she was unable to work. The motion was denied.[18] Subsequent to the tenth anniversary, the wife filed another motion for modification in which she made the same claim. The trial court hearing the second motion denied it, ruling that the issue had been decided when the ruling on the earlier motion for modification was denied. Id., 803–804. This court reversed the judgment of the trial court denying the second motion for modification, reasoning that the question of the wife's health and employability could not have been determined prior to the passing of ten years. The question had to be decided on the basis of the facts known about the wife's health after ten years, which was unknowable previously. Id., 804.

In this case, the plaintiff claimed in her motion for reconsideration and in her motions to modify that the child support awarded by the court at the time of dissolution deviated from the guidelines. In dissolving the marriage, the court concluded that the child support award complied with the guidelines. The court considered the guidelines worksheet submitted by the parties and rendered its award. The matter was litigated, and the plaintiff may not revisit the court's initial child support award except by means of a timely appeal.[19] The court therefore properly determined that the issue as

to whether its child support award deviated from the guidelines is res judicata.

For the foregoing reasons, I conclude that the court properly denied the plaintiff's motions to modify and would affirm the judgment in AC 30068.

II

AC 30069

The plaintiff claims that the court improperly awarded the defendant attorney's fees to defend against the motions to amend child support, health insurance and life insurance. I agree.

The following procedural history is relevant to the resolution of the plaintiff's claim. In his objection to the plaintiff's motion to modify, which was filed on May 23, 2008, the defendant asked the court to award him attorney's fees and costs to defend against the plaintiff's motion if the court found that the motion is frivolous, duplicative and without merit. The defendant, however, cited no legal basis for such an award. In his objection to the plaintiff's amended motion to modify, the defendant requested attorney's fees pursuant to *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007) (en banc).

In its memorandum of decision regarding the motions to modify, the court found "that the motions to modify were filed without a good faith basis and that the assessment of attorney's fees is warranted. Counsel for the defendant shall file an affidavit detailing the fees expended regarding these two motions only." On June 30, 2008, the defendant submitted a revised affidavit of attorney's fees in the amount of $12,977.50 and costs of $17.69. On July 2, 2008, the court awarded the defendant counsel fees in the amount of $6497.60 without explanation.[20]

As the majority notes, the parties disagree as to the standard of review applicable to the plaintiff's claim. This disagreement stems in part from the court's failure to cite the legal basis for awarding the defendant attorney's fees. The majority concludes that the clearly erroneous standard is applicable because the court found that the motions to modify were filed without a "good faith basis," and, therefore, *Maris* v. *McGrath*, 269 Conn. 834, 844, 850 A.2d 133 (2004) ("opposing party has acted in bad faith"), applies. The defendant argues that in this marital dissolution action, the abuse of discretion standard of *Ramin* v. *Ramin*, supra, 281 Conn. 351, applies. I agree with the defendant on the basis of the public policy rationale for awarding attorney's fees in dissolution actions as articulated in *Ramin*. The rule applicable to the issue controls the standard of review, not the language used by the court in its memorandum of decision.

"The so-called 'American rule' for the award of attorney's fees to the prevailing party bars such an award

'except as provided by statute or in certain defined exceptional circumstances . . . .'" *Maris* v. *McGrath*, supra, 269 Conn. 835. "General Statutes § 46b-62 governs the award of attorney's fees in dissolution actions and provides that the court may order either spouse . . . to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in [General Statutes §] 46b-82." (Internal quotation marks omitted.) *Ramin* v. *Ramin*, supra, 281 Conn. 351. In *Maguire* v. *Maguire*, 222 Conn. 32, 44, 608 A.2d 79 (1992), our Supreme Court articulated "the general rule . . . that an award of attorney's fees in a marital dissolution case is warranted only when at least one of two circumstances is present: (1) one party does not have ample liquid assets to pay for attorney's fees; or (2) the failure to award attorney's fees will undermine the court's other financial orders." *Ramin* v. *Ramin*, supra, 352.

"Under *Maguire*, in a case . . . in which an innocent party has incurred substantial attorney's fees as a result of the other party's litigation misconduct, the innocent party must nevertheless bear the full brunt of her attorney's fees, as long as the innocent party has ample liquid funds to pay her attorneys, and as long as the lack of an award of attorney's fees would not undermine the court's other financial orders. This result would follow regardless of the seriousness, duration and pervasiveness of the other party's litigation misconduct, regardless of how high the resultant cost to the innocent party, and regardless of any advantage the wrongdoer may have secured through his litigation misconduct, such as, for example, the successful concealment of a portion of his assets."[21] Id., 352–53. *Ramin* therefore established an exception to the statutory limitation on the award of attorney's fees under § 46b-62. That exception grants the court "discretion to award attorney's fees to a party who incurs those fees largely due to the other party's *egregious* litigation misconduct . . . ." (Emphasis added.) Id., 353.

Although one could characterize the motions to amend filed by the plaintiff as frivolous, especially her claim that the court's child support award deviated from the guidelines, I cannot conclude that her litigation misconduct was egregious, and the court made no such finding. For those reasons, I concur in the majority opinion in AC 30069.

[1] In its memorandum of decision, the court made the following findings of fact, among others. During the course of the marriage, the defendant, William P. Lennon, was the primary wage earner, and, at the time of the dissolution judgment, was earning substantial wages and generous benefits, including a base salary of $225,420, annual bonus, stock options, restricted stock awards and a pension. It is likely that he will continue to grow with Electric Boat, receive further promotions and become one of the top ten employees in upper management. He was promoted to vice president during the pendency of the dissolution trial.

During the course of the marriage, the plaintiff was employed full-time as a corporate attorney, sometimes earning in excess of the defendant's salary. They agreed that she would be the primary caregiver of their three

children, and she worked part-time, sacrificing her career aspirations for the benefit of the family and in recognition of the defendant's career potential. She is highly skilled and capable. At the time of the dissolution, she worked as a freelance corporate attorney at $200 per hour and has the benefit of full-time child care at a $30,000 salary together with hired assistance for housecleaning and home maintenance. From mid-July, 2007, to mid-December, 2007, she earned $78,500, gross, while recovering from a fractured pelvis and devoting many days and hours to the dissolution litigation.

The court also found that the parties spend more than they earn on a lavish lifestyle, which includes three residences, three private school tuitions, a horse and horse shows, boats, vacations, travel and legal fees exceeding $300,000. This has been aggravated by the plaintiff's earning little in 2005, 2006 and the first half of 2007.

The plaintiff suspected the defendant of infidelity, but she failed to prove that suspicion by a fair preponderance of the evidence. The court found the cause of the dissolution is more the plaintiff's fault than the defendant's.

[2] In its memorandum of decision, the court made findings and issued orders addressing the parties' real estate, retirement assets, nonretirement assets, parenting plan, child support, alimony, education, tax exemptions, information and returns, medical and dental insurance and expenses and life insurance.

[3] Our Supreme Court has concluded that our statutes and guidelines relating to child support require that all child support awards be made in accordance with the principles established in the child support guidelines. See *Maturo* v. *Maturo*, 296 Conn. 80, 94–95, 995 A.2d 1 (2010).

"The court also concluded that [a]lthough the guidelines grant courts discretion to make awards on a case-by-case basis above the amount prescribed for a family at the upper limit of the schedule [of basic child support obligations (schedule) set forth in § 46b-215a-2b [f] of the Regulations of Connecticut State Agencies] when the combined *net weekly income of the parents exceeds that limit, which is presently $4000* . . . the guidelines also indicate that such awards should follow the principle expressly acknowledged in the preamble and reflected in the schedule that the child support obligations as a percentage of the combined net weekly income should decline as the income level rises." (Emphasis added; internal quotation marks omitted.) *Misthopoulos* v. *Misthopoulos*, 297 Conn. 358, 367–68, 999 A.2d 721 (2010).

[4] The record also contains an agreement of the parties, which is dated December 18, 2007, and states: "The [parties] shall equally share up to $36,000 (each parent $18,000) of the college education expenses for each child for each year of college. Said expenses shall be those expenses as defined by . . . General Statutes § 46b-56c.

"Notwithstanding the foregoing, and for [their daughter] only, the [defendant] shall receive a credit towards his share each year for the amount of $3,500, which [daughter] will pay for through student loans. This provision is in accord with the [parties'] agreement regarding the allocation of expenses for [daughter's] horse. ([S]ee schedule A attached hereto.)

"Except for exceeding the 'UCONN' cap, all other provisions of the statute shall apply, including § 46b-56c (h) regarding modifiability."

[5] In addition to seeking reconsideration of the court's child support order, the plaintiff sought reconsideration of the court's orders pertaining to the defendant's pension (preretirement survivor annuity, cost of living adjustments, early retirement subsidies or other increases provided by the plan); the defendant's 401 (k) plan (gains and losses, distribution of pension assets as inequitable); the children's medical coverage, life insurance requirements, valuation of assets, assignment of tax issues as violative of the pendente lite orders, allowing the defendant to hold $160,000 for three years and creating a significant financial hardship for the plaintiff and depriving her of needed cash; and a pendente lite motion for reimbursement that was not heard.

Under the heading "[a]llowing [the defendant] to hold $160,000 for [three] years creates a significant financial hardship to [the plaintiff] and deprives her of needed cash," the plaintiff stated: The defendant "makes over $600,000 per year and has more than enough cash to pay [the plaintiff] her asset. *He will receive more than $100,000 after tax cash by March 31, 2008, without considering his salary of $225,000.*" (Emphasis added.)

[6] The plaintiff listed the following bullet points in her motion as reasons the court's order of child support was not in compliance with the guidelines: "[n]et incomes of [p]arties exceeds the maximum under the [g]uidelines," "[s]upport calculations do not include [the defendant's] 'perks'," "[s]upport calculations do not include [the plaintiff's] business deductions for self-employment," "[c]osts assigned to [the plaintiff] under orders exceed child

support awarded," "[s]chool costs that do not exceed $150," "[c]ar expenses for [the two older children]" and "[m]ileage for [assistant]."

[7] In its March 27, 2008 memorandum of decision, the court also stated: "[A] motion to reargue should be granted if the parties bring to the court's attention some important precedent that is contrary to the ruling of the court if the court's ruling is based on erroneous facts and should not be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument." (Internal quotation marks omitted.)

[8] The court rejected the plaintiff's argument that it failed to adopt the opinions of her expert, Arthur Assantes, as the court may exercise its discretion regarding the opinions of expert witnesses. See *Evans* v. *Taylor*, 67 Conn. App. 108, 113, 786 A.2d 525 (2001).

[9] The plaintiff identified eight issues in her motion to open: "Judgment orders Support for Child Over Age of Majority," "Failure to disclose assets is fraud," "Failure to award the pre-retirement survivor annuity will deny Plaintiff her entire General Dynamics pension if Defendant dies prior to retirement," "COLAs, Pre-Retirement Survivor Annuity, COLA and other increases," "Gains and Losses on Pensions," "Mortgage and Mortgage Rate Leave Plaintiff and Children Financially Pinned," "Use of Beach House Not in Best Interest of Children," and "Tax Reporting Prohibited by IRS."

[10] The court stated, in part, that the "plaintiff's claims number four (postretirement survivor annuity benefits), five (cost of living allowances), number six (gains and losses on pension) and number nine (tax reporting for [assistant]) raise serious issues, which, in the interests of justice and equity, justify further consideration. If in fact, as the plaintiff argues, the memorandum of decision should be clarified so that the plaintiff can receive benefits which will cost the defendant nothing, it should be considered. Those claims raise factual issues, which must be addressed at an evidentiary hearing. For that reason, the parties are ordered to secure a trial date from the family case flow office for an evidentiary hearing on those four issues only."

[11] The plaintiff also moved "the [c]ourt to modify its orders dated December 31, 2007 as follows:

"2. . . . orders relating to the costs for education be modified and/or clarified to provide for equitable support by both parents.

"3. . . . orders relating to the costs for the children be modified and/or clarified to provide for equitable support by both parents.

"4. . . . orders relating to the costs for childcare be modified and/or clarified to provide for equitable support by both parents.

"5. . . . [orders] that the [parties' older] son . . . be allowed to continue to see his out of network counselor.

"6. . . . the life insurance obligation imposed by the [c]ourt be modified to eliminate the requirement that [the] [p]laintiff obtain life insurance for $500,000 for the following reasons:

"a. It is excessive in light of [the] [p]laintiff's child support obligations;

"b. The cost of life insurance is unduly burdensome upon [the] [p]laintiff;

"c. Upon her death, [the] [d]efendant's alimony obligations will cease which amount far exceeds [the] [p]laintiff's child support obligations, thus negating the need for life insurance; and

"d. Providing $500,000 of life insurance will provide a windfall to [the] [d]efendant in the event of [the] [p]laintiff's death, which is contrary to the purpose of the statute allowing for life insurance to be awarded.

"7. . . . the life insurance obligation on [the] [d]efendant be clarified to specify that [the] [p]laintiff is the beneficiary of the life insurance proceeds as long as there is an obligation to pay alimony, and that if there is no alimony obligation, that the [p]laintiff shall be the [t]rustee of the life insurance for the benefit of the children."

[12] Practice Book § 25-26 (e) provides: "Each motion for modification shall state the specific factual and legal basis for the claimed modification and shall include the outstanding order and date thereof to which the motion for modification is addressed." The plaintiff's amended motion fails to include the outstanding order.

[13] The court awarded the plaintiff $900 a week as alimony for a period of fourteen years, nonmodifiable only as to term. The alimony orders were based on the defendant's annual base salary of $225,000 and the plaintiff's earning capacity of $100,000 for 2007-2008. The plaintiff was granted a " 'safe harbor' " to earn up to $195,000, and the defendant was to have $250,000 without it being deemed a substantial change in circumstances. As additional alimony, the plaintiff was to receive 50 percent of the defendant's gross annual bonus for the years 2008, 2009 and 2010. Thereafter, as additional

alimony, the plaintiff was to receive 40 percent of the defendant's gross annual bonus for the years 2011, 2012 and 2013. Thereafter, as additional alimony, the plaintiff was to receive 30 percent of the defendant's gross annual bonus for the years 2014 through 2021.

[14] The order page attached to the plaintiff's amended motion contains seven enumerated items to be granted or denied: "1. The Child Support be increased to $1700 per week effective as of the date the Motion to Modify was filed. . . . 2. That all costs for the children's education at Renbrook and Loomis be shared equally. . . . 3. That all costs for the children's recreational activities, and for [the older son's] car, gas, repairs, etc. be shared equally. . . . 4. That all costs for driving the children to and from their schools be shared equally and that all costs for the [assistant] be shared equally. . . . 5. That the life insurance obligation on the Plaintiff is eliminated. . . . 6. That the Plaintiff shall be the beneficiary of the Defendant's life insurance for so long as there is an alimony obligation, and that if there is no longer an alimony obligation, that the three children shall be the beneficiaries with the Plaintiff as the Trustee on their behalf. . . . 7. That the Plaintiff shall receive attorneys fees in the amount of $ ."

[15] The plaintiff also claimed that the defendant received a substantial increase over his 2007 income. The plaintiff previously raised that issue in her motion to open. See footnote 5 of this dissent.

[16] General Statutes § 46b-86 (a) provides in relevant part: "There shall be a rebuttable presumption that any deviation of less than fifteen per cent from the child support guidelines is not substantial and any deviation of fifteen per cent or more from the guidelines is substantial. . . ." See footnote 3 of this dissent regarding the application of the guidelines to weekly income that exceeds $4000.

[17] In its memorandum of decision on the motions to modify, the court stated: "The plaintiff seeks to have the child support of $439 per week be increased to $1700 per week. It should be noted that at trial, the plaintiff submitted a child support guidelines worksheet which requested child support in the amount of $553 per week. The court found, based on the [plaintiff's] earning capacity of $100,000 per year and the [defendant's] earnings of $225,000 per year that [the] child support figure of $439 per week was appropriate and complied with the child support guidelines. While the plaintiff argues that the child support order 'substantially deviates from the . . . guidelines,' the court made a specific finding that it in fact did comply. There was no appeal from that finding or order, and, thus, the plaintiff is barred by the doctrine of res judicata to further argue that particular point."

[18] The reason for the denial is not known, but counsel represented that the motion was premature, as the tenth year had not been completed. *Levine* v. *Levine*, supra, 88 Conn. App. 803.

[19] This is not to say that in the future, if there is a substantial change in the financial circumstances of the parties, the court could not modify its child support order. Such a modification would be granted, however, on the basis of a substantial change of financial circumstances, not on the ground that the initial award deviated from the guidelines.

[20] The court later articulated its decision with regard to its award of attorney's fees. The court set forth the motions filed by the plaintiff and the defendant's response thereto. The plaintiff objected to the award of attorney's fees but never requested a hearing on the issue of attorney's fees or contemporaneous timesheets in support of the defendant's request for attorney's fees. The plaintiff claimed that the requested attorney's fees were "gouging" and she asked to see the time records of opposing counsel for services unrelated to the subject motions. The court noted that three lawyers from the law firm representing the defendant had appearances in the file. Two of the lawyers were in court during the pendency of the matter, one of the less experienced lawyers in the role of second chair. The court considered all of the factors identified in *Ernst* v. *Deere & Co.*, 92 Conn. App. 572, 576, 886 A.2d 845 (2005), and was particularly impressed with "the skill requisite to perform the legal service properly" and "the experience, reputation and ability of the attorneys." The court awarded the defendant 50 percent of his requested fees.

[21] In *Ramin*, the defendant husband failed or refused over a number of years to comply with his wife's discovery requests, was deceitful and exhibited distain for the judicial process. *Ramin* v. *Ramin*, supra, 281 Conn. 355–56.