JUDITH DESHPANDE *v.* ANIRUDDHA DESHPANDE
(AC 33366)

DiPentima, C. J., and Alvord and Bishop, Js.

Argued December 10, 2012—officially released May 7, 2013

(Appeal from Superior Court, judicial district of New Haven, Gould, J.)

William F. Gallagher, for the appellant (defendant).

William H. Cashman, for the appellee (plaintiff).

Opinion

DiPENTIMA, C. J. The defendant, Aniruddha Deshpande, appeals from the judgment of the trial court rendered in connection with the underlying dissolution action in which the court entered an order for child support[1] and from the judgment of the trial court denying his motions for modification of the child support order. The defendant claims that the court (1) improperly entered a child support order without finding the presumptive amount of child support due under the child support and arrearage guidelines[2] or explaining the reasons for any deviation from the presumptive amount, as required by General Statutes § 46b-215b (a); (2) improperly refused to allow him to introduce evidence pertaining to the financial circumstances of the plaintiff, Judith Deshpande, in order to establish grounds for a modification of the child support order; (3) improperly refused to allow him to present evidence regarding certain factors[3] supporting a deviation from the presumptive child support amount under the guidelines; and (4) erroneously stated in its memorandum of decision that a hearing was held to address his two motions for modification. We agree with the defendant's first claim and, accordingly, reverse the judgment of the court.[4]

The following undisputed facts and procedural history are relevant to our resolution of this appeal. The parties married on September 6, 1991. They have three children, all of whom had yet to reach the age of twenty-three at the time of the court's judgment. The plaintiff filed a marital dissolution complaint on November 24, 2009. On May 13, 2010, the parties filed an agreement in which the defendant agreed to pay to the plaintiff $322 per week in child support. The court, *Markle*, *J.*, approved the agreement and made it an order of the court. On November 4, 2010, the parties filed an agreement modifying the May 13, 2010 agreement. The defendant again agreed to pay to the plaintiff $322 per week in child support. The court, *Abery-Wetstone*, *J.*, approved the modified agreement and made it an order of the court. In approving each agreement, the court did not make any finding regarding the presumptive amount of child support due under the child support guidelines nor did it make a finding regarding any deviation from the guidelines.[5] The defendant did not appeal from the court's November 4, 2010 order.

On January 10, 2011, the defendant filed a motion to modify the court's November 4, 2010 order. In the motion, the defendant requested that the court decrease the amount of child support to be paid. On January 27, 2011, the court, *Hon. James Kenefick*, *Jr.*, judge trial referee, ordered the defendant's motion for modification to be addressed at the final hearing on the divorce. That trial was held on February 7 and 8, 2011. At trial, the court, *Gould*, *J.*, denied the defendant's January 10,

2011 motion for modification. In rendering its judgment of dissolution, the court ordered the defendant to continue paying $322 per week in child support. Neither at trial nor in its judgment of dissolution did the court make any finding regarding the presumptive amount of child support due under the statutory child support guidelines nor did it make a finding regarding a deviation from the guidelines.

On February 14, 2011, the defendant filed a second motion to modify the court's child support order. A hearing on the motion was held on March 24, 2011. At the conclusion of the hearing, the court, *Gould*, *J.*, denied the defendant's motion. On March 29, 2011, the defendant filed a motion for reargument and reconsideration of the court's denial of his motion for modification, which the court denied on March 31, 2011. On April 15, 2011, the defendant appealed from the March 24, 2011 judgment of the court denying his February 14, 2011 motion to modify the court's child support order and from the February 8, 2011 judgment of dissolution with respect to the order of child support and the denial of his first motion for modification.[6]

The defendant claims that the court erred by entering a child support order without making an initial finding that specified the presumptive amount of his child support obligation under the statutory child support guidelines as mandated by General Statutes § 46b-215b (a). Further, the defendant claims that, to the extent that the court's child support order deviated from the presumptive amount, the court failed to make any findings explaining the reasons for its deviation.[7] We agree.

We first set forth the standard of review and applicable law governing the defendant's claim. "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. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Notwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling . . . may be reversed if, in the exercise of its discretion, the trial court applies the wrong standard of law." (Citations omitted; internal quotation marks omitted.) *Maturo* v. *Maturo*, 296 Conn. 80, 87–88, 995 A.2d 1 (2010).

Section 46b-215b (a) provides: "The child support and arrearage guidelines issued pursuant to section 46b-215a, adopted as regulations pursuant to section 46b-215c, and in effect on the date of the support determination *shall* be considered in *all* determinations of child support award amounts, including any current support, health care coverage, child care contribution and past-due support amounts, and payment on arrearages and

past-due support within the state. In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. A specific finding on the record that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under the deviation criteria established by the Commission for Child Support Guidelines under section 46b-215a,[8] *shall be required* in order to rebut the presumption in such case." (Emphasis added.)

"The guidelines incorporate these statutory rules and contain a schedule for calculating the basic child support obligation, which is based on the number of children in the family and the combined net weekly income of the parents. . . . Consistent with . . . § 46b-215b (a), the guidelines provide that the support amounts calculated thereunder are the correct amounts to be ordered by the court unless rebutted by a specific finding on the record that the presumptive support amount would be inequitable or inappropriate. . . . The finding *must* include a statement of the presumptive support amount and explain how application of the deviation criteria justifies the variance. . . . [Our Supreme Court] has stated that the reason why a trial court must make an on-the-record finding of the presumptive support amount before applying the deviation criteria is to facilitate appellate review in those cases in which the trial court finds that a deviation is justified. . . . In other words, the finding will enable an appellate court to compare the ultimate order with the guideline amount and make a more informed decision on a claim that the amount of the deviation, rather than the fact of a deviation, constituted an abuse of discretion." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Kiniry* v. *Kiniry*, 299 Conn. 308, 319–20, 9 A.3d 708 (2010); *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 550, 53 A.3d 1039 (2012).

Section 46b-215a-3 (a) of the Regulations of Connecticut State Agencies provides in relevant part: "An agreement of the parties may be sufficient to rebut the presumption when such finding cites one or more deviation criteria, which may include other equitable factors, to support such agreement. Any such finding shall state the amount that would have been required under such sections and include a factual finding to justify the variance. Only the deviation criteria stated in the lettered subparagraphs of subdivisions (1) to (6), inclusive, of subsection (b) of this section, and indicated by the check boxes in section VII of the worksheet, shall establish sufficient bases for such findings." In *Tuckman* v. *Tuckman*, 308 Conn. 194, 61 A.3d 449 (2013), our Supreme Court recently stated that "the applicable statutes, as well as the guidelines, provide that *all child support awards* must be made in accordance with the principles established therein to ensure

that such awards promote equity, uniformity and consistency for children at all income levels.'' (Emphasis altered; internal quotation marks omitted.) Id., 206.

It is evident from our thorough review of the record that the court failed to make any findings regarding the presumptive amount of child support under the guidelines or regarding a deviation from that amount. Although the May 13, 2010 and November 4, 2010 agreements by the parties—both of which were approved by the court and incorporated into its orders—specified a child support amount of $322 per week, neither agreement stated the presumptive amount of support that should have been calculated in accordance with the child support guidelines. As previously noted, an agreement of the parties may be sufficient to rebut the presumption that the support amount calculated under the guidelines is the correct amount; however, the court must still make such a finding, cite one or more deviation criteria to support the agreement, state the amount that would have been required under such sections and make a factual finding to justify the variance. Regs., Conn. State Agencies § 46b-215a-3. Here, the court made no such findings.

At no time during the trial on February 7 and 8, 2011 did the court state the presumptive amount of support due under the guidelines or make any reference whatsoever to the guidelines. Instead, the court stated only that the $322 per week in child support on which the parties previously agreed would continue. Similarly, the court failed to make any reference to the presumptive amount in its February 8, 2011 judgment containing its final order requiring the defendant to continue to pay $322 in child support.[9] Because the court failed to specify the presumptive amount or make any findings regarding a deviation from that amount, we can only speculate as to the amount, whether the court's child support order deviated from that amount and, to the extent that there was a deviation, whether the circumstances of this case justified a variance from the presumptive amount based on the court's application of the deviation criteria. Therefore, we conclude that the court abused its discretion by rendering a child support order without first articulating the presumptive amount due under the child support guidelines or explaining any deviation from that amount.

The judgment is reversed only with respect to the order of child support and the case is remanded for further proceedings consistent with this opinion.

In this opinion BISHOP, J. concurred.

[1] The defendant challenges the court's judgment only with respect to its child support order. The defendant does not challenge the court's judgment dissolving the marriage.

[2] The guidelines are set forth in § 46b-215a-1 et seq. of the Regulations of Connecticut State Agencies.

[3] Specifically, the defendant claims that the court refused to allow him to present evidence regarding recurring contributions or gifts from the plaintiff's domestic partner and his claim of extraordinary parental expenses

for healthcare.

[4] Because we reverse the court's February 8, 2011 judgment with respect to its child support order, we do not reach the defendant's other three claims, which concern the court's denial of his motions for modification of that order.

[5] With respect to the May 13, 2010 agreement, there was no space designated for the court, *Markle, J.*, to specify the presumptive amount of support and the court did not refer to the presumptive amount anywhere on the form. On the form that the court, *Abery-Wetstone, J.*, signed approving the parties' November 4, 2010 agreement, no responses were provided in the spaces that asked for the presumptive amount under the guidelines, for the reason(s) explaining any deviation from the presumptive amount, and whether the child support provisions of the agreement complied with the child support guidelines. The court did not make any additions to the form that referred to the presumptive amount. In addition, we note that, although there are two child support guideline worksheets in the record, the court made no reference to the worksheets or their contents in its findings.

[6] Although the defendant did not timely appeal from the court's February 8, 2011 judgment or the court's judgment denying his first motion for modification, the plaintiff did not move to dismiss as untimely any portion of the defendant's appeal.

[7] The plaintiff does not dispute the applicability of the child support guidelines in this case or that it is a mandatory requirement for the court to make a finding regarding the presumptive amount of support due under the guidelines. The plaintiff's sole response to the defendant's first claim is that the defendant's appeal of the court's November 4, 2010 and February 8, 2011 orders was not timely. As noted in footnote 6 of this opinion, the plaintiff did not raise this claim in a motion to dismiss within ten days of the filing of the defendant's appeal, as required by Practice Book § 66-8. Because she failed to file a motion to dismiss within ten days of the filing of the defendant's appeal, the plaintiff waived her right to seek a dismissal of the defendant's appeal as untimely. See *Rubenstein* v. *Rubenstein*, 107 Conn. App. 488, 499, 945 A.2d 1043, cert. denied, 289 Conn. 948, 960 A.2d 1037 (2008). Further, we note that "the failure to take an appeal within the proper time is not a jurisdictional defect, but merely renders an appeal voidable." *State* v. *Johnson*, 301 Conn. 630, 641 n.11, 26 A.3d 59 (2011).

We also note that, in her "statement of the proceedings," the plaintiff appears to contradict her claim that a presumptive finding is mandatory by stating that the "court did not need to make any findings relative to the presumptive amount of child support under the guidelines." The plaintiff has cited no authority for this proposition and, for the reasons set forth in this opinion, we reject any suggestion that the court was not required to make a finding regarding the presumptive amount of child support.

[8] The deviation criteria are set forth in § 46b-215a-3 of the Regulations of Connecticut State Agencies.

[9] Even if the court had made findings regarding the presumptive support amount and any deviation therefrom prior to the judgment of dissolution, the court was obligated to make an independent, on-the-record determination of the presumptive support amount in its *final* orders contained in the judgment of dissolution. See *Kiniry* v. *Kiniry*, supra, 299 Conn. 321–22.