ALVORD, J., dissenting. I do not disagree with the majority's legal analysis with respect to a trial court's obligation to make a factual finding regarding the presumptive amount of child support due under the child support and arrearage guidelines prior to entering a child support order. I respectfully dissent, however, because I believe this court should not reach the merits of a collateral attack on a dissolution judgment that was not timely appealed. For that reason, I would affirm the judgment of the trial court.

With respect to the majority's statement of the facts, I would emphasize the fact that the plaintiff, Judith Deshpande, and the defendant, Aniruddha Deshpande, agreed on a specified weekly amount for child support, based on their earning capacities, on November 4, 2010.[1] The agreement of the parties was reached with the assistance of the family relations office and was signed by the plaintiff, the defendant and their respective attorneys. The court, *Abery-Wetstone*, *J.*, did not make a finding of the presumptive amount for child support or indicate whether there were any deviation criteria when it accepted the parties' agreement and made it an order of the court.

Subsequently, after a two day trial, a judgment of dissolution was rendered by the court, *Gould*, *J.*, on February 8, 2011. At that time, the court ordered the defendant to continue paying the amount of child support that had been agreed upon by the parties, and made an order of the court, as requested by the parties, in November, 2010. The defendant represented himself at the dissolution trial and now was dissatisfied with that amount.[2] He requested that the court decrease his child support obligation. The court told him that either party could file a postjudgment motion for modification. When rendering the dissolution judgment, the court did not make a finding of the presumptive amount for child support or indicate whether there were any deviation criteria when it entered the agreed upon, earning capacity child support order, although there were two child support guideline worksheets in the file. The self-represented defendant did not appeal timely from the judgment of dissolution in which the pendente lite child support order had become a final order.

Less than one week after the judgment of dissolution was rendered, the defendant filed a motion to modify the court's child support order. The court denied the defendant's postjudgment motion after a hearing on March 24, 2011, on the ground that he had failed to demonstrate a substantial change of circumstances. After the court's denial of the defendant's motion for reargument and reconsideration, which had been filed pursuant to Practice Book § 11-11, the defendant timely

appealed from the court's judgment denying his February 14, 2011 motion to modify the child support order. The defendant again was represented by counsel when he filed his appeal on April 15, 2011. The appeal form noted that the defendant, in addition to appealing from the denial of the motion for modification of child support, was appealing from "the judgment." The judgment of dissolution, however, was rendered on February 8, 2011, and any appeal from that judgment should have been filed on or before February 28, 2011. See Practice Book § 63-1.

The plaintiff did not file a motion to dismiss that portion of the appeal challenging the judgment of dissolution. See Practice Book § 66-8. By motion dated May 10, 2011, the defendant requested that the trial court "articulate the factual and legal basis of its rulings on February 8 and March 24, 2011, denying [the] defendant's motions for modification of child support." The plaintiff timely filed an objection, claiming, inter alia, that "[n]either the appeal nor the articulation was filed within the 20-day appeal period from the judgment on February 8, 2011." The plaintiff additionally raised the issue of the untimeliness of the appeal with respect to the judgment of dissolution in her brief filed with this court. The defendant, in his reply brief, argued that the plaintiff waived any right to challenge the timeliness of his appeal because she had failed to file a motion to dismiss within ten days of the filing of the appeal. The majority agrees with the defendant's position in his reply brief and proceeds to review the merits of the defendant's claim relating to the failure to make factual findings about the child support guidelines. It then reverses the judgment of the trial court despite the defendant's failure to timely appeal from that judgment.

Because the amount of child support was not challenged until two months after that order had entered, I consider the defendant's claim to be a collateral attack on the underlying judgment.[3] I do not believe that we are compelled to review this stale claim simply because the plaintiff did not attack the untimeliness by way of a motion to dismiss. The appeal form did not make it clear that the appeal was being taken from the judgment rendered on February 8, 2011. The defendant simply referred to "the judgment" and did not specify that it was the judgment of dissolution. Parties often refer to decisions on postjudgment motions as being judgments. Furthermore, the preliminary statement of issues filed by the defendant at that time was limited to: "Did the court err in denying defendant's motions for modification of child support?" When it became clear that the defendant was challenging the underlying judgment at the time he filed his motion for articulation, the plaintiff immediately filed her objection to the untimeliness of that portion of the appeal addressing the underlying dissolution judgment.

I conclude that this court has the discretion to refuse to review stale claims and collateral attacks on judgments regardless of whether the opposing party timely challenges those claims by way of a motion to dismiss. We should not be bound by any claimed waiver. In *Nicoll* v. *State*, 38 Conn. App. 333, 661 A.2d 101 (1995), this court addressed the reasons for dismissing an untimely appeal. Chief Judge Dupont wrote: "It is well settled that this court has jurisdiction to consider late appeals *if, in our discretion, we choose to do so*. . . . This is so even when a party timely moves to dismiss an untimely appeal. . . . Given the large number of appeals and motions filed in this court, however, we have adopted a policy that gives precedence to those appeals that are timely filed in compliance with Practice Book § [63-1]. Therefore, when a motion to dismiss that raises untimeliness is, itself, timely filed . . . it is ordinarily our practice to dismiss the appeal if it is in fact late, and if no reason readily appears on the record to warrant an exception to our general rule.

"*This practice is based in part on the fact that if the untimely appeal is entertained, a delinquent appellant would obtain the benefit of the appellate process after contributing to its delay, to the detriment of others with appeals pending who have complied with the rules and have a right to have their appeals determined expeditiously*." (Citations omitted; emphasis added.) Id., 335–36.

If we have discretion to consider a late filed appeal, I believe we reasonably also have discretion to refuse to consider a late filed appeal. Under the circumstances of this case, we should decline to address the merits of the defendant's claim that collaterally attacks the underlying judgment. This action was commenced in 2009, and the record reveals that the case was particularly contentious and reaching agreement on the financial orders was problematic. The case was referred to the family relations office several times during its two year pendency in an attempt to resolve multiple issues. To the credit of the parties, their trial lawyers and the family relations office, over time, most of those issues were resolved by agreement. As of the date of trial, only a few outstanding matters remained. I have no doubt that had the plaintiff filed a timely motion to dismiss that portion of the appeal relating to the February 8, 2011 judgment, this court would have granted that motion. For these reasons, I believe that we should exercise our discretion and refuse to address the merits of a stale claim relating to the child support and arrearage guidelines in the underlying judgment. Accordingly, I would affirm the judgment of the trial court.

[1] The November 4, 2010 agreement provided that the defendant was to pay $322 per week for child support and 44 percent of the children's unreimbursed medical expenses. The parties previously had agreed to those amounts in an earlier court approved agreement filed on May 13, 2010. Significantly, in addition to continuing the defendant's agreed upon obligation to pay $322 per week for child support and 44 percent of the children's

unreimbursed medical expenses, the November 4, 2010 agreement contained the following language: "The parties agree that this is a final agreement regarding the issues in this paragraph and the other paragraphs of the May 13, 2010 agreement not modified above."

[2] During the trial, the defendant claimed that the November 4, 2010 agreement was not a final agreement with respect to his request to lower his child support obligation. The defendant maintained, however, that the November 4, 2010 agreement was a "binding final agreement" with respect to his alimony obligation ($1 per year) in his trial motion in limine to exclude testimony and argument regarding alimony filed on February 7, 2011.

[3] "Unless a litigant can show an absence of subject matter jurisdiction that makes the prior judgment of a tribunal entirely invalid, he or she must resort to direct proceedings to correct perceived wrongs . . . . A collateral attack on a judgment is a procedurally impermissible substitute for an appeal." (Internal quotation marks omitted.) *Urban Redevelopment Commission* v. *Katsetos*, 86 Conn. App. 236, 244, 860 A.2d 1233 (2004), cert. denied, 272 Conn. 919, 866 A.2d 1289 (2005).