BORDEN, J. dissenting. I disagree with the majority that the trial court improperly temporarily suspended, rather than terminated, the unallocated alimony and support award contained in the judgment. I therefore dissent.

As the majority states, the defendant, Adrian Peter Bailey, challenges on appeal the trial court's *modification* of his unallocated alimony and support[1] obligation to the plaintiff, Rebecca Nation-Bailey, claiming that the court was required to *terminate* the alimony part of the judgment, rather than to modify it. Thus, the issue in this case is whether the language of the separation agreement, as incorporated into the judgment of dissolution sought to be modified—"[u]nallocated alimony and child support shall be paid until the death of either party, the [plaintiff's] remarriage or cohabitation as defined by Conn. General Statutes § 46b-86 (b)"[2]—gave the court the full panoply of remedies provided by § 46b-86 (b), including the power to "modify . . . and suspend . . . the payment of periodic alimony . . . ." I would answer that question in the affirmative.

The majority concludes, in effect, that the judgment's reference to "cohabitation as defined by [General Statutes] § 46b-86 (b)" means only the reference to the statutory definition of cohabitation and does not include the court's remedial powers under that statute. I disagree. I conclude, to the contrary, that the judgment's reference to "cohabitation as defined by [General Statutes] § 46b-86 (b)" must, as a matter of law, be read to include the court's full panoply of powers under the statute, including, as in the present case, the power to suspend periodic alimony.

I take a moment to restate the facts as found by the court. The court found that the plaintiff and her then fiancé had lived together from December, 2007, through March, 2008—a total of four months—under, in the language of the statute, "circumstances as to alter the financial needs of [the plaintiff]." General Statutes § 46b-86 (b). Thus, the court, exercising its powers under the statute, took the commonsense position of suspending the alimony obligation for that period and denied the defendant's motion that the alimony be terminated forever. It is this position that the defendant challenges on appeal and the majority holds was an abuse of discretion by the court, on the ground that the language of the judgment required termination. I submit that this holding is contrary to a proper reading of the statute and of the case law under it and violates the well-worn axiom that "[i]t is an abiding principle of jurisprudence that common sense does not take flight when one enters a courtroom." (Internal quotation marks omitted.) *Gazo* v. *Stamford*, 255 Conn. 245, 266,

765 A.2d 505 (2001).

First, I address the scope of review. The majority's conclusion reverses the trial court's construction of the judgment. That presents a question of law for the court—trial and appellate—which we review de novo, in which "[t]he determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The judgment should admit of a consistent construction as a whole," to be ascertained from the language and the surrounding circumstances. (Internal quotation marks omitted.) *Racsko* v. *Racsko*, 102 Conn. App. 90, 92**,** 924 A.2d 878 (2007). In addition, this case necessarily involves the construction of a statute, namely, § 46b-86 (b), which also calls for de novo review. See *Blum* v. *Blum*, 109 Conn. App. 316, 322, 951 A.2d 587, cert. denied, 289 Conn. 929, 958 A.2d 157 (2008).

Second, I turn to the statute itself. In this regard, I first note that the statute does not even contain the word "cohabitation." Instead, it uses "the broader language of 'living with another person' rather than 'cohabitation.' " *DeMaria* v. *DeMaria*, 247 Conn. 715, 720, 724 A.2d 1088 (1999). Thus, the majority's focus on the language "cohabitation as defined by Conn. General Statutes § 46b-86 (b)" as limited to the statutory definition, without also including the accompanying remedial powers of the court, finds no support in the actual language of the statute.

Furthermore, the entire subsection (b) of the statute consists of one long sentence. Thus, although the statute obviously has two substantive components—(1) living together, (2) under circumstances that alter the financial needs of the alimony receiver—linguistically it links the two together in one sentence. Moreover, the statute *begins* with the remedial powers of the court: the court "may . . . modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party." General Statutes § 46b-86 (b). Thus, the majority's slicing of the purported definitional part from the remedial part is simply inconsistent with the language of the statute.

Additionally, it is equally inconsistent with the purpose of the statute, which is "an express grant of authority to *modify or terminate* alimony upon [a] showing that the receiving party is living with another person and that such living arrangements result in a change of circumstances that alter the financial needs of such party." (Emphasis added; internal quotation marks omitted.) *DeMaria* v. *DeMaria*, supra, 247 Conn. 722.

Thus, this broad remedial purpose, which expressly acknowledges the court's equitable power to remedy a wrong on a case-by-case basis, argues persuasively for affording the court the full panoply of its powers under the statute.

Furthermore, this court has explicitly recognized, in the context of interpreting § 46b-86 (b), that "[i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . . In applying these principles, we are mindful that the legislature is presumed to have intended a just and rational result." (Internal quotation marks omitted.) *Blum* v. *Blum*, supra, 109 Conn. App. 322. The majority's conclusion violates these wise principles of statutory interpretation. Section 46b-86 (b) is part of the web of dissolution statutes, of which one of the hallmarks is the court's power to act equitably. See *Pasquariello* v. *Pasquariello*, 168 Conn. 579, 585, 362 A.2d 835 (1975) ("[t]he 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"). Thus, in accord with those principles, I would read the statute, as applied to the judgment in the present case, to incorporate, rather than to restrict, the court's commonsense exercise of its equitable powers under the statute.

Third, I examine the applicable case law. *DeMaria* v. *DeMaria*, supra, 247 Conn.715, holds that the statute operates to its full extent even when the judgment under consideration does not mention the statute. In that case, the judgment under consideration for modification referred only to "cohabitation," without any reference to the statute at all. The court held, nonetheless, that, using the statute as a source of common-law policy, the trial court, in importing the additional requirement of a change of financial circumstances, "was guided properly by the statute." Id., 722. The court "conclude[d], in accordance with the definition contained in § 46b-86 (b), that the trial court properly construed the term 'cohabitation' as used in the dissolution judgment to include the financial impact of the living arrangements on the cohabiting spouse . . . ." Id., 719–20. It is difficult, therefore, to understand why a specific reference to the statute would, as the majority concludes, somehow deprive the court of the same statutory powers, namely, to refer to the statute for a definition of its powers in the case of a cohabiting spouse.

Similarly, in *Racsko*, the judgment provided for alimony for a period of seven years, "nonmodifiable as to term, unless the [defendant] or [plaintiff] dies, remarries, or cohabitates as defined by statute." *Racsko* v. *Racsko*, supra, 102 Conn. App. 91. The defendant sought an order terminating the alimony on the basis of *his*

cohabitation, arguing that the unambiguous language of the judgment required that result. Id. The trial court denied the motion and, instead, modified the judgment to reduce the alimony. Id. On appeal, this court read the language of the judgment as referring to § 46b-86 (b), even though the statute was not specifically referenced, and held that the trial court properly interpreted the ambiguous language of the judgment as incorporating the powers of the court under the statute. Id., 92–93. Again, it is difficult to square the majority's cramped reading of the judgment in the present case with this court's more flexible reading of the judgment and statute in *Racsko*.

The majority principally relies for its conclusion on *D'Ascanio* v. *D'Ascanio*, 237 Conn. 481, 678 A.2d 469 (1996), on the use of the word "until" in the judgment, and on the fact that the reference to cohabitation is part of a list of purportedly self-executing termination of alimony contingencies. This reliance is unpersuasive.

In *D'Ascanio*, the parties had stipulated in the trial court that, if the trial court found cohabitation, it was required to reduce the alimony award by one half; id., 488; and, therefore, "[t]he only issue raised before the court was whether the defendant was cohabiting with [the third party] within the meaning of § 46b-86 (b)." Id.; see id., 489 ("[w]e agree that the sole issue to be resolved by the trial court, as framed by the parties, was whether there was cohabitation between the defendant and [the third party]"). *D'Ascanio* did not address, and cannot be read to bear on, the issue in the present case, in which there was no such stipulation and in which the parties did address the issue of whether the court had the power to suspend, rather than to terminate, the alimony.

The majority puts more weight on the word "until" than it can bear. The use of that word in the judgment is equally consistent with the trial court's ruling in the present case, because by suspending the alimony, rather than terminating it as sought by the defendant, the word could carry a similar meaning: for example, the alimony continues "until" cohabitation under the statute, which carries the court's range of equitable powers.

Finally, the majority's emphasis on the fact that the term "cohabitation" is part of a series of otherwise self-executing factors—namely, death or remarriage of the receiving party—is also flawed. Section 3 (B) of the judgment, which contains the specific language at issue, provides that "[u]nallocated alimony *and child support* shall be paid until the death of either party, the [plaintiff's] remarriage or cohabitation as defined by . . . § 46b-86 (b) . . . ." (Emphasis added.) Yet it is undisputed that "child support" does not end with remarriage of the plaintiff. Thus, the majority's reliance on the fact that death or remarriage are self-executing to terminate alimony is misplaced, because termination of child sup-

port would not be self-executing. Instead, it is apparent that, contrary to the majority's reading of the language of the judgment, it was not so perfectly drawn as to support the majority's reading of it; it is simply a somewhat carelessly drawn clause that was not intended to carry with it the nicely sliced parsing employed by the majority.

I therefore dissent, and would affirm the trial court's order temporarily suspending the unallocated alimony and support.

[1] Because I agree with the majority regarding the challenge to the support part of the judgment, I do not discuss it here.

[2] General Statutes § 46b-86 (b) provides: "In an action for divorce, dissolution of marriage, legal separation or annulment brought by a husband or wife, in which a final judgment has been entered providing for the payment of periodic alimony by one party to the other, the Superior Court may, in its discretion and upon notice and hearing, modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party."