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KEITH PRIOLEAU *v.* NITZA AGOSTA
(AC 45317)

Bright, C. J., and Prescott and Seeley, Js.

Syllabus

The plaintiff father appealed to this court from the trial court's judgment awarding him and the defendant mother joint legal and physical custody of their minor child. The parties, who had never married, had exercised a voluntary, mutual custody arrangement in which the father exercised parenting time every weekend until the mother filed a child support action. The father then filed this custody application seeking, inter alia, to formalize the joint legal custody arrangement. Following the judgment, in which the court issued orders granting the father, inter alia, parenting time with the child every weekend, the mother filed a motion for clarification, articulation and reargument requesting that the court amend its orders to grant her parenting time at least one weekend per month. The court, treating the mother's motion as a motion for reconsideration, amended its orders to grant the mother parenting time one weekend each month and to grant the father additional parenting time during one weeknight of each month. *Held*:

1. The plaintiff father could not prevail on his claim that the trial court either lacked jurisdiction to grant the defendant mother's motion to reconsider the court's original judgment or abused its discretion in doing so: because the court had the inherent authority to reexamine and reconsider its original judgment, and it treated the mother's motion, timely filed within days after the court rendered judgment and seeking an alteration of the judgment solely on the basis of evidence presented at trial, as a motion for reconsideration and not for modification, it possessed the authority to alter its earlier judgment to correct what it concluded was an error; moreover, the court did not abuse its discretion in granting the mother the relief sought in her postjudgment motion as the court's conclusion that the judgment required change was reasonably supported by evidence presented at trial, including the child's more recent desire to spend time with friends on the weekends and her inability to do so when she was with the father, and the mother's lack of quality parenting time on weekdays due to her work schedule.
2. The trial court did not abuse its discretion in allocating parenting time by reducing the number of overnight stays the plaintiff father had with the child; although the court's orders reduced the number of overnight stays the father had with the child under the parties' arrangement before the custody action by approximately eighty nights per year, the court awarded the father additional parenting time on weekdays, which he had not enjoyed before the custody action in an attempt to apportion the parties' visitation to serve the child's best interests pursuant to the applicable statute (§ 46b-56).

Argued March 1—officially released July 4, 2023

Procedural History

Application for custody as to the parties' minor child, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Klau*, *J.*; judgment issuing certain orders regarding custody; thereafter, the court, *Klau*, *J.*, granted the defendant's motion for reconsideration and amended its orders, and the plaintiff appealed to this court. *Affirmed.*

Keith Prioleau, self-represented, the appellant (plaintiff).

Kelly S. Therrien, for the appellee (defendant).

Opinion

BRIGHT, C. J. In this contested custody action, the self-represented plaintiff, Keith Prioleau, appeals from the judgment of the trial court awarding him and the defendant, Nitza Agosta, joint legal and physical custody of their minor child, Kayla. On appeal, the plaintiff claims that the court (1) lacked jurisdiction to grant the defendant's motion to reconsider the court's original judgment or abused its discretion in doing so and (2) abused its discretion in allocating parenting time between the parties.[1] We disagree and, therefore, affirm the judgment of the trial court.

In its memorandum of decision, the court set forth the following relevant facts, which are undisputed. "The parties are parents of a daughter, [Kayla], born June, 2009. The plaintiff . . . was present at [Kayla's] birth and signed a paternity acknowledgment. He is also listed as [Kayla's] father on her birth certificate. . . . Although the parties never married, they were in a romantic relationship for eighteen years. They separated in 2013. For several years after [Kayla's] birth, the [plaintiff] was the stay-at-home parent and primary caretaker. After the relationship ended in 2013, the parties continued to be effective coparents and, as a practical matter, exercised joint legal custody. They agreed that [Kayla] would reside primarily with the defendant . . . and that the plaintiff would have parenting time every weekend from Friday after school until Monday morning.

"This voluntary, mutual arrangement worked well for the parties and [Kayla]—until October, 2019, when the [defendant] filed a child support action. The [plaintiff] responded by filing [the underlying] custody application two months later. Through the application, the [plaintiff] sought to formalize the joint legal custody arrangement and proposed a shared parenting plan in lieu of the long-standing every weekend plan.

"In February, 2019, the court, *Connors*, *J.*, referred the parties to Family Services for a comprehensive custody evaluation. . . . [U]nfortunately, the COVID-19 pandemic caused significant disruptions in court proceedings, not to mention the parties' lives. Even so, the parties adapted. For a substantial period, while the parties stayed and/or worked from home, and [Kayla] attended school virtually, the parties followed an alternating week parenting schedule. In May, 2021, a change in the [plaintiff's] employment status—he took a job with Raytheon in Massachusetts—necessitated a change in the parenting schedule. However, the [plaintiff] pursued reassignment to Collins Aerospace in Connecticut, where he commenced working in mid-October of 2021.

"Having returned to Connecticut, the [plaintiff] wants to return to the alternating week parenting schedule.

In response, the [defendant] proposes that the [plaintiff] have parenting time on alternate weekends and on two afternoons each week. Alexa Joseph, the Family Relations Counselor who conducted the comprehensive custody evaluation, proposes the same parenting schedule as the [defendant].

"A main point of contention is how the parties' respective parenting time proposals will affect [Kayla's] academic performance in school. . . . In 2018 or 2019, [Kayla] began to struggle in math and literacy. The [defendant] asked the school to schedule Student Assistance Team (SAT) meetings. There were five meetings through October, 2020, which both parties attended. Updated information shows that [Kayla] is performing well in her STEM classes and improving in literacy but struggles at times completing homework and class assignments in a timely manner. She also allows herself to be drawn into her peer's personal dramas, has experienced behavioral issues in her class, and speaks poorly about other students on social media.

"The [defendant] contends that her proposed parenting schedule will provide a more stable home situation for [Kayla], which the [defendant] believes will lead to improved school performance and lessen the behavioral issues that [Kayla] is experiencing. The [defendant] also asks the court to find that, although both parents 'have historically been and currently are significantly involved in the child's life, the [defendant] very clearly takes the lead with regard to the child's academics as well as other areas of life.'

"The court agrees with and adopts the first proposed finding, but not the second. That is, the court finds that both parents are actively engaged with [Kayla's] education and her school. Dr. Lauren Daveron, the Assistant Principal at [Kayla's] school, testified that the [plaintiff] 'has definitely been involved with [Kayla's] school,' that both parties attended SAT meetings and that the [plaintiff] has 'always been available for meetings by phone or in person.' "

After noting that it had considered the statutory factors relevant to its determination as to the best interests of Kayla; see General Statutes (Rev. to 2021) § 46b-56 (c); the court found "that the regular weekly parenting schedule the parties followed for many years before October, 2019—by mutual agreement and without the need of court intervention—is in [Kayla's] best interests. That schedule worked well for the parties and, most importantly, for [Kayla]. Indeed, although the [plaintiff] initially resisted the 'every weekend' parenting schedule when the [defendant] first proposed it, he admitted that 'he grew to love it and the relationship [it fostered] with his daughter.' But for the [defendant] filing the child support action in October, 2019, and then the COVID-19 pandemic, it is likely that the parties would have continued to follow that schedule for the

foreseeable future." Accordingly, the court issued the following orders. "The parties shall share joint legal custody of [Kayla]. . . . The [defendant] shall have primary residence. . . . Except as amended below, the [defendant's] proposed orders dated September 24, 2021 . . . are fair, just and equitable and in the best interests of [Kayla]. Subject to the following amendment, the court adopts the [defendant's] proposed orders and incorporates them by reference. . . . Paragraph two of the [defendant's] proposed orders [is] amended as follows: the [plaintiff] shall have parenting time every weekend from Friday at 6 p.m. until Sunday evening at 7 p.m." (Footnote omitted.)

Paragraph two of the defendant's proposed orders provided that "the plaintiff . . . shall have parenting time with the minor child every Tuesday and Thursday from 4 p.m. to 7 p.m. and every other Friday at 6 p.m. until Sunday at 7 p.m. The defendant . . . shall have parenting time during all other times."

The court issued its decision on January 6, 2022, and the defendant filed a "motion for clarification, articulation, and reargument, postjudgment" on that same date. The defendant amended her motion on January 11, 2022, to correct a clerical error.[2] In her motion, the defendant claimed that awarding the plaintiff parenting time during every weekend is not in the best interests of Kayla. The defendant argued that the evidence presented at trial "supported the fact that the plaintiff . . . does not allow the minor child to attend social or educational activities on the weekends she spends at his home."[3] She also argued that the court's order prevents the defendant from spending quality time with the child because she works Monday through Friday each week. The defendant requested "that the court grant [the] motion and amend its orders dated January 6, 2022, such that the defendant . . . be allowed to have parenting time at least one weekend per month (specifically the third weekend) with the minor child."

On February 2, 2022, the plaintiff, who was represented by counsel before the trial court, filed an objection to the defendant's motion. In his objection, the plaintiff argued that the defendant was not seeking a clarification or an articulation of the court's judgment and, instead, was "requesting a modification of the January 6, 2022 order." Therefore, according to the plaintiff, "[t]he appropriate procedural vehicle to modify an existing order is a motion for modification—not a motion for articulation." The plaintiff also argued that the defendant's request for reargument should be denied because she failed to establish "that the court either overlooked controlling law or misconstrued the factual evidence before it."

On February 8, 2022, the court issued an order denying the defendant's motion insofar as it sought clarification and articulation of the original judgment. The court,

however, treated the defendant's motion to reargue as a motion for reconsideration; see *Antonio A.* v. *Commissioner of Correction*, 205 Conn. App. 46, 74, 256 A.3d 684 ("[m]otions for reargument and motions for reconsideration are nearly identical in purpose"), cert. denied, 339 Conn. 909, 261 A.3d 744 (2021); see also *State* v. *Taylor*, 91 Conn. App. 788, 791–92, 882 A.2d 682 ("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"), cert. denied, 276 Conn. 928, 889 A.2d 819 (2005); and ordered: "Upon reconsideration, the court determines that it is in the best interests of the minor child to amend the parenting schedule as follows: The defendant . . . shall have the child on the third weekend of each month, from after school on Friday until the start of school on Monday morning. During the fourth week of each month, the plaintiff . . . shall have parenting time with the child one afternoon during the week, from after school until 7 p.m. If the parties are unable to agree on the day of the week, the [plaintiff] shall have the child on Wednesdays after school until 7 p.m. In all other respects, the court's January 6, 2022 orders remain unchanged." This appeal followed.

As a preliminary matter, we note that, during oral argument before this court, the parties initially disagreed as to the effect of the court's amendment to the defendant's proposed parenting time order. Ultimately, the plaintiff agreed with the defendant's counsel, who explained that, pursuant to the court's January 6, 2022 decision, because the court amended but did not replace paragraph two of her proposed order, the plaintiff was entitled to parenting time (1) every weekend from Friday at 6 p.m. until Sunday at 7 p.m. and (2) every Tuesday and Thursday from 4 p.m. until 7 p.m. The parties also agreed that, pursuant to the court's February 8, 2022 order, the plaintiff is entitled to parenting time (1) three weekends each month from Friday at 6 p.m. until Sunday at 7 p.m., (2) every Tuesday and Thursday afternoon from 4 p.m. until 7 p.m., and (3) one additional weekday afternoon in the fourth week of each month from after school until 7 p.m. With this point clarified, we turn to the plaintiff's claims on appeal.

I

The plaintiff first claims that the court lacked jurisdiction to modify the judgment and, in the alternative, that the court abused its discretion in doing so. We disagree.

We begin with the applicable standard of review. "A determination regarding a trial court's subject matter jurisdiction is a question of law. When . . . the trial court draws conclusions of law, our review is plenary and we must decide whether its conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omit-

ted.) *Swanson* v. *Perez-Swanson*, 206 Conn. App. 266, 272, 259 A.3d 39 (2021). "The standard of review regarding challenges to a court's ruling on a motion for reconsideration is abuse of discretion. As with any discretionary action of the trial court . . . the ultimate [question for appellate review] is whether the trial court could have reasonably concluded as it did." (Internal quotation marks omitted.) *Fain* v. *Benak*, 205 Conn. App. 734, 746, 258 A.3d 112 (2021), appeal dismissed, 345 Conn. 912, 283 A.3d 980 (2022); see also *Novak* v. *Levin*, 287 Conn. 71, 78, 951 A.2d 514 (2008) ("Whether a court retains continuing jurisdiction over a case is a question of law subject to plenary review. . . . Whether a court properly exercised that authority, however, is a separate inquiry that is subject to review only for an abuse of discretion." (Internal quotation marks omitted.)).

A

The plaintiff claims that the court lacked jurisdiction to modify the judgment in response to the defendant's postjudgment motion because "[t]he defendant never completed and submitted a form JD-FM-174 Motion for Modification which requires special questions to be answered by the moving party to establish material change and a payment of fees." According to the plaintiff, the defendant was required to file a motion to modify the court's custody order pursuant to § 46b-56.[4] The defendant responds that the "court had the absolute discretion to reexamine and reconsider the original [judgment] and come to a different conclusion." We agree with the defendant.

As an initial matter, we note "the distinction between a trial court's jurisdiction and its authority to act under a particular statute. Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it. . . . Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action." (Citations omitted; internal quotation marks omitted.) *Amodio* v. *Amodio*, 247 Conn. 724, 727–28, 724 A.2d 1084 (1999). Although the plaintiff states his claim in terms of the court's jurisdiction, he does not challenge the court's " 'competence to entertain the action before it' "; id., 728; but, rather, the court's authority to modify its original judgment. Indeed, there is no question that the court had jurisdiction over the custody action. See General Statutes § 46b-1 (a) ("[m]atters within the jurisdiction of the Superior Court deemed to be family relations matters shall be matters affecting or involving . . . (8) . . . proceedings to determine the custody and visitation of children"); General Statutes § 46b-56 (a) ("[i]n any controversy before the Superior Court as to the

custody or care of minor children . . . the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction under the [Uniform Child Custody Jurisdiction and Enforcement Act]"). Thus, "[c]onsistent with our policy of leniency to self-represented litigants"; *Budlong & Budlong, LLC* v. *Zakko*, 213 Conn. App. 697, 712 n.13, 278 A.3d 1122 (2022); we construe the plaintiff's argument as challenging the court's authority to reconsider its judgment.[5]

With respect to a court's authority to reconsider and modify its judgment, our Supreme Court has explained that, "[n]otwithstanding the absence of a rule or statute, it is the inherent authority of every court, as long as it retains jurisdiction, to reconsider a prior ruling. . . . If a court is not convinced that its initial ruling is correct, then in the interests of justice it should reconsider the order, provided it retains jurisdiction over the subject matter and the parties." (Citations omitted.) *Steele* v. *Stonington*, 225 Conn. 217, 219 n.4, 622 A.2d 551 (1993). Likewise, "courts have the inherent authority to open, correct or modify judgments, but this authority is restricted by statute and the rules of practice." (Internal quotation marks omitted.) *TD Banknorth, N.A.* v. *White Water Mountain Resorts of Connecticut, Inc.*, 133 Conn. App. 536, 541, 37 A.3d 766 (2012).

Practice Book § 11-11 provides in relevant part: "[A]ny motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously . . . and shall be considered by the judge who rendered the underlying judgment or decision. . . . The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal . . . ." Practice Book § 63-1 (c) (1) provides in relevant part: "If a motion is filed within the appeal period that, if granted, would render the judgment . . . ineffective, either a new twenty day period or applicable statutory time period for filing the appeal shall begin on the day that notice of the ruling is given on the last such outstanding motion . . . . Motions that, if granted, would render a judgment . . . ineffective include . . . motions that seek . . . reargument of the judgment . . . or any alteration of the terms of the judgment."

In addition, it is well settled that a civil judgment of the Superior Court may be opened if a motion to open or set aside is filed within the statutory four month period. A motion to open a judgment is governed by General Statutes § 52-212a and Practice Book § 17-4. Section 52-212a provides in relevant part: "Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, a civil judgment or decree rendered in the Superior Court may not be opened or set aside unless a motion to open or set aside is filed within four months following the date on which

the notice of judgment or decree was sent. . . .'' Practice Book § 17-4 states essentially the same rule.

''The provisions of § 52-212a do not operate to strip the court of its jurisdiction over its judgments, but merely operate to limit the time period in which a court may exercise its substantive authority to adjudicate the merits of a case.'' *Bridgeport* v. *Triple 9 of Broad Street, Inc.*, 87 Conn. App. 735, 744, 867 A.2d 851 (2005). ''A court has broad discretion to treat a motion for clarification of a judgment or a motion to reargue a judgment as a motion to open and modify the judgment provided that the motion is filed within the four month period and the substance of the motion and the relief requested therein is sufficient to apprise the nonmovant of the purpose of the motion.'' *Von Kohorn* v. *Von Kohorn*, 132 Conn. App. 709, 714–15, 33 A.3d 809 (2011).

Thus, under the rules of practice, courts have ''continuing authority to adjudicate any properly filed motions to reargue, reconsider or open the judgment that is the subject of the appeal; see Practice Book § 11-11; irrespective of the possibility that the trial court's action on such a motion potentially could render [an] appeal moot.'' *307 White Street Realty, LLC* v. *Beaver Brook Group, LLC*, 216 Conn. App. 750, 762 n.8, 286 A.3d 467 (2022); see also *Mangiante* v. *Niemiec*, 98 Conn. App. 567, 578, 910 A.2d 235 (2006) (''[w]hether denominated as a motion for reargument or reconsideration, the motion filed by the plaintiff was a proper vehicle for the court to exercise its equitable discretion to reexamine its decision''). The court's authority in this regard ''is consistent with the rule that the filing of a motion that seeks an *alteration*, rather than a clarification, of the judgment suspends the appeal period.'' (Emphasis added.) *Weinstein* v. *Weinstein*, 275 Conn. 671, 699, 882 A.2d 53 (2005).

Nevertheless, a trial court's authority to alter its judgment through reconsideration or reargument is not absolute. In *Jaser* v. *Jaser*, 37 Conn. App. 194, 655 A.2d 790 (1995), this court considered whether the trial court, in response to the defendant's ''motion for reargument, reconsideration and to set aside judgment,'' improperly modified its judgment as to child support and alimony. Id., 200. Similar to the plaintiff's argument in the present case, the plaintiff in *Jaser* argued that, before the court could modify its judgment, it needed to determine, pursuant to General Statutes § 46b-86, whether there was a substantial change in circumstances that would warrant a modification. Id., 201. The defendant in *Jaser* argued that such a showing was not necessary because he only sought reconsideration, and not modification, of the judgment. This court held that resolution of the issue did not turn on the title of the defendant's motion. ''Regardless of how the defendant characterizes his motion, we must examine the practical effect of the trial court's ruling in order to determine its nature. Only

then can we determine whether the ruling was proper. . . . A modification is defined as [a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact. Black's Law Dictionary (6th Ed. 1990) [p. 1004].

"Conversely, 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. To set aside means [t]o reverse, vacate, cancel, annul, or revoke a judgement . . . . Black's Law Dictionary (6th Ed. 1990) [p. 1372]." (Citations omitted; internal quotation marks omitted.) *Jaser* v. *Jaser*, supra, 37 Conn. App. 202–203. In *Jaser*, this court concluded that the trial court improperly modified the judgment without making the necessary finding of a substantial change in circumstances. Id., 204. In reaching this conclusion, the court noted that the trial court treated the defendant's motion as a motion to modify and that the parties did not "bring to the attention of the court that what was sought was other than a modification of the judgment." Id. Furthermore, in support of his motion, the defendant relied on events that had transpired after the court had rendered judgment. Id., 203 n.10.

Applying our reasoning in *Jaser* to the present case, we review the defendant's motion and the parties' and court's treatment of it to determine whether it properly is considered a motion for reconsideration or a motion for modification governed by § 46b-56. The defendant filed the motion within days after the court rendered judgment, pursuant to Practice Book § 11-11, seeking an alteration of the judgment. In her motion, the defendant highlighted certain facts presented at trial in support of her request that the court amend its parenting time order to allow the defendant to have parenting time on the third weekend of each month. Thus, the defendant requested that the court reconsider the judgment solely on the basis of the evidence presented at trial. See *Wasson* v. *Wasson*, 91 Conn. App. 149, 161, 881 A.2d 356 ("reconsideration implies reexamination and possibly a different decision by the [court] which initially decided it" (internal quotation marks omitted)), cert. denied, 276 Conn. 932, 890 A.2d 574 (2005). In turn, the court did not consider new evidence when ruling on the defendant's motion but instead concluded, in light of the evidence that it had previously heard, that its January 6, 2022 judgment was incorrect. In fact, the

court's ruling made clear that, "[u]pon reconsideration, the court determines that it is in the best interests of the minor child to amend the parenting schedule . . . ." Thus, unlike in *Jaser*, the court in the present case treated the defendant's motion as a motion for reconsideration and not as a motion for modification. We conclude that the court's treatment of the motion as such was proper. Thus, it possessed the authority to alter its earlier judgment to correct what it concluded was an error.

Consequently, because the court acted pursuant to its "inherent authority to open, correct or modify judgments"; (internal quotation marks omitted) *TD Banknorth, N.A.* v. *White Water Mountain Resorts of Connecticut, Inc.*, supra, 133 Conn. App. 541; which is distinct from its statutory authority to modify a visitation order pursuant to § 46b-56, the requirements for granting a motion for modification simply do not apply in these circumstances. See, e.g., *Bridgeport* v. *Triple 9 of Broad Street, Inc.*, supra, 87 Conn. App. 744 ("[g]iven the relief requested by [the defendant] in its postjudgment motion, and in light of the court's continuing jurisdiction over its judgments and its authority to act substantively to open its judgments within four months of rendition, the court in this instance had the authority to treat [the defendant's] postjudgment pleading as a motion to open the judgment"); see also *Fitzsimons* v. *Fitzsimons*, 116 Conn. App. 449, 455, 975 A.2d 729 (2009) (concluding that, because motion to reargue was filed within four month period as required under § 52-212a, "the [trial] court was vested with the discretion to modify its property division").

B

The plaintiff also claims that the court abused its discretion in granting the defendant's motion because the court "was never provided with any new evidence to analyze, there was never any hearing, no discovery, no nothing given by the defendant, so the trial court's [granting of] reconsideration is not reasonable nor based in new material factual evidence or circumstances." The defendant responds that the court was not required to hold a hearing on the motion or receive evidence of a material change in circumstances. She argues that "the court . . . could have found . . . that it overlooked the best interests standard or misapprehended the facts of the case when it originally granted the plaintiff father parenting time during all of the child's free time on the weekends." We agree with the defendant.

"It is well settled that a motion for reconsideration is intended 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." (Internal quotation marks omitted.) *In re Elia-*

nah T.-T., 327 Conn. 912, 913–14, 171 A.3d 447 (2017); see also *Steele* v. *Stonington*, supra, 225 Conn. 219 n.4 ("[i]f a court is not convinced that its initial ruling is correct, then in the interests of justice it should reconsider the order, provided it retains jurisdiction over the subject matter and the parties"). Moreover, "a court is not required to hold a hearing upon granting a motion to reargue a decision that is a final judgment because such motions are governed by Practice Book § 11-11." *Paniccia* v. *Success Village Apartments, Inc.*, 215 Conn. App. 705, 715 n.11, 284 A.3d 341 (2022); see also *Disturco* v. *Gates in New Canaan, LLC*, 204 Conn. App. 526, 536, 253 A.3d 1033 (2021) ("[section] 11-11 do[es] not require the court to schedule a hearing upon granting a movant's motion to reargue").

As previously noted, in the present case, the defendant neither sought to present new evidence nor claimed that there was a change in circumstances. Instead, she requested that the court modify its parenting time order on the basis of the evidence presented at trial. Given that the defendant had previously testified about Kayla's more recent desire to socialize with friends and her inability to do so when she spends the weekend with the plaintiff; see footnote 3 of this opinion; the court reasonably could have concluded, upon reconsideration of the evidence, that it was in Kayla's best interests to spend one weekend each month with the defendant to allow for more socializing with her friends. The court also may have concluded further that it had initially overlooked the defendant's testimony regarding her work schedule in assessing the practical effect of its parenting time order and, upon reconsideration, found the defendant's arguments persuasive on this point. See *Beeman* v. *Stratford*, 157 Conn. App. 528, 540, 116 A.3d 855 (2015) ("[i]f a court believes that it has made a mistake, there is little reason, in the absence of compelling circumstances to the contrary, to stick slavishly to a mistake"). In other words, the court reasonably could have concluded, on the basis of the evidence presented at trial, that a change to the judgment was required. Moreover, the court recognized that the plaintiff would have less parenting time due to its decision to grant the defendant's requested relief and attempted to offset some of that lost time by providing the plaintiff with additional parenting time during the fourth week of each month. Consequently, because the court's order is supported by the evidence in the record, we conclude that the court did not abuse its discretion in granting the defendant the relief sought in her postjudgment motion.

II

Finally, the plaintiff claims that the court abused its discretion in allocating parenting time by reducing the number of overnight stays he has with Kayla. We are not persuaded.

"We utilize an abuse of discretion standard in reviewing orders regarding custody and visitation rights . . . . Nothing short of a conviction that the action of the trial court is one which discloses a clear abuse of discretion can warrant our interference." (Internal quotation marks omitted.) *R. A.* v. *R. A.*, 209 Conn. App. 327, 334, 268 A.3d 685 (2021).

In support of his claim, the plaintiff notes that the court, by ordering that he will have Kayla on weekends until Sunday evening rather than Monday morning, reduced the number of his overnight stays from nearly 180 each year under the parties' arrangement before the custody action to approximately 100 each year going forward. The plaintiff further notes that one study has shown that "the quality of [a father's] relationship [is] linked incrementally to how much overnight time the father and child or children spend together." To be sure, the court's order has the effect of reducing the number of nights that Kayla sleeps at the plaintiff's home. Nevertheless, the court also awarded the plaintiff additional parenting time on weekdays, time which he had not enjoyed before the custody action. Thus, the court increased his parenting time during the week despite reducing the number of overnight stays the plaintiff has with Kayla. The court determined, pursuant to § 46b-56, that it was in Kayla's best interests to allow both parents to enjoy roughly equal amounts of parenting time with Kayla and attempted to apportion the parties' visitation accordingly. Consequently, although we understand the plaintiff's dissatisfaction with the reduction of the number of overnight stays, we cannot conclude that the court's attempt to balance the parties' competing desires for quality time with their child constitutes an abuse of its broad discretion.[6]

The judgment is affirmed.

In this opinion the other judges concurred.

[1] We note that the defendant initiated a support action against the plaintiff before the plaintiff brought the underlying custody action. See *Agosta* v. *Prioleau*, Superior Court, judicial district of Hartford, Docket No. FA-19-6119171-S. On appeal, the plaintiff claims that "this court in its plenary review should also review the impact that actual custody has on the [family support magistrate's] August 4, 2021 child support order . . . ." The plaintiff further claims that this "court should order that neither party pay child support to the other but rather keep their incurred half of child support for expenses they incur." We lack jurisdiction over the plaintiff's claims regarding the support action.

The appellate procedure set forth in General Statutes § 46b-231 (n) (1), (2), and (6) provides that a party aggrieved by a final decision of a family support magistrate shall file a petition for appeal in the Superior Court, which will then conduct a hearing. The Superior Court may "affirm the decision of the family support magistrate . . . remand the case for further proceedings . . . [or] reverse or modify the decision" if certain conditions are met. General Statutes § 46b-231 (n) (7). Pursuant to § 46b-231 (o), the aggrieved party can only appeal to the Appellate Court after the Superior Court has made a final determination on the appeal from the decision of the family support magistrate. In the present case, because the plaintiff did not file a petition for appeal from the family support magistrate's decision in the Superior Court, we lack jurisdiction to consider his claims related to the family support magistrate's decision. Accordingly, we limit our review to the judgment of the trial court in the underlying custody action.

[2] The defendant amended her motion to comply with Practice Book § 11-11, which provides that a party filing a motion to reargue a decision that is a final judgment "shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion."

[3] At trial, the defendant testified that she stopped agreeing to the every weekend schedule approximately three years before the trial. The defendant explained that "Kayla has actually shown interest to do things with her friends and so, it was, you know—I would bring her, you know—I would be the one to take her to these friendly functions. And so, most times these things can't happen until the weekends and so, [the plaintiff] for the most part did not take her to any [events], you know—if [any]—a few events with her friends."

[4] "[Section] 46b-56 provides trial courts with the statutory authority to modify an order of custody or visitation. When making that determination, however, a court must satisfy two requirements. First, modification of a custody award must be based upon either a material change [in] circumstances which alters the court's finding of the best interests of the child . . . or a finding that the custody order sought to be modified was not based upon the best interests of the child. . . . Second, the court shall consider the best interests of the child and in doing so may consider several factors. . . . Before a court may modify a custody order, it must find that there has been a material change in circumstances since the prior order of the court, but the ultimate test is the best interests of the child. . . . These requirements are based on the interest in finality of judgments . . . and the family's need for stability. . . . The burden of proving a change to be in the best interest of the child rests on the party seeking the change." (Footnotes omitted; internal quotation marks omitted.) *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 511–12, 146 A.3d 26 (2016).

[5] Indeed, as our Supreme Court has recognized, "the distinction between challenges to the trial court's subject matter jurisdiction and challenges to the exercise of its statutory authority is not always clear and sometimes has proven illusory in practice." (Internal quotation marks omitted.) *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 466, 239 A.3d 272 (2020).

[6] The plaintiff also asserts that "courts need to establish a means test by which dads who really want to parent their child or children can do so as an equal time sharing arrangement with the mothers. . . . A parent wanting anything other than 50/50 parenting time should have to prove by clear and convincing evidence that the other parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health. . . . Furthermore, courts should establish a legal presumption of equal parenting time in all cases. Judges should presume that every parent should have exactly equal parenting time, regardless of the facts and circumstances of their case, when no abuse is involved." (Internal quotation marks omitted.) The legislature has spoken as to the burdens and presumptions in custody and visitation matters. See General Statutes § 46b-56 (b) ("[i]n making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests"); General Statutes § 46b-56a (b) ("There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage. If the court declines to enter an order awarding joint custody pursuant to this subsection, the court shall state in its decision the reasons for denial of an award of joint custody."). Therefore, "the primary responsibility for formulating public policy must remain with the legislature." (Internal quotation marks omitted.) *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 659, 224 A.3d 147 (2020).