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# RAUL OCHOA *v.* KATHLEEN BEHLING
## (AC 45242)

Alvord, Clark and Keller, Js.

*Syllabus*

The plaintiff father appealed from the trial court's order permitting the intervening defendant, K, the minor child's maternal grandmother who now has sole legal and physical custody of the child, to continue to claim a federal income tax dependency exemption for the child. In October, 2012, the father brought a child custody action against the defendant mother, seeking sole custody of their minor child. The court granted K's motion to intervene in the proceeding and subsequently rendered a stipulated judgment in accordance with an agreement between the father and K that provided that the father and K would share joint legal custody of the child and that allocated the federal income tax deduction for the child between the father and K. In December, 2021, K filed motions requesting, inter alia, that she be entitled to claim the child as her dependent exemption for all tax years beginning in 2021. After a hearing held later that month, the trial court issued orders providing that, inter alia, as long as the father remained up to date with his child support and any arrearage payment schedule, the stipulated judgment with regard to tax deductions would remain in effect. The father did not file a motion for reconsideration or otherwise object to the court's orders. The father appealed to this court, alleging that the trial court erred in adopting the prior court order that allowed K, a custodial nonparent, to take federal child dependency tax exemptions for the child because the trial court lacked the authority to do so and claiming that states cannot allocate federal tax liability because doing so is within the "exclusive province of the United States Congress." *Held* that this court declined to review the plaintiff father's claim challenging the trial court's authority to allocate federal tax liability because he failed to raise it before the trial court: this court is not bound to consider a claim unless it is distinctly raised at the trial or arose subsequent to the trial, and, in this case, the father had multiple opportunities before the trial court to raise his claim challenging that court's authority to allocate federal tax liability, such as filing an objection to K's motion that she be permitted to take the child tax exemption for all years going forward, objecting to the proposed orders that K filed in advance of the December, 2021 hearing, or raising the court's alleged lack of authority to issue K's requested order at the hearing, but he failed to do so.

Argued May 31—officially released August 8, 2023

*Procedural History*

Application seeking sole custody of the parties' minor child, brought to the Superior Court in the judicial district of Litchfield, where the court, *Gallagher*, *J.*, granted the motion to intervene as a defendant filed by Joan Behling; thereafter, the court, *Pickard*, *J.*, rendered judgment in accordance with a stipulated agreement entered into by the plaintiff and the intervening defendant; subsequently, the court, *Lobo*, *J.*, granted, inter alia, the intervening defendant's motion to claim a certain dependent exemption for the minor child for federal income tax purposes, and the plaintiff appealed to this court. *Affirmed*.

*Jose L. DelCastilloSalamanca*, for the appellant (plaintiff).

*James D. Hirschfield*, for the appellee (intervening defendant).

*Opinion*

CLARK, J. In this child custody action, the plaintiff father, Raul Ochoa, appeals from the trial court's order permitting the intervening defendant, Joan Behling, the minor child's maternal grandmother who has sole legal and physical custody of the child,[1] to continue to claim a federal income tax dependency exemption for the child.[2] On appeal, the plaintiff claims that the trial court erred "in adopting [a] prior court order" that allowed the defendant, a custodial nonparent, to take certain federal child dependency tax exemptions for the child because the court lacked the authority to do so. In his view, "states cannot allocate federal tax liability, as doing so is within the exclusive province of the United States Congress." We decline to review the plaintiff's claim on appeal because it was not raised before the trial court.

The following procedural history is relevant for present purposes. On October 10, 2012, the plaintiff brought this action against the child's mother, Kathleen Behling, seeking sole custody of their minor daughter. On February 4, 2013, the trial court, *Gallagher*, *J.*, granted a motion to intervene filed by the defendant, the child's maternal grandmother. The parties subsequently entered into an agreement that provided, inter alia, that the plaintiff and the defendant would share joint legal custody of the child. The agreement also provided that the defendant "shall be allowed to take the tax deduction for the minor child for every two out of three years, commencing with the 2015 tax year" and that the plaintiff "shall be able to take a tax deduction once every third year, commencing the 2014 tax year." On April 10, 2014, the trial court, *Pickard*, *J.*, rendered a stipulated judgment in accordance with the agreement.

On April 13, 2021, the defendant filed a postjudgment motion for modification, requesting that she be allowed to relocate to Wisconsin with the child. Specifically, she alleged that "I'm now retired and can't afford the rent in [Connecticut]. [I would] like to move back to [Wisconsin] where my family lives. Rents are cheaper and [I would] have help."

On December 7, 2021, before any hearing on the motion for modification was held, the defendant also filed a "motion for order," which explained that the plaintiff was "currently receiving" a 2021 child tax credit for the child even though the defendant "[was] entitled to claim [the child] as her dependent exemption in 2021" pursuant to the stipulated judgment. The defendant requested that the court order the plaintiff "to unenroll from the child tax credit program for 2021 so that [she] can enroll for the child tax credit and be entitled to claim same on her 2021 income tax returns." The defendant also sought an order that she be "entitled to claim the minor child as her dependent exemption for all tax

years from 2021 forward for so long as the child is available to be taken as a dependent exemption."

On December 15, 2021, the defendant filed a second "motion for order" in which she requested that she be awarded "sole legal and physical custody" of the child. She argued, inter alia, that if her motion for modification were granted, which would permit her to live in Wisconsin with the child, it would "make communication with the plaintiff even more difficult" and that she "needs to be in a position to be able to make decisions relating to significant issues pertaining to [the child's] medical, educational, religious, social and/or emotional development . . . ."

On December 22, 2021, the court held a hearing on the defendant's motion for modification. The court also permitted argument on some of the other related pending motions, including, inter alia, the defendant's December 7, 2021 motion for order, which requested that the court order the plaintiff to unenroll from the child tax credit program for 2021 and that the defendant be entitled to claim the minor child as a dependent for all tax years going forward. The plaintiff's counsel argued that, because the plaintiff "is no longer employed at his place of employment, there's no monthly [or] weekly payment of the advanced child credit because he's no longer working. So, there's no need to unenroll for something that doesn't exist." The plaintiff's counsel clarified, however, that "[i]f it's something that is corresponding to 2021, then it's entitled to [the defendant]." He indicated that he would look at the issue and work with opposing counsel to resolve it. The plaintiff's counsel, however, opposed the defendant's proposed order that she be entitled to claim the federal tax dependency exemption for all years going forward. He argued that the plaintiff would be able to provide child support and that those benefits should be a function of the child support orders, instead of something separate and apart.

On December 23, 2021, the trial court, *Lobo*, *J.*, granted the defendant's April 13, 2021 motion for modification, stating that the "[defendant] may relocate with the child to Wisconsin," and granted the defendant's motion for "sole legal and physical custody" of the child.[3] On that same day, the court also issued an order on the defendant's December 7, 2021 motion for order, which provided in relevant part: "Provided [that] the plaintiff . . . remains up to date with his child support and consistent with any arrearage payment schedule, the stipulation agreement . . . for tax deductions pertaining to the minor child shall remain in effect. If plaintiff father is not in compliance with child support orders or any arrearage payments, [the defendant] shall claim the plaintiff's . . . child tax deduction for that year so long as the child is available to be taken as a dependent exemption. . . . The plaintiff is ordered to unenroll

from the child tax credit program for 2021, by January 31, 2022, so that [the defendant] can enroll for the child tax credit and be entitled to claim same on her 2021 income tax returns."[4] The plaintiff did not file a motion for reconsideration or otherwise object to the court's order. This appeal followed.

Because the plaintiff failed to raise the present claim before the trial court, we decline to review it on appeal. It is well known that this court is not "bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial." Practice Book § 60-5. "The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court . . . to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Nweeia* v. *Nweeia*, 142 Conn. App. 613, 618, 64 A.3d 1251 (2013); see also *Cunniffe* v. *Cunniffe*, 150 Conn. App. 419, 441, 91 A.3d 497 (same), cert. denied, 314 Conn. 935, 102 A.3d 1112 (2014).

Our review of the record shows that the plaintiff had multiple opportunities before the trial court to raise the present claim that the court lacked authority to adopt a prior court order that allowed the defendant to take certain federal child dependency tax exemptions but never did so. First, the plaintiff did not file an objection to the defendant's motion for order that requested, among other things, that the defendant be permitted to take the child tax exemption for all years going forward. Second, the plaintiff did not file an objection to the proposed orders that the defendant filed on December 15, 2021, in advance of the parties' December 22, 2021 hearing. Those proposed orders once again requested that the court, inter alia, allow the defendant "to claim the minor child as her dependent exemption for all tax years commencing 2021 and going forward for so long as the child is available to be taken as a dependent . . . ." Third, when the issue regarding the tax exemption arose at the December 22, 2021 hearing, the plaintiff failed to raise the court's alleged lack of authority to issue the defendant's requested order.[5] Accordingly, we decline to review the plaintiff's claim. To do so "would result in a trial by ambuscade of the trial judge." *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 265, 828 A.2d 64 (2003).

The judgment is affirmed.

In this opinion the other judges concurred.

[1] The minor child's mother, Kathleen Behling, was also a defendant in the underlying action. She, however, did not participate in this appeal. Therefore, all references to the defendant in this opinion are to Joan Behling only.

[2] On December 30, 2022, after the plaintiff filed his appeal from the court's

tax credits order, the plaintiff filed a separate appeal from the trial court's November 18, 2022 decision granting the defendant's March 1, 2022 motion for contempt. The Office of the Appellate Clerk treated that appeal as an amendment to the present appeal pursuant to Practice Book § 61-9. Although the plaintiff filed his initial appellate brief on September 20, 2022, which was before the filing of the amended appeal, he never sought permission to file a supplemental brief addressing the issues in his amended appeal. Because the plaintiff has not briefed any issues related to the trial court's decision granting the defendant's motion for contempt, we deem any claims related to the contempt order abandoned. See, e.g., *Gray* v. *Gray*, 131 Conn. App. 404, 411, 27 A.3d 1102 (2011) ("We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [A]ssignments of error which are merely mentioned but not briefed beyond a statement of the claim will be deemed abandoned and will not be reviewed by this court." (Internal quotation marks omitted.)).

[3] The plaintiff has not challenged the court's orders granting the defendant's motion for modification or its order granting the defendant sole legal and physical custody of the child.

[4] The order further provided that the "plaintiff . . . shall sign up the minor child for any and all Social Security benefits to which she is entitled by the end of January, 2022. . . . The plaintiff shall provide proof to the defendant of stimulus money received as calculated pertaining to the minor child. The plaintiff shall reimburse [the defendant] for [60 percent] of the stimulus check money received attributed to the minor child by the end of February, 2022, or establish an arrearage payment regarding same during the family support magistrate hearing scheduled for January, 2022."

[5] We note that, at oral argument before this court, the plaintiff's counsel specifically was asked whether he raised this argument in the trial court. The plaintiff's counsel conceded that "[i]t wasn't raised, Your Honor."