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SUSAN F. GAINTY *v.* MICHAEL INFANTINO
(AC 45506)

Bright, C. J., and Alvord and Cradle, Js.

Syllabus

Pursuant to statute (§ 46b-84 (c)), a trial court may make appropriate orders of support for any child with, inter alia, a mental disability who resides with a parent and is principally dependent upon such parent for maintenance until such child attains the age of twenty-one.

The defendant father appealed from the judgment of the trial court ordering him to pay support pursuant to § 46b-84 (c) for his daughter. The plaintiff mother filed motions requesting that the court enter an order extending child support, educational support, and medical and dependent care and modifying child support until the parties' daughter attained the age of twenty-one on the basis that the daughter has a qualifying disability. The defendant contested that their daughter had a mental disability and that she had resided with the plaintiff during the time period at issue, as required by § 46b-84 (c). After a hearing before the court, at which the plaintiff presented expert testimony about the daughter's mental disabilities and both parties testified, the court issued orders that required the defendant to comply with outstanding discovery requests and required both parties to submit updated financial affidavits within two weeks. The court also ordered counsel to prepare updated proposed orders, indicating that the plaintiff's proposed orders should include specific monetary amounts with regard to the expenses she had incurred on her daughter's behalf and the defendant's proposed orders should include an indication as to whether he agreed or disagreed with each amount listed in the plaintiff's proposed orders. The plaintiff submitted proposed orders in accordance with the court's order, requesting that the defendant be ordered to pay a higher amount per week in child support retroactive for the period of time from when the daughter turned nineteen to when she turned twenty-one. The defendant did not comply with the court's directive to file proposed orders, and he failed to file any other posttrial document. The trial court found that the plaintiff had satisfied her burden under § 46b-84 (c) and adopted the plaintiff's proposed orders as orders of the court, finding that the daughter was mentally disabled as defined in the applicable statute (§ 46a-51), that she had lived with the plaintiff at all times, and that the defendant was capable of procuring the funds for the financial obligations warranted in the present matter. The court ordered that the defendant pay the plaintiff the retroactive child support in lump sum payments and to reimburse the plaintiff for one half of her expenditures made for their daughter's medical and school expenses up to her twenty-first birthday, including costs of attendance at a residential educational and treatment facility for children with disabilities that the daughter attended for most of her high school years and a postgraduate year and her attendance at a special education college. After the defendant filed his appeal to this court, the plaintiff filed a motion for appellate counsel fees, which the court granted after a hearing. The defendant thereafter amended his appeal to challenge the court's award of appellate attorney's fees. *Held*:

1. This court declined to review the defendant's unpreserved claim that the order requiring reimbursement for the daughter's educational expenses was barred by the principles of res judicata and collateral estoppel: although, on appeal, the defendant relied on two previous trial court rulings for his claim that the plaintiff's entitlement to reimbursement for educational expenses related to the daughter's high school and college had been addressed by two prior court orders, at no point in the present proceeding before the trial court did the defendant alert that court to any argument of collateral estoppel or res judicata with respect to the educational expenses related to the daughter, and, therefore, those claims were not properly before this court; moreover, contrary to the defendant's claim that the trial court in a previous ruling had determined that the costs for the daughter's college exceeded its authority pursuant to statute (§ 46b-56c), that court had never been asked to

address a claim under § 46b-84 (c) and, in fact, the court's ruling denying the plaintiff's motion for postsecondary educational support made no mention of § 46b-84 (c), the college, or the disabilities of the parties' daughter.

2. The defendant could not prevail on his claim that the trial court abused its discretion by modifying the child support orders without considering the child support guidelines or other statutory criteria and that the court, under § 46b-84 (c), had the authority only to extend, not modify, the support order: because the defendant failed to raise before the trial court any claim regarding the court's statutory authority to issue a support order that exceeded his original weekly child support obligation when the daughter was a minor, this court declined to review that claim; moreover, although the defendant claimed that the court failed to consider his other qualified dependents, namely, his three minor children, in making its support order, that contention was unsupported by the record, as the defendant failed to identify in his appellate brief any evidence that he presented to the trial court as to the needs of those children, and, despite his failure to file an updated financial affidavit as expressly ordered by the court, the court nevertheless considered the defendant's financial circumstances in making its support order and found that the defendant was more than capable of procuring funds for the financial obligations that were warranted in this matter.

3. The trial court did not abuse its discretion in awarding appellate attorney's fees to the plaintiff: the court expressly stated that it had considered the criteria set forth in the statute (§ 46b-82) governing the award of attorney's fees in family court proceedings, as required by statute (§ 46b-62), and the court's general reference to those criteria was all that was required; moreover, contrary to the defendant's argument that the court failed to consider the parties' financial affidavits and the assets listed therein, the court expressly found the defendant not credible with respect to the claimed decrease in earnings listed in his financial affidavit, a credibility determination that this court would not second-guess; furthermore, although the defendant claimed that the plaintiff had more cash assets than he did, the court found that the financial situations of the parties were not at all parallel and that the award of counsel fees was essential so as to not undermine the court's decision directing the defendant to contribute to the support of the parties' special needs child.

Argued October 17—officially released December 12, 2023

Procedural History

Action to establish paternity of the plaintiff's minor children, and for other relief, brought to the Superior Court in the judicial district of Hartford and tried to the court, *Prestley, J.*; judgment declaring that the defendant is the father of the plaintiff's minor children and granting certain other relief; thereafter, the court, *Hon. Constance L. Epstein*, judge trial referee, granted the plaintiff's motions for extension of child support for a child with a qualified disability and for modification of child support, from which the defendant appealed to this court; thereafter, the court, *Hon. Constance L. Epstein*, judge trial referee, granted the plaintiff's motion for appellate counsel fees, and the defendant filed an amended appeal. *Affirmed.*

John F. Morris, for the appellant (defendant).

Steven R. Dembo, with whom were *P. Jo Anne Burgh*, and, on the brief, *Seth J. Conant*, for the appellee (plaintiff).

Opinion

ALVORD, J. The defendant, Michael Infantino, appeals from the judgment of the trial court ordering support pursuant to General Statutes § 46b-84 (c),[1] which authorizes the court, inter alia, to issue orders of support for a child who has a mental disability until the child attains the age of twenty-one. On appeal, the defendant claims that the court (1) improperly ordered him to reimburse the plaintiff, Susan F. Gainty, for one half of the medical and special schooling expenditures the plaintiff had made on behalf of the parties' child, (2) exceeded its authority in issuing its support order, and (3) abused its discretion in awarding appellate attorney's fees to the plaintiff. We affirm the judgment of the court.

This matter originated in 2001 as an action to establish the paternity of the parties' two children, a son, born in 1998, and a daughter, born in 2001 (daughter). In May, 2001, the trial court, *Prestley*, *J.*, entered judgments of paternity as to the children and ordered the defendant to pay child support in the amount of $250 per week.[2]

For the past fifteen years, the parties have been engaged in postjudgment litigation involving the defendant's failure to comply with the court's child support orders. Prior to the proceedings at issue in this appeal, the defendant had been found in contempt five times, two of which involved the court issuing a mittimus against the defendant with purge amounts of $15,000 and $3000. The court issued a capias on four occasions, following the defendant's failure to appear for court proceedings, and each capias contained a bond amount.

On December 11, 2019, the then self-represented plaintiff filed a motion captioned "motion for order for extension of child support order, education, medical, dependent care expenses through age twenty-one for a child with a qualified disability." In her handwritten motion, the plaintiff stated that she was requesting that the court enter an order extending "child support, education support, medical, dependent care" for their daughter until age twenty-one on the basis that the daughter has a qualifying disability. On December 17, 2019, the plaintiff, who continued as a self-represented litigant, filed a motion for modification of child support. Therein, she represented that the child has a qualifying disability and is eligible for support through age twenty-one. She further represented that there are "[s]ignificant expenses for care, support, needed services." She requested, inter alia, that the court "[o]rder current support," that the court order the defendant to "[c]ontribute to child care/support programs," and, under "[o]ther" orders, she handwrote "[e]xpenses pertaining to services, care, programs, education, [and] medical expenses."

The court, *Hon. Constance L. Epstein*, judge trial referee, held a hearing on the plaintiff's motions on February 16, 2022. Although the defendant did not file an objection to the plaintiff's motion, the court understood his objection to be twofold: contesting that their daughter had a mental disability and that she had resided with the plaintiff during the time period at issue. The plaintiff presented the expert testimony of Julie Casertano, a clinical psychologist who had been treating the parties' daughter since 2006. Casertano testified that the parties' daughter had been diagnosed with several mental disabilities, including nonverbal learning disorder, disruptive mood dysregulation disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder, and generalized anxiety disorder. Casertano testified that several of the daughter's diagnoses are classified as mental disorders in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Casertano testified regarding the daughter's emotional and behavioral outbursts and inability to obtain a full-time job or live independently.

The plaintiff also presented the expert testimony of Christina Ciocca, who conducted two neuropsychological evaluations, one in 2016 and one in 2019, on the parties' daughter. Ciocca testified as to the daughter's diagnoses of nonverbal learning disorder, major depressive disorder, and generalized anxiety disorder. She testified that she opined in her report that, "[g]iven her complex profile, persistent difficulties, [and] recent relapse, [the parties' daughter] must remain eligible for services through age 22." Ciocca testified that she had recommended that the family seek a conservatorship over their daughter because Ciocca's test results revealed that "[their daughter] was not able to fully appreciate and make decisions on her behalf and in her best interest." Ciocca stated that, at the time of her report in 2019, she did not believe that the daughter could live independently.

The plaintiff and the defendant also testified at the hearing. The plaintiff testified that she was employed as a special education teacher, earning approximately $75,000 annually. The plaintiff testified as to the expenses she has incurred on behalf of the daughter, including medical expenses and expenses related to Franklin Academy, a residential educational and treatment facility for children with disabilities that the daughter attended for most of her high school years and a postgraduate year, and Landmark College, a special education college that the daughter attended. The defendant testified that he was self-employed in landscape construction, earning approximately $165,000 annually. The defendant testified that he did not deny that the daughter had experienced the issues to which the experts had testified or that the plaintiff had incurred costs for their daughter and, in fact, testified

that his "eyes may have enlightened a little more today," but nevertheless maintained that he should not be obligated to assist in the support of their daughter until she reached the age of twenty-one.

During the February 16, 2022 hearing, the court also received documentary evidence, including the two neuropsychological evaluations performed by Ciocca and a document summarizing the plaintiff's expenses, all of which were admitted into evidence without objection. The court also considered the defendant's October 21, 2021 financial affidavit[3] and the plaintiff's February 11, 2022 financial affidavit.

At the conclusion of the hearing, the court specifically inquired of counsel whether the child support guidelines applied to this matter, and both counsel responded that the guidelines do not apply. The court orally issued orders to the parties and thereafter issued a written order that required the defendant to comply with outstanding discovery requests and both parties to submit updated financial affidavits within two weeks. The court also ordered the following: "Counsel are to prepare updated proposed orders. The plaintiff's proposed orders shall include specific monetary amounts. The defendant's proposed order[s] shall include an indication as to whether he agrees or disagrees with each amount listed in the plaintiff's proposed orders."

On March 1, 2022, the plaintiff submitted her posttrial memorandum in accordance with the court's February 16, 2022 order. In her proposed orders, she requested, inter alia, that the defendant be ordered to pay $300 per week in child support retroactive for the period of January, 2020, through January, 2022, when their daughter turned twenty-one. The defendant did not comply with the court's directive to file proposed orders, and he failed to file any other posttrial document.

As the court noted in its April 28, 2022 memorandum of decision, which was reissued as corrected to address typographical errors on August 25, 2022, "[a]t the time of the February 16, 2022 hearing in this matter, [the defendant] had still not complied with long overdue production requests on financial matters, and when questioned as to that significant delay, he replied that he was 'too busy.' At the close of the hearing on February 16, 2022, the court ordered [the defendant's] compliance with the production requests and an updated financial affidavit within two weeks. As of the date of this memorandum of decision, the court file still does not reflect any notice of compliance by [the defendant] to the outstanding discovery, nor does it reflect the filing of an updated financial affidavit by [the defendant]."

The court made the following findings with respect to the parties' daughter. "Casertano describes [the daughter] as extremely limited in her cognitive abilities

and in her ability to maintain any interpersonal relationships. [She] is anxious about almost all normal everyday activities and experiences and finds almost everything in her life to be not only challenging but very often overwhelming. Some of [her] difficulties include her inability to maintain regular sleep/awake patterns ([her] sleep is irregular in that she will be awake for days and then sleep for days); she has severe mood swings and subjects her family and others to violent emotional outbursts, some resulting in property destruction; she has alienated herself from her older brother and has made home life very turbulent for her mother and her two younger half brothers because of her frequent belligerent outbursts, temper tantrums, irritability, anger, constantly combative disruptive behavior, and general inability to interact well consistently with anyone. [She] cannot hold down employment or support herself. While she has been able to achieve some temporary gains, such as participating in certain activities for a while at the schools she has attended, she is, and has been, totally dependent upon her mother for food, shelter, compliance with necessary medication regimes and other basic needs. [Casertano] testified that [the daughter] has not been able to, and cannot now, live on her own." The court found that "Casertano has diagnosed [the daughter] as suffering from several 'mental disorders' as described in the [DSM-5]: disruptive mood dysregulation disorder, attention deficit hyperactivity disorder, post-traumatic stress disorder, exaggerated startle response, and generalized anxiety disorder. [She] also suffers from a nonverbal learning disorder. [Casertano] has referred [her] many times to family therapy, individual therapy, consultations, and just about any other pragmatic approach one could imagine to assist this young woman, and [the plaintiff] has followed all of these recommendations. Casertano opined that, despite some temporarily experienced minor progress from time to time, [the daughter] has continued to suffer from these disabilities throughout the time at issue and does to this very day." (Footnote omitted.)

The court explained that Ciocca substantiated Casertano's opinion and noted that Ciocca, "[i]n her latest report . . . opined that [the daughter] could not live independently. lndeed, [Ciocca] made no less than thirty-two recommendations to assist in addressing the significant disabilities from which the child suffers, even including the possibility of application for a full legal conservatorship for the child."

The court further found that "[the daughter] has always lived with [the plaintiff]. At age eleven or twelve, [the daughter] stopped visiting with [the defendant], and before that, the visitation was minimal. Outside of child support until the age of majority, which is still in arrears, [the plaintiff] has not been provided any financial or other assistance from [the defendant]. The only exception to this is that [the defendant] would very

occasionally see [their daughter] when she was in one of her exceedingly negatively hyper moods and he would offer to calm her down. At the hearing in this matter, [the defendant] did not present any evidence regarding [their daughter's] diagnoses. lndeed, after hearing the other evidence presented at the hearing, [the defendant] testified that he does not disagree that [their daughter] is a troubled young woman and that he had learned some things from the testimony that had been elicited."

The court found: "During the time at issue, [the daughter] attended Franklin Academy in East Haddam . . . and, for a short time thereafter, Landmark College in Putney, Vermont. Both of these schools are residential facilities for individuals with learning and other disabilities, and the schools provide special supervision and attention." The court found that the daughter always had resided with the plaintiff and continued to do so at the time of the hearing.

The court made findings with respect to each of the parties' financial situations. With respect to the plaintiff, the court found that she earns approximately $78,000 annually from her work at a technical high school and that she has lost time from work due to the daughter's needs. The court also found that the plaintiff has paid for all of their daughter's expenses and refinanced the mortgage on her home to manage payment of those expenses.

With respect to the defendant, the court found that he is "more than capable of making the financial obligations that are warranted in this matter and is capable of procuring the funds for same." Specifically, the court found that the defendant is self-employed in "landscape construction," and his financial affidavit reported income of approximately $163,000 annually. The court noted that the defendant's financial affidavit reported an excess of income over all expenses in the amount of $400 weekly. The court also made findings with respect to the defendant's home purchase in summer, 2021.[4] The court expressly did not credit the defendant's entry on his financial affidavit of the value of his home in the amount of $409,000, on the basis of his testimony that he had paid $455,000 for his home a few months earlier.

The court found that the plaintiff had satisfied her burden under § 46b-84 (c) and adopted the plaintiff's proposed orders as orders of the court. The court ordered the defendant to pay $300 weekly for the period of January 24, 2020, to January 24, 2022, amounting to a total of $31,200 due for his share of their daughter's support. The court ordered that amount to be paid in four equal lump sum payments of $7800, with the first payment due on May 30, 2022, and the final payment due on November 28, 2022. In addition, the court ordered the defendant to pay the plaintiff immediately the "sum of $683.10, an amount to which he stipulated was past

due pre-majority obligations on his part."

Finally, the court ordered the defendant to reimburse the plaintiff for one half of her expenditures made for their daughter's "medical and school expenses up to January 25, 2022 . . . ." The court ordered the plaintiff to submit, within one week, a listing of the expenditures "in chronological order and with identification because the court finds the list submitted to be confusing." On May 6, 2022, the plaintiff submitted a spreadsheet identifying expenditures she had made with respect to the daughter's medical and special schooling costs, together with documentation of the expenditures listed therein. The spreadsheet contained forty-seven entries, totaling $91,328.56. She identified, as the defendant's 50 percent share due, the amount of $44,651.78.

On May 6, 2022, the defendant filed a memorandum of law "requesting the court to deny legal fees and sanctions . . . ." He did not argue in his memorandum that the $300 weekly support order was improper. Indeed, the only reference in that memorandum to the $300 weekly support order is contained in his argument that his failure to provide full compliance with the plaintiff's discovery requests "did not substantially prejudice the plaintiff as the court awarded her the full amount she requested in her proposed orders of $300/per week for the full retroactive period requested." The defendant did not file any response to the plaintiff's identification of her out-of-pocket medical and special schooling expenses, notwithstanding the court's order that he do so.

On May 11, 2022, the court issued a second part of its memorandum of decision, wherein it provided concluding orders after its review of the submissions. The court ordered: "In addition to the monthly support obligations for which orders have already been issued in the April 28, 2022 portion of this court's orders, the total amount of out-of-pocket medical and special schooling expenses for which [the defendant] remains responsible, up through January 25, 2022, is $44,651.78. [The defendant] is to pay that total amount to [the plaintiff] on or before January 25, 2023.

"[The defendant] has not complied with discovery requests as to his financials and has not provided an updated financial affidavit. The court will not penalize him with a fine for his failure to do so, but, based on the findings in the first portion of this decision, the court is confident that [the defendant] is more than capable of paying this award, or procuring a method to do so." The court denied the plaintiff's request for attorney's fees. This appeal followed.

On July 8, 2022, the plaintiff filed a motion for appellate counsel fees. After a hearing, the court granted the motion and ordered the defendant to pay $10,000 in appellate attorney's fees to the plaintiff. The defendant

thereafter amended his appeal to challenge the court's award of appellate attorney's fees. Additional facts and procedural history will be set forth as necessary.

I

The defendant's first claim on appeal is that "[t]he trial court abused its discretion by ordering reimbursement of expenses twice denied by the court." Specifically, he contends that the order requiring reimbursement for Landmark College and Franklin Academy costs was barred by res judicata and collateral estoppel. As part of this claim, he argues that a prior court correctly had determined that the Landmark College costs "were outside the court's statutory jurisdiction under [General Statutes §] 46b-56c because the order in this case predated the October 1, 2002 effective date of the statute."[5] The plaintiff responds that the defendant's claim is unpreserved. We agree with the plaintiff and, thus, we decline to review the claim.

The following procedural history merits reiteration. At the conclusion of the February 16, 2022 hearing, the court stated that it wanted the plaintiff to provide "the specific amounts for each of [her] proposed orders" and wanted "from defendant's counsel the amounts on which [the] defendant agrees or disagrees." The court reiterated in its written order that "[t]he defendant's proposed order[s] shall include an indication as to whether he agrees or disagrees with each amount listed in the plaintiff's proposed orders." Moreover, in part one of its memorandum of decision, issued on April 28, 2022, the court stated that the defendant "is also to repay [the plaintiff] for one half of the expenditures she has made for the daughter's medical and school expenses up to January 25, 2022," and requested that the plaintiff resubmit the list in chronological order and with identification. Following the plaintiff's submission of the list, prepared as ordered by the court, which included the Landmark College and Franklin Academy expenses and identified the defendant's proposed 50 percent contribution, the defendant, in direct noncompliance with the court's order, did not file a response to the plaintiff's detailed identification of expenditures. After the issuance of part two of the court's memorandum of decision dated May 11, 2022, which ordered the defendant to reimburse the plaintiff for one half of the special schooling expenses, the defendant did not make any filings with the trial court suggesting that he disputed any of the expenses.

On appeal, the defendant contends in his brief that the plaintiff's entitlement to reimbursement for Franklin Academy and Landmark College expenses was addressed by two prior court orders. First, he notes that the court, *Nastri*, *J.*, on February 13, 2019, denied the plaintiff's motion for a postsecondary educational support order for both the parties' son and daughter. Second, he notes that the family support magistrate,

Frederic Gilman, denied the plaintiff's motion for contempt, which motion included an allegation that the defendant failed to pay 50 percent of the costs of the daughter attending Franklin Academy.[6] According to the defendant, because the plaintiff previously litigated and was unsuccessful with regard to her claims that the defendant should share in the Franklin Academy and Landmark College costs, her claims in the present motion are barred by res judicata and collateral estoppel. At no point in the present proceeding, however, did the defendant alert the court to any argument of collateral estoppel or res judicata with respect to the Franklin Academy or Landmark College expenses related to their daughter.[7] See *Cadle Co.* v. *Ogalin*, 175 Conn. App. 1, 13, 167 A.3d 402 (declining to consider res judicata argument raised for first time on appeal because "[r]es judicata and collateral estoppel are affirmative defenses that may be waived if not properly pleaded" (internal quotation marks omitted)), cert. denied, 327 Conn. 930, 171 A.3d 454 (2017). As to the defendant's related contention that Judge Nastri correctly determined that the costs for Landmark College exceeded the court's statutory authority pursuant to § 46b-56c, Judge Nastri was never asked to address a claim under § 46b-84 (c). In fact, Judge Nastri's ruling denying the plaintiff's motion for postsecondary educational support made no mention of § 46b-84 (c), Landmark College, or the disabilities of the parties' daughter.

"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." (Emphasis in original; internal quotation marks omitted.) *Ochoa* v. *Behling*, 221 Conn. App. 45, 50–51, 299 A.3d 1275 (2023); see also *Kennynick, LLC* v. *Standard Petroleum Co.*, 222 Conn. App. 234, 235 n.2, A.3d (2023) (declining to review claim of error with respect to compound prejudgment interest where defendant did not raise claim with trial court despite plaintiff expressly requesting that award in posttrial briefing).

Our examination of the record reveals that the defendant did not raise with the trial court any of the claims he now advances on appeal with respect to the Landmark College and Franklin Academy expenses. Consequently, those claims are not properly before this court, and we therefore decline to review them.

II

The defendant's second claim on appeal is that the court abused its discretion "by modifying the child support orders, without considering the child support guidelines . . . or any statutory criteria."[8] He contends that the court, pursuant to § 46b-84 (c), had the authority only to extend, not modify, the support order. We decline to review this claim. To the extent that the defendant argues that the court abused its discretion generally in awarding support pursuant to § 46b-84 (c), we are not persuaded.

We begin with the language of § 46b-84 (c), which authorizes the court to make orders of support for disabled children until the child attains the age of twenty-one. Section 46b-84 (c) provides in relevant part that "[t]he court may make appropriate orders of support of any child with . . . a mental disability . . . who resides with a parent and is principally dependent upon such parent for maintenance until such child attains the age of twenty-one. The child support guidelines established pursuant to section 46b-215a shall not apply to orders entered under this subsection. . . ."

We first note that the defendant failed to raise at trial any claim regarding the court's statutory authority to issue a support order that exceeded his $250 weekly child support obligation when the child was a minor, and, thus, we decline to review that claim. As noted previously, "[o]ur rules of practice provide that we are not bound to consider a claim unless it was distinctly raised at trial or arose subsequent to the trial. Practice Book § 60-5. . . . A claim is distinctly raised if it is so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . A claim briefly suggested is not distinctly raised. . . . Our rules of procedure [also] do not allow a [party] to pursue one course of action at trial and later, on appeal, argue that a path he rejected should now be open to him. . . . To rule otherwise would permit trial by ambuscade." (Citation omitted; emphasis in original; internal quotation marks omitted.) *A & R Enterprises, LLC* v. *Sentinel Ins. Co., Ltd.*, 202 Conn. App. 224, 229, 244 A.3d 660, cert. denied, 336 Conn. 921, 246 A.3d 2 (2021).

Our review of the record reveals that the defendant had multiple opportunities before the trial court to raise his appellate claim that the court lacked the statutory authority to order support in an amount greater than the previous child support order but failed to do so. The first opportunity was presented when the plaintiff testified at trial that she was seeking the amount of $300 per week for the twenty-four month period from age nineteen until the daughter reached the age of twenty-one. At the hearing, the defendant did not raise any issue as to the dollar amount of support requested. Instead, he contested only whether their daughter had a mental disability and whether she resided with the

plaintiff during the time period at issue. The second opportunity occurred when the plaintiff reiterated her request for the $300 weekly amount in her March 1, 2022 posttrial memorandum and specified that her request was made pursuant to § 46b-84 (c). The defendant did not file proposed orders or a posttrial memorandum addressing the plaintiff's request for support pursuant to § 46b-84 (c).[9] Accordingly, we decline to review the defendant's claim.

With respect to the defendant's remaining arguments that the court failed to consider his "other qualified dependents," we reject this contention as unsupported by the record. First, the defendant fails to identify in his appellate brief any evidence that he presented to the trial court as to the needs of his other children. Second, despite the express order of the court that he file an updated financial affidavit, which could have reflected current expenses related to his other children, the defendant failed to do so. Despite this failure, the court nevertheless considered the defendant's financial circumstances in making its support order. In its memorandum of decision, the court expressly considered the defendant's October, 2021 financial affidavit, which reported $48 in weekly children's activities, and found that the financial affidavit reported income of approximately "$163,000 per year, with an excess of income over all expenses each week in the amount of more than $400."[10] The court also made findings as to the defendant's purchase of his home and expressed doubt as to the credibility of the defendant's representation that the value of the home had decreased from its purchase price of $455,000 in summer, 2021, to $409,000 as of October, 2021. The court noted the defendant's testimony that his wife's parents had paid the $50,000 down payment. Moreover, the court found that the defendant was "more than capable of making the financial obligations that are warranted in this matter and is capable of procuring the funds for same." The defendant does not challenge these factual findings, made in connection with the court's support order, as clearly erroneous.[11]

Consistent with § 46b-84 (c), the court expressly found that the daughter had a mental disability and resided with the plaintiff at all times. The defendant has not provided this court with any basis to conclude that the court abused its discretion in determining that the needs of the parties' daughter would be met by a $300 weekly contribution and that the defendant had the ability to make that contribution.

III

The defendant's final claim on appeal is that the court abused its discretion in awarding appellate attorney's fees to the plaintiff. We disagree.

The following additional procedural history is rele-

vant to this claim. Following the defendant's appeal to this court, the plaintiff filed a motion for an order of appellate counsel fees. On August 3, 2022, the court held a hearing, during which both parties testified and submitted financial affidavits. The plaintiff testified that she was requesting that the court order the defendant to pay counsel fees in the amount of her counsel's initial retainer, which was $12,500, plus the cost of transcripts, which was estimated to be approximately $500.

In its August 25, 2022 memorandum of decision, the court granted the motion and ordered the defendant to pay $10,000 in attorney's fees to the plaintiff. The court stated that it had considered the parties' testimony at the hearing, thoroughly reviewed the parties' briefing, considered the applicable decisional law, and "thoroughly considered all of the criteria set forth in General Statutes § 46b-82, as directed by General Statutes § 46b-62 . . . ." The court stated: "At the hearing on this matter, the defendant contended that his earnings had declined; however, his credibility regarding that issue left much to be desired. Contrary to the defendant's assertions, the financial situations of the parties are not at all parallel, and the plaintiff has borne, and continues to bear, the entire financial responsibility for the parties' special needs child. Furthermore, the award of counsel fees is essential so as to not undermine the court's decision directing the defendant to contribute to the support for the parties' special needs child, for the limited period of time permitted by . . . § 46b-84—the decision that is the subject of the defendant's appeal."

We next set forth applicable legal principles and our standard of review. Section 46b-62 governs the award of attorney's fees in family court proceedings and provides in relevant part that "the court may order . . . any parent to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82," the alimony statute. These criteria include, inter alia, "the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties . . . ." General Statutes § 46b-82 (a). "Courts ordinarily award counsel fees . . . so that a party . . . may not be deprived of [his or] her rights because of lack of funds. . . . Where, because of other orders, both parties are financially able to pay their own counsel fees they should be permitted to do so. . . . An exception to the rule . . . is that an award of attorney's fees is justified even where both parties are financially able to pay their own fees if the failure to make an award would undermine its prior financial orders . . . . [A]n award of attorney's fees . . . is warranted only when at least one of two circumstances is present: (1) one party does not have ample liquid assets to pay for attorney's fees; or (2) the failure to award attorney's fees will undermine the court's other

financial orders." (Citation omitted; internal quotation marks omitted.) *Dolan* v. *Dolan*, 211 Conn. App. 390, 405, 272 A.3d 768, cert. denied, 343 Conn. 924, 275 A.3d 626 (2022).

"Whether to allow [attorney's] fees, and if so in what amount, calls for the exercise of judicial discretion by the trial court. . . . An abuse of discretion in granting [attorney's] fees will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." (Citation omitted; internal quotation marks omitted.) *Hornung* v. *Hornung*, 323 Conn. 144, 170, 146 A.3d 912 (2016).

The defendant argues that the court improperly considered the burdens borne by the plaintiff with respect to the parties' daughter. Specifically, he contends that "the court's decision palpably demonstrates the court's sympathy for the plaintiff's situation, focusing its findings on her and on the burdens she bears and not on the statutory criteria." He also contends that the court failed to consider the defendant's ability to pay.[12] Finally, the defendant argues that the court failed to consider the parties' financial affidavits, particularly the defendant's cash assets of only $3900 and the plaintiff's ownership of rental property and $115,000 in deferred compensation. We disagree.

First, we note that the court expressly stated that it had considered the statutory criteria set forth in § 46b-82, as required by § 46b-62. The court's general reference to those criteria is all that is required. See *Leonova* v. *Leonov*, 201 Conn. App. 285, 331, 242 A.3d 713 (2020), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021); see also *Jewett* v. *Jewett*, 265 Conn. 669, 693, 830 A.2d 193 (2003) ("[i]n making an award of attorney's fees under § 46b-82, [t]he court is not obligated to make express findings on each of these statutory criteria" (internal quotation marks omitted)).

Second, we reject the defendant's argument regarding the parties' financial affidavits.[13] The court expressly found the defendant not credible with respect to his claimed decrease in earnings.[14] We cannot second-guess the court's credibility determination. See *Giordano* v. *Giordano*, 203 Conn. App. 652, 662, 249 A.3d 363 (2021) (rejecting defendant's claim that his financial affidavit demonstrated lack of ability to pay where court, in finding defendant had ability to pay, expressly found defendant not credible with respect to purported inability to pay). As to the defendant's contention that the plaintiff had "far more cash assets" than he did, the court found that "the financial situations of the parties are not at all parallel . . . ." Moreover, "ample liquid funds [are] not an absolute litmus test for an award of counsel fees. . . . [To] award counsel fees to a [party] who had sufficient liquid assets would be justified, if the failure to do so would substantially undermine the other financial awards." (Internal quotation marks omit-

ted.) *Giordano* v. *Giordano*, supra, 662–63. In the present case, the court found that the award of counsel fees was "essential so as to not undermine the court's decision directing the defendant to contribute to the support for the parties' special needs child . . . ." On the basis of the record, we conclude that the foregoing findings justified the court's award of attorney's fees, and the award did not constitute an abuse of its discretion.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] General Statutes § 46b-84 (c) provides: "The court may make appropriate orders of support of any child with intellectual disability, as defined in section 1-1g, or a mental disability or physical disability, as defined in subdivision (15) of section 46a-51, who resides with a parent and is principally dependent upon such parent for maintenance until such child attains the age of twenty-one. The child support guidelines established pursuant to section 46b-215a shall not apply to orders entered under this subsection. The provisions of this subsection shall apply only in cases where the decree of dissolution of marriage, legal separation or annulment is entered on or after October 1, 1997, or where the initial support orders in actions not claiming any such decree are entered on or after October 1, 1997."

We note that § 46b-84 (c) has been amended since the events underlying this appeal by No. 23-137, § 64, of the 2023 Public Acts, effective October 1, 2023. Public Act 23-137, § 64, defines mental disability by reference to General Statutes § 46a-51 (20), which provides: " 'Mental disability' refers to an individual who has a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's 'Diagnostic and Statistical Manual of Mental Disorders . . . .' " Public Act 23-137, § 64, also increased the age limit for orders of support for disabled children until the child attains the age of twenty-six, but those provisions "shall apply only in cases where the decree of dissolution of marriage, legal separation or annulment is entered on or after October 1, 2023, or where the initial support orders in actions not claiming any such decree are entered on or after October 1, 2023."

In the present case, because the initial support order was entered before October 1, 2023, the amendments to § 46b-84 (c) are not relevant to this appeal. All references to § 46b-84 (c) herein are to the current revision of the statute.

[2] The transcript of the hearing in the action to establish paternity also reflects that the court intended to order the defendant to pay 50 percent of daycare and medical expenses and that the parties had agreed to these orders.

Specifically, the following exchange occurred:

"[The Plaintiff's Counsel]: According to [the child support guidelines worksheet], on the basis of [the defendant's] income, it would yield a child support order of $225 a week and 40 percent share of daycare and medical.

"The Court: Okay.

"[The Plaintiff's Counsel]: What we're asking the court to order is 50 percent as well as $250 a week to memorialize what's currently being done and what has been done.

"The Court: Okay. All right. I'll make that order."

Although the order regarding daycare and medical expenses appears to have been inadvertently omitted from the written order, the parties, at all relevant times in this litigation, have operated under the understanding that the daycare and medical expenses were ordered as stated in the transcript. For example, the file reflects that during the July 21, 2010 contempt proceeding, the parties agreed as to the amount of the daycare and medical arrearage, $3443.46, which was ordered to be paid directly to the plaintiff by the defendant.

In his appellate brief, the defendant makes passing reference to the omission, while acknowledging that "[t]he court file reflects that the court regularly assumed such an order existed and has entered orders as if [the medical expenses order had been issued] . . . ." The defendant neither directs this court to any instance in which he ever contested the award of medical expenses as inconsistent with the original judgment, nor does he raise such a claim on appeal.

[3] The defendant represents in his appellate brief that the court had before it at the time of the February, 2022 hearing his current financial affidavit. He provides, in his appendix, a financial affidavit dated February 12, 2022. The court file, however, does not reflect the filing by the defendant of a February 12, 2022 financial affidavit. Moreover, during the hearing, the court stated on the record that it had the defendant's October 21, 2021 financial affidavit, and the plaintiff's counsel questioned the defendant with respect to that October affidavit. The court noted in both of its memoranda of decision that the defendant had failed to file an updated financial affidavit. Although the plaintiff references the defendant's February, 2022 financial affidavit in her appellate brief, she also represents that "[t]he defendant failed to file a current financial affidavit at the time of trial in February, 2022."

Because there is no indication in the record that the defendant filed a February, 2022 financial affidavit and the parties and the court used the October, 2021 financial affidavit during the hearing, we also reference the defendant's October, 2021 financial affidavit.

[4] The court noted the defendant's testimony that he "averred to the mortgage company that he was seeking a waiver of his past due pre-majority child support arrears when he was applying for the mortgage."

[5] The defendant also argues that the court exceeded its authority under § 46b-84 (c) when it ordered the defendant to pay a portion of the Franklin Academy and Landmark College expenses. The defendant's argument in this regard is difficult to follow. First, the defendant appears to repeat his argument about the prior court orders. He then seems to fault the court for not considering the child support guidelines, even though § 46b-84 (c) explicitly states that the guidelines do not apply to orders issued thereunder and the defendant's counsel agreed before the trial court that the child support guidelines did not apply. See part II of this opinion. Finally, the defendant refers the court to brief portions of the legislative history of § 46b-84 (c) to suggest that the court's only authority under § 46b-84 (c) was to continue until age twenty-one a previously entered support order. He does so without any discussion of whether there is any ambiguity in the statute that would warrant our review of the legislative history. Furthermore, other than referring the court to the legislative history, the defendant's brief provides little argument or explanation as to its importance or relevance. We are not persuaded by any of these arguments, all of which are unpreserved because they were never raised in the trial court.

[6] The entirety of the portion of Magistrate Gilman's September 18, 2019 order regarding contempt states: "No Contempt Found. Contempt concluded; Regarding Franklin Academy."

[7] The defendant notes in his appellate brief that the plaintiff's counsel indicated during the hearing, in response to a question from the court, that she was not including a claim for amounts from Franklin Academy expenses. The defendant recognizes, however, that exhibit 5 specifically did include expenses for Franklin Academy and calculated the defendant's 50 percent share of those expenses. Moreover, the defendant recognizes that the plaintiff, following the court's order that she provide a more specific list of expenses, again included amounts paid to Franklin Academy and identified the defendant's 50 percent share due. The defendant failed to comply with the court's order that he respond to the list. Given this ambiguous record, we cannot conclude that counsel's single statement was intended to abandon the plaintiff's request for reimbursement.

[8] The defendant also argues that the court abused its discretion, in both its reimbursement order and its weekly support order, by failing to consider his "other qualified dependents," namely, his three minor children. See footnote 10 and accompanying text of this opinion.

[9] The defendant contends in his appellate brief that the plaintiff's motions, which she filed as a self-represented party, "asked only for an extension of the child support order, not a modification, and for an order regarding 'services, care programs, education, medical expenses,' most of which had previously been denied. To the extent the motion was treated as a modification, the court should have had testimony and evidence establishing the customary [General Statutes §] 46b-86 criteria before a modification could be granted." At the hearing, the defendant's counsel expressly stated that the child support guidelines do not apply, and he cannot now claim on appeal that they do. Furthermore, as previously noted, none of these issues were raised and preserved properly in the trial court.

[10] Our review of the record reveals that the defendant offered no evidence as to the minor children beyond his testimony as follows:

"[The Plaintiff's Counsel]: And on the last page where there's a summary

of your income versus your expenses, it shows your net weekly income . . . of $2170 and net weekly—total weekly expenses of $1754. If my math is correct, that's a $416 difference in the positive between your expenses and your income. Does that sound about right?

"[The Defendant]: Yes.

"[The Plaintiff's Counsel]: Where does that money go every week?

"[The Defendant]: Savings, it just goes. Got a big house to—you know, a house, a family, kids, things come up.

"[The Plaintiff's Counsel]: You only show on here that you have a savings account with $400 in it?

"[The Defendant]: That's correct.

"[The Plaintiff's Counsel]: So, 416—your testimony is that $416 per week goes into savings?

"[The Defendant]: For things that happen, my kids are destructive as young kids are. Things break, I've got to replace them, fuel's gone up, everything, food.

* * *

"[The Plaintiff's Counsel]: What children do those—is that $48 per week [in children's activities identified on the defendant's financial affidavit] benefit for?

"[The Defendant]: For the three boys that live with me at home."

[11] In the portion of his brief challenging the court's award of attorney's fees, the defendant does identify these factual findings as improperly supporting that award. See footnote 12 of this opinion.

[12] In his argument that the court improperly awarded attorney's fees, the defendant references the court's findings with respect to its award of support, made months prior to the plaintiff's motion for attorney's fees. Specifically, he argues that "[t]he court made no findings regarding the defendant's net income. Rather, the court somewhat dismissively cited his gross income as a basis, made reference to his recent purchase of a home, and with no other evidence found in its April 28th decision . . . the 'father is more than capable of making the financial obligations that are warranted in this matter and capable of procuring the funds for same.' The evidence before the court cannot support that finding and no claim of missing discovery can permit the court to leap to such unbased assumptions." (Citation omitted.) We are unpersuaded by the defendant's contentions. As discussed in part II of this opinion, notwithstanding the defendant's failure to comply with discovery and the court's order that he file an updated financial affidavit, the court expressly considered the earlier financial affidavit in rendering its orders.

[13] The defendant again argues that the court failed to consider "his obligations to his three . . . minor children and his family whom the court never mentioned at all in any of its decisions." We disagree. The court considered the defendant's financial affidavit, and the defendant did not offer any evidence during the hearing beyond testifying as to the ages of his minor children. See also footnote 10 and accompanying text of this opinion.

[14] When asked by his counsel how he figured that he earns $1975 per week, he responded: "I'm not sure." He later testified that he determines his revenue by looking to deposits in his business account.