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ADRIAN MARCUS *v.* DAWN CASSARA
(AC 45592)

Moll, Suarez and Clark, Js.

Syllabus

The defendant mother appealed to this court from the trial court's adjudication of the plaintiff father's postjudgment motion for modification regarding certain orders related to child support. The parties, who were never married, have three minor children together. The father had filed a custody application requesting joint legal custody. Following a bench trial, the court awarded the parties joint legal custody of the children but ordered that the mother would have physical custody and final decision-making authority with respect to matters involving the children and that the father would have visitation rights. The court ordered the father to pay, inter alia, $528 per week as basic child support in accordance with the presumptive amount due under the child support guidelines and to share, inter alia, expenses for the children's extracurricular activities in the same proportion as the percentage allocations contained in the child support guidelines, with the father responsible for 72 percent and the mother responsible for 28 percent of those costs. Subsequently, the father filed a motion for modification, requesting that the court modify the percentage allocation for the cost of extracurricular activities such that the parties would be equally responsible for the expenses of mutually agreed upon activities. Following a hearing, the court granted the motion for modification, eliminating the requirement that the father contribute to the expenses for the children's extracurricular activities. The court explained that extracurricular activities are not regular child support and that the order regarding extracurricular activities was an extra order that was made as a deviation from the child support guidelines but that the issuing court had failed to articulate its reasons for deviating from the guidelines. *Held*:

1. The trial court exceeded its authority in modifying the order regarding the expenses for extracurricular activities to entirely eliminate the father's obligation to contribute to those expenses, the court having based its decision on a ground that was not contained in the father's motion for modification: in his motion, the father did not characterize the order as a substantial deviation from the child support guidelines or argue that the court issuing the original decision improperly failed to make the requisite findings in support thereof, and he did not request that his obligation be entirely eliminated or reduced to $0, instead, he requested that the order be modified so that each party would be "equally responsible" for the expenses of the children's extracurricular activities, i.e., that they each would pay 50 percent of those costs, and the court, therefore, improperly considered whether the extracurricular activities order was a deviation under the child support guidelines; moreover, although the father had filed numerous motions for modification, he had never challenged the court's decision to issue the extracurricular activities order as being a substantial deviation from the child support guidelines that was made without the requisite finding that the application of the guidelines would be inequitable or inappropriate, and the court improperly used the father's motion for modification as an opportunity to evaluate, sua sponte, the propriety of the order more than twelve years after it was imposed.
2. The trial court improperly concluded that the extracurricular activities order constituted a deviation from the child support guidelines, as that order was issued as a separate order, independent from the father's presumptive child support obligation: the court did not deviate from the child support guidelines in issuing the extracurricular activities order, as it was not a basic child support order issued pursuant to the statute (§ 46b-215b) governing the determination of child support award amounts, and the court was thus not required to make a specific finding on the record that application of the guidelines would be inequitable or inappropriate; moreover, because the basic child support obligation as set forth in the child support guidelines in effect at the time of

the original order did not encompass the expenses for extracurricular activities, imposing an order to account for those expenses was not inconsistent with, and did not deviate from, the presumptive amount under those guidelines.

(*One judge concurring in part and concurring in the judgment*)

Argued April 11—officially released December 26, 2023

Procedural History

Application for custody of the parties' minor children, brought to the Superior Court in the judicial district of Stamford-Norwalk, and tried to the court, *Gordon*, *J.*; judgment granting, inter alia, joint legal custody to the parties and visitation rights to the plaintiff; thereafter, the case was transferred to the judicial district of Danbury, where the court, *Hon. Heidi G. Winslow*, judge trial referee, granted in part the plaintiff's motion for modification of certain orders, and the defendant appealed to this court. *Reversed in part*; *further proceedings*.

Dawn Cassara, self-represented, the appellant (defendant).

Adrian Marcus, self-represented, the appellee (plaintiff).

Opinion

SUAREZ, J. The self-represented defendant, Dawn Cassara, appeals from the judgment of the trial court granting in part a postjudgment motion for modification filed by the plaintiff, Adrian Marcus, regarding certain orders related to child support. On appeal, the defendant claims that the court improperly modified an order requiring the plaintiff to pay a percentage of the costs associated with the extracurricular activities of the parties' children. We agree and, accordingly, reverse in part the judgment of the trial court.

The record reveals the following facts and procedural history. The parties, who were never married, have three children together: a daughter born in July, 2005, and twin sons born in December, 2006. In June, 2008, the plaintiff filed a custody application requesting joint legal custody of the children, with the children's primary residence being with the defendant.

On December 10, 2009, after a bench trial, the trial court, *Gordon*, *J.*, issued an oral ruling that included custody and visitation orders (December, 2009 decision). The court awarded the parties joint legal custody of the children but ordered that the defendant would have physical custody and final decision-making authority with respect to matters involving the children and that the plaintiff would have visitation rights. The court found that the plaintiff, who had his own chiropractic practice located in Greenwich, had an earning capacity of $200,000 per year, and the defendant, who was not employed at that time, had an earning capacity of $20,000 per year.[1] The court ordered the plaintiff to pay $528 per week as basic child support in accordance with the presumptive amount due under the child support guidelines and to share childcare expenses and unreimbursed medical and dental costs in accordance with the percentage allocation contained in the child support guidelines. In addition, the court ordered the parties to share expenses for the children's extracurricular activities in the same proportion as the percentage allocations contained in the child support guidelines, with the plaintiff being responsible for 72 percent and the defendant being responsible for 28 percent of those costs. Specifically, the court set forth that "the parties shall share the cost for any extracurricular activities for the minor children, so long as those activities are reasonable, also in proportion to the childcare expense calculation [in] the guidelines." In addition, the court ordered the plaintiff to maintain his medical insurance and the parties to maintain their life insurance policies for the benefit of the children. The plaintiff did not appeal from the December, 2009 decision. Nevertheless, since the entry of those initial orders, the parties have engaged in continuous litigation regarding custody, visitation, and support.

On May 3, 2021, the plaintiff filed the motion for modification that led to the ruling that is the subject of the present appeal. The plaintiff requested, among other things, that the court modify the percentage allocation for the cost of extracurricular activities.[2] The plaintiff contended, in relevant part, that he had paid 72 percent of the expenses for the children's extracurricular activities since the December, 2009 decision "oftentimes without [the defendant] discussing the activities with [him] ahead of time and simply just sending [him] a bill after the fact." The plaintiff further argued that the defendant was "taking advantage of unilaterally signing the children up for activities and billing [him] on activities for which he does not agree and for which he cannot afford." With respect to his financial circumstances, the plaintiff alleged that the earning capacity of $200,000 per year as found by the court in the December, 2009 decision "is more than double his actual income." The plaintiff requested, among other things, that the court modify the percentage of extracurricular activity expenses allocated to each party such that they would "be equally responsible for the expenses associated thereto for all mutually agreed upon activities . . . ."

On May 11, 2022, the court, *Hon. Heidi G. Winslow*, judge trial referee, held a remote hearing on the plaintiff's motion for modification. At the hearing, the defendant testified that the parties' children were involved in extracurricular activities such as dance, skiing, basketball, baseball, and soccer, and she explained the costs of those activities.[3] The court questioned the parties as to the basis for the order regarding the expenses for extracurricular activities as set forth in the December, 2009 decision and whether the court, in that decision, had made any finding as to "the reason for the deviation." The defendant responded that "[t]he trial court made significant findings of financial abuse back in 2009 . . . ."[4] The plaintiff's counsel initially did not address whether the court had made, or improperly failed to make, any findings regarding a deviation from the child support guidelines. Instead, she responded that "[w]hat we cited to in this motion was [that] the extracurricular activities are supposed to be discussed and agreed upon," and that the defendant had engaged in "unilateral decision-making in this case dating back in its history," even though the court issuing the December, 2009 decision "did [not] ever intend on extracurricular activities . . . to be unilateral decisions where one party just does whatever they want and bills the other party."

The court subsequently stated: "I haven't found anything in the original judgment that explains the deviation from the child support guidelines. Extracurricular activities are not regular child support, they are a deviation from the child support guidelines and the court is

required to find a reason for the deviation consonant with the guidelines that are published." At that point, the plaintiff's counsel agreed with the court's concern. When the court continued to ask whether "the decision anywhere say[s] anything about the reason for the deviation," the plaintiff's counsel responded, "[n]ot that I could find, Your Honor." The plaintiff's counsel explained: "I read the decision. I did not see anywhere where [the court] discussed . . . and articulated a reason for deviating upwards to 72 percent for extracurriculars. . . . [T]his is a court of equity and . . . I respectfully ask the court to address it today. . . . [A]nd, if the court finds these extenuating circumstances, or something . . . to justify the deviation that's allowed, I would like . . . the court to articulate it."

At the conclusion of the hearing, the court issued an oral ruling granting the plaintiff's motion for modification as it pertained to the expenses for extracurricular activities. The court concluded that "the children do not have extraordinary extracurricular expenses. Considering that there are three children, yes, there are extracurricular expenses, but they are not in any way extraordinary that would warrant a deviation from the child support guidelines. And accordingly, the court is eliminating the requirement that [the plaintiff] contribute to those expenses effective June 30, 2021."[5]

When the defendant asked the court whether it was "eliminating [the plaintiff's] requirement to contribute entirely, or . . . changing the allocation," the court explained that it was eliminating the plaintiff's obligation to contribute to the cost of extracurricular activities "[e]ntirely . . . [o]n the basis that there's no reason to deviate from the guidelines." The court further explained that the order regarding extracurricular activities "is an extra order that is made as a deviation from the child support guidelines and should be explained as a deviation from the child support guidelines. But in this case no one has given me a satisfactory reason to deviate from the child support guidelines and, accordingly, I'm making the modification." The court also noted that the plaintiff "is not participating very actively in these extracurricular activities at this point anyway. So, it certainly would not be a particular reason to have him pay."[6]

The defendant subsequently filed a motion to reargue and for reconsideration, which the court summarily denied. This appeal followed. After filing her appeal, the defendant, pursuant to Practice Book § 64-1, requested that the trial court provide a statement of its decision with respect to the motion for modification and the motion to reargue and for reconsideration.

On July 5, 2022, the court issued a memorandum of decision addressing its decisions to grant the plaintiff's motion for modification as it related to the expenses for

extracurricular activities and to deny the defendant's motion to reargue and for reconsideration.[7] The court explained: "The [child support] guidelines used in 2009 were effective August 1, 2005. The guidelines used now have been effective since July 1, 2015. Both sets of guidelines require a court to articulate acceptable reasons for [a] deviation from [the] child support guidelines together with a finding that it would be inappropriate and inequitable NOT to deviate from the guidelines in the instant case. The trial court in 2009 made no statements regarding [a] deviation from the guidelines. Nor did the trial court give any reason for supposing that deviation criteria might exist. The defendant has argued at the May 31, 2022 hearing before this court that the trial judge made extensive findings regarding the plaintiff's coercive financial and emotional control of the defendant. The defendant advances the claim that the trial judge intended to make up for the history of coercive control by allowing the defendant to wield power over the plaintiff in the future regarding financial matters. In keeping with her interpretation of the trial judge's ruling that the purpose of the extracurricular order was to avenge the plaintiff's abusive and controlling behaviors during the parties' cohabitation, the defendant has been taking full advantage of that order. Without consulting at all in advance, the defendant for many years sends bills to the plaintiff for her definition of reasonable extracurricular activities and demands payment of his [72] percent. Although this court finds it unlikely that the 2009 trial court could have intended its order to be a means of revenge by the defendant, the actual reason for the order will remain a mystery.

"The trial court order regarding extracurricular activities is not typically seen in orders made by a family judge unless the parties stipulate to such an order and ask the judge to approve it. In such cases, the parties do not ask the court to deviate from the child support guidelines. Rather, they enter into a separate verbal or written contract. After that contract becomes a court order as part of a judgment, the family court may enforce it or modify it. The extracurricular activities order is not child support as contemplated by the guidelines because the court has not articulated it as a necessary deviation. It is possible, using [the] deviation criteria for the court to make an order for payment of extracurricular activities. That order must be based [on] the best interests of the child. It requires a proper finding by the judge, who incorporates it into the child support order. But it almost never happens that the issue receives that treatment when the parties have put it into a separation agreement as a contract. Since the issue of extracurricular contributions is a contract between the parties, it must be addressed by the Superior Court as contract enforcement/modification rather than by the magistrate's court. It falls to the Superior Court to decide whether the contract continues to be

fair and equitable when faced with a request to modify the order.

"It is problematic in this case that the trial judge gave no explanation for its extracurricular contributions order. It was outside the scope of the guidelines, but it was also not endorsing an agreement of the parties. If this court were to treat the order as child support, then the evidence on May 31, 2022, showed [that] the order substantially deviates from the child support guidelines. This is a cause for modification under . . . [General Statutes §] 46b-86 (a). The evidence further showed that at this time there are no extraordinary circumstances that apply for a deviation from the guidelines. No facts persuaded this court by a preponderance of the evidence that this family's finances or the children's needs were out of the ordinary to justify a deviation. The best interests of the children are not served by the extra financial order in this case.

"If this court were to treat the order as a contract imposed upon the parties by the trial judge, then this court finds circumstances have changed dramatically since 2009. The children never see or communicate with their father. He is just a financial source in their eyes. The children are not engaged in any special extracurricular activities that incur out of the ordinary costs for children of their ages or station. The defendant has been wielding the order as a weapon against the plaintiff to demand that he contribute to a large range of expenses such as casual clothing used for sports as well as everyday life and all weekend recreational pursuits of the children. At one time, she claimed the plaintiff must contribute to furniture purchased for the children to use in her home. She does not consult the plaintiff in advance of incurring [the] expenses. When he protests that he does not regard the expense as reasonable, or regard it as an extracurricular activity, or he cannot afford to contribute, the defendant vetoes his objection and reiterates her demand for payment. She asserts she has the power to do this because she has final decision-making as to the children's activities. Given the children's attitudes toward their father, fostered in part over a long period of time by their mother, and the father's total removal from any participation in their lives, it is inappropriate and inequitable to require the plaintiff to continue contributing to extracurricular activities."

With respect to the defendant's motion to reargue and for reconsideration, the court explained that the defendant continued to make the same arguments that she made at the hearing on the motion to modify, which the court already had rejected. The court further explained that "[t]his court has not declared any of the trial judge's orders to be invalid but has ruled that the order addressing extracurricular activities is subject to modification. The evidence called for a modification.

No part of the May 31 decision required a finding of a change in the earning capacity of the plaintiff. Nor did the court find that there had been such a change."

On appeal, the defendant claims that the court improperly modified the order regarding the expenses for extracurricular activities to entirely eliminate the plaintiff's obligation to contribute to those expenses. Specifically, the defendant contends that there had been no substantial change in the financial circumstances of the parties, the court improperly based its decision on a ground that it raised, sua sponte, which was not contained in the plaintiff's motion for modification, and the court improperly relied on "irrelevant, nonfinancial" factors. We agree with the defendant.

The following standard of review and legal principles guide our analysis of the defendant's claim. "The scope of our review of a trial court's exercise of its broad discretion in domestic relations cases is limited to the questions of whether the [trial] court correctly applied the law and could reasonably have concluded as it did. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Nevertheless, we may reverse a trial court's ruling on a modification motion if the trial court applied the wrong standard of law." (Citations omitted; internal quotation marks omitted.) *Olson* v. *Mohammadu*, 310 Conn. 665, 671, 81 A.3d 215 (2013). In addition, "[t]he question of whether, and to what extent, the child support guidelines apply . . . is a question of law over which this court should exercise plenary review." *Misthopoulos* v. *Misthopoulos*, 297 Conn. 358, 367, 999 A.2d 721 (2010).

"Our case law is clear that § 46b-86 (a) creates two alternative circumstances in which a court can modify a child support order. . . . Those circumstances are when there is (1) a showing of a substantial change in the circumstances of either party or (2) a showing that the final order for child support substantially deviates from the child support guidelines absent the requisite findings."[8] (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Righi* v. *Righi*, 172 Conn. App. 427, 433, 160 A.3d 1094 (2017). "Both the substantial change of circumstances and the substantial deviation from child support guidelines' provision establish the authority of the trial court to modify existing child support orders to respond to changed economic conditions. The first allows the court to modify a support order when the financial circumstances of the individual parties have changed, regardless of their prior contemplation of such changes. The second allows the court to modify child support orders that were once deemed appropriate but no longer seem equitable in the light of changed social or economic circumstances in the society as a whole . . . ." (Internal quotation

marks omitted.) *Weinstein* v. *Weinstein*, 128 Conn. App. 558, 561, 17 A.3d 535 (2011).

"When presented with a motion to modify child support orders on the basis of a substantial change in circumstances, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties. . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and . . . make an order for modification. . . . A party moving for a modification of a child support order must clearly and definitely establish the occurrence of a substantial change in circumstances of either party that makes the continuation of the prior order unfair and improper." (Internal quotation marks omitted.) *Robinson* v. *Robinson*, 172 Conn. App. 393, 400–401, 160 A.3d 376, cert. denied, 326 Conn. 921, 169 A.3d 233 (2017).

A court also "has the power to modify a child support order on the basis of a substantial deviation from the guidelines independent of whether there has been a substantial change in the circumstances of [either] party"; (internal quotation marks omitted) *Righi* v. *Righi*, supra, 172 Conn. App. 433; if that deviation was made "without the requisite specific finding that [the] application of the guidelines would be inequitable or inappropriate." Id., 434; see also id., 436–37 ("three distinct findings [are required] in order for a court to properly deviate from the child support guidelines in fashioning a child support order: (1) a finding of the presumptive child support amount pursuant to the guidelines; (2) a specific finding that application of such guidelines would be inequitable and inappropriate; and (3) an explanation as to which deviation criteria the court is relying on to justify the deviation"). "[O]nce the court enters an order of child support that substantially deviates from the guidelines, and makes a specific finding that the application of the amount contained in the guidelines would be inequitable or inappropriate, as determined by the application of the deviation criteria established in the guidelines, that particular order is no longer modifiable solely on the ground that it substantially deviates from the guidelines. By the same token, in the absence of such a specific finding, the order is continually subject to modification on the ground of a substantial deviation from the guidelines."[9] (Internal quotation marks omitted.) *Moore* v. *Moore*, 216 Conn. App. 179, 192, 283 A.3d 994 (2022).

"In the context of a trial court's consideration of a motion to modify, the [child support] guidelines become relevant only after a change in circumstances has been shown, if that is the ground urged in support of modification . . . or in determining whether the existing child support order substantially deviates from the guidelines, if that is the ground urged in support of modification." (Emphasis omitted; internal quotation

marks omitted.) *Brown* v. *Brown*, 199 Conn. App. 134, 158, 235 A.3d 555 (2020).

In the present case, we first conclude that the court exceeded its authority in modifying the order regarding the costs of extracurricular activities because it based its decision on a ground that was not contained in the plaintiff's motion for modification.[10]

"[I]n the context of motions to modify support orders, we have held that a court's reliance on a ground not raised in a motion to modify is an abuse of discretion in the absence of an amendment to the motion." *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 514, 146 A.3d 26 (2016). In the present case, the court modified the extracurricular activities order on the ground that it was an unjustified deviation from the guidelines. The plaintiff, however, filed his motion for modification on the ground that there had been "material changes in circumstances" as a result of the defendant "unilaterally" signing the children up for extracurricular activities "for which he does not agree and for which he cannot afford." As set forth previously, a substantial change in the financial circumstances of the parties and a substantial deviation from the child support guidelines are two alternative, independent grounds for granting a motion for modification. See *Righi* v. *Righi*, supra, 172 Conn. App. 433; see also *Brown* v. *Brown*, supra, 199 Conn. App. 158.

In his motion for modification, the plaintiff did not characterize the order as a substantial deviation from the child support guidelines or argue that the court issuing the December, 2009 decision improperly failed to make the requisite findings in support thereof. In fact, he did not request that his obligation be entirely eliminated or reduced to $0 and, instead, he requested that the order be modified so that each party would be "equally responsible" for the expenses of the children's extracurricular activities, i.e., that they each would pay 50 percent of those costs. The court, therefore, improperly considered whether the extracurricular activities order was a deviation under the child support guidelines and modified the order on a ground not contained in the plaintiff's motion for modification. See *Prial* v. *Prial*, 67 Conn. App. 7, 13–14, 787 A.2d 50 (2001) (trial court improperly considered child support guidelines where plaintiff did not allege substantial deviation from guidelines to support his request for modification); see also *De Almeida-Kennedy* v. *Kennedy*, 188 Conn. App. 670, 679, 205 A.3d 704 (trial court properly did not make findings under child support guidelines where defendant did not raise claim that child support obligation substantially deviated from guidelines), cert. denied, 332 Conn. 909, 210 A.3d 566 (2019).

Although the plaintiff has filed numerous motions for modification, including the motion at issue in the present case, he has never challenged the court's deci-

sion to issue the extracurricular activities order as being a substantial deviation from the child support guidelines that was made without the requisite finding that the application of the guidelines would be inequitable or inappropriate. We conclude that, under the circumstances of the present case, the court improperly used the plaintiff's motion for modification as an opportunity to evaluate, sua sponte, the propriety of the order more than twelve years after it was imposed.[11]

We also disagree with the court's conclusion that the extracurricular activities order constituted a deviation from the child support guidelines. It is helpful in our analysis to provide an overview of the legal principles governing custody and support orders issued pursuant to General Statutes § 46b-56 and basic child support orders issued pursuant to General Statutes § 46b-215b. We do so in order to illustrate the different purposes of orders imposed under those provisions. "[Section] 46b-56 grants authority to the court to render orders of custody and provides in relevant part: '(a) In 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 . . . . Subject to the provisions of section 46b-56a, the court may assign parental responsibility for raising the child to the parents jointly, or may award custody to either parent . . . . (b) In 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.' "[12] (Emphasis omitted.) *Powers* v. *Hiranandani*, 197 Conn. App. 384, 405–406, 232 A.3d 116 (2020). This court has indicated that orders to pay for extracurricular activities can fall within the purview of § 46b-56. See id.

Section 46b-215b, on the other hand, governs basic child support orders to be issued in accordance with the child support guidelines. Specifically, § 46b-215b (a) provides: "The child support and arrearage guidelines issued pursuant to section 46b-215a, adopted as regulations pursuant to section 46b-215c, and in effect on the date of the support determination shall be considered in all determinations of child support award amounts, including any current support, health care coverage, child care contribution and past-due support amounts, and payment on arrearages and past-due support within the state. In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount to be ordered. A specific finding on the record at a hearing, or in a written judgment, order or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappro-

priate in a particular case, as determined under the deviation criteria established by the Commission for Child Support Guidelines under section 46b-215a, shall be required in order to rebut the presumption in such case."

In accordance with the statutory directives set forth in § 46b-215b (a), § 46b-215a-1 (6) of the Regulations of Connecticut State Agencies defines a "[c]hild support award" as "the entire payment obligation of the noncustodial parent, *as determined under the child support and arrearage guidelines*, and includes *current support payments*, *health care coverage*, *child care contribution and periodic payments on arrearages*." (Emphasis added.) We emphasize that a "child support award," therefore, does not encompass any and all payments to be made by a noncustodial parent; the term plainly refers only to that obligation imposed upon a noncustodial parent by application of the guidelines. Section 46b-215a-1 (7) of the regulations further defines "[c]urrent support" as "an amount for the ongoing support of a child, exclusive of arrearage payments, health care coverage and a child care contribution."[13]

In the present case, the court that issued the December, 2009 decision properly considered and applied the child support guidelines in accordance with § 46b-215b (a). The court explicitly stated that it calculated the child support obligation "in accordance with the child support guidelines," and, thus, did not deviate from the presumptive amount when it ordered the plaintiff to pay basic child support in the amount of $528 per week.

The order allocating the expenses of the children's extracurricular activities was issued as a separate order, independent from the plaintiff's presumptive child support obligation, in accordance with § 46b-56.[14] We conclude that the court did not deviate from the child support guidelines in issuing the extracurricular activities order, as it was not a basic child support order issued pursuant to § 46b-215b, and, therefore, the court was not required to make a specific finding on the record that application of the guidelines would be inequitable or inappropriate.

In reaching this conclusion, we consider the 2005 Child Support and Arrearage Guidelines, which were the guidelines in effect at the time of the December, 2009 decision. See, e.g., *Schull* v. *Schull*, 163 Conn. App. 83, 93, 134 A.3d 686 (considering child support guidelines in effect at time of court's original support order), cert. denied, 320 Conn. 930, 133 A.3d 461 (2016). Neither the guidelines nor the preamble accompanying those guidelines suggests that the expenses for extracurricular activities are encompassed within the presumptive amount of child support set forth therein, or that an extracurricular activities order would constitute a deviation from the guidelines. See Regs., Conn. State Agencies § 46b-215a-3 (b) (2005) (listing deviation crite-

ria as "(1) [o]ther financial resources available to a parent . . . (2) [e]xtraordinary expenses for care and maintenance of the child . . . (3) [e]xtraordinary parental expenses . . . (4) [n]eeds of a parent's other dependents . . . (5) [c]oordination of total family support . . . [and] (6) [s]pecial circumstances . . . .").

The guidelines do, however, make clear that "[t]he presumptive current support amount for each parent is equal to that parent's share of the *basic* child support obligation . . . ." (Emphasis added.) Regs., Conn. State Agencies § 46b-215a-2b (c) (6) (2005); see also Regs., Conn. State Agencies § 46b-215a-2b (c) (3) (2005) (providing instructions to "[d]etermine the *basic* child support obligation" (emphasis added)). The guidelines' use of the word "basic" to modify "child support" is instructive to our analysis. Specifically, the description of that child support as basic, according to the ordinary meaning of that term, suggests that it accounts for fundamental, or essential, expenses. See Merriam-Webster's Collegiate Dictionary (11th Ed. 2014) p. 101 (defining "basic" in relevant part as "of, relating to, or forming the base or essence: fundamental . . . constituting or serving as the basis or starting point"); id., p. 507 (defining "fundamental" in relevant part as "of or relating to essential structure, function, or facts").

As one Superior Court judge has accurately articulated, "Connecticut's [child support] guidelines neither list nor define specific expenditures that comprise child support, but it is clear that such general categories of *basic need* like food, housing, clothing and transportation are fairly considered a part of child support. The cost of children's [extracurricular] or 'enrichment' activities are not part of child support." (Emphasis added.) *Scott* v. *Scott*, Superior Court, judicial district of Hartford, Docket No. FA-04-4005987-S (March 24, 2014). Although we do not attempt to delineate all of the child-rearing costs included in the presumptive amount of child support, we conclude that expenses for extracurricular activities are not among the basic expenses taken into consideration by the guidelines, which is why courts routinely issue separate orders to account for those expenses, as set forth subsequently in this opinion.

The preamble to the child support guidelines further supports our conclusion that the guidelines do not account for the expenses of extracurricular activities.[15] See *Maturo* v. *Maturo*, 296 Conn. 80, 92–93, 995 A.2d 1 (2010) ("[t]he guidelines are accompanied by a preamble that is not part of the regulations but is intended to assist in their interpretation"). The preamble explains that the guidelines are based on the income shares model, which "presumes that the child should receive the same proportion of parental income as he or she would have received if the parents lived together." Child Support and Arrearage Guidelines (2005), preamble,

§ (d), p. ii. The preamble further explains that the schedule of basic child support obligations is "based on economic data on child-rearing costs," gathered by a Consumer Expenditure Survey. Id., § (e) (1), p. iii. That survey data "includes information on several hundred items purchased by households," which the Bureau of Labor Statistics "categorizes . . . into several major categories, *such as food*, *housing*, *clothing*, *transportation*, *and health care*." (Emphasis added.) Id. Our conclusion that the presumptive child support amount accounts for essential expenses such as the foregoing is consistent with the preamble's explanation of why the percentages set forth in the schedule of basic child support obligations decline as parental income increases. The preamble specifically notes that "economic studies have found that spending on children declines as a proportion of family income as that income increases, and a diminishing portion of family income is spent on each additional child"; id., § (d), p. iii; and suggests that spending declines because "families at higher income levels do not have to devote most or all of their incomes to *perceived necessities*." (Emphasis added.) Id., § (e) (4) (A), p. iv; see also *Maturo* v. *Maturo*, supra, 296 Conn. 93 ("[c]hildren's *economic needs* do not increase automatically . . . with an increase in household income" (emphasis added)).

Because the basic child support obligation as set forth in the child support guidelines does not encompass the expenses for extracurricular activities, imposing an order to account for those expenses is not inconsistent with, and does not deviate from, the presumptive amount under those guidelines. See *Maturo* v. *Maturo*, supra, 296 Conn. 107 (differentiating between "the basic child support obligation" and "additional support obligations imposed on the noncustodial parent for education, health care, *recreation*, insurance and other matters" (emphasis added)).

Both this court and our Supreme Court have considered numerous cases in which a trial court has imposed an order allocating between parties the costs of their children's extracurricular activities, separate from the basic child support obligation calculated in accordance with the guidelines. See, e.g., *McKeon* v. *Lennon*, 321 Conn. 323, 329, 138 A.3d 242 (2016) (trial court ordered parties to share all costs over $150 for children's extracurricular activities in addition to defendant's weekly child support obligation); *Olson* v. *Mohammadu*, supra, 310 Conn. 668 (trial court ordered defendant to pay 66 percent of child's extracurricular activities expenses in addition to weekly child support); *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 363 (trial court ordered defendant to pay 67 percent of expenses for extracurricular activities for minor children in addition to weekly child support); *Maturo* v. *Maturo*, supra, 296 Conn. 107 (trial court imposed additional support obligation, separate from basic child support obligation, requiring

defendant to pay all expenses relating to children's extracurricular activities); *Leonova* v. *Leonov*, 201 Conn. App. 285, 332 n.35, 242 A.3d 713 (2020) (court ordered parties to share equally the cost of extracurricular activities), cert. denied, 336 Conn. 906, 244 A.3d 146 (2021); *Zaniewski* v. *Zaniewski*, 190 Conn. App. 386, 389, 210 A.3d 620 (2019) (in addition to plaintiff's weekly child support obligation imposed in accordance with child support guidelines, court ordered parties to share equally in cost of children's extracurricular activities); *Ray* v. *Ray*, 177 Conn. App. 544, 549, 569, 573 n.15, 173 A.3d 464 (2017) (court ordered defendant to pay presumptive minimum child support amount, in compliance with child support guidelines, and entered separate orders requiring defendant to pay one half of child's expenses for extracurricular activities); *Brady-Kinsella* v. *Kinsella*, 154 Conn. App. 413, 424, 106 A.3d 956 (2014) (court ordered defendant to pay 61 percent of extracurricular expenses in addition to weekly sum of child support), cert. denied, 315 Conn. 929, 110 A.3d 432 (2015); *Blum* v. *Blum*, 109 Conn. App. 316, 318, 951 A.2d 587 (trial court ordered defendant to pay 90 percent of extracurricular expenses in addition to basic child support), cert. denied, 289 Conn. 929, 958 A.2d 157 (2008).[16]

In our review of the appellate case law, we found only one case, *Ferraro* v. *Ferraro*, 168 Conn. App. 723, 733–34, 147 A.3d 188 (2016), in which this court determined that an extracurricular activities order was improperly imposed. In *Ferraro*, however, the order was not improper on the basis that it had been an unjustified deviation from the child support guidelines. Instead, this court determined that the trial court abused its discretion in imposing the extracurricular activities order because neither party had requested such an order and, at trial, there had been no testimony presented as to any extracurricular activities undertaken by the children or what the expenses of such activities would be. Id., 734. This court concluded: "Simply put, there is no evidence supporting the need for an order that allocates the expenses of extracurricular activities between the parties." Id. In the present case, unlike in *Ferraro*, the defendant specifically requested an order for the expenses of extracurricular activities in her proposed order submitted to the court prior to the December, 2009 decision, which supported the need for such an order. Thus, the court here could properly exercise its discretion to issue an extracurricular activities order.

This court most recently upheld an order allocating expenses for extracurricular activities in *Powers* v. *Hiranandani*, supra, 197 Conn. App. 406. In *Powers*, the trial court ordered the defendant to pay, among other things, 53 percent of the expenses for the extracurricular activities of the parties' child, in accordance with the percentage allocation set forth in the child support

guidelines. Id., 390–91 n.4. At the time of the court's order, the parties' child was three years old. Id., 404. The defendant testified that the child participated in swimming, ice skating, and visits to a nature center, with the cost of those activities being $1 per week, as listed on the plaintiff's financial affidavit. Id. On appeal, the defendant challenged the extracurricular activities order on the basis that "it does not contain an upper limit and there is no evidence of the child's extracurricular activities." Id. This court rejected both arguments, explaining: "At the time of dissolution, the cost of the child's extracurricular activities as listed on the plaintiff's financial affidavit was de minimus. The defendant has failed to demonstrate how he is harmed by the court's order, now, or will be harmed in the future. The trial court could not speculate as to the child's future interests, activities, and the costs thereof. It merely provided a means for the parties to pay for them in the present." Id., 405. This court further explained that, "[i]f there is a substantial change in circumstances that warrants a change in the court's order regarding payment of the child's extracurricular activities, the defendant is not without a remedy," and cited § 46b-56, providing for the modification of custody orders. Id., 405–406. Accordingly, this court concluded that the trial court did not abuse its discretion in issuing the order regarding expenses for extracurricular activities. Id., 406.

In the present case, like in *Powers*, the court that issued the December, 2009 decision was considering the allocation of expenses for extracurricular activities when those costs were de minimus, as all three of the parties' children were under the age of five at that time. Because the court "could not speculate as to the [children's] future interests, activities, and the costs thereof"; id., 405; its extracurricular activities order provided a means for the parties to pay for those unknown costs in the future, separate from the plaintiff's basic child support obligation. In doing so, the court did not deviate from the child support guidelines and, like the court in *Powers*, simply used the percentage allocations contained in the guidelines to divide those costs. See id., 390–91 n.4 (describing orders regarding financial responsibilities of parties with respect to child as being "[c]onsistent with the child support guidelines").

The court, in the present case, ordered a total child support award of $528 per week, and for the parties to share childcare expenses and unreimbursed medical and dental costs, in accordance with the child support guidelines, and, therefore, it did not deviate from the guidelines. The court's separate order to pay for the children's extracurricular activities is not included in the definition of a "[c]hild support award" under § 46b-215a-1 (6) of the regulations, which means the entire payment obligation *as determined under the guidelines* and includes only "current support payments, health care

coverage, child care contribution and periodic payments on arrearages." Regs., Conn. State Agencies § 46b-215a-1 (6). The language in § 46b-215b (a) reflects that a deviation from the child support guidelines refers only to the total child support *award* amount and does not encompass *all* child support orders, like in the case of a separate order to pay for the expenses of extracurricular activities. The court could have exercised its discretion to deviate from the presumptive child support award by increasing or decreasing the total child support award to reflect the expenses of extracurricular activities; see footnote 15 of this opinion; but it was not required to do so. Instead, the court, in its broad discretion, chose not to deviate from the presumptive child support award and issued a separate order under § 46b-56, as appears to have been the case in *Powers*, to allocate the expenses for the children's extracurricular activities. Because the court in the present case did not deviate from the child support guidelines in issuing the extracurricular activities order, we conclude that it was not required to make the findings that must accompany a deviation.

To be clear, we do not suggest that the extracurricular activities order is not subject to modification. Instead, we conclude that the order was not modifiable on the basis that it was a substantial deviation from the guidelines. The court considering the plaintiff's motion for modification still had the ability to modify the extracurricular activities order on the basis of a substantial change in the circumstances of either party; see *Powers* v. *Hiranandani*, supra, 197 Conn. App. 405–406; and, in the present case, the plaintiff argued that there had been "material changes in circumstances" because the defendant was unilaterally[17] signing the children up for activities "[that] he cannot afford." In its ruling, the court did not consider the financial reasons on which the plaintiff relied, expressly observing that it had not decided the motion on this basis. Accordingly, on remand, the court should consider the merits of this basis for modification in adjudicating the plaintiff's motion.

The judgment is reversed and the case is remanded with direction to reconsider the plaintiff's motion to modify the extracurricular activities order in accordance with this opinion; the judgment is affirmed in all other respects.

In this opinion MOLL, J., concurred.

[1] The court noted that the plaintiff's reported income had been as high as $250,000 per year prior to the parties' litigation and found the plaintiff not credible as to his stated income of less than $100,000 per year.

[2] In his motion for modification, the plaintiff also requested that the court modify and vacate an order for sanctions that the court had entered on September 12, 2016, because the plaintiff had allowed one of his life insurance policies to lapse. The court denied that request, and that portion of the court's ruling is not at issue in this appeal.

[3] The defendant testified that the plaintiff's share of the expenses for the previous year totaled $2637.43, but that the plaintiff contributed only $208.

[4] When issuing the December, 2009 decision, the court told the plaintiff that his "entire pattern of conduct throughout the litigation has been a pattern of financial and coercive control." The court pointed to, among other things, the plaintiff's decision to obtain, without the defendant's knowledge, a home equity line of credit on the house that the parties shared and to use those funds for purposes that did not benefit the defendant or the parties' children. The court found that the plaintiff "left [the defendant] without any cushion, without any resources and not knowing whether she was going to have enough money to live."

[5] The court explained that June 30, 2021, was the date on which the motion for modification was served on the defendant.

[6] The plaintiff's counsel explained that the plaintiff "is completely separated from his children," and the plaintiff testified that his access to the children stopped in May, 2021.

[7] On June 30, 2022, the court also filed a signed transcript of its May 11, 2022 oral decision granting, in part, the plaintiff's motion for modification.

[8] General Statutes § 46b-86 (a) provides in relevant part: "Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support, an order for alimony or support pendente lite or an order requiring either party to maintain life insurance for the other party or a minor child of the parties may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a, unless there was a specific finding on the record at a hearing, or in a written judgment, order or memorandum of decision of the court, that the application of the guidelines would be inequitable or inappropriate. . . ."

[9] The legal principles governing child support orders and the application of the child support guidelines will be discussed in greater detail subsequently in this opinion.

[10] We are not persuaded by the plaintiff's argument that the defendant waived this aspect of her claim. We acknowledge that, at the May 11, 2022 hearing, the defendant did not specifically object to the court's sua sponte consideration of whether the extracurricular activities order constituted an unjustified deviation from the guidelines, and, instead, she responded to the merits of the court's questions, which were predicated on its characterization of the extracurricular activities order as a deviation. The defendant, however, was self-represented before the trial court, as she is on appeal. "Although self-represented parties are not excused from complying with relevant rules of procedural and substantive law, [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants . . . ." (Internal quotation marks omitted.) *Gutierrez* v. *Mosor*, 206 Conn. App. 818, 835, 261 A.3d 850, cert. denied, 340 Conn. 913, 265 A.3d 926 (2021). On the basis of our review of the record, we are not convinced that the defendant intentionally waived her claim. See *Gagne* v. *Vaccaro*, 80 Conn. App. 436, 445–46, 835 A.2d 491 (2003) (explaining that "[w]aiver is an *intentional* relinquishment or abandonment of a *known* right or privilege," and that party may waive claim of law if she "knows of the existence of the claim and of its reasonably possible efficacy" (emphasis added; internal quotation marks omitted)), cert. denied, 268 Conn. 920, 846 A.2d 881 (2004).

Significantly, there is nothing in the record to suggest that the defendant had notice that the court might consider modifying the extracurricular activities order on the basis that it constituted a substantial deviation from the child support guidelines. See *Petrov* v. *Gueorguieva*, 167 Conn. App. 505, 517, 522–23, 146 A.3d 26 (2016) (considering whether actions occurring prior to hearing placed party on notice as to unpleaded issues or facts). To the contrary, our review of the transcript of the May 11, 2022 hearing reveals the defendant's surprise or confusion when, at the conclusion of the hearing, the court entirely eliminated the plaintiff's obligation to contribute to the extracurricular expenses rather than simply modifying the percentage allocation as the plaintiff had requested. See id., 519 (considering whether defendant was unduly prejudiced or surprised by court's consideration of ground not raised in plaintiff's motion for modification). The defendant immediately sought clarification of the court's ruling and questioned the basis of its decision. Indeed, in the defendant's subsequent motion to reargue and for reconsideration, she emphasized, among other things, that "[a]t no time has the validity of [the extracurricular activities order] been questioned by [the plaintiff] or any of his attorneys." Accordingly, under the circumstances of the present case, we do not view the defendant's failure to object at the

hearing to the procedural deficiency of the court's decision—its reliance on a ground not raised in the plaintiff's motion for modification—as a waiver of her claim on appeal.

[11] To be clear, we do not suggest that a court would be unable to modify a child support order on the basis that it substantially deviates from the guidelines if that order is the result of a deviation that was made without the requisite findings and a party seeks modification on that basis.

[12] Subsection (e) of General Statutes § 46b-56 provides: "In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84."

General Statutes § 46b-84 (d) provides: "In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child."

[13] The regulations in effect at the time of the December, 2009 decision contained identical language. See Regs., Conn. State Agencies § 46b-215a-3 (a) (2005) (repealed July 1, 2015).

[14] As we will more fully explain in our analysis, the fact that the court awarded an amount of basic child support that did not reflect any deviation from the presumptive amount as set forth in the guidelines plainly reflects that the order of basic child support did not include extracurricular activities expenses. Thus, we logically characterize the order to pay for such expenses as being separate and distinct from the order to pay basic child support.

[15] The guidelines set forth ample deviation criteria, including "[b]est interests of the child." See Regs., Conn. State Agencies § 46b-215-5c (b) (6) (D). Although the 2015 Child Support and Arrearage Guidelines are not binding upon the ruling at issue in the present appeal; see *Schull* v. *Schull*, supra, 163 Conn. App. 93 (considering child support guidelines in effect at time of court's original support order); it is nonetheless helpful to our analysis to note that, in the preamble to the 2015 Child Support and Arrearage Guidelines, the commission noted that it had "considered adding extracurricular expenses to the currently listed [deviation] criteria of education expenses, unreimbursable medical expenses, and expenses for special needs. The commission decided not to add extracurricular expenses as a separate section under the category 'extraordinary expenses for care and maintenance of the child' reasoning that extracurricular expenses could be addressed under the criteria of best interests of the child under the 'special circumstances' heading." Child Support and Arrearage Guidelines (2015), preamble, § (j) (2), p. xxi.

This discussion clearly supports the conclusion that the expenses for extracurricular activities are not included in the presumptive amount of basic child support set forth in the guidelines. To conclude otherwise would thwart the commission's expressed intent that such expenses are a possible basis to deviate from the presumptive amount of basic child support set forth in the guidelines. Moreover, although the commission suggests in the 2015 preamble that a court could address extracurricular expenses as a deviation criterion, it certainly does not mandate that a court must do so.

[16] Notably, although the propriety of the orders was not at issue in many of these cases, neither this court nor our Supreme Court characterized the extracurricular activities orders as deviations from the guidelines.

In addition, although the court in the present case reasoned that extracurricular activities orders are "not typically seen" unless the parties agree to such an order, none of these cases cited involved agreements between the parties. Nevertheless, there are numerous additional cases in which the parties themselves account for the expenses of extracurricular activities separately from basic child support. See, e.g., *Blondeau* v. *Baltierra*, 337 Conn. 127, 147 n.19, 252 A.3d 317 (2020) (parties entered into stipulation pendente lite providing that defendant would pay, among other things, 73 percent of children's extracurricular expenses in addition to weekly child support); *Scott* v. *Scott*, 215 Conn. App. 24, 29 and n.3, 282 A.3d 470 (2022) (parties agreed that plaintiff would pay, among other things, 60 percent of children's extracurricular expenses); *Barber* v. *Barber*, 193 Conn. App. 190, 194 and n.4, 219 A.3d 378 (2019) (parties' agreement required defendant to pay "add-on child support," for, among other things, summer camp and extracurricular activities, in addition to basic child support); *Kupersmith*

v. *Kupersmith*, 146 Conn. App. 79, 81–82, 78 A.3d 860 (2013) (parties' separation agreement provided that defendant would pay 85 percent of expenses for extracurricular activities in addition to monthly child support).

[17] To the extent that the court implied that the defendant was required, pursuant to the December, 2009 decision, to consult with the plaintiff prior to incurring the expenses for extracurricular activities, or that the expenses must have been agreed upon between the parties, we disagree. Although the court issuing the December, 2009 decision ordered that both parties "are to be notified of and participate in all school programs and all extracurricular activities," the court also gave the defendant final decision-making authority and, at the start of its orders, explicitly stated: "I just want to be perfectly clear that I do not believe in this case that shared decision-making, the consulting back and forth between each other is a good idea for the children. The dynamic between the two of you is poisonous and bad. Until each of you can prove by your actions that you can do that workably, it's not in their best interest."