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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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MIHALAKOS, J., dissenting. I respectfully dissent from the majority's conclusion that the trial court acted properly in fashioning the its financial order. I believe that the court based the alimony and child support obligation of the plaintiff, Daniel Hughes, on gross income, which constituted an abuse of its discretion.

"Notwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling . . . may be reversed if, in the exercise of its discretion, the trial court applies the wrong standard of law." (Internal quotation marks omitted.) *Morris* v. *Morris*, 262 Conn. 299, 305, 811 A.2d 1283 (2003). Our law is clear that "a court must base child support and alimony orders on the available net income of the parties, *not gross income*." (Emphasis added; internal quotation marks omitted.) Id., 306; see also *Collette* v. *Collette*, 177 Conn. 465, 469, 418 A.2d 891 (1979); *Tobey* v. *Tobey*, 165 Conn. 742, 747, 345 A.2d 21 (1974); *Febbroriello* v. *Febbroriello*, 21 Conn. App. 200, 202, 572 A.2d 1032 (1990). Stated another way, "[*g*]*ross earnings is not a criterion for awards of alimony*." (Emphasis added; internal quotation marks omitted.) *Ludgin* v. *McGowan*, 64 Conn. App. 355, 358, 780 A.2d 198 (2001).

In *Ludgin* v. *McGowan*, supra, 64 Conn. App. 355, this court held that a trial court's repeated reference in its memorandum of decision to the parties' gross incomes, along with the failure to discuss the issue of net income, violated our well established precedent requiring that financial orders be based on net income, not gross income. Id., 358. As I will discuss in greater detail, it is my belief that the reasoning in *Ludgin* dictates a reversal of the court's financial order in this case. I believe that the majority's decision to discount our holding in *Ludgin* misinterprets our case law and will lead to confusion and instability in an area of law that is in need of clear and consistent guidelines.

Ludgin involved a dissolution action in which the parties sought alimony and child support orders from the court. Id., 356. Prior to the hearing, the parties had furnished the court with evidence of both their gross and net incomes. Id., 357, 358 n.2. In its memorandum of decision setting forth the financial orders, the court repeatedly referred to and compared the parties' gross incomes.[1] Id., 358. The plaintiff appealed to this court, claiming that the trial court improperly had based its financial orders on the parties' gross incomes. Id., 356. This court, having reviewed the foregoing facts, concluded: "Although the court had before it evidence of the parties' net incomes, it appears that the court chose not to rely on such information. The court's memorandum of decision is devoid of any mention of the parties' net incomes. The court relied solely on the parties'

gross incomes in fashioning the financial orders. We conclude, therefore, that the court improperly designed its financial orders by relying on the parties' gross incomes rather than on their net incomes.'' Id., 358–59. The factual circumstances of the present case are comparable to those in *Ludgin* and, therefore, support a similar outcome.

As in *Ludgin*, the court in the present case, despite having before it evidence of net income, focused entirely on gross income throughout its memorandum of decision. The most compelling evidence that the court based its order on gross income is the terms of the financial order, which were expressed as a percentage of the plaintiff's gross income.[2] I agree with the majority that a alimony and child support order expressed as a function of gross income *could*, in theory, still be based on net income. Nevertheless, that the court chose to express its order as a percentage of the plaintiff's gross income is significant and warrants closer scrutiny into the court's reasoning for basing the order on the gross, rather than the net, figures.

Here, however, it is not only the terms of the order but the totality of the court's reasoning throughout its memorandum of decision that leads me to conclude that the award was based on gross income. Notably, the court's memorandum of decision also listed the plaintiff's gross earnings for the previous seven years. Specifically, the court stated: ''The court lists the gross earnings of the plaintiff to illustrate the capability and ability he has displayed and the pay he has received for his efforts. Because his earned income fluctuates from year to year, the court will provide for a formula for the periodic alimony and child support. Each party has submitted a proposal in this respect in their proposed orders. The plaintiff's W-2 earnings for the previous seven years are as follows . . . [1997: $279,080; 1998: $373,073; 1999: $720,152; 2000: $368,937; 2001: $791,008; 2002: $564,038; 2003: $542,156].'' A comparison of the foregoing statement to the statements made by the court in *Ludgin*; see footnote 1 of this opinion; indicates that the courts' references to gross income in both cases are strikingly similar.

The majority reasons that the court made repeated reference to the plaintiff's gross income solely to demonstrate his ability to pay alimony and child support. I disagree. The better explanation, rather, for why the court focused on gross income is because the proposed orders submitted by both parties requested that the award be based on gross income. As the majority notes, the court expressly references the parties' proposed orders in its memorandum of decision. See footnote 2 of the majority opinion. That the parties requested that the order be based on gross income and that the court responded with an award expressed as a function of gross income strongly indicates that the court based

its award on gross income. Regardless of whether the parties requested such a result in their proposed orders, however, the court cannot circumvent our well established precedent requiring that financial orders be based on net income. See *Morris* v. *Morris*, supra, 262 Conn. 306.

Further, nowhere in its memorandum of decision did the court indicate that it relied on net income as a basis for the order.[3] The majority correctly points out that, generally speaking, a court is not required to make an explicit finding regarding net income in its memorandum of decision. See *Dombrowski* v. *Noyes-Dombrowski*, 273 Conn. 127, 137, 869 A.2d 164 (2005). In relying on this principle to affirm the court's order, however, the majority presumes too much. The majority refers to the trial court's references to the plaintiff's financial affidavit, his tax returns and the net value of his most recent cash bonus, and concludes that the court had ample evidence from which it could determine the parties' net incomes. Simply because the court had before it evidence of net income, however, does not necessarily mean that the court relied on net income. See *Ludgin* v. *McGowan*, supra, 64 Conn. App. 358.[4] What we are presented with in this case is not a situation in which the court merely failed to detail its reasoning with regard to the net income of the parties. In this case, not only is any meaningful mention of net income absent from the memorandum of decision,[5] but also in its place is a detailed analysis of *gross* income. In my opinion, given the court's emphasis on gross income, the court would have had to make it clear that it had *not* based its decision on gross income. Without any such indication, I cannot see how the court's order can be sustained.

The majority's attempt to distinguish *Ludgin* from other relevant case law is not persuasive. *Morris* v. *Morris*, supra, 262 Conn. 299, is the most recent Supreme Court case on point and the only Supreme Court case decided after our holding in *Ludgin*. In *Morris*, our Supreme Court concluded that the trial court had abused its discretion in fashioning a support order because in its memorandum of decision, it ''affirmatively and expressly stated that it relied on gross incomes in determining support . . . .''[6] Id., 307. The court's holding reinforces our well established case law dictating that financial orders be based on net income, not gross income. Yet, as the majority concedes, *Morris* cannot be read so narrowly as to invalidate orders only when a court states in *explicit* terms that it relied on gross income. In fact, the majority can cite nothing about *Morris* that alters the controlling weight of *Ludgin*. Because the facts of the present case more closely resemble the facts of *Ludgin* than the facts of *Morris*, *Ludgin* is more helpful than *Morris* in the analysis.

In further support of its decision to sustain the order, the majority relies on *Kelman* v. *Kelman*, 86 Conn. App.

120, 860 A.2d 292 (2004), cert. denied, 273 Conn. 911, 870 A.2d 1079 (2005). In *Kelman*, we determined that a trial court, despite having referenced the parties' gross incomes in its memorandum of decision, did not abuse its discretion in fashioning its financial orders. Id., 124. There is a critical distinction between *Kelman* and the present case, however. In *Kelman*, the court *expressly stated* that it had based its orders on all of the relevant information, including the parties' financial affidavits and child support guideline worksheets, both of which included the parties' net incomes. Id., 123. The presence of this language in the memorandum of decision is what saved the financial orders. In the present case, that language, or anything equivalent, is wholly absent from the court's memorandum of decision. The court in the present case never stated that it had relied on net income, nor did it make a more general statement indicating that it had relied on documents containing information of the parties' net incomes. Because the court in *Kelman* provided the reviewing court with some evidence that it had based its order on the proper criteria,[7] *Kelman* cannot be used to support the majority's decision to affirm the decision in this case, in which no such evidence was provided.

The law is clear and simple: Financial orders may not be based on gross income. When all evidence indicates that an award has been based on gross income, a trial court cannot be entitled to a presumption otherwise. I respectfully dissent from part I of the majority's opinion and, consequently, would not reach the other claims presented on appeal. I would reverse the judgment as to the financial orders and remand the case for a new hearing in accordance with law.

[1] For example, the court stated in its memorandum of decision that "[t]he plaintiff's financial affidavit is not reflective of a regular weekly salary, but rather a computation of . . . gross income. The plaintiff testified that his . . . gross income for the year 1996 was $64,132 . . . for the year 1997 [it was] $65,455 . . . ." (Internal quotation marks omitted.) *Ludgin* v. *McGowan*, supra, 64 Conn. App. 358. The court then listed the plaintiff's gross income for 1998, calculated his gross weekly income for that year, and compared that number to the defendant's gross weekly income. Id.

[2] See the terms of the court's financial order set forth in part I of the majority opinion.

[3] The court mentioned net earnings only once, stating: "The plaintiff received one-time awards intended to offset awards forfeited by leaving Merrill Lynch. His cash bonus paid this year for 2003 was $766,250 gross and $456,992.78 net as listed on his financial affidavit dated and filed April 20, 2004." In my opinion, this single, casual reference to net earnings, which was made early on in the court's memorandum of decision during the court's background discussion, is insignificant to our analysis.

[4] See also *Morris* v. *Morris*, supra, 262 Conn. 303 n.3, in which our Supreme Court concluded that a financial order was based improperly on gross income despite its awareness that the trial court had before it evidence of net income *and* that the court even had stated in its memorandum of decision that it relied on the parties' financial affidavits as the basis for its order.

[5] See footnote 3 of this opinion.

[6] Specifically, the trial court in *Morris* stated: "[T]he defendant has the following *gross* amounts which are properly included in his support income consideration . . . ." (Emphasis in original; internal quotation marks omitted.) *Morris* v. *Morris*, supra, 262 Conn. 307.

[7] Furthermore, the court in the present case emphasized the parties' gross earnings to a far greater extent than did the court in *Kelman*, which made

only a passing reference to gross earnings. See *Kelman* v. *Kelman*, supra, 86 Conn. App. 123–24.