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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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NANCY WEINSTEIN *v.* LUKE A. WEINSTEIN
(SC 17097)

Sullivan, C. J., and Borden, Norcott, Katz and Zarella, Js.

Argued January 11—officially released October 4, 2005

Lori Welch-Rubin, with whom was *Susan Wolfson*, for the appellant (plaintiff).

Karen L. Dowd, with whom were *Kenneth J. Bartschi* and, on the brief, *Wesley W. Horton* and *Linda T. Douglas*, for the appellee (defendant).

Gaetano Ferro and *Norman A. Roberts II* filed a brief for the Connecticut Chapter of the American Academy of Matrimonial Lawyers as amicus curiae.

Opinion

KATZ, J. The plaintiff, Nancy Weinstein, appeals, following our grant of certification,[1] from the judgment of the Appellate Court, affirming the judgment of the trial court. *Weinstein* v. *Weinstein*, 79 Conn. App. 638, 830 A.2d 1134 (2003). The trial court had denied the plaintiff's application for a rule to show cause requesting that the court open and vacate the judgment dissolving her marriage to the defendant, Luke A. Weinstein, on the ground that the stipulation on which the judgment was based was the result of a fraudulent

misrepresentation by the defendant. On appeal to this court, the plaintiff challenges the Appellate Court's conclusion that the trial court's findings, namely, that the plaintiff had failed to prove both that the defendant committed fraud by clear and convincing evidence and that there was a substantial likelihood that the result of a new trial would be different, were not clearly erroneous. Id., 648. Specifically, the plaintiff contends that she offered clear and convincing evidence that: (1) the defendant had committed fraud by failing to disclose a $2.5 million offer he and his business partners had received for the purchase of a software company that they owned during the pendency of the marriage dissolution proceedings; and (2) the defendant's rejection of that lucrative offer compelled the conclusion that the defendant fraudulently had undervalued his ownership interest in the company in his financial affidavit submitted to the court in the marriage dissolution proceedings. The plaintiff also contends that she established that there is a substantial likelihood that the outcome of a new trial would be different in light of the withheld and misrepresented information. We agree with the plaintiff, and, accordingly, we reverse the judgment of the Appellate Court.

The record reveals the following facts and procedural history. After nearly seven years of marriage and the birth of one child, the plaintiff filed a complaint seeking to dissolve her marriage due to an irretrievable breakdown. At the time of the dissolution proceedings, the defendant owned a substantial minority interest in a small, privately held software company, Product Technologies, Inc. (Product Technologies).[2] During the pendency of the matter, the plaintiff deposed the defendant, seeking specifically to obtain financial information about the value of his interest in the company. At trial before *Higgins, J.* (dissolution court), the plaintiff, through her expert witness, Kenneth J. Pia, Jr., submitted a report to the court containing Pia's valuation of the defendant's interest, which Pia had made on the basis of the financial information contained in the defendant's deposition, discovery and other representations, including the defendant's sworn financial affidavits in which he repeatedly had valued his interest at $40,000.[3] Subsequently, the parties stipulated to, and the dissolution court adopted, the $40,000 value for the defendant's interest in the company. On May 12, 1998, the dissolution court entered orders for, inter alia, child support and alimony. The court also ordered the defendant to pay to the plaintiff $100,000 as a property settlement. On the basis of the stipulated valuation of the defendant's interest in Product Technologies, the dissolution court allowed the defendant to retain that interest and the plaintiff to retain an inherited interest in a separate partnership owned by her family.

On May 29, 1998, the defendant filed a motion for reconsideration of the financial orders in the dissolution

judgment, claiming that complying with the existing orders would ''strip him bare'' and force him to sell premarital assets. While that motion was pending, on June 12, 1998, the defendant received a memorandum of understanding from ICL, Inc. (ICL), a company with which Product Technologies jointly had developed certain software.[4] Although the memorandum of understanding did not set forth the finalized terms of the sale, it nonetheless clearly stated ICL's intent to purchase Product Technologies, stating: ''This [memorandum of understanding] sets forth the intent of the parties that the Shareholders shall sell to ICL and ICL shall purchase from the Shareholders all of the issued and outstanding shares of [Product Technologies]. As such, the [Product Technologies] Business . . . shall be transferred to ICL *including, but not limited to, all intellectual property rights*. The term '[Product Technologies] Business' shall include, but is not limited to, [Product Technologies] operations as a smart card software developer and systems integration/solutions provider. More specifically, the [Product Technologies] Business includes, but is not limited to, the supply, both directly and through strategic relationships, of SmartCity system software, hardware, installation, customization, system integration, support and training. At ICL's election the Shares shall be sold to either ICL or to one or more of the companies within the ICL Group. The term 'ICL Group' means ICL's parent, affiliated and subsidiary companies.'' (Emphasis added.) On June 15, 1998, the defendant and his partners met with representatives from ICL, at which time ICL made an offer to purchase Product Technologies for $2.5 million. The defendant and his partners immediately rejected the offer, in part because they believed it was too low if ICL expected it to include the intellectual property asset. The defendant did not notify the plaintiff or the dissolution court that he had received and rejected this offer.

On June 16, 1998, the dissolution court denied the defendant's motion for reconsideration. In October, 1998, five months after the entry of the judgment of dissolution, the defendant and his partners sold Product Technologies to ICL for $6 million. As a result of the sale, the defendant received approximately $1.45 million for his interest in the company.

Thereafter, the plaintiff filed an application for a rule to show cause seeking to open and to vacate the judgment on the basis of fraud, asserting that the defendant fraudulently had failed to disclose and misrepresented material financial information during the pendency of the marital dissolution proceedings.[5] With respect to nondisclosure, the plaintiff claimed, inter alia, that the defendant's failure to disclose the $2.5 million offer constituted fraud. Specifically, the plaintiff contended that the defendant's duty to disclose pertinent financial information had extended until June 16, 1998, when the dissolution court ruled on the defendant's motion for

reconsideration. The plaintiff asserted that the defendant had become aware of ICL's intent to purchase Product Technologies upon receipt of the memorandum of understanding on June 12, 1998, and that he had a duty to disclose the $2.5 million offer because the dissolution court had not yet ruled on his motion to reduce his financial obligations under the dissolution judgment due to monetary constraints.

With respect to misrepresentation, the plaintiff asserted, inter alia, that the defendant would not have considered the $2.5 million offer, which would have yielded the defendant approximately $500,000, to be too low unless Product Technologies and his interest therein were worth far more than the $40,000 that he had represented in his financial affidavit. Finally, the plaintiff contended that there was a substantial likelihood that the outcome of a new trial would be different in light of the withheld and misrepresented information.

The trial court, *Parker, J.*, denied the plaintiff's application for a rule to show cause, finding that the plaintiff had not proffered clear and convincing evidence that the defendant had committed fraud. With respect to the defendant's nondisclosure, although the dissolution court did not render judgment in the case until May 12, 1998, the trial court apparently concluded that the defendant's duty to disclose ended at the conclusion of the evidence, not upon the date on which judgment was rendered. The trial court found that, although the defendant had received an offer on June 15, 1998, ''as of the time of the trial, April 16 and 17, 1998, there was no sale pending, no offer to purchase had been made, and no negotiations or discussions regarding [the] sale of [Product Technologies] had taken place.'' With respect to the defendant's allegedly fraudulent misrepresentation in his financial affidavit, the court declined to infer from the defendant's rejection of ICL's $2.5 million offer that Product Technologies was worth that amount or more. Because the trial court concluded that the plaintiff had failed to prove that the defendant engaged in fraudulent nondisclosure, and that the defendant's rejection of the $2.5 million offer did not establish clear and convincing evidence of fraud in his financial affidavit, the court did not address the plaintiff's claim that there was a substantial likelihood that the outcome of a new trial would be different in light of the $2.5 million offer and the defendant's rejection thereof. The trial court did, however, reach that issue with respect to a different nondisclosure claim asserted by the plaintiff; see footnote 7 of this opinion; but concluded that, even had the defendant violated his duty to disclose such information, there was not a substantial likelihood that the result of a new trial would be different.

The plaintiff filed a motion for reconsideration reasserting, inter alia, that the evidence reflected that the

defendant had committed fraud because: (1) he received the sale offer before a final judgment had been rendered by virtue of the dissolution court's denial of the defendant's motion for reconsideration; (2) the trial court acknowledged in its memorandum of decision that "[n]ecessarily, by filing the motion [for reconsideration], [the] defendant invited the plaintiff and the [dissolution] court to take another look at his financial condition"; and (3) the defendant therefore violated his duty to disclose the sale offer before final judgment had been rendered. The trial court denied the motion. In doing so, the court characterized the issue of whether the defendant's duty to disclose extended beyond the date of trial as outside the scope of the plaintiff's pleadings. The trial court further concluded that, in the absence of any appellate authority, it would not extend the duty to disclose beyond the trial and the rendering of judgment.

The plaintiff thereafter appealed to the Appellate Court, which affirmed the trial court's decision. Specifically, the Appellate Court concluded that the trial court properly could have credited the defendant's testimony that the subject of the sale of Product Technologies to ICL was not broached until June 15, 1998. *Weinstein* v. *Weinstein*, supra, 79 Conn. App. 641, 644. It did not address the plaintiff's claim regarding the extension of the defendant's continuing duty to disclose.[6] The Appellate Court also failed to address the plaintiff's claim that the trial court improperly had concluded that the defendant had not misrepresented the value of his interest in his financial affidavit and specifically, that the defendant's rejection of the $2.5 million offer did not evidence such a misrepresentation. This certified appeal followed.

The plaintiff claims that she has satisfied her burden of proving that the defendant fraudulently had misrepresented his financial condition during the dissolution proceedings. Specifically, she asserts, inter alia,[7] that: (1) because the defendant's continuing duty to disclose necessarily extended to the date the dissolution court had ruled on his motion for reconsideration on June 16, 1998, the defendant was required to disclose his knowledge of ICL's intention to purchase Product Technologies, as reflected in the memorandum of understanding received on June 12, 1998, and the $2.5 million offer received on June 15, 1998; (2) the defendant deliberately withheld this material information; and (3) the $40,000 valuation the defendant placed on his ownership interest in Product Technologies was fraudulent in light of the defendant's rejection of the $2.5 million offer. The plaintiff further asserts that the dissolution court likely would have reached a different result if there had been a new trial because it would have divided the parties' assets differently, based either on the potential value of the defendant's interest subject to the pending sale or on the present value of the defendant's

interest as reflected by the rejected $2.5 million offer.

In response, the defendant contends that: (1) the $40,000 valuation in his affidavit was a reasonable assessment of the value of his interest in Product Technologies at that time given the company's dire financial state;[8] (2) the duty to disclose does not extend beyond the date the original judgment was rendered.[9] He further claims that, even if it did, it would be unreasonable to require disclosure of an offer he received only one day before the dissolution court ruled on his motion for reconsideration. We agree with the plaintiff.

I

STANDARD OF REVIEW AND GOVERNING PRECEDENT

Before addressing the merits of the plaintiff's claims, we set forth the standard for our review and the relevant legal principles. The party claiming fraud—in this case, the plaintiff—has the burden of proof. *Aksomitas* v. *Aksomitas*, 205 Conn. 93, 100, 529 A.2d 1314 (1987). Whether that burden has been met is a question of fact that will not be overturned unless it is clearly erroneous. *Miller* v. *Guimaraes*, 78 Conn. App. 760, 781, 829 A.2d 422 (2003). "A court's determination is clearly erroneous only in cases in which the record contains no evidence to support it, or in cases in which there is evidence, but the reviewing court is left with the definite and firm conviction that a mistake has been made." (Internal quotation marks omitted.) *W.* v. *W.*, 256 Conn. 657, 661, 779 A.2d 716 (2001).

"Our review of a court's denial of a motion to open [based on fraud] is well settled. We do not undertake a plenary review of the merits of a decision of the trial court to grant or to deny a motion to open a judgment. . . . In an appeal from a denial of a motion to open a judgment, our review is limited to the issue of whether the trial court has acted unreasonably and in clear abuse of its discretion. . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action. . . . The manner in which [this] discretion is exercised will not be disturbed so long as the court could reasonably conclude as it did. . . .

"Fraud consists in deception practiced in order to induce another to part with property or surrender some legal right, and which accomplishes the end designed. . . . The elements of a fraud action are: (1) a false representation was made as a statement of fact; (2) the statement was untrue and known to be so by its maker; (3) the statement was made with the intent of inducing reliance thereon; and (4) the other party relied on the statement to his detriment. . . . A marital judgment based upon a stipulation may be opened if the stipulation, and thus the judgment, was obtained by fraud. . . . A court's determinations as to the elements of

fraud are findings of fact that we will not disturb unless they are clearly erroneous. . . .

''There are three limitations on a court's ability to grant relief from a dissolution judgment secured by fraud: (1) there must have been no laches or unreasonable delay by the injured party after the fraud was discovered; (2) there must be clear proof of the fraud; and (3) there is a substantial likelihood that the result of the new trial will be different.'' (Citations omitted; internal quotation marks omitted.) *Mattson* v. *Mattson*, 74 Conn. App. 242, 244–46, 811 A.2d 256 (2002). Because there is no claim of undue delay in the present case, we limit our consideration to whether there was sufficient proof of fraud and whether the result in a new trial would differ.

To determine whether there was proof of fraud, we consider the evidence through the lens of our well settled policy regarding full and frank disclosure in marital dissolution actions. ''Our [rules of practice have] long required that at the time a dissolution of marriage, legal separation or annulment action is claimed for a hearing, the moving party shall file a sworn statement . . . of current income, expenses, assets and liabilities, and pertinent records of employment, gross earnings, gross wages and all other income. . . . The opposing party is required to file a similar affidavit at least three days before the date of the hearing . . . .

''Our cases have uniformly emphasized the need for full and frank disclosure in that affidavit. A court is entitled to rely upon the truth and accuracy of sworn statements required by . . . the [rules of practice], and a misrepresentation of assets and income is a serious and intolerable dereliction on the part of the affiant which goes to the very heart of the judicial proceeding. . . . These sworn statements have great significance in domestic disputes in that they serve to facilitate the process and avoid the necessity of testimony in public by persons still married to each other regarding the circumstances of their formerly private existence. . . .

''Moreover, in *Monroe* v. *Monroe*, [177 Conn. 173, 182, 413 A.2d 819, appeal dismissed, 444 U.S. 801, 100 S. Ct. 20, 62 L. Ed. 2d 14 (1979)], we referred to the requirement of full and frank disclosure between attorney and marital client. [L]awyers who represent clients in matrimonial dissolutions have a special responsibility for full and fair disclosure, for a searching dialogue, about all of the facts that materially affect the client's rights and interests. Id., 183. In *Baker* v. *Baker*, 187 Conn. 315, 322, 445 A.2d 912 (1982), we imposed this requirement of honest disclosure between the litigating parties and the court. It is a logical extension of those precedents to require such full and frank disclosure as well between the marital litigants themselves. . . .

''We have recognized, furthermore, in the context of

an action based upon fraud, that the special relationship between fiduciary and beneficiary compels full disclosure by the fiduciary. . . . Although marital parties are not necessarily in the relationship of fiduciary to beneficiary, we believe that no less disclosure is required of such parties when they come to court seeking to terminate their marriage.

"Finally, the principle of full and frank disclosure . . . is essential to our strong policy that the private settlement of the financial affairs of estranged marital partners is a goal that courts should support rather than undermine. . . . That goal requires, in turn, that reasonable settlements have been knowingly agreed upon. . . . Our support of that goal will be effective only if we instill confidence in marital litigants that we require, as a concomitant of the settlement process, such full and frank disclosure from both sides, for then they will be more willing to [forgo] their combat and to settle their dispute privately, secure in the knowledge that they have all the essential information. . . . This principle will, in turn, decrease the need for extensive discovery, and will thereby help to preserve a greater measure of the often sorely tried marital assets for the support of all of the family members." (Citations omitted; internal quotation marks omitted.) *Billington* v. *Billington*, 220 Conn. 212, 219–22, 595 A.2d 1377 (1991).

II

EVIDENCE OF FRAUD

A

Misrepresentation in the Defendant's Financial Affidavit

We begin with the plaintiff's claim that the defendant committed fraud in his financial affidavit. In April, 1998, the defendant represented at the dissolution trial that Product Technologies was worth approximately $200,000. In his financial affidavit, the defendant repeatedly valued his interest in the company at $40,000. See footnote 3 of this opinion. Only two months later, on June 15, 1998, the defendant received and rejected ICL's $2.5 million purchase offer in part because he believed it was too low. A $2.5 million sale price for Product Technologies would have netted the defendant $500,000 for his interest alone. On June 17, the defendant authored a letter to ICL stating that their "low valuation of [Product Technologies]" was flawed because it failed to account for the intellectual property asset. At the hearing on the plaintiff's rule to show cause, the defendant was asked to explain what he meant in the June 17 letter:

"[Plaintiff's Counsel]: [W]hat did you mean by the low valuation? That the $2.5 million was too low, is that what you meant?

''[The Defendant]: Yes.''

The only logical conclusion one could draw from the defendant's stated belief that the $2.5 million offer was too low is that the defendant knew that Product Technologies and his interest therein were worth far more that he previously had represented in his financial affidavit during the dissolution trial.[10] At the hearing on the rule to show cause, the defendant testified that he based his valuation of Product Technologies and his interest therein on the book value of the company at that time. Although the defendant contends that his valuation was justified at the time given the book value[11] of the company, the fact that the defendant based his valuation of Product Technologies *solely* on the company's book value simply means that his valuation patently was flawed for the same reason that he said ICL's $2.5 million valuation was flawed—it failed to account for the worth of the intellectual property asset.[12] Therefore, what we have in the present case is the dissolution of a marriage in which one party held a valuable asset, the true worth and nature of which only that party knew. Accordingly, in evaluating the trial court's decision, we must ask ourselves whether the trial court *reasonably* could have concluded that there was not clear and convincing evidence that: (1) a fiduciary would have had a duty to disclose the withheld information to a beneficiary; and (2) a fiduciary would have committed fraud in withholding that information from a beneficiary. See *Billington* v. *Billington*, supra, 220 Conn. 221; *Jackson* v. *Jackson*, 2 Conn. App. 179, 191, 478 A.2d 1026, cert. denied, 194 Conn. 805, 482 A.2d 710 (1984); see also *Anderson* v. *Anderson*, 822 A.2d 824, 829 (Pa. Super. 2003) (''The rules were intended to provide an even playing field for both parties in the marital and economic dissolution of the marriage. The rules should not and must not be used to play a game of 'gotcha.' ''). When viewed through this lens, the defendant's conduct in excluding from his valuation the worth of an asset that Product Technologies had spent more than $1 million developing and was the ''life blood'' of the company reasonably can be viewed only as a blatant and deliberate misrepresentation.[13] See *Jackson* v. *Jackson*, supra, 195 (''[T]he plaintiff knowingly made an untrue representation. The representation was made to induce the defendant to act upon it. *That is the self-evident purpose of such affidavits*.'' [Emphasis added.]).

Even if we were to assume, arguendo, that the defendant's valuation of Product Technologies during the dissolution trial included the worth of the intellectual property asset, his assessment that the $2.5 million offer was too low still equally serves as clear and convincing evidence that the valuation was a misrepresentation. If the defendant's valuation of $200,000 for the company had been an accurate assessment that included the

worth of the intellectual property asset, then he could not have believed that ICL's $2.5 million valuation of the company was too low because it excluded the value of that asset.

In considering the defendant's suggestion that ICL was willing to spend an added premium in order to avoid litigation over the intellectual property rights to the jointly developed software and to gain a competitive advantage in the market, one must ask how much of a premium the trial court reasonably could have assumed that ICL would have been willing to pay for something that supposedly was worth only $200,000. Let us assume, for example, that the trial court determined that as much as 50 percent of the $2.5 million offer could have been a premium that ICL was willing to pay simply to avoid the cost and stress of litigation. It defies reason, however, to think that anyone would spend $1.25 million just to avoid litigation over something worth only $200,000. It would be equally implausible to think that anyone would be willing to pay an *additional* $1.25 million on top of the litigation premium for something worth so little. Similarly, ICL would not be willing to spend any more money to gain a competitive advantage in the market than it believed that it could make in the market once it had the intellectual property asset. Product Technologies and ICL had developed this asset together, and no one knew its worth better than these two companies. Thus, ICL's $2.5 million offer constituted an independent appraisal of the worth of Product Technologies that the defendant himself labeled as ''flawed'' because it was too low.[14] Indeed, the huge disparity between the value that the defendant placed on Product Technologies in April, 1998, and the value that ICL placed on the company just two months later *compels* the conclusion that the defendant knew the company and his interest therein were worth more during the dissolution trial.[15] Therefore, the trial court *reasonably* could not have found a lack of correlation between the defendant's assessment of the $2.5 million offer as too low and his valuation of Product Technologies during the dissolution trial, and we are left with the ''definite and firm conviction'' that a mistake has been made.[16] See *State* v. *Michael J.*, 274 Conn. 321, 346, 875 A.2d 510 (2005) (''[a] finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'' [internal quotation marks omitted]). Accordingly, we conclude that the trial court's determination that the plaintiff failed to proffer clear and convincing evidence that the defendant knowingly had misrepresented his worth in his financial affidavit was clearly erroneous in light of the defendant's testimony regarding the $2.5 million offer. Because the trial court failed to conclude that the defendant had

misrepresented his worth in his financial affidavit, the court did not address the question of whether such a misrepresentation would have been calculated to deceive the plaintiff. In light of the evidence presented, however, we can glean no reason for the defendant's misrepresentation other than to induce the plaintiff to rely on the undervaluation in his affidavit to her detriment. See *Greger* v. *Greger*, 22 Conn. App. 596, 600, 578 A.2d 162 (concluding that trial court properly found that defendant's conduct was ''deliberate, fraudulent and egregious concealment of assets'' when defendant had represented in his affidavit that his closely held insurance business had no value although he knew, at time affidavit was filed, exactly how much he would be receiving from sale of business), cert. denied, 216 Conn. 820, 581 A.2d 1055 (1990).

B

Nondisclosure as Further Misrepresentation

Although we already have concluded that the evidence proffered by the plaintiff regarding the defendant's valuation in his financial affidavit was sufficient to establish that the defendant had misrepresented his financial worth intentionally to deceive the plaintiff, we feel compelled to address the plaintiff's nondisclosure claim, as it further illuminates the defendant's continuing pattern of fraudulent conduct. The plaintiff contends that the defendant's duty to disclose pertinent financial information extended until the trial court rendered its decision on the defendant's motion for reconsideration of the dissolution judgment on June 16, 1998, and that the defendant, therefore, should have disclosed his knowledge of ICL's intent to purchase Product Technologies, notice of which he received on June 12, 1998, and ICL's $2.5 million offer, which was received on June 15, 1998.[17] The defendant contends that his duty to disclose such information did not extend beyond the judgment date of May 12, 1998, and that his motion for reconsideration, filed fourteen days later claiming that compliance with the order would ''strip him bare'' and force him to sell premarital assets, did not extend that duty. We agree with the plaintiff.

At the outset, we note that the trial court predicated its conclusion on the assumption that the defendant's continuing duty to disclose pertinent financial information expired at the close of the dissolution trial on April 17, 1998, rather than when judgment was rendered. ''Whether the [defendant] had a duty to disclose is a question of law and, thus, our review [of the trial court's conclusion] is plenary.'' *Miller* v. *Guimaraes*, supra, 78 Conn. App. 776, citing *Macomber* v. *Travelers Property & Casualty Corp.*, 261 Conn. 620, 635–36, 804 A.2d 180 (2002). We conclude that the trial court's assumption was incorrect as a matter of law.

Practice Book § 13-15 imposes a continuing duty, dur-

ing trial, to correct or supplement discovery responses.[18] With respect to dissolution proceedings, this court has established that the value of the parties' assets must be determined as of the time the judgment of dissolution is rendered. See *Sunbury* v. *Sunbury*, 216 Conn. 673, 676, 583 A.2d 636 (1990) (''[i]n the absence of any exceptional intervening circumstances occurring in the meantime, [the] date of the granting of the divorce would be the proper time as of which to determine the value of the estate of the parties upon which to base the division of property'' [internal quotation marks omitted]); see also 3 A. Rutkin, Family Law and Practice (2005) § 36.06 [1], pp. 36-22 through 36-23 (''Statutes in the vast majority of states set no definite date for valuation, although there are a few exceptions. Case law, therefore, governs in most jurisdictions. Numerous courts have held that assets should be valued as of the date of the decree. A significant number of courts have also decided that the proper valuation date for marital assets is the date of trial.''). Therefore, it is clear that the duty to update pertinent discovery responses and to disclose facts relevant to that determination necessarily must extend until the judgment is rendered. Indeed, the sole purpose of disclosing pertinent financial information and mandating updated financial affidavits is to value the parties' assets properly, and it would completely thwart that purpose if the duty to disclose were to end before the asset valuation date. A treatise on family law explains why the later date serves an important function: ''A separate, but critical, determination is the date selected for valuation of property to be distributed. The final award to a party may be significantly larger or smaller depending on the date chosen, especially if the parties' property consists of assets which fluctuate in value. Since the final divorce hearing often will be months or even years after the parties' final separation, a valuation date should be selected that will give the trial court the most current and accurate information possible, depending on the nature of the asset.'' 3 A. Rudkin, supra, § 36.06, p. 36-22. Indeed, extending the duty to disclose until the judgment is final essentially is mandated by our determination in *Billington* v. *Billington*, supra, 212 Conn. 220–22, wherein we underscored the necessity for full and frank disclosure in marital actions. See also Practice Book § 1-8 (''[t]he design of these rules [is] to facilitate business and advance justice, [and] they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice''). Thus, as our case law for the last fifteen years makes clear, the duty to disclose continued until the judgment of dissolution was final.[19]

In the present case, however, because the defendant filed a motion for reconsideration, the judgment ultimately did not become final until the dissolution court acted on his motion. We have recognized in an analo-

gous context that the filing of a motion for reconsideration should be treated as suspending the finality of judgment when the effect of a ruling on the motion can affect the substantive rights of the parties.[20] See *Killingly* v. *Connecticut Siting Council*, 220 Conn. 516, 525–27, 600 A.2d 752 (1991); see also *Interstate Commerce Commission* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270, 284–85, 107 S. Ct. 2360, 96 L. Ed. 2d 222 (1987) (concluding that pending reconsideration had stayed appeal period and had rendered agency's original order ''nonfinal'' until decision on reconsideration was issued). Such a result is consistent with the rule that the filing of a motion that seeks an alteration, rather than a clarification, of the judgment suspends the appeal period. See Practice Book § 63-1 (c); *In re Haley B.*, 262 Conn. 406, 412–14, 815 A.2d 113 (2003) (concluding that motion for change in visitation order suspended appeal period). It also is consistent with our rules of practice governing appellate proceedings, which provide in relevant part that ''[u]nless the chief justice or chief judge shall otherwise direct, any stay of proceedings which was in effect during the pendency of the appeal shall continue until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until twenty days after its disposition, and, if it is granted, until the appeal is finally determined. . . .'' Practice Book § 71-6.[21] Thus, under the facts and circumstances of the present case, it is clear that the defendant's continuing duty to disclose information pertinent to valuing the parties' assets for distribution extended at least until June 16, 1998, when the dissolution court denied his motion for reconsideration of the dissolution judgment. Because the defendant's continuing duty to disclose extended through June 12, 1998, the defendant bore an obligation to inform the plaintiff and the dissolution court about ICL's intent to purchase Product Technologies. Similarly, the defendant had a duty to disclose ICL's $2.5 million purchase offer received on June 15, 1998.[22]

At oral argument before the dissolution court on his motion for reconsideration, the defendant contended that complying with the financial orders under the dissolution judgment would ''strip him bare'' and *force* him to sell premarital assets. Three days earlier, however, the defendant had received express notice of ICL's intent to purchase Product Technologies, and, on the day of the hearing on his motion, the defendant received the $2.5 million purchase offer. Indeed, the defendant must have *known* that he bore a duty to disclose this information because such a duty is *inherent* in the nature of the request he made before the court in his motion for reconsideration. ''Common sense is not to be left at the courthouse door.'' *Meehan* v. *Meehan*, 40 Conn. App. 107, 113, 669 A.2d 616, cert. denied, 236 Conn. 915, 673 A.2d 1142 (1996). This situation essentially is akin to the defendant going before the court

and asking it to reduce his child support obligations because he was unemployed and could barely support himself, while concealing the fact that he had received a lucrative job offer that would pay him far more than he thought his services ever would be worth. In imploring the dissolution court to reduce his financial obligations to the plaintiff, the defendant necessarily reignited his duty to disclose *fully and frankly* any new financial information because such information was directly pertinent and material to the very issue the defendant was asking the court to reconsider. See *Duksa* v. *Middletown*, 173 Conn. 124, 127, 376 A.2d 1099 (1977) (''[a] party who assumes to speak must make a full and fair disclosure as to the matters about which he assumes to speak'' [internal quotation marks omitted]). Such information certainly would include a purchase offer for, and a significant increase in value of, a marital asset. See footnote 15 of this opinion. It would defy logic and principles of fairness to allow the defendant to contest his financial ability to comply with the dissolution court's order by claiming financial hardship while simultaneously allowing him to withhold information expressly sought by the plaintiff as to the accurate value of and purchase offers for Product Technologies. Similarly, under the circumstances of this case, the evidence compels the conclusion that his nondisclosure of the $2.5 million purchase offer was calculated to deceive. See *Miller* v. *Appleby*, 183 Conn. 51, 57 n.1, 438 A.2d 811 (1981) (''when false representations are made for the purpose of inducing an act to another's injury, necessarily there is the plain implication that the representations were made with the intent to deceive'').

C

Detrimental Reliance

It is undisputed that the plaintiff relied on the valuation in the defendant's affidavit when she agreed to stipulate that his interest was worth only the $40,000 value listed therein.[23] Similarly, the dissolution court relied on the stipulated value in dividing the parties' assets. In light of these facts, it cannot be said that the misrepresentation in the defendant's affidavit was not material or that the plaintiff did not rely on it to her detriment. With respect to nondisclosure, it bears repeating that the reason the plaintiff is saddled with the burden of having to demonstrate fraud by clear and convincing evidence is because the defendant did not disclose timely material information that bore on the truthfulness of his financial affidavit. Had the defendant timely disclosed the $2.5 million offer instead of coming to court seeking its beneficence, the plaintiff would have been well within the four month period during which the plaintiff would have been permitted to file a motion to open the judgment, subject only to review as to whether the court acted unreasonably or in clear abuse of its discretion.[24] See *American Honda Finance*

Corp. v. *Johnson*, 80 Conn. App. 164, 166, 834 A.2d 59 (2003). Instead, by failing to disclose material information that bore directly on financial orders the *defendant* asked the dissolution court to reconsider, he invited the court to scrutinize the value of a marital asset that he continued to misrepresent.[25] Thus, it can hardly be said that the defendant's failure to disclose the $2.5 million offer was not detrimental to the plaintiff, as it was the sole reason for the plaintiff's delay in discovering the defendant's misrepresentation in his financial affidavit. Accordingly, we conclude that the trial court improperly determined that the plaintiff had failed to establish the elements of fraud by clear and convincing evidence. See *Billington* v. *Billington*, 27 Conn. App. 466, 468, 606 A.2d 737 (concluding that trial court properly found that plaintiff had proven by clear and convincing evidence that defendant committed fraud when parties had agreed on property division of parcels of equal value and defendant represented in his affidavit that parcel he was to receive was worth $225,000 but failed to disclose that he already had received offer for $380,000 for parcel), cert. denied, 224 Conn. 906, 615 A.2d 1047 (1992).

III

SUBSTANTIAL LIKELIHOOD OF DIFFERENT OUTCOME

Finally, we turn to the issue of whether the plaintiff failed to proffer clear proof that there is a substantial likelihood that the outcome of a new trial would be different. The plaintiff contends that, in light of the true value of Product Technologies, the value of the parties' marital assets would have been significantly higher, thus, increasing her portion of the property settlement.

In its memorandum of decision, the trial court noted that the key questions involved in this inquiry were whether the plaintiff would have: (1) agreed to the $40,000 valuation of the defendant's interest in Product Technologies; (2) presented evidence that the value of the defendant's interest was greater than $40,000; and (3) been able to convince the trial court that the value was significantly greater than $40,000. We agree with the trial court's summary of the proof needed, but we disagree with its conclusion that the plaintiff failed to meet this burden.

We first note that, had the dissolution court known of the defendant's misrepresentation in his financial affidavit, it clearly would have viewed the defendant's credibility, and therefore his testimony, with far greater skepticism. Furthermore, in light of Product Technologies' drastically higher value than that attested to by the defendant, as evidenced by ICL's $2.5 million offer, we are left with the definite and firm conviction that the trial court should have concluded that there existed a substantial likelihood that the dissolution court would

have made a different distribution of assets in the plaintiff's favor, either in the form of a direct payment or in shares of the defendant's company. The plaintiff need not prove what remedy the dissolution court would have adopted; just that the outcome likely would have differed.

We further conclude that, if the sale offer properly had been disclosed, it is substantially likely that the dissolution court would have granted, rather than denied, the defendant's motion for reconsideration of the dissolution order, adopting any number of remedies in the interest of avoiding a miscarriage of justice to the plaintiff. See *Northeast Savings, F.A.* v. *Scherban*, 47 Conn. App. 225, 229–30, 702 A.2d 659 (1997) (''In any ordinary situation if a trial court feels that, by inadvertence or mistake, there has been a failure to introduce available evidence upon a material issue in the case of such a nature that in its absence there is a serious danger of a miscarriage of justice, it may properly permit that evidence to be introduced at any time before the case has been decided. *Hauser* v. *Fairfield*, 126 Conn. 240, 242, 10 A.2d 689 (1940). Whether or not a trial court will permit further evidence to be offered after the close of testimony in a case is a matter resting in the sound discretion of the court.'' [Internal quotation marks omitted.]), cert. denied, 244 Conn. 907, 714 A.2d 2 (1998); see also *Doyle* v. *Abbenante*, 89 Conn. App. 658, 665, 875 A.2d 558 (2005) (''[a]s a general matter, in the *absence of the discovery of some new facts* or new legal *authorities that could not have been presented earlier*, the denial of a motion for reargument is not an abuse of the discretion of the trial court'' [emphasis added]). The extent to which it might have been difficult to assign a precise value to the potential future value of Product Technologies or only its intellectual property asset does not affect the outcome. The dissolution court could have addressed that issue by granting the plaintiff shares in the company. Indeed, it is not uncommon for dissolution courts to have to deal with assets with fluctuating values.[26]

The defendant disputes that the result of a new trial would be different because the plaintiff rejected an offer he had made during the dissolution proceedings to give her a share of his interest. Specifically, at the hearing on the motion to open the judgment, the defendant testified that he had offered the plaintiff a ''tail'' provision, meaning that he had been willing to give the plaintiff 20 to 30 percent of the proceeds of any sale of his interest in Product Technologies should one occur within a fixed period of time after the marital dissolution judgment.[27] The defendant apparently overlooks, however, that, at the time he made that offer, he had represented to the plaintiff that the future outlook for Product Technologies was bleak and that he had failed to disclose the company's actual worth including the value of its intellectual property asset. Thus, the plain-

tiff's rejection of the defendant's offer of an interest that the defendant essentially asserted had little to no value does not bear on whether she would have reacted differently had the true picture been disclosed.

In sum, it was undisputed that Product Technologies was developed during the parties' marriage, that marital assets were invested in the company and that the defendant's interest in Product Technologies was a marital asset. Thus, had the dissolution court been aware that this asset was worth *significantly* more than the defendant had represented, it is substantially likely that the court ultimately would have entered a different award with respect to the division of the parties' assets. See *Kinderman* v. *Kinderman*, 19 Conn. App. 534, 538, 562 A.2d 1151 ("[w]e have no trouble concluding that the $132,000 difference in valuation [of the marital residence] in this case is sizeable"), cert. denied, 212 Conn. 817, 565 A.2d 535 (1989); *Cuneo* v. *Cuneo*, 12 Conn. App. 702, 710, 533 A.2d 1226 (1989) (holding that increase in value of marital residence from $40,000 to $60,000 was sizable difference). Accordingly, we conclude that, had the trial court reached this issue, it would have been compelled to conclude that the plaintiff proffered clear proof of a substantial likelihood that the outcome of a new trial would yield a different result. See *Jackson* v. *Jackson*, supra, 2 Conn. App. 195 ("[c]onsidering all of the statutory criteria for distribution of assets and for alimony in a dissolution action; General Statutes §§ 46b-81, 46b-82; we conclude that it is highly likely that a new trial, with all of the cards on the table, will produce a different result").

In sum, we are well aware of our limited role in reviewing the factual findings of the trial court under the clearly erroneous standard. The trier of fact has wide discretion in interpreting the evidence and drawing conclusions therefrom. *Jackson* v. *Jackson*, supra, 2 Conn. App. 195. When "a clear case is made under applicable law that a fraudulent and material misrepresentation by one party resulted in a substantial injustice to the other party, [however] we must not hesitate to act. This is such a case."[28] Id., 196.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the judgment of the trial court and to remand the case to that court with direction to grant the motion to open the judgment of dissolution and for further proceedings according to law.

In this opinion BORDEN and NORCOTT, Js., concurred.

[1] We granted the plaintiff's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly affirm the trial court's denial of the plaintiff's motion to open this marital dissolution judgment on the basis of fraud?" *Weinstein* v. *Weinstein*, 266 Conn. 933, 837 A.2d 807 (2003).

[2] Product Technologies manufactured financial software for Smart Card systems. Smart Cards are reusable plastic cards to which the user can add

value, similar to credit cards that have a computer chip inside. Product Technologies produced the ''turnkey'' software that is used in Smart Cards using uniquely designed source codes. Thus, in addition to its profits from the manufacture and sale of the turnkey software, Product Technologies owned an intellectual property asset in the source codes.

[3] The defendant submitted a total of five affidavits to the dissolution court on: February 3, 1997; March 3, 1997; September 10, 1997; April 15, 1998; and April 17, 1998. A subsequent affidavit was faxed to the plaintiff on August 17, 1998. Each of the affidavits, with the exception of the ones produced on April 15, 1998, and August 17, 1998, valued the defendant's interest in Product Technologies at $40,000. The April 15, 1998 affidavit valued the defendant's interest at $14,000, and the August 17, 1998 affidavit listed the value as unknown.

[4] Although Product Technologies and ICL had operated at one time as friendly partners, the relationship soured sometime between 1997 and 1998. Between March and June, 1998, the companies were threatening each other with litigation over the intellectual property rights to the software.

[5] Although the application to open the judgment was filed more than four months from the date of dissolution; see Practice Book § 17-4 (a); a trial court has inherent power to determine if fraud exists. *Kenworthy* v. *Kenworthy*, 180 Conn. 129, 131, 429 A.2d 837 (1980).

[6] The dissent suggests that, because the Appellate Court failed to address the plaintiff's claim regarding the defendant's continuing duty to disclose, we should presume that it did so because the plaintiff had failed to plead or to preserve the claim in the trial court. We note, however, that because the defendant objected to her raising this claim for this very reason, the Appellate Court likely would have relied on the defendant's objection as its reason for not reaching the claim. Instead, the Appellate Court's opinion is *silent* on the issue. That opinion similarly is silent with respect to the plaintiff's claims stemming from the valuation in the defendant's affidavit despite the fact that the dissent agrees that the ''gravamen'' of the plaintiff's claims stemmed from that affidavit. Thus, rather than presume that the Appellate Court's failure to address the plaintiff's continuing duty to disclose claim necessarily implies that it agreed with the defendant that the plaintiff failed to plead and to preserve the claim, an argument that we reject; see footnote 8 of this opinion; it is more reasonable to conclude that the Appellate Court simply overlooked that claim.

[7] The plaintiff also has raised numerous other claims, including that the defendant: (1) fraudulently failed to disclose a material financial document, a private placement memorandum, that further evidenced the fraud in his financial affidavit; and (2) fraudulently concealed negotiations with ICL regarding the acquisition of Product Technologies that took place during the dissolution trial. Because our resolution of the plaintiff's claims regarding the $2.5 million offer is dispositive, we need not address these claims.

[8] The defendant claims that we should not review the plaintiff's claim that he committed fraud in his financial affidavit by valuing his interest in Product Technologies at $40,000 because the plaintiff has raised that issue for the first time on appeal to this court. The defendant contends that the plaintiff's sole focus in the trial court and in the Appellate Court was on the issue of whether the defendant had committed fraud by failing to disclose the October, 1998 sale. We disagree. The plaintiff raised the issue of fraud in the defendant's affidavit in her rule to show cause application by referencing the $40,000 value therein and claiming that the defendant had misrepresented the worth of his business. See *Beaudoin* v. *Town Oil Co.*, 207 Conn. 575, 587–88, 542 A.2d 1124 (1988) (''[t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically'' [internal quotation marks omitted]). The plaintiff also raised this claim in her memorandum of law filed in support of her rule to show cause application and asserted the claim at the hearing on her rule to show cause. Moreover, because the defendant failed to object in the lower courts to any of the plaintiff's claims stemming from the $40,000 valuation, he necessarily has waived the right to object to those claims before this court. See *DiLieto* v. *Better Homes Insulation Co.*, 16 Conn. App. 100, 104–105, 546 A.2d 957 (1988). For all of the foregoing reasons, we reject the defendant's claim.

[9] The defendant also contends, and the dissent concludes, that we should not address the plaintiff's claim regarding the extension of the continuing duty to disclose because the plaintiff did not plead this claim with specificity in her rule to show cause application and failed to preserve this claim at trial. These contentions are without merit. With respect to the pleadings,

the plaintiff framed her rule to show cause application broadly enough to encompass this claim by asserting that the defendant improperly had failed to disclose an offer to purchase his business that he received during the ''prolonged pendency'' of the marriage dissolution proceedings. We will not penalize the plaintiff for not pleading, *to the letter*, claims that could not have been flushed out fully at the pleadings stage because they are based in part on information, such as the defendant's receipt and rejection of the $2.5 million offer on June 15, 1998, that, because of the defendant's conduct, she could not possibly have uncovered prior to discovery. Indeed, it is understandable that the plaintiff's pleadings focused primarily on the ultimate acquisition of Product Technologies for $6 million because that was all she knew about when she filed her rule to show cause application. Still, the plaintiff framed her rule to show cause broadly enough to encompass her claim with respect to the defendant's continuing duty to disclose, consistent with the evidence produced at the hearing, and it is extremely likely that the dissolution court would have granted the plaintiff leave to amend her pleadings had she requested permission. See *Transportation Plaza Associates* v. *Powers*, 203 Conn. 364, 368–69 n.2, 525 A.2d 68 (1987) (''The defendants did not raise with any specificity any issue in the trial court as to the failure of the pleadings to conform to the proof; and such an issue need not be reviewed here. . . . Furthermore, its is extremely likely that the court would have granted a motion to amend the pleadings had [the plaintiff] so moved.'' [Citations omitted.]).

With respect to the preservation of her claim, at trial the plaintiff elicited evidence from the defendant in support of this claim and reasserted that claim in her closing argument, in her brief, and again in her motion for reconsideration of the trial court's decision. Specifically, in the facts section of her brief to the trial court, the plaintiff provided a time line of events. Three of those events included: the defendant's receipt of the $2.5 million offer on June 15, 1998; the defendant's argument that same day before the trial court on his motion for reconsideration of the dissolution judgment, claiming that the property settlement in the judgment would ''strip him bare''; and the defendant's rejection two days later of the $2.5 million offer because it was too low. In the argument section of her brief, the plaintiff again referenced these three events and underscored the defendant's failure to disclose the $2.5 million offer. The plaintiff then stated with respect to these, as well as other actions by the defendant: ''*All* of the foregoing representations by [the defendant] regarding his assets were known by [him] to be untrue. Moreover, these false representations were made in order to induce [the plaintiff] and the court to rely and act upon them, and both [the plaintiff] and the court did rely and act upon them.'' (Emphasis added.) Finally, the defendant hardly can contend that he was ambushed by the plaintiff's claim because in his closing argument in the trial court he acknowledged its presence in her brief and defended against that claim, raising the same arguments that he raises in his brief to this court. In addition to the excerpts in the transcript cited by the dissent, at closing, the defendant's counsel stated: ''We filed a motion for reconsideration. If [the defendant] had thought ICL was going to come along and offer him a lot of money or any money, he would not have a filed a motion for reconsideration. It would have been ridiculous. And the fact that that motion was denied again strongly pushes that the date that we need to look at back to the time of the trial . . . .'' When these remarks are read in concert with the remarks quoted by the dissent, it becomes clear that the defendant's counsel had recognized the nature of the plaintiff's claim and simply was arguing that the duty to disclose should not extend beyond the date of the trial.

In concluding that the plaintiff failed to plead and preserve this claim, the dissent assigns considerable weight to the fact that the trial court asked the plaintiff at the hearing if she would agree that, in order to prevail, she would have to show that the seeds of the acquisition were planted during the dissolution trial itself. Specifically, the trial court stated: ''I think what proffered my inquiry to you is . . . the last question . . . did you have discussions with ICL . . . after I think it was June 15 . . . about the acquisition. And in order for you to prevail, correct me if I'm wrong, don't you have to . . . show that the seeds, at least the seeds of this acquisition, were planted and well watered before the trial?'' The plaintiff answered: ''Yes, Your Honor. I do need to show that.'' In making this argument, the dissent overlooks one obvious fact. The trial court's question clearly referred to the plaintiff's claim regarding the defendant's failure to disclose the pending sale of Product Technologies. The plaintiff simply conceded that, in order to prevail on her claim that the defendant had committed fraud by concealing

the pending acquisition of his company during the dissolution trial, she would have to prove that the seeds of the sale had been planted during the trial. The trial court's question and the plaintiff's concession have no bearing, however, on the plaintiff's other claims. Thus, we decline to conclude that the plaintiff conceded that she had to prove that the seeds of the acquisition were planted during the dissolution trial in order to prevail on *all* of the claims in her complaint, including those claims that stand independent of her claim regarding the acquisition.

[10] The dissent points to the defendant's statement at trial, in response to a question unrelated to his rejection of the $2.5 million offer, that he doubted the sincerity of the offer and believed it could be a ploy on ICL's part to gain access to Product Technologies' intellectual property secrets through due diligence review as evidence of another reason that the defendant could have rejected the offer. We find it difficult to conclude that the trial court reasonably could have credited this testimony. Two weeks after rejecting ICL's $2.5 million offer, ostensibly in part because of their concern about ICL's intent to use the due diligence review to obtain intellectual property secrets with no binding obligation to purchase the company, the defendant and William Mangino, Jr., the founder and a co-owner of Product Technologies, signed a nonbinding memorandum of understanding with ICL that subjected Product Technologies to the same due diligence review. In other words, the same risk existed, and the only substantive difference between the $2.5 million offer that the defendant rejected and the $6 million offer that the defendant accepted two weeks later was the higher price. Moreover, even if we were to assume, arguendo, that the trial court properly could have credited the defendant's statement regarding the sincerity of the offer as an alternate explanation for his rejecting it, it could not conclude that this was the sole reason for rejecting it as it is undisputed that the defendant testified that he believed that $2.5 million was too low a price if it included the intellectual property asset. In other words, the presence of evidence in the record that could suggest that this is not the *sole* reason that the defendant rejected the offer is *irrelevant* to our conclusion regarding the correlation between the defendant's admission that he thought the offer was too low and his valuation of the company during the dissolution trial. To be clear, our conclusion that the defendant knew that Product Technologies was worth more than he represented in his financial affidavit is not predicated simply on the fact that the defendant ultimately rejected the offer, as suggested by the dissent, but rather, it is founded on the defendant's admission that he did so because he believed the offer was too low.

[11] We accept, therefore, the defendant's uncontradicted testimony that Product Technologies had a minimal book value, but we reconcile that testimony with the other evidence, namely, the defendant's rejection of ICL's $2.5 million offer, by concluding that the book value logically could not have included the company's intellectual property asset. The dissent, however, concludes that the book value was the actual value of all of Product Technologies' assets without reconciling that conclusion with the defendant's rejection of the $2.5 million offer as too low.

[12] The dissent suggests that because Pia was an expert in valuing businesses, he should have either independently assessed the worth of the intellectual property asset or asked more questions concerning its worth. The defendant, however, was best equipped to value that asset because he created it and knew its worth better than anyone else involved in the marriage dissolution proceedings. Additionally, Pia's valuation necessarily was limited by the information disclosed by the defendant. The defendant's duty to disclose fully and frankly required more than merely alluding to the fact that Product Technologies owned source codes; similarly, that duty was not met by his providing to Pia reams of documents in which information was buried that *might* have alerted Pia as to the asset's worth. See *Jackson* v. *Jackson*, 2 Conn. App. 179, 191, 478 A.2d 1026 (concluding that trial court's finding that plaintiff had not committed fraud in failing to disclose stock split to defendant because defendant easily could have ascertained number and value of plaintiff's shares from information in footnote in plaintiff's affidavit was clearly erroneous because it was not "a reasonable conclusion from the evidence unless the attorney examining the affidavit [had] been alerted to what he should look for"), cert. denied, 194 Conn. 805, 482 A.2d 710 (1984).

In order to comply with the requirement of full and frank disclosure, the defendant should have disclosed the fact that the company owned this asset and offered an *accurate* assessment of the asset's worth. See id., 190–91. To the extent that the defendant believed that Pia should discount the worth

of the intellectual property asset because of the dispute with ICL over the rights to it, it was incumbent upon the defendant to explain that to Pia, rather than exclude altogether the worth of the asset from his valuation and his disclosures to the plaintiff. The dissent essentially makes a due diligence argument, namely, that the plaintiff and her expert did not dig deep enough to uncover the true worth of something the defendant had a duty to fully and frankly disclose. In *Billington*, however, we removed the due diligence inquiry from the fraud analysis in marital actions because ''the requirement of diligence in discovering fraud is inconsistent with the requirement of full disclosure because it imposes on the innocent injured party the duty to discover that which the wrongdoer already is legally obligated to disclose.'' *Billington* v. *Billington*, supra, 220 Conn. 220.

[13] There is no question that the defendant believed that Product Technologies owned a valuable intellectual property asset, namely, the source codes for their Smart Card technology. See footnote 2 of this opinion. Indeed, the potential marketability of this asset formed the basis of a venture capital effort launched prior to the sale by the defendant and Mangino as a part of their plan to grow the company rapidly. Not surprisingly, the only document that evidenced the asset's potential, namely, the private placement memorandum on which the dissent relies, was withheld from the plaintiff during discovery. Although the dissent affords considerable weight to the defendant's stock sale to Mangino in January, 1997, this sale occurred eleven months *before* issuance of the first placement memorandum, a document clearly evidencing the defendant's belief that Product Technologies owned a valuable intellectual property asset and his strategy for developing that asset's potential, a strategy that may not have existed eleven months earlier. We further note that, although the dissent questions the inferences the majority has drawn from the defendant's conduct only *one month after the judgment of dissolution*, it nevertheless finds it reasonable to draw an inference from the defendant's conduct *eighteen months prior to the dissolution*.

[14] Although the dissent suggests that Pia's valuation of Product Technologies and the defendant's interest therein also could serve as an independent appraisal of the company, the dissent fails to recognize that Pia's valuation could not have been accurate in the absence of information essential to reaching a proper valuation, namely, the worth of the intellectual property asset. See footnote 12 of this opinion. The dissent's contention that this assertion is unsupported by the record is without merit. At the hearing on the motion to open, Pia testified that he had asked the defendant ''very specifically'' how he intended to go about growing Product Technologies. According to Pia, the defendant's *sole* response was that the company was trying to obtain bank financing. Pia expressly stated that ''[n]othing else was described at that point in time.'' As previously noted; see footnote 12 of this opinion; under the holding in *Jackson* v. *Jackson*, supra, 2 Conn. App. 191, the fact that something might have been buried in the mass of documents that the defendant provided to Pia is insufficient to meet the defendant's disclosure obligations. The defendant had a duty to indicate clearly the value of the intellectual property asset. Rather than comply with this duty, the defendant failed to mention the asset and its potential for the company when Pia asked about his plans to grow the company and similarly failed to disclose the only document that evidenced the asset's potential and the defendant's efforts to grow the company by marketing the worth of this asset. See footnote 13 of this opinion.

[15] At the hearing on the plaintiff's rule to show cause, the defendant testified that there were certain events that occurred between April and June of 1998 that, in his opinion, significantly increased the value of Product Technologies. These events included a contract signed by one of their clients with ''the largest credit card issuer in the world'' that put Product Technologies' Smart Cards under that company's name with a Mastercard logo on them, and a 50 percent increase in the number of employees. Although the defendant initially claimed that he believed that these events only made Product Technologies' *appear* to be a successful company, when pressed further by the plaintiff, he later stated that he thought that these events ''significantly change[d] its value . . . .'' Giving every favorable presumption to the trial court's reading of the evidence, if the trial court had credited this testimony as a sufficient explanation for the gross disparity between the defendant's $200,000 valuation of Product Technologies in April, 1998, and ICL's $2.5 million offer in June, 1998, then it should have been obvious that the defendant essentially had admitted that he had reason to believe that the value of Product Technologies had increased dramatically during

the pendency of the dissolution proceedings, a fact that he had failed to disclose to the plaintiff and the dissolution court. See part II B of this opinion. If the trial court had chosen to disbelieve this testimony, then there would have been no evidence left in the record to explain the drastic value increase over a two month period, other than that Product Technologies had been worth much more than the defendant had represented all along.

[16] We note that the Connecticut Chapter of the American Academy of Matrimonial Lawyers filed an amicus brief in support of the plaintiff's appeal and took the position that the Appellate Court and the trial court improperly failed to focus on whether the defendant's $40,000 valuation was reasonable in light of ICL's offer and ultimate purchase of Product Technologies indicating a significantly greater value.

[17] The trial court found that "[t]he evidence is clear that ICL had not proposed, or even broached, an acquisition until June 15, 1998." That finding was clearly erroneous in light of the memorandum of understanding from ICL. The defendant contends that the trial court was entitled to believe the testimony of Mangino that the offer on June 15, 1998, came "[o]ut of the blue" and had not been contemplated by Product Technologies until that date. Even if we were to accept the defendant's characterization of Mangino's testimony as accurate, the trial court properly could not have accepted that testimony over the plain language of the memorandum of understanding unequivocally stating ICL's intent to purchase Product Technologies. Similarly, the fact that the memorandum of understanding was not binding on ICL is irrelevant. Regardless of whether ICL was bound to purchase Product Technologies by the terms of the memorandum, that document clearly indicated ICL's intent to purchase Product Technologies, and while ICL could have renounced that intent, it never did so.

[18] Practice Book § 13-15 provides: "If, subsequent to compliance with any request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, that party shall promptly notify the other party, or the other party's attorney, and file and serve in accordance with Sections 10-12 through 10-17 a supplemental or corrected compliance."

In one of her interrogatories to the defendant, the plaintiff asked: "Has [Product Technologies] been approached, or any contacts made by any other groups concerning any transactions involving the sale and/or purchase of business interests?" The defendant replied: "[T]he answer is yes. *However, with the exception of information already disclosed during depositions, no offers have been made and no agreement in principle or otherwise has been contemplated, proposed, or made.*" (Emphasis added.)

[19] Although the dissent concedes that the proper date to value the parties' assets is the date of the dissolution, in this case May 12, 1998, it fails to address the defendant's testimony that he believed that the value of Product Technologies began increasing significantly prior to this date due to certain key events that he similarly failed to disclose to the plaintiff or to the dissolution court. See footnote 15 of this opinion.

[20] In *Killingly* v. *Connecticut Siting Council*, 220 Conn. 516, 525–27, 600 A.2d 752 (1991), we addressed the question of whether the filing of a motion for reconsideration of an agency's decision rendered the original judgment nonfinal until the decision on the motion for reconsideration was issued. In doing so, we expressed our approval of the rule followed by the federal courts, under which the agency retains jurisdiction, and thus a decision is not final, while the motion for reconsideration is pending. Id., 526. We declined to adopt a bright line rule, however, that would preclude the trial court from retaining jurisdiction over an administrative appeal that was filed within the original appeal period, but before the motion for reconsideration was filed and denied, because interests of fairness and judicial economy would weigh in favor of allowing the trial court to retain jurisdiction. Id.

The dissent's basis for criticizing our reliance on *Killingly* is unavailing. Although we stated in that case that a motion for reconsideration suspends the finality of the judgment when the ruling of the motion would "have redetermined the rights of the parties"; id., 521; the dissent contends that, because our holding was based on the importance of final judgments in the agency context, it is inapplicable in the marital dissolution setting. We fail to see the distinction. The importance of obtaining a final judgment when the lower ruling body is an agency applies with equal force when the lower ruling body is a trial court. "[T]he relevant considerations in determining

finality are whether the process of . . . decisionmaking has reached a stage where [appellate] review will not disrupt the orderly process of adjudication and whether rights or obligations have been determined or legal consequences will flow from the [earlier] action.'' Id.

[21] This rule neither suggests nor allows for the finality of judgments to be extended indefinitely as the dissent suggests. A party only has twenty days from the date of judgment in which to file a motion for reconsideration. Practice Book § 11-12 (a). After the twenty days has passed, no such motions can be filed and the judgment becomes final. If, however, a motion for reconsideration on which the ruling could alter the judgment is filed within the twenty day period, it is only logical that the finality of the judgment be suspended until the court has ruled on that motion.

[22] The defendant contends that it would be unreasonable to require disclosure of an offer received only one day before the court rendered its decision. We disagree, particularly in light of the fact that the defendant knew three days prior to the June 15, 1998 meeting of ICL's intention to purchase Product Technologies. To accept the defendant's contention would be wholly inconsistent with the considerations we outlined in *Billington*. Full and frank disclosure means precisely that—*full and frank disclosure*.

[23] The dissent's suggestion that the plaintiff did not rely on the defendant's affidavit is contradicted by the record. Pia clearly stated that he had agreed to settle on a value of $40,000 in part because it was the value the defendant had placed on his interest in his affidavit. Moreover, Pia's valuation is not the issue in this case. Rather, the issue is whether the defendant failed to comply with his duty to fully, frankly, and *truthfully* disclose the worth of his interest in his affidavit.

[24] Indeed, because General Statutes § 51-183b allows a court to file its decision within 120 days of the date of the close of evidence, the appropriate question in a case like the present one is whether the trial court should be able to assume that it will be notified of any significant change in financial circumstances as soon as it occurs.

[25] In fact, both the trial court and the defendant recognized that, in filing his motion for reconsideration, the defendant necessarily invited the court to reexamine his financial situation. In his closing argument, the defendant's counsel stated: ''We filed a motion for reconsideration. If [the defendant] had thought ICL was going to come along and offer him a lot of money or any money, he would not have filed a motion for reconsideration. It would have been ridiculous.'' In its memorandum of decision, the trial court acknowledged: ''Necessarily, by filing the motion, [the] defendant invited [the] plaintiff and the [dissolution] court to take another look at his financial condition . . . . If [the] defendant had known of the sale as early as the mid-April trial, its hard to believe he would have risked disclosure of the previously concealed sale by filing the motion for reconsideration/reargument; a risk inherent in the filing of the motion.'' In response to the query of why the defendant would invite the court to reexamine his assets under such circumstances, the obvious answer is that, because the defendant already had induced the plaintiff to stipulate to the undervaluation of his interest in Product Technologies, he had no reason to fear that the valuation would be disturbed by the dissolution court in ruling on his motion. Indeed, the only thing that would have prompted the plaintiff or that court to disturb the valuation that the parties already had stipulated to would have been the evidence that the defendant wilfully concealed.

[26] As one family law treatise explains: ''The trend [in valuing marital assets] appears to be moving away from mandating a specific date for valuation and toward a flexible approach where the court has discretion to assign the date of valuation . . . . Even in jurisdictions that require or prefer that valuation be assigned as of a particular date, circumstances may require flexibility. If an asset at issue is one that is highly susceptible to fluctuations in value, authority should be located and arguments prepared to support utilization by the court of a valuation date most beneficial to the client.'' 2 A. Rutkin, Family Law and Practice (2005) § 13.04 [1] [b], p. 13-67. The valuation of a closely held business can be very difficult and numerous methods commonly are employed in doing so. Id., § 13.05 [2], p. 13-80. ''In order to obtain the most accurate valuation for a small business, it is important to vigorously pursue discovery of all available data concerning the business, no just easy-to-obtain information. Discovery of only a financial statement or an inventory of assets *typically will not be sufficient.*'' (Emphasis added.) Id. The factors that should be considered, as recommended by the Internal Revenue Service, would include assessing the value of an intellectual property asset. See id. (setting forth as relevant factors: ''[1] [t]he

nature of the business and the history of the enterprise from its inception; [2] *[t]he economic outlook in general and the outlook of the specific industry in particular;* [3] [t]he book value of the stock and the financial condition of the business; [4] *[t]he earning capacity of the company*; [5] [t]he dividend-paying capacity; [6] *[w]hether or not the enterprise has goodwill or other intangible value*; [and] [7] [s]ales of the stock and the size of the block of the stock to be valued'' [emphasis added]).

[27] At the outset, we note that, according to Pia, it was he, and not the defendant, who had suggested the ''tail'' provision. Pia testified that the only reason he brought it up was because he had asked the defendant if he would be willing to consider it if the parties entered into a settlement agreement. We further note that the obvious answer to the dissent's query of why the defendant would have considered offering the plaintiff a ''tail'' if he knew that Product Technologies was worth millions is that he clearly had colored that offer by representing to the plaintiff that Product Technologies had virtually no future and no sale or investment prospects. Pia testified that he did not think the defendant's offer was an attractive one *based on the circumstances that the defendant had disclosed to him at that time.* Pia also testified that he had been given no reason to believe that there was going to be a sale of Product Technologies any time in the near future. These are precisely the kind of representations that the defendant had a continuing duty to correct during the pendency of the dissolution proceedings, and, if the defendant had complied with that duty, then there is a substantial likelihood that the plaintiff would have reconsidered whether to accept the tail provision.

[28] Finally, the dissent harkens that, as a result of this opinion, there will be mass confusion among the family bench and bar and far more dissatisfied marital litigants. We disagree. The result of this case essentially is no different than any other reversal of judgment in a dissolution action requiring a new trial, affording the trial court enormous discretion, as to valuation and division of the marital assets and other attendant financial orders. Furthermore, the result in this case places responsibility where it belongs, on the party who wrongfully withheld information, not on the matrimonial bar otherwise likely to face malpractice complaints that would result from the dissent's allocation of blame. See *Grayson* v. *Wofsey, Rosen, Kweskin & Kuriansky*, 231 Conn. 168, 174–77, 646 A.2d 195 (1994) (upholding liability of wife's trial counsel following Appellate Court's judgment affirming decision by trial court denying her motion to open dissolution judgment based on husband's fraudulent affidavit).