NORCOTT, J., dissenting. I disagree with the majority's conclusion that the trial court improperly determined that the parties' prenuptial agreement (agreement) was unenforceable. I also conclude that the trial court improperly presumed that the parties were entitled to an equal distribution of the marital property. Accordingly, I respectfully dissent, and would reverse the judgment of the trial court only with regard to the financial orders.

I

Like the majority, I begin with the first claim of the defendant, David Friezo, namely, that the trial court improperly concluded that the agreement executed by the parties on November 12, 1998, was unenforceable. I do so because, if enforceable, the agreement would have controlled the financial disposition of the case. Under the agreement, the recovery of the plaintiff, Victoria Wood Friezo, would have been limited to $400,000, plus the use of a residence for herself and the parties' child.[1] The trial court found, however, that the plaintiff had not been afforded fair and reasonable financial disclosure prior to executing the agreement. The trial court further found that the plaintiff's attorney, Eamonn Foley, had acted under a "clear conflict of interest" and had failed to offer independent advice. Accordingly, it concluded that the agreement was unenforceable pursuant to General Statutes § 46b-36g (a) (3) and (4). As I outline in the discussion that follows, I disagree with the standard of review that the majority applies to this claim. I further conclude that the trial court properly determined that the agreement was unenforceable.

Generally, "[a]n antenuptial agreement is a type of contract and must, therefore, comply with ordinary principles of contract law." *McHugh* v. *McHugh*, 181 Conn. 482, 486, 436 A.2d 8 (1980). The enforceability of such agreements is, however, governed by § 46b-36g,[2] which previously has not been the subject of an appellate level decision in this state.

I begin by setting forth the applicable standard of review, which "depends upon the proper characterization of the rulings made by the trial court. To the extent that the trial court has made findings of fact, our review is limited to deciding whether such findings were clearly erroneous. . . . 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.) *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 149, 848 A.2d 451 (2004).

I disagree with the majority's conclusion that this appeal is subject to plenary review because the meaning of "fair and reasonable disclosure" under § 46b-36g (a) (3) is one of statutory interpretation and "the defendant's claim that the agreement was enforceable is a mixed question of fact and law . . . ." Rather, my review of the text and structure of the statute itself indicates that the trial court's conclusions under § 46b-36g (a) (3) and (4) were factual findings subject to review only for clear error. Section 46b-36g (a) lists four bases for finding a prenuptial agreement to be unenforceable: (1) voluntariness; (2) unconscionability; (3) failure to provide a fair and reasonable disclosure of property, financial obligations and income; and (4) lack of reasonable opportunity to consult with independent counsel. In § 46b-36g (c), the legislature provides, in accordance with our jurisprudence, that "[a]n issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law." The statute is, however, silent with regards to the other three circumstances in which a prenuptial agreement shall not be enforced. By negative implication, this silence indicates that the legislature intended that inquiries under the other provisions of the statute be decided as factual rather than legal questions, which also would be consistent with our case law in effect when the statute was enacted. See *Williams Ford, Inc.* v. *Hartford Courant Co.*, 232 Conn. 559, 580, 657 A.2d 212 (1995) (citing cases from variety of contexts since 1980 wherein "[w]e have consistently held that reasonableness is a question of fact for the trier to determine based on all of the circumstances"); see also, e.g., *Alvarez* v. *New Haven Register, Inc.*, 249 Conn. 709, 722, 735 A.2d 306 (1999) ("[t]he legislature is presumed to be aware of this court's decisions"); *State* v. *Kyles*, 169 Conn. 438, 442, 363 A.2d 97 (1975) ("it must be presumed that the legislature was aware of prior judicial decisions"). Therefore, in reviewing whether the trial court properly determined that the plaintiff was not (1) "provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party"; General Statutes § 46b-36g (a) (3); and (2) "afforded a reasonable opportunity to consult with independent counsel"; General Statutes § 46b-36g (a) (4); this court is reviewing questions of fact and must apply the clearly erroneous standard. See, e.g., *In re Marriage of Adams*, 240 Kan. 315, 320, 729 P.2d 1151 (1986) (deferring to trial court's finding that wife received advice from independent counsel); see also *Williams Ford, Inc.* v. *Hartford Courant Co.*, supra, 580 ("reasonableness is a question of fact for the trier to determine based on all of the circumstances"); *Weiss* v. *Statewide Grievance Committee*, 227 Conn. 802, 812, 633 A.2d 282 (1993) (statewide grievance committee's determination that conflict of interest had existed was factual finding subject to review for clear error).

I turn first to the trial court's finding, pursuant to § 46b-36g (a) (3), that the plaintiff "was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations, and income of the [defendant] . . . ." As the majority acknowledges, § 46b-36g does not define the term "fair and reasonable disclosure." Although § 46b-36g is derived from § 6 of the Uniform Premarital Agreement Act (Uniform Act),[3] it also is largely a codification of the principles set forth in *McHugh* v. *McHugh*, supra, 181 Conn. 482. Compare General Statutes § 46b-36g (a) ("A premarital agreement . . . shall not be enforceable if the party against whom enforcement is sought proves that . . . [1] Such party did not execute the agreement voluntarily; or . . . [3] Before execution of the agreement, such party was not provided a fair and reasonable disclosure of the amount, character and value of [the other parties assets and liabilities] . . . .") with *McHugh* v. *McHugh*, supra, 486 ("To determine whether an antenuptial agreement relating to property was valid when made, courts will inquire whether any waiver of statutory or common-law rights, or the right to a judicial determination in any matter, was voluntary and knowing. . . . The duty of each party to disclose the amount, character, and value of individually owned property . . . is an essential prerequisite to a valid antenuptial agreement containing a waiver of property rights." [Citations omitted.]); see also Conn. Joint Standing Committee Hearings, Judiciary, Pt. 7, 1995 Sess., p. 2492, written statement of Edith McClure, representative of Connecticut Bar Association ("[§ 46b-36g] is further intended to clarify the level of financial disclosure between parties and to [overcome] limitations in the scope of the major [Connecticut] [c]ourt decision on [p]remarital [a]greements, *McHugh* v. *McHugh* [supra, 487]").[4] *McHugh* itself, however, also does not define the term "fair and reasonable disclosure," as the majority also acknowledges.

"When a statute does not define a term, it is appropriate to look to the common understanding expressed in the law . . . ." *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709, 721, 546 A.2d 830 (1988). Despite the lack of definition in this context, the terms "fair" and "reasonable" are familiar to our jurisprudence.[5] For example, we have, in the context of the removal of the chairman of a municipal board of education, stated: "What constitutes reasonable notice in any given legal context depends on the facts and circumstances of the case . . . including the purpose for which the notice is required." (Citation omitted; internal quotation marks omitted.) *LaPointe* v. *Board of Educatio*n, 274 Conn. 806, 814, 878 A.2d 1154 (2005); see also *Cahn* v. *Cahn*, 225 Conn. 666, 674, 626 A.2d 296 (1993) ("[w]hat is reasonable notice [for the purposes of a deposition] must depend largely upon the facts and circumstances of each case" [internal

quotation marks omitted]); *E. M. Loew's Enterprises, Inc.* v. *Surabian*, 146 Conn. 608, 612, 153 A.2d 463 (1959) (" '[r]easonable' is a relative term which varies in the context in which it is used, and its meaning may be affected by the facts of the particular controversy"). In this particular context, we have noted that, "[u]nder ordinary circumstances, parties to an ante-nuptial agreement do not deal at arm's length; they stand in a relationship of mutual confidence that calls for the exercise of good faith, candor and sincerity in all matters bearing upon the agreement." (Internal quotation marks omitted.) *McHugh* v. *McHugh*, supra, 181 Conn. 487; cf. *Weinstein* v. *Weinstein*, 275 Conn. 671, 686, 882 A.2d 53 (2005) (describing long-standing policy of requiring detailed financial disclosure to trial court in dissolution of marriage cases). Accordingly, the trial court's assessment of the fairness and reasonableness of the disclosure necessarily incorporated an evaluation of the statutory criteria in light of all the relevant circumstances, including: (1) the level of the plaintiff's financial sophistication; (2) the complexity of the disclosed information; and (3) the time that the plaintiff had to consider the disclosed information. I now consider the defendant's disclosure of the three statutorily mandated types of information, namely, his: "[1] property, [2] financial obligations and [3] income . . . ." General Statutes § 46b-36g (a) (3).

The financial disclosure document attached to the agreement lists several assets that purportedly comprised the defendant's property. It does so, however, in cursory terms that fail to describe the nature of the property in any way whatsoever. As the trial court noted, the disclosure document simply lists thirty-one ambiguously labeled assets, giving no indication of how they were valued or, in some cases, what they truly are. For example, the disclosure document, which indicates the value of the defendant's holdings in "ESTIMATED VALUE (000's)," lists, inter alia, the following assets of the defendant: "Ornstein Leyton Reality, Inc. Real Estate Venture," to which is assigned a value of "85," and "Rosehill Capital Management Rosehill Japan Fund L.P.," to which is assigned a value of "350." Similarly, under the broad category of "Bankers Trust Co. Employee Plans," the defendant's disclosure document lists three assets totaling "430" without explaining what those assets, which are labeled "BT Partnershare Account," "BT Coinvestment Plan" and "BT Partnership Equity Plan," actually constitute. The disclosure document is similarly vague with regard to the defendant's liabilities. Indeed, the only liability listed by the defendant was "Less Tax (40%)" in the amount of "578" under the heading "BT Equity Participation Plan."

Furthermore, although the final agreement signed by the plaintiff listed the defendant's income for the year 1997 as $2,300,000, the draft agreement and the defendant's financial disclosure document that had been

received by the plaintiff's attorney on November 6, 1998, did not contain *any* statement regarding the defendant's income. Additionally, the income stated on the final agreement was not itemized, and provided the plaintiff with no way of assessing its source or consistency. To the extent that the agreement can be construed as having disclosed the defendant's income, it did so only twenty-four hours before the wedding took place, leaving the plaintiff little time to evaluate that disclosure or take any other action to protect her interest.[6]

Additionally, the trial court made significant findings regarding the plaintiff's financial inexperience.[7] Specifically, the trial court found that the plaintiff possessed only a high school education, "had no knowledge of Connecticut marriage and divorce laws, inheritance rights, spousal share upon death, forms of joint or sole real property ownership, qualified domestic relations orders, tax-deferred annuities, individual retirement plans, etc." The trial court further found that the parties "kept their finances completely separated," and "did not talk of money issues." I acknowledge that the plaintiff is charged with knowledge of the financial information sent to her attorney on November 6, 1998. See *Lafayette Bank & Trust Co.* v. *Aetna Casualty & Surety Co.*, 177 Conn. 137, 140, 411 A.2d 937 (1979) ("[t]he knowledge and admissions of an attorney are imputed to his client"); see also *Dornemann* v. *Dornemann*, 48 Conn. Sup. 502, 511, 850 A.2d 273 (1979) ("[t]he actual review of the financial disclosure by each party is not mandated by the statute"). Even if we were to assume, for the sake of argument, its effectiveness with regard to the defendant's assets and liabilities, the disclosure made on that date did not contain any statement of the defendant's income.

Furthermore, even if the financial disclosure document the defendant sent to Foley on November 6, 1998, had contained this information, it is unlikely that the plaintiff would have been able adequately to evaluate it in the short time provided. Accordingly, given the trial court's findings, the scope and timing of the disclosure raise serious doubts that "the parties were aware of their legal rights and their respective assets and liabilities, and proceeded by the agreement to alter those rights in a fair and voluntary manner." *McHugh* v. *McHugh*, supra, 181 Conn. 488. I, therefore, conclude that the trial court's finding of inadequate disclosure finds evidentiary support in the record.

Similarly, with regard to the second aspect of the clearly erroneous test, namely, whether "although there is evidence to support [the trial court's finding], 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) *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, supra, 269 Conn. 149; I also cannot conclude that the

trial court's finding of unreasonable financial disclosure was clearly erroneous. Indeed, the record does contain *some evidence* supporting the defendant's contention that the plaintiff received adequate financial disclosure. Specifically, the total net worth listed on the financial disclosure document attached to the agreement presented a facially accurate portrayal of the defendant's assets of the time of the marriage, and both it and the agreement were in Foley's possession four days before the plaintiff consulted him. Additionally, the defendant presented evidence at trial that the plaintiff had worked with the defendant, was familiar with his compensation, had observed his income tax information on several occasions, and oversaw the renovation of his considerable Westport home.

Nevertheless, it is well established that, on appeal, "[w]e cannot retry the facts or pass on the credibility of the witnesses." (Internal quotation marks omitted.) *Greco* v. *Greco*, 275 Conn. 348, 359, 880 A.2d 872 (2005). Consequently, although evidence exists in the record supporting both parties' positions, *considering the record in its entirety*, I am not left with the definite and firm conviction that the trial court committed a mistake in finding that the defendant did not meet the statutory standard of fair and reasonable disclosure.

Because a signatory to a prenuptial agreement relinquishes significant legal rights, it is imperative that the "terms and the circumstances surrounding [the agreement's] execution are such as to demonstrate that the parties were aware of their legal rights and their respective assets and liabilities, and proceeded by the agreement to alter those rights in a fair and voluntary manner." *McHugh* v. *McHugh*, supra, 181 Conn. 488. I, therefore, conclude that, under the facts of the present case, in which an unsophisticated plaintiff facing the looming prospect of illegal-alien status was presented with an ambiguous financial disclosure document shortly before her wedding, the trial court's finding of unreasonable financial disclosure was not clearly erroneous.[8] The trial court, therefore, correctly determined that the agreement was unenforceable under § 46b-36g (a) (3). Accordingly, I now turn to the defendant's remaining claims, only one of which requires any consideration.

II

Because I would conclude that the agreement is unenforceable, I must consider the merits of the defendant's second claim with respect to the trial court's orders regarding the distribution of marital property. Specifically, the defendant contends, despite the statutory criteria governing the distribution of marital property; see General Statutes § 46b-81;[9] that the trial court improperly began its analysis with a presumption that all property obtained during the marriage should be divided equally between the spouses. The trial court described

the defendant's assets as follows: "The defendant owns a 40 percent capital interest in [Lydian Capital Advisors, LLC (LCA)]. The nonmarketable equity value of his interest is $1,187,967. . . . [LCA's] income from operations has grown exponentially in each year of operation and continues to grow as the amount of assets under management has grown. In the year 2000, the income was negative at ($194,638). In 2001, the income was $77,664; in 2002, $400,069; in 2003, $5,951,763. The defendant's income interest is 64.62 percent.

"[LCA] is the general partner of [Lydian Asset Management, L.P. (LAM)] and has a 14.32 percent capital ownership interest in [LAM]. The defendant has a direct 64.04 percent capital ownership interest in [LAM]. . . . [T]he defendant's current capital ownership interest in [LAM] is $1,684,584. . . .

"In addition to his capital ownership interest in [LAM], the defendant has deferred performance fees for the years 2000, 2001, 2002 and 2003. The amount deferred in 2000, was $4,200,000; in 2001, $10,475,721; in 2002, $3,739,537; and in 2003, $5,023,107. The deferred compensation investments have increased in value to a present total of $38,668,639. The investments are on a ten year deferral schedule. . . . After application of a price/net asset discount of 7 percent and a further application of a discount of 35 percent for lack of marketability, the gross value today of the defendant's deferred compensation is $23,375,192. . . . [The defendant's interest has] a current after-tax value of $13,370,610. The defendant's capital ownership interest and deferred compensation moneys at [LAM] are together worth $15,055,194 today in after-tax dollars. . . .

"The defendant [also] owns 75 percent of [Frisa I, LLC (Frisa)]. The sole asset of [Frisa] is commercial property in Westport, Connecticut. The fair market value of the property is $3,800,000. With a mortgage of $3,312,920, the net value is $487,080. [Frisa] also has cash on hand of $166,035 and miscellaneous small assets and debts. . . . [T]he defendant's current equity value in [Frisa] is $397,835."

The trial court concluded its findings regarding the defendant's assets, stating: "The defendant owned assets valued at $6,576,000 at the outset of the marriage. Although certain stock options and equity participation assets totaling almost one million dollars were sacrificed when the defendant left employment at Bankers Trust [International PLC], a portion of the defendant's lump sum separation package in 1999, recognized the loss of those benefits. The current after-tax value of the defendant's interest in the three hedge fund entities totals $17,137,613. The value of the real property at 9 Brookside Drive, Westport, Connecticut is $3,500,000. The apartment at 315 East 68th Street in New York City is worth $800,000. The condominium unit in Fort

Lauderdale, Florida has a net equity of $100,000. Bank accounts total $40,164. Cars, motorcycles, the yacht and a snowmobile are valued at $88,041. Securities and bonds are worth $1,145,560. The defendant has 401(k) accounts of $385,859. The total is $22,700,624. He also has accumulated frequent flier mileage, furnishings in his real properties, and jewelry."

The trial court continued, stating: "The court has considered all the criteria of General Statutes §§ 46b-56, 46b-56c, 46b-62, 46b-81, 46b-82 and 46b-84 in light of the evidence presented. Each of these parties performed the role that each contracted to perform in this marital partnership. If each party fulfilled his or her part of the bargain, the contribution of each party should be worth one half of the paid compensation received during the marriage. This is so even though no wages were paid for the plaintiff's services. *Beginning with the premise that the worth of the contribution of each party in a marriage of equals is of equal dollar value*, the criteria of the General Statutes must be applied. The defendant in this case enjoys substantial advantages over the plaintiff in the areas of occupation, amount and sources of income, vocational skills, employability and opportunity for future acquisition of capital assets and income. The length of the marriage is relatively short. It is appropriate to preserve for the defendant the advantage in assets that he held over the plaintiff at the outset of the marriage." (Emphasis added.)

Additionally, at the conclusion of the trial, the court engaged in the following colloquy with defense counsel: "[The Court]: . . . Isn't it all relative? I mean, let's say that, during the marriage, all that they saved was forty thousand dollars and it was all in his IRA. Wouldn't she be entitled to twenty thousand of it?

"[Defense Counsel]: No. It's not a community property state, Your Honor. This is equitable distribution. The court has to consider all—

"[The Court]: And a contract, which is essentially a fifty-fifty deal. Marriage.

"[Defense Counsel]: Your Honor, not in this state, Your Honor, in all due respect. It is not a contract fifty-fifty. It is not—you don't divide the assets fifty-fifty. This is not community property.

"[The Court]: It's not community property, but why don't we start with that as a marriage between equals and a contractual arrangement in which they have their different roles that they each perform?

"[Defense Counsel]: Your Honor, I think that's the legislature to make that finding. That is not the law. Equitable distribution is not the same as community property. In a short-term marriage—

"[The Court]: I agree, but what makes for equitable distribution? You're saying that—

"[Defense Counsel]: The statute criteria [§] 46b-81. [A litigant in another dissolution of marriage case] came before this court—before Judge Tierney—on a thirty-two year marriage and demonstrated that she was there from age twenty-two—whatever it was, Your Honor—helping support her husband when he had nothing to the point where he was at [General Electric Corporation] and, out of a hundred million dollars, she got twenty million dollars.

"[The Court]: Possibly a travesty. You're dealing with a different judge. . . .

"[The Court]: And you have to convince me that the work that—in this case for example—the wife has done in the household is worth less than half of the assets, and I haven't heard that argument—I mean, I haven't heard anything convincing as to why her efforts—you said, that isn't worth so many millions, and I'm not sure I heard why." On the basis of the foregoing findings, the trial court ordered that the defendant pay the plaintiff the previously mentioned $8,220,000 property award.[10]

I note that "[o]ur standard of review in domestic relations cases is a very narrow one," and, generally, "[w]e will not reverse a trial court's rulings with regard to custody and financial orders unless the court incorrectly applied the law or could not reasonably have concluded as it did." *Blake* v. *Blake*, 207 Conn. 217, 225, 541 A.2d 1201 (1988). Nevertheless, "[a]lthough it is well established that trial courts have broad equitable remedial powers regarding marital dissolutions . . . it is equally well settled that [c]ourts have no inherent power to transfer property from one spouse to another; instead, that power must rest upon an enabling statute. . . . Thus, the court's authority to transfer property appurtenant to a dissolution proceeding requires an interpretation of the relevant statutes. Statutory construction, in turn, presents a question of law over which our review is plenary." (Citations omitted; internal quotation marks omitted.) *Smith* v. *Smith*, 249 Conn. 265, 272, 752 A.2d 1023 (1999). Accordingly, because the trial court's judgment was predicated upon its construction of § 46b-81 as incorporating a presumption of equal distribution, I review that aspect of the trial court's order de novo.

The distribution of marital property is governed by § 46b-81, which provides in relevant part: "(a) At the time of entering a decree . . . dissolving a marriage . . . the Superior Court may assign to either the husband or wife all or any part of the estate of the other. . . . (c) In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party . . . shall consider the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occu-

pation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."[11]

Furthermore, although this court has not previously had occasion to discuss the present issue, the Appellate Court addressed it comprehensively in *Wendt* v. *Wendt*, 59 Conn. App. 656, 680–88, 757 A.2d 1225, cert. denied, 255 Conn. 918, 763 A.2d 1044 (2000). Notwithstanding the trial court's negative characterization of *Wendt*, which constituted binding precedent on it, I find the Appellate Court's reasoning therein highly persuasive. In *Wendt*, the Appellate Court stated: "It is well settled that a statute must be applied as its words direct. . . . [Section] 46b-81 (c) directs the court to consider numerous separately listed criteria. No language of presumption is contained in the statute. Indeed, § 46b-81 (a) permits the farthest reaches from an equal division as is possible, allowing the court to assign to either the husband or wife all or any part of the estate of the other. . . . The claimed equal division presumption is not part of the statutory criteria. On the basis of the plain language of § 46b-81, there is no presumption in Connecticut that marital property should be divided equally prior to applying the statutory criteria." (Citation omitted; internal quotation marks omitted.) Id., 682. The court in *Wendt* continued, stating: "Allowing the plaintiff's argument to persuade us would be, in effect, to write a community property law by judicial fiat. . . . In sum, in the absence of specific statutory language, there is no presumption of an equal property distribution in Connecticut. The legislative intent is to be found, not in what the legislature intended to say, but in the meaning of what it did say. . . . We must construe a statute without reference to whether we feel that it might be improved by adding to it or interpreting it differently. . . . It is our duty to apply the law, not to make it." (Citations omitted; internal quotation marks omitted.) Id., 683. Furthermore, in addition to the Appellate Court's comprehensive language based analysis, I note that no support for the trial court's presumption of equal distribution exists in the statute's voluminous legislative history.

The plaintiff agrees that there is no presumption, under § 46b-81, that marital property should be divided equally. She contends, nonetheless, that the trial court did not apply such a presumption, but merely divided the property fifty-fifty after applying the statutory criteria. In the alternative, the plaintiff argues that the trial court's conclusion constituted harmless error.

In light of the trial court's oral statements and memorandum of decision, however, the plaintiff's first con-

tention is untenable. Moreover, the plaintiff does not ask this court to disavow *Wendt*, and I would apply the Appellate Court's persuasive reasoning in *Wendt* as the governing law in the present case.[12]

Additionally, the plaintiff's alternative argument, that the trial court's improper presumption was harmless, also lacks merit. In a civil case, an error is harmful if it likely affected the outcome at trial. *Pagano* v. *Ippoliti*, 245 Conn. 640, 651, 716 A.2d 848 (1998). The trial court's memorandum of decision and dialogue with defense counsel indicate that the court considered the presumption significant and based its decision, at least in part, on the defendant's inability to rebut the presumption. Under the circumstances, "[w]e cannot say, with any certainty, whether the trial court would have ruled the way that it did in the absence of such [a presumption] . . . ." *In re Samantha C.*, 268 Conn. 614, 675, 847 A.2d 883 (2004) (trial court's improper drawing of adverse inference for failure to testify in termination of parental rights case was not harmless error). Furthermore, it is axiomatic that "[t]he issues involving financial orders are entirely interwoven. The rendering of a judgment in a complicated dissolution case is a carefully crafted mosaic, each element of which may be dependent on the other." (Internal quotation marks omitted.) *Greco* v. *Greco*, supra, 275 Conn. 354. I, therefore, conclude that the trial court's use of an improper presumption when distributing the marital property affected the outcome at trial and, accordingly, was not harmless error.[13]

Accordingly, I respectfully dissent from the majority opinion in this case. For all of the foregoing reasons, I would, therefore, reverse the judgment as to the financial orders only and remand the case for a new hearing on the remaining issues according to law.

[1] The agreement provided that, in the event the marriage ended in divorce, in addition to providing a residence for the plaintiff and the parties' child, the defendant would pay to the plaintiff an amount corresponding to the length of the period in which the parties lived together as husband and wife, set forth as follows: "If the [p]eriod is less than 2 full years, the sum of $150,000 . . . If the [p]eriod is 2 years or more, but less than 4 full years, the sum of $300,000 . . . If the [p]eriod is 4 years or more, but less than 6 full years, the sum of $400,000 . . . If the [p]eriod is 6 years or more, but less than 8 full years, the sum of $650,000 . . . If the [p]eriod is 8 years or more, but less than 10 full years, the sum of $850,000 . . . If the [p]eriod is 10 years or more, the sum shall be $1,000,000, plus $200,000 for each two full years in excess of 10 years, not to exceed the sum of $3,000,000 for 30 full years."

[2] The majority opinion provides only the text of § 46b-36g (a). See parts III and IV of the majority opinion. I believe that the remainder of § 46b-36g, particularly subsection (c), sheds light on the appropriate standard of review. The full text of General Statutes § 46b-36g provides: "(a) A premarital agreement or amendment shall not be enforceable if the party against whom enforcement is sought proves that:

"(1) Such party did not execute the agreement voluntarily; or

"(2) The agreement was unconscionable when it was executed or when enforcement is sought; or

"(3) Before execution of the agreement, such party was not provided a fair and reasonable disclosure of the amount, character and value of property, financial obligations and income of the other party; or

"(4) Such party was not afforded a reasonable opportunity to consult with independent counsel.

"(b) If a provision of a premarital agreement modifies or eliminates spousal support and such modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid such eligibility.

"(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law."

[3] The majority opinion provides only the text of subsection (a) of § 6 of the Uniform Act. See footnote 22 of the majority opinion. I believe that the remainder of the section, and particularly subsection (c), is relevant to determining the applicable standard of review. Section 6 of the Uniform Act provides: "(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

"(1) that party did not execute the agreement voluntarily; or

"(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

"(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

"(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

"(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

"(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

"(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law."

[4] I note that the genealogy and history of § 46b-36g illustrate the importance the legislature assigned to the disclosure of pertinent financial information. In its original proposed form, § 46b-36g provided in relevant part: "A premarital agreement or amendment shall not be enforceable if the party against whom enforcement is sought proves that . . .

"(3) Before execution of the agreement, such party: (A) Was not provided a fair and reasonable disclosure of the amount, character, and value of property, financial obligations and income of the other party; *and* (B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property, financial obligations and income of the other party beyond the disclosure provided; *and* (C) Did not have, or reasonably could not have had, an adequate knowledge of the property, financial obligations and income of the other party, and of the legal rights which that party would relinquish under the agreement . . . ." (Emphasis added.) Substitute House Bill No. 6932, § 6 (a) (3). Clearly, the conjunctive test set forth in the original version of § 46b-36g required that a divorcing spouse prove two elements in addition to unfair or unreasonable financial disclosure, namely, both lack of a written waiver of financial disclosure, which the prudent drafter always would include in the agreement, and lack of actual knowledge of the other spouse's finances. The statute as enacted, which requires only that a spouse demonstrate that he or she was not provided fair and reasonable financial disclosure, is not nearly so onerous.

[5] The majority acknowledges the lack of definition in this context, and then proceeds directly to the case law of sister jurisdictions that have enacted similar provisions based on the Uniform Act. Although ordinarily it may be proper to turn to such decisions; see *Hill* v. *Blake*, 186 Conn. 404, 408, 441 A.2d 841 (1982) ("[when an] act is a uniform law, decisions from other states are valuable for the interpretation of its provisions"); I do not find it proper in this instance, wherein our legislature has adopted a modified version of the Uniform Act.

I acknowledge that, when analyzing claims of unfair financial disclosure, sister state courts often have confined their inquiry to whether the information disclosed was accurate, rather than the circumstances under which it was made available. See, e.g., *In re Estate of Lopata*, 641 P.2d 952, 955 (Colo. 1982) ("[f]air disclosure contemplates that each spouse should be given information, of a general and approximate nature, concerning the net worth of the other"); *Darr* v. *Darr*, 950 S.W.2d 867, 870–71 (Mo. App. 1997) (analyzing mathematical accuracy of disclosure); *In re Estate of Hartman*,

399 Pa. Super. 386, 390–91, 582 A.2d 648 (1990) (fair and reasonable disclosure provision refers to accurate portrayal of net worth and information on applicable statutory rights). This distinction, however, largely appears to have been necessitated by the structure of Uniform Act, § 6 (a), which, unlike § 46b-36g, explicitly requires that a party demonstrate both unconscionability *and* unreasonable financial disclosure. Compare footnote 2 of this opinion with footnote 3 of this opinion. Accordingly, the bulk of the factors that I otherwise would consider as part of an inquiry into the reasonableness of financial disclosure must, necessarily, be considered by other jurisdictions in the evaluation of unconscionability. I conclude to the contrary that, as I have explained, our statute, by separately mandating fair and reasonable disclosure of financial information, requires a much more fact sensitive inquiry, going beyond the facial accuracy of the disclosure.

[6] As the majority indicates in part IV of its opinion, the trial court was not entirely clear in its reasons for invalidating the agreement. Although the trial court specifically quoted from the language of subdivisions (3) and (4) of § 46b-36g (a), it also stated that the plaintiff did not "knowingly" waive her rights based on the "timing of the [defendant's] disclosure" of his finances. I agree that this language suggests that the trial court also considered the voluntariness of the plaintiff's signature on the agreement in holding it to be unenforceable.

I disagree, however, with the majority's conclusion that the trial court improperly considered the timing of the signing of the agreement when it performed an analysis under § 46b-36g (a) (3). The majority states that "[i]t is well established that the amount of time available to review a prenuptial agreement is relevant in assessing whether the agreement was voluntary, or signed under duress, but not in determining whether the parties made a 'fair and reasonable' disclosure of their financial circumstances." Although § 46b-36g (a) lists four reasons for invalidating a premarital agreement, I decline to read the subdivisions of the statute as mutually exclusive, in the sense that facts relevant to one inquiry cannot also be relevant to the others. Rather, I note that in many situations, the subdivisions of § 46b-36g (a) may overlap, so that facts relevant to one will also be relevant to others.

[7] I agree with the majority's statement that "the time has come for paternalistic presumptions and protections to be discarded." Indeed, the plaintiff's financial status before she married the defendant shows an admirable ability to manage her own finances. My review of this case, however, is under the clearly erroneous standard, and the trial court's factual findings specifically consider the disparity in business knowledge between the two parties. Because the trial court had the opportunity directly to assess and to judge the credibility of the witnesses in this case, I am bound by its factual findings in my review. See, e.g., *Greco* v. *Greco*, 275 Conn. 348, 359, 880 A.2d 872 (2005) ("[I]t is axiomatic that [t]he trial court's [factual] findings are binding upon this court unless they are clearly erroneous in light of the evidence and the pleadings in the record as a whole. . . . We cannot retry the facts or pass on the credibility of the witnesses." [Internal quotation marks omitted.]).

[8] I need not address the question of whether the plaintiff was afforded an adequate opportunity to consult with independent counsel pursuant to § 46b-36g (a) (4) because my agreement with the trial court's determination that the plaintiff did not receive fair and reasonable financial disclosure by itself renders the agreement unenforceable.

[9] General Statutes § 46b-81 provides in relevant part: "(a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. . . .

"(c) In fixing the nature and value of the property, if any, to be assigned, the court . . . shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

[10] As the defendant indicates in his brief, the trial court's award reflects its presumption of a fifty-fifty distribution of marital property. Specifically, the trial court found that the defendant possessed $22,700,624 in assets, $6,576,000 of which he had brought into the marriage. The trial court then "preserve[d] for the defendant the advantage in assets that he held over the plaintiff at the outset of the marriage," and, apparently, divided the remaining

$16,124,624 worth of marital property approximately in half to arrive at its award of $8,220,000.

[11] "This approach to property division is commonly referred to as an 'all-property' equitable distribution scheme." *Krafick* v. *Krafick*, 234 Conn. 783, 792, 663 A.2d 365 (1995).

[12] I note also that *Wendt* is consistent with the rule in other equitable distribution jurisdictions. See, e.g., *Toth* v. *Toth*, 190 Ariz. 218, 221, 946 P.2d 900 (1997) ("the legislature's intent that the division be equitable, not equal, is clearly evidenced by the legislative history of the dissolution statute"); *Burwell* v. *Burwell*, 700 A.2d 219, 223 (D.C. App. 1997) ("[t]he divorce law contains no presumption in favor of an equal distribution of property; instead, it requires the court to divide the marital property 'in a manner that is equitable, just and reasonable' "); *Gussin* v. *Gussin*, 73 Haw. 470, 479, 836 P.2d 484 (1992) ("[t]here is . . . no fixed rule for determining the amount of property to be awarded each spouse in a divorce action other than as set forth in [the Hawaii statute]" [internal quotation marks omitted]); *Luedke* v. *Luedke*, 487 N.E.2d 133, 134 (Ind. 1985) ("to require . . . a rebuttable presumption of a 'fifty-fifty' split and require any variance to be supported by particular findings of fact, is to put an artificial structure on the fact-finding process which may very well impinge the trial judge's ability to openly weigh all the facts and circumstances, giving equal regard to all of them"); *Patricia B.* v. *Steven B.*, 186 App. Div. 2d 609, 611, 588 N.Y.S.2d 874 (1992) ("there is no basis in law for beginning an analysis concerning a business or a professional practice with a presumption that the parties must divide such an asset on an equal basis subject to modification after due consideration of the factors enumerated in [the New York statute]"); *Fratangelo* v. *Fratangelo*, 360 Pa. Super. 487, 502, 520 A.2d 1195 (1987) (Disapproving of fifty-fifty presumption and stating: "The starting point is unequivocally the consideration of all relevant [statutory] factors. This requires compilation, computation, weighing and balancing considerations, and then applying the sound discretion of the court to achieve economic justice."); *Shackelford* v. *Shackelford*, 39 Va. App. 201, 211, 571 S.E.2d 917 (2002) ("The requirement that the trial court consider all of the statutory factors necessarily implies substantive consideration of the evidence presented as it relates to all of these factors. . . . We find nothing in the [Virginia statute] or case law, and [the] wife provides no authority, that requires a fifty-fifty distribution of marital assets. A [50] percent distribution is not presumptively appropriate." [Citation omitted; internal quotation marks omitted.]).

[13] Because my conclusion with regard to this issue requires new financial orders, I need not reach the defendant's remaining claims, namely, that the trial court improperly: (1) determined that the defendant lacked credibility; (2) included in the defendant's income nearly five million dollars in nonexistent performance fees; and (3) calculated the defendant's hedge fund management fees.