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VERTEFEUILLE, J., with whom KATZ and PALMER, Js., join, dissenting in part. I agree with and join part III of the majority opinion. I disagree, however, with the plurality's conclusion in part I of its opinion.[1]

In part I of its opinion, the plurality concludes that the trial court applied the wrong standard of law when it entered an order requiring the defendant, Frank A. Maturo, to pay 20 percent of his annual bonus as supplemental child support for his two minor children because this order is inconsistent with the applicable statutory criteria and the applicable child support and arrearage guidelines (guidelines). The plurality further concludes that the child support order was improper because it was an open-ended, variable child support award at a higher percentage of the defendant's net income than the 15.89 percent that is applied at the upper end of the schedule of basic child support guidelines (schedule), and was not reasonably related to the needs of the children. I disagree with these conclusions for several reasons. First, I disagree with the plurality that the guidelines control the trial court's determination of child support for this high income family. Second, even if the guidelines were determinative for this high income family, I disagree with the plurality that the trial court's award requiring the defendant to pay 20 percent of the net cash portion of his annual bonus as supplemental child support constitutes an abuse of discretion. Third, I disagree with the plurality that the trial court did not properly consider and apply the factors set forth in General Statutes § 46b-84. Finally, I also disagree with the plurality's cramped view of what constitutes "the needs of the child" for purposes of our child support statutes and guidelines.

The plurality opinion sets forth the facts found by the trial court. The following additional facts, however, are also relevant to the issue on appeal. In ordering the defendant to pay child support in the amount of $636 per week plus 20 percent of his annual net cash bonus after state and federal taxes were deducted, the trial court stated the following: "The [guidelines] reach a maximum weekly income of $4000 per week and the [defendant's] income is well in excess of $5000 per week. The basis for the deviation from the [guidelines] is the [defendant's] substantial assets, the [defendant's] superior earning capacity, the extraordinary disparity in parental income and the significant and essential needs of the [plaintiff, Laura E. Maturo] including, but not limited to, the need to provide a home for the children. The court is also making this order because it has not considered the [defendant's] yearly noncash compensation (composed of stock options and restricted stock in the amount of $530,000 for 2005 and

received in January, 2006) in making its alimony and child support awards. The court did consider the [defendant's] stock options and restricted stock in the property division."

I agree with the plurality with respect to our standard of review. "The well settled standard of review in domestic relations cases is that this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Internal quotation marks omitted.) *Simms* v. *Simms*, 283 Conn. 494, 502, 927 A.2d 894 (2007), quoting *Borkowski* v. *Borkowski*, 228 Conn. 729, 739, 638 A.2d 1060 (1994). "Notwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling . . . may be reversed if, in the exercise of its discretion, the trial court applies the wrong standard of law." *Borkowski* v. *Borkowski*, supra, 740. I further agree with the plurality's conclusion that "[t]he question of whether, and to what extent, the child support guidelines apply, however, is a question of law over which this court should exercise plenary review." I disagree, however, with the plurality's application of this standard of review to the present case.

My first disagreement is with the plurality's threshold conclusion that the guidelines are controlling with regard to the determination of child support for this high income family. Piecing together words from various parts of the applicable statutes, guidelines and the preamble to the guidelines, the plurality concludes that, "[i]n sum, the applicable statutes, as well as the guidelines, provide that all child support awards must be made in accordance with the principles established therein to ensure that such awards promote 'equity,' 'uniformity' and 'consistency' for children 'at all income levels.' "[2] The plurality concludes that "[a]lthough the guidelines grant courts discretion to make awards on a 'case-by-case' basis above the amount prescribed for a family at the upper limit of the schedule when the combined net weekly income of the parents exceeds that limit, which is presently $4000 . . . the guidelines also indicate that such awards should follow the principle expressly acknowledged in the preamble and reflected in the schedule that the child support obligation as a percentage of combined net weekly income should decline as the income level rises." I disagree.

I begin with General Statutes § 46b-215b (a),[3] which provides in relevant part that "[t]he . . . guidelines . . . shall be considered in all determinations of child support amounts . . . ." Thus, a trial court is required to begin with the guidelines when it is called upon to establish a child support order. Section 46b-215b (a)

further establishes that there shall be a rebuttable presumption that the amount of support to be ordered by the court will be the amount established in the guidelines.

I turn next to the guidelines themselves. There is no dispute that the maximum net income addressed by the guidelines schedule is $4000 per week and that the net income of the defendant in the present case at the time of dissolution exceeded $5000 per week. The preamble to the guidelines specifically states that courts "remain free to fashion appropriate child support awards on a case-by-case basis where the combined income exceeds the range of the schedule . . . ." Child Support and Arrearage Guidelines (2005), preamble, § (e) (6), p. vi. A review of the history of the guidelines demonstrates the intent of the commission for family support guidelines (commission) with regard to high income families. In 1991, the first year in which the commission promulgated the guidelines, the preamble stated, "[w]hen the combined family income exceeds the cap, the guidelines *do not apply* except that the order should not be less than that which is applicable at the highest income level within the guidelines, subject to the court's discretion." (Emphasis added.) Child Support and Arrearage Guidelines (1991), preamble, § (c) (3), p. 4. When the commission published its updated edition of the guidelines in 1994, the commission "extended the applicable range of the guidelines under these regulations. . . . [Above that level], courts *remain free* to fashion appropriate child support awards on a case-by-case basis, provided the amount of support prescribed at the [highest income level contained in the schedule] is presumed to be the minimum that should be ordered in such cases." (Emphasis added.) Child Support and Arrearage Guidelines (1994), preamble, § (e) (1), p. vii. Thus, contrary to the conclusion of the plurality, the preamble to the guidelines demonstrates that the commission intended for the trial courts to have discretion to determine child support awards "on a case-by-case basis" when family income exceeds the highest income level contained in the guidelines, although the guidelines do establish the minimum level of presumptive weekly support that should be awarded in such cases. Id. The guidelines therefore do not establish any presumptive amount of child support for high income families, other than the minimum weekly support amount.

My understanding of the role that the guidelines play in establishing child support awards for high income families is further informed by this court's decision in *Battersby* v. *Battersby*, 218 Conn. 467, 590 A.2d 427 (1991). In that case, the trial court concluded that the guidelines did not apply to the family before the court because the family income exceeded the highest income shown on the guidelines schedule. The trial court therefore exercised its discretion and ordered child support based on a number of considerations, including the

statutory factors. The defendant father thereafter appealed, claiming that: (1) the trial court's refusal to apply the guidelines violated the requirement in § 46b-215b (a) that the guidelines "shall be considered"; and (2) the trial court improperly failed to extrapolate from the guidelines schedule by applying the highest percentage in the schedule to the family's excess income. This court rejected both claims and affirmed the judgment of the trial court. This court determined, first, that § 46b-215b (a) "requires only that the trial court consider the [g]uidelines" and that the trial court had done so. Id., 470. Second, this court found that the trial court had the authority to reject the defendant's suggested extrapolation from the guidelines. We stated "[t]here are no provisions for extrapolating to higher income levels the percentages or award amounts set forth in the [guidelines schedule]." Id. This court concluded that the defendant's claim was without merit because "[t]he record shows that the court considered the [g]uidelines, found the [schedule] inapplicable for arriving at a presumptive support amount, and considered the statutory criteria and other [g]uideline factors in arriving at its decision." Id., 472.

The guidelines are defined as "the rules, principles, schedule and worksheet . . . for the determination of an appropriate child support award, to be used when initially establishing or modifying both temporary and permanent orders." Regs., Conn. State Agencies § 46b-215a-1 (5). Accordingly, consistent with *Battersby*, I would conclude that although the schedule set forth in the guidelines is not controlling for determining a child support award for a high income family like the one in the present case, it is appropriate for the trial court to consider the other portions of the guidelines in forming its award. For instance, in determining what constitutes income for purposes of child support it is appropriate to look to the definition of "gross income" provided in the guidelines. Moreover, as the definition of the guidelines provides, the guidelines are informed by general principles that are important to consider in all support determinations. Contrary to the plurality, however, I would rely on the entirety of the basic principles set forth in the preamble. Child Support and Arrearage Guidelines (2005), preamble, § (d), pp. ii–iii. These basic principles explain that our guidelines are based on the income shares model and further set forth the general principles underlying the income shares model. Id. I disagree, however, with the plurality that the principles of the guidelines mean merely that "spending on children declines as a proportion of family income as that income increases . . . ." Id., p. iii. Although I recognize that is one of the principles underlying the income shares model, it is not the only one. As explained more fully herein, the income shares model is guided primarily by the premise that the "child should receive the same proportion of parental income as he or she would

have received if the parents lived together" and it rejects the notion that child support awards must be based on an itemized showing of need. Id., p. ii.

Thus, given the consideration requirement of § 46b-215b (a), the text, principles and schedule of the guidelines, including the preamble, and this court's ruling in *Battersby*, I would conclude that the trial court in the present case properly complied with the statute and the guidelines when it: (1) considered the guidelines; (2) determined that the defendant's income exceeded the highest income shown on the guidelines schedule; (3) ordered the highest amount of weekly support as shown on the schedule; and (4) then used its discretion to order additional support as permitted under the guidelines because the defendant's income exceeded the highest income on the schedule.

The plurality spends several pages of its opinion detailing the history of the adoption of the guidelines to demonstrate that the purpose of the guidelines was to limit judicial discretion in the area of child support determinations. Although I do not dispute that this may be the general purpose of the guidelines, the commission's explicit textual language demonstrates that it intended for courts to retain discretion when awarding child support in cases involving high income families. The plurality concludes, however, that "when a family's combined net weekly income exceeds $4000, the court should treat the percentage set forth in the schedule at the highest income level as the presumptive *ceiling* on the child support obligation, subject to rebuttal by application of the deviation criteria enumerated in the guidelines, as well as the statutory factors described in § 46b-84 (d)." (Emphasis added.) This conclusion is in direct opposition to the discretion intended and explicitly provided for by the commission with regard to high income families. Moreover, the plurality establishes a "ceiling" for child support awards for high income families despite the lack of any textual support for such a cap. The plurality acknowledges that the guidelines "are accompanied by a preamble that is not part of the regulations but is intended to assist in their interpretation." Relying on the explicit language of that preamble, I would conclude that the commission clearly did not intend for the guidelines to be determinative of the appropriate child support award for a high income family like the one in the present case.

In interpreting guidelines similar to ours, which specifically "require a court determination on a case-by-case basis" in those cases in which the income of the parent paying support exceeds $6250 per month, the Tennessee Supreme Court concluded that "[t]he guidelines' very latitude reflects this need for an exercise of discretion." *Nash* v. *Mulle*, 846 S.W.2d 803, 806 (Tenn. 1993). That court went on to state that "it would . . . be unfair to require a custodial parent to prove a specific

need before the court will increase an award beyond [the highest amount contained in the guidelines]. At such high income levels, parents are unlikely to be able to 'itemize' the cost of living. Moreover, most parents living within their means would not be able to present lists of expenditures made in the mere anticipation of more child support. Until the guidelines more specifically address support awards for the children of high-income parents, we are content to rely on the judgment of the trial courts within the bounds provided them by those guidelines." Id. Similarly, bearing in mind that the commission in this state also explicitly has chosen to allow courts to "remain free" to fashion child support awards for high income families on a case-by-case basis; Child Support and Arrearage Guidelines (2005), preamble, § (e) (6), p. vi.; I would conclude that until our guidelines more specifically address support awards for the children of high income families, we must rely on the sound discretion of our trial courts in such instances.

Furthermore, even if I were to agree with the plurality that the guidelines do control the determination of child support awards for a high income family like the one in the present case, I would not conclude that the trial court abused its discretion by requiring the defendant to pay 20 percent of his annual cash bonus as additional child support rather than the 15.89 percent that the plurality concludes is appropriate.

The plurality opinion concludes that "the support payment for two children under the guidelines should presumptively not exceed 15.89 percent when the combined net weekly income of the family exceeds $4000, and, in most cases, should reflect less than that amount." In support of its conclusion, the plurality points to the schedule of presumptive support awards contained in the guidelines. Specifically, the plurality concludes that because the required support payment for two children declines from 35.99 percent when the combined net weekly income of the parties is $310, to 15.89 percent when the combined net weekly income is $4000, the support payment for those families whose net weekly income is over $4000 should be "15.89 percent or less . . . ." I disagree and would not conclude that the trial court abused its discretion by awarding an additional 4.11 percent of the defendant's annual cash bonus as supplemental child support.

In support of its conclusion, the plurality states that the trial court was bound by "the guideline principles that a declining percentage of the combined net family income should be awarded as the income level rises and that the percentage of any future bonus allocated for child support should be 'generally consistent' . . . with the percentages established in the schedule in order to ensure consistency, uniformity and equity in the treatment of persons in such circumstances." (Cita-

tion omitted.) The plurality's conclusion in this regard is flawed. First, its approach offers no more consistency or uniformity than the approach taken by the trial court because the plurality concludes that the supplemental child support order should be 15.89 percent *or less*. Utilizing this approach, however, under the same facts as the present case, one trial court properly could order supplemental child support of 1 percent of a substantial annual bonus and another trial court properly could order supplemental child support of 15.89 percent of a substantial annual bonus. I disagree that this approach is any more consistent, uniform or equitable than the trial court's award in the present case of 20 percent of the defendant's annual cash bonus.

The plurality also relies on *Battersby* v. *Battersby*, supra, 218 Conn. 467, in support of its conclusion. I disagree with the plurality's reading of *Battersby*. In *Battersby*, as previously set forth herein, this court affirmed the judgment of the trial court, which had refused to extrapolate from the guidelines when determining a child support award based on a percentage, where the family income was above the highest level contained in the schedule and the guidelines. In doing so, this court recognized that "[*t*]*here are no provisions for extrapolating to higher income levels the percentages or award amounts set forth in the* [*g*]*uidelines chart.* If the legislature or commission had intended to provide for such extrapolation of the chart, it could have said so. Two long-standing rules of statutory construction are that a court may not by construction supply omissions in a statute simply because it appears that good reasons exist for adding them . . . and that a court must construe a statute as it finds it, without reference to whether it thinks the statute would have been or could be improved by the inclusion of other provisions. . . . These rules of statutory construction are equally applicable to the task confronting the trial court in attempting to apply these legislatively mandated [g]uidelines." (Citations omitted; emphasis added.) Id., 470–71. This court also stated that, in its final report, the commission that originally had recommended the adoption of the guidelines had noted that "[i]t is generally accepted that the guidelines are of minimal value in framing support obligations at both the high and low ends of the income scale." (Internal quotation marks omitted.) Id., 473. Accordingly, we concluded that "the trial court had the authority to reject the defendant's suggested extrapolation of the [g]uidelines' percentage as inappropriate and inequitable in the circumstances before it." Id. Although this court in *Battersby* concluded that the trial court did not abuse its discretion by entering a support order that constituted a lower percentage of support than that contained at the highest income level on the schedule, nothing in *Battersby* suggested that a lower percentage was *required*.

The plurality also cites *Gentile* v. *Carneiro*, 107 Conn.

App. 630, 946 A.2d 871 (2008), in support of its conclusion that the trial court improperly required the defendant to pay a higher percentage of his net cash bonus than the applicable percentage at the $4000 weekly income level contained in the schedule. *Gentile*, however, is inapposite to the present case. In *Gentile*, the "[trial] court's supplemental order required the defendant [husband] to pay 50 percent of the first $20,000 in aggregate commissions that he is entitled to receive and 25 percent of any commission in excess of $20,000 that he is entitled to receive." Id., 649. The Appellate Court concluded that this supplemental order was improper because it obligated the defendant to pay a percentage of commissions that was higher than the percentage of support mandated by the schedule for his income level. Id., 650. Unlike the high income defendant in the present case, however, the income of the defendant in *Gentile* was encompassed within the schedule, and the trial court, therefore, was obligated to use the percentage contained therein.

Moreover, it is important to remember that the trial court in the present case only awarded 20 percent of the defendant's annual net *cash* bonus as supplemental child support; it did not award any of the defendant's annual stock bonus as supplemental child support. In entering the supplemental child support order, the trial court explained that "[t]he court is also making this order because it has not considered the [defendant's] yearly noncash compensation (composed of stock options and restricted stock in the amount of $530,000 for 2005 and received in . . . 2006) in making its alimony and child support awards." The trial court made no factual findings about the value of the defendant's annual stock bonus. We therefore are unable to determine the exact percentage of total family net income that is ordered for child support. It is evident, however, that if the defendant's annual stock bonus has any material value at all, then the supplemental child support ordered by the trial court would likely be less than 15.89 percent of total family net income that the plurality concludes is the ceiling for the award.

The defendant's *only* response to this analysis is factually and legally unsupported. The defendant states: "The plaintiff also asserts that the percentage of [the] defendant's bonus-based income being paid to her as support is lower than claimed by [the] defendant since [the] defendant's calculations do not include his noncash stock bonus. . . . However, the court treated this noncash award as an asset awarded to [the] defendant as part of its property distribution, expressly excluding this from consideration of the alimony and child support awards." It is true, of course, that the trial court awarded the defendant, as part of the property settlement, all of the restricted and unexercised stock shares that the defendant had earned prior to the dissolution of the couple's marriage. Contrary to the defendant's con-

tention, however, there is no property distribution order respecting *future* stock compensation, occurring after the dissolution, nor would one expect there to be as it is well established that such future earnings are not marital assets and, therefore, not subject to division. See, e.g., *Bornemann* v. *Bornemann*, 245 Conn. 508, 517, 752 A.2d 978 (1998) ("our broad definition of property [i]s not entirely without limitation . . . [as] property under [General Statutes] § 46b-81 includes only interests that are presently existing, as opposed to mere expectancies"); *Kiniry* v. *Kiniry*, 71 Conn. App. 614, 624, 803 A.2d 352 (2002) ("stock options that are awarded prior to the date of dissolution and awarded solely for past services are considered to be earned during the marriage and are, therefore, considered marital property subject to equitable distribution under § 46b-81"). Because the defendant's future earnings subsequent to dissolution are not marital assets, it would have been unlawful for the court to divide them as marital property, as the defendant claims the court did in this case. More importantly, there is absolutely no evidence in the record that this is what the court did—i.e., distribute the defendant's future noncash bonus income as "assets" of the marriage.

The defendant cites to § 5 of the trial court's memorandum of decision as support for his contention that "the court treated th[e] noncash [bonus] award as an asset awarded to [the] defendant as part of its property distribution." This section of the court's decision, however, addresses child support only, not marital property distribution. In ordering the defendant to pay a portion of his net cash bonus in child support, the court emphasized that it "has not considered the [defendant's] yearly noncash compensation . . . in making its alimony and child support awards." The court then stated that it "did consider the [defendant's] *stock options and restricted stock in the property division*." (Emphasis added.) Thus, the court clearly distinguished between "noncash *compensation*," which it elected not to levy for support purposes, and "stock options and restricted stock in the property division," which were distributed as part of the marital estate. (Emphasis added.) With respect to the stock options and restricted stock, the record reflects that the court awarded the defendant, as part of the property division, restricted shares of Merrill Lynch stock with a value of $1,850,000 and unexercised stock options with a value of $3,529,000. Those shares and options, however, were earned *prior to the dissolution of the marriage*.

I also disagree with the plurality's conclusion that the trial court did not properly apply the statutory criteria in the present case. Child support orders are governed by, inter alia, General Statutes §§ 46b-84[4] and 46b-215b. Under § 46b-84 (a), the divorcing parents of minor children are required to maintain the children if they are "in need of maintenance." "In determining whether a

child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child." General Statutes § 46b-84 (d). Section 46b-215b further provides in relevant part: "(a) The child support guidelines established pursuant to section 46b-215a and in effect on the date of the support determination shall be considered in all determinations of child support amounts, including any past-due support amounts, and payment on arrearages and past-due support within the state. In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount of support, including any past-due support, or payment on any arrearage or past-due support to be ordered. A specific finding on the record that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under criteria established by the Commission for Child Support Guidelines under section 46b-215a, shall be required in order to rebut the presumption in such case. . . .

"(c) In any proceeding for the establishment or modification of a child support award, the child support guidelines shall be considered in addition to and not in lieu of the criteria for such awards established in [section] 46b-84 . . . ."

I first turn to the text of § 46b-84 (d), which sets forth the manner in which the trial court is to determine whether a child is in need of maintenance. The subsection provides: "*In determining whether a child is in need of maintenance* and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, *the court shall consider* the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child." (Emphasis added.) General Statutes § 46b-84 (d). Thus, by the express terms of § 46b-84 (d), the trial court is required to consider the many factors set forth in that statute in determining, first, whether the child is in need, and, second, the amount of the need.

Indeed, the punctuation of § 46b-84 (d) supports my conclusion. "Although punctuation is not generally considered an immutable aspect of a legislative enactment, given its unstable history; see *State* v. *Roque*, 190 Conn.

143, 152, 460 A.2d 26 (1983); see also 2A J. Sutherland, [Statutory Construction (4th Ed. Sands 1984)] § 47.15; it can be a useful tool for discerning legislative intent. *State* v. *Dennis*, 150 Conn. 245, 248, 188 A.2d 65 (1963); *Connecticut Chiropody Society, Inc.* v. *Murray*, 146 Conn. 613, 617, 153 A.2d 412 (1959). Thus, where a qualifying phrase is separated from several phrases preceding it by means of a comma, one may infer that the qualifying phrase is intended to apply to all its antecedents, not only the one immediately preceding it. 2A J. Sutherland, supra, § 47.33." *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 189–90, 592 A.2d 912 (1991). Applying this rule to § 46b-84 (d), I would conclude that the legislature intended that trial courts examine the delineated factors both when determining whether a child is in need of maintenance and also when determining the amount of maintenance required. Thus, the statute requires that the child's need is not to be determined narrowly, but rather broadly, and only after a consideration of a variety of factors concerning the child, including "the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child." General Statutes § 46b-84 (d). As I explain hereafter, factors under § 46b-84 (d) such as "station" and "educational status and expectation" are particularly important in analyzing the needs of the children in high income families such as the one in the present case.

General Statutes § 46b-56,[5] which also governs child support orders, imposes an additional factor to be considered in determining child support orders. Section 46b-56 (c) provides in relevant part that, "[i]n making or modifying any order [regarding the custody, care, education, visitation and support of the children], the court shall consider the best interests of the child . . . ." This statute adds the broad consideration, "best interests of the child" to the many other factors that must be considered in determining child support orders.

It is well established that in determining child support awards, courts should consider "the standard of living that the child or children would have enjoyed if the family had continued to live together." 24A Am. Jur. 2d 414, Divorce and Separation § 942 (2008). This court repeatedly has recognized that it is proper for courts to consider the parents' standard of living in determining child support payments. See *Blake* v. *Blake*, 207 Conn. 217, 232, 541 A.2d 1201 (1988) ("[o]ur courts have also considered the parties' standard of living in determining child support payments"), citing *Burke* v. *Burke*, 137 Conn. 74, 76–81, 75 A.2d 42 (1950); *Morris* v. *Morris*, 132 Conn. 188, 193–94, 43 A.2d 463 (1945) ("[w]e cannot hold that the trial court, taking into consideration as it did the financial circumstances and standard of living of the parties, abused its discretion in ordering payments in the amounts stated"). This court previously

has concluded that the use of the term "station" in the marital dissolution statutes requires the court to consider the standard of living of the parties. See *Blake* v. *Blake*, supra, 232 ("The most pertinent definition of 'station' in Webster, Third New International Dictionary, is 'social standing.' A person's social standing is strongly correlated to his standard of living, although other factors may be important as well. Our courts have frequently considered the standard of living enjoyed by spouses in determining alimony or in dividing marital property.").

On the basis of the foregoing, I would conclude that, in the present case, the trial court did not abuse its discretion by ordering child support in the form of 20 percent of the defendant's annual cash bonus for the children, now age sixteen, whose father earns an extraordinarily high income and who have experienced a lifestyle consistent with this high income for their entire lives. The trial court's entry of a weekly child support order of $636, the maximum amount under the guidelines schedule, plus 20 percent of the defendant's annual net cash bonus, is in accord with the directive of § 46b-84 (d) to consider the age, station and educational status and expectation of the children, and of § 46b-56, which requires a consideration of the children's best interests. The trial court's orders in the present case did not include an educational support award; instead, the trial court "reserve[d] jurisdiction as to how the children's college expenses shall be paid." It is not unreasonable, however, to infer that the trial court intended that a portion of the supplemental child support order might be put aside to meet the cost of college, particularly considering the fact that both parents are college educated and the defendant holds an advanced degree. In addition, it was reasonable for the trial court to anticipate expenses for such items as automobiles, automobile liability insurance, extended vacations, specialized camps and other luxuries that these teenagers likely would have enjoyed had their parents not divorced. The trial court's supplemental support order ensures that the children will have the luxuries that they would have received if the family had remained intact.

Finally, I also disagree with the plurality's cramped reading of the statutes and the guidelines with regard to the needs of the children. The plurality concludes as follows: "[W]hen there is a proven, routine consistency in annual bonus income, as when a bonus is based on an established percentage of a party's steady income, an additional award of child support that represents a percentage of the net cash bonus also may be appropriate if justified by the needs of the child. When there is a history of wildly fluctuating bonuses, however, or a reasonable expectation that future bonuses will vary substantially, as in the present case, an award based on a fixed percentage of the net cash bonus is impermissible unless it can be linked to the child's characteristics

and demonstrated needs." In my view, this approach is in direct conflict with the applicable statutes which, as discussed previously herein, demonstrate that child support orders are to be awarded by taking into account a wide variety of factors beyond the demonstrated physical needs of the children.

The guidelines themselves provide evidence that this state has explicitly rejected the notion that child support determinations should be based solely on the costs associated with meeting the physical needs of the child. The preamble to the guidelines explicitly explains that "[t]he [guidelines] are based on the [i]ncome [s]hares [m]odel. The [i]ncome [s]hares [m]odel presumes that the child should receive the same proportion of parental income as he or she would have received if the parents lived together. Underlying the income shares model, therefore, is the policy that the parents should bear any additional expenses resulting from the maintenance of two separate households instead of one, since it is not the child's decision that the parents divorce, separate, or otherwise live separately.

"The [i]ncome [s]hares [m]odel has proven to be the most widely accepted, particularly due to its consideration of the income of both parents. About two-thirds of the states follow the income shares model . . . .

"The [i]ncome [s]hares [m]odel reflects presently available data on the average costs of raising children in households across a wide range of incomes and family sizes. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the exact proportion allocated to children in individual cases, even with exhaustive financial affidavits. However, a number of authoritative economic studies based on national data provide reliable estimates of the average amount of household expenditures on children in intact households. The studies have found that the proportion of household spending devoted to children is systematically and consistently related to the level of household income and to the number of children." Child Support and Arrearage Guidelines (2005), preamble, § (d), pp. ii–iii. "Rather than defining the individual needs of a child on a case-by-case basis as is required by the cost sharing methodology, an income sharing approach looks to economic evidence to establish an identified portion of the income of an intact family which is spent on children." 3 A. Rutkin, Family Law and Practice (2009) § 33.04[2] [c]; see also *Jenkins* v. *Jenkins*, 243 Conn. 584, 594, 704 A.2d 231 (1998) ("The guidelines provide that the basic principles from which they were derived are found in the 'income shares model' of calculation of child support. . . . Therefore, in order to be in accord with the guidelines, the determination of a parent's child support obligation must account for all of the income that would have been

available to support the children had the family remained together." [Citation omitted.]); 3 A. Rutkin, supra, § 33.04[2] [c] (income shares model "incorporates the statutory standard set out in the Uniform Marriage and Divorce Act, to wit: 'In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including . . . [3] the standard of living the child would have enjoyed had the marriage not been dissolved' "). Indeed, since the guidelines first took effect approximately twenty years ago, they "have shifted the evidentiary focus from proving the needs of the children to establishing the parents' income." L. Morgan, Child Support Guidelines: Interpretation and Application (Sup. 2009) § 2.03 [a]. The approach taken by the plurality is inconsistent with the income shares model. Consistent with the income shares model, the schedule contained in the guidelines focuses on the net income of the parties, not on proven costs for raising the child or children.

The plurality cites *Ford* v. *Ford*, 600 A.2d 25, 30 (Del. 1991), and *In re Marriage of Bush*, 191 Ill. App. 3d 249, 261, 547 N.E.2d 590 (1989), appeal denied, 129 Ill. 2d 561, 550 N.E.2d 553 (1990), for the proposition that higher income families devote more income to savings and less on needs; therefore, a support award in excess of the child's reasonable needs would constitute a distribution of the noncustodial parent's estate and a windfall to the child. Although the Delaware and Illinois courts did adopt this approach at the time those cases were decided, it is generally understood that when the states first began to adopt the child support guidelines, "a body of case law developed that there was such a thing as 'excess' child support, that is, too much child support that was in excess of the child's 'reasonable needs." L. Morgan, supra, § 4.07 [b] [2].

"In recent years, there has been a definite trend away from the type of reasoning described in [*Ford* v. *Ford*, supra, 600 A.2d 30, and *In re Marriage of Bush*, supra, 191 Ill. App. 3d 249]. Instead there has been an increasing recognition that a child is entitled to share in the increasing good fortune and wealth of his/her parents. This new wave of cases started with the recognition that the appropriate standard of living for a child of affluent parents is affluence matching that of the parents, regardless of the 'wishes' of the parent to direct the upbringing of the child." L. Morgan, supra, § 4.07 [b] [3].

The Pennsylvania Superior Court explained this concept in the case of *Branch* v. *Jackson*, 427 Pa. Super. 417, 420, 629 A.2d 170 (1993), as follows: "necessaries, and luxuries are relative matters. . . . Children of wealthy parents are entitled to the educational advan-

tages of travel, private lessons in music, drama, swimming, horseback riding, and other activities in which they show interest and ability. They are entitled to the best medical care, good clothes, and familiarity with good restaurants, good hotels, good shows, and good camps. It is possible that a child with nothing more than a house to shelter him, a coat to keep him warm and sufficient food to keep him healthy will be happier and more successful than a child who has all the advantages, but most parents strive and sacrifice to give their children advantages which cost money.

"A wealthy father has a legal duty to give his children the advantages which his financial status indicates to be reasonable . . . . [A parent] should not be forced by a support order to make personal sacrifices to give them all the advantages to which we referred above, but a father with the assets, the youth, and the ability of the defendant can furnish his children with these advantages without any recognizable sacrifice on his part." (Internal quotation marks omitted.)

I also find persuasive the decision of the California Court of Appeal in *In re Marriage of Ostler & Smith*, 223 Cal. App. 3d 33, 272 Cal. Rptr. 560 (1990). In that case, the husband appealed from a judgment in a dissolution of marriage action awarding child support at the maximum amount allowed by the applicable support guidelines plus additional child support equal to 10 percent of the husband's annual bonus per child. Id., 42. On appeal, the husband claimed that the trial court had abused its discretion because there was no evidence that the children needed the additional award and the trial court improperly had applied a mechanical percentage formula to the award. Id., 51. The Court of Appeal affirmed the judgment of the trial court, concluding as follows: "Overall, there was sufficient evidence for the court to determine approximately what the needs were and would be for boys of about nine and fourteen years of age. Determining the amount comes within the rule that the trier of fact may fix a reasonable sum where the matters are nontechnical in nature and of common knowledge. . . . The court could call on its own knowledge of such things as inflation, the cost of car insurance for male teenaged drivers, the cost of major vacation trips, and allowances as the boys aged, as well as the increased cost of their food and clothing." (Citation omitted; internal quotation marks omitted.) Id., 53–54; see also *In re Marriage of Mosley*, 165 Cal. App. 4th 1375, 1387, 82 Cal. Rptr. 3d 497 (2008) (The Court of Appeal remanded the case, requiring the trial court to "include in its order a method for requiring [the husband] to pay support obligations based on any bonus income that he may in fact receive. It may, for example, fashion an additional award, over and above guideline support, expressed as a fraction or percentage of any discretionary bonus actually received.").

The plurality also relies on *In re Marriage of Bush*, supra, 191 Ill. App. 3d 255, wherein the respondent father had been ordered to pay 20 percent of his net annual income into a trust fund for his child in addition to $800 per month in cash child support to the mother. On appeal, the respondent father claimed that the child support award was excessive because it was far more than was necessary to meet the child's reasonable needs, particularly in light of each parent's separate abilities to financially care for the child. Id., 259. The Illinois Appellate Court held that the trial court's overall award of 20 percent of the respondent's net income was excessive for a four year old child, concluding that "where the individual incomes of both parents are more than sufficient to provide the reasonable needs of the parties' children, taking into account the [lifestyle] the children would have absent the dissolution, the court is justified in setting a figure below the guideline amount." Id., 260. Subsequently, *In re Marriage of Bush* has been held to have limited application only where the individual incomes of both parents are more than sufficient to meet the needs of the child. Indeed, in a recent case examining the holding of *In re Marriage of Bush*, the Illinois Appellate Court stated that "[w]e are aware that the amount paid in child support currently exceeds the monthly expenses for the entire household, but a child's entitlement to a level of support is not limited to his or her 'shown needs.' [The] argument that [a minor child] is only entitled to her 'shown needs' has been rejected by the Illinois Supreme Court . . . for the reason that it, in effect, ignores the consideration of the standard of living that the child would have enjoyed if the marriage had not been dissolved." *In re Marriage of Garrett*, 336 Ill. App. 3d 1018, 1023, 785 N.E.2d 172, appeal denied, 204 Ill. 2d 658, 792 N.E.2d 306 (2003). In the present case, the defendant does not assert and the evidence does not support that the individual incomes of both parents are more than sufficient to meet the needs of the children. Accordingly, I conclude that the reasoning in *In re Marriage of Bush*, supra, 249, is not applicable to the present case.

The plurality's focus on the physical needs of the children is a step backward and ignores the "new wave" of cases that recognizes the significance of the standard of living of children of affluent parents. See L. Morgan, supra, § 4.07 [b] [3]. Consistent with the newer approach, I would conclude that, on the basis of the extraordinarily high income of the defendant in the present case, the trial court did not abuse its discretion in ordering him to pay 20 percent of his annual cash bonus as additional child support in order to "furnish his children with [the advantages that children of wealthy parents are entitled to] . . . ." (Internal quotation marks omitted.) *Branch* v. *Jackson*, supra, 427 Pa. Super. 420.

I therefore respectfully dissent.

[1] I also disagree with part II of the plurality opinion as it relates to the child support award for the same reasons as explained herein and therefore do not separately address that part of the plurality opinion.

[2] The plurality also concludes that "although courts may, in the exercise of their discretion, determine the correct percentage of the combined net weekly income assigned to child support in light of the circumstances in each particular case, including a consideration of other, additional obligations imposed on the noncustodial parent, any deviation from the schedule or the principles on which the guidelines are based must be accompanied by the court's explanation as to why the guidelines are inequitable or inappropriate and why the deviation is necessary to met the needs of the child." The plurality further concludes that the trial court improperly applied the deviation criteria in the present case. Because I conclude that the guidelines are not determinative in the case of high income families, I do not address whether the trial court properly applied the deviation criteria.

[3] General Statutes § 46b-215b provides in relevant part: "(a) The child support guidelines established pursuant to section 46b-215a and in effect on the date of the support determination shall be considered in all determinations of child support amounts, including any past-due support amounts, and payment on arrearages and past-due support within the state. In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount of support, including any past-due support, or payment on any arrearage or past-due support to be ordered. A specific finding on the record that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under criteria established by the Commission for Child Support Guidelines under section 46b-215a, shall be required in order to rebut the presumption in such case. . . .

"(c) In any proceeding for the establishment or modification of a child support award, the child support guidelines shall be considered in addition to and not in lieu of the criteria for such awards established in sections 46b-84, 46b-86, 46b-130, 46b-171, 46b-172, 46b-215, 17b-179 and 17b-745."

[4] General Statutes § 46b-84 provides in relevant part: "(a) Upon or subsequent to the annulment or dissolution of any marriage or the entry of a decree of legal separation or divorce, the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance. Any postjudgment procedure afforded by chapter 906 shall be available to secure the present and future financial interests of a party in connection with a final order for the periodic payment of child support. . . .

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

[5] General Statutes § 46b-56 provides in relevant part: "(a) In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may make or modify any proper order regarding the custody, care, education, visitation and support of the children if it has jurisdiction . . . .

"(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to

be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers. . . ."