DEBRA TOMLINSON *v.* JOHN A. TOMLINSON
(SC 18586)

Rogers, C. J., and Palmer, Zarella, McLachlan, Eveleigh and Vertefeuille, Js.

Argued January 4—officially released June 26, 2012

Daniel Shepro, with whom, on the brief, was *Stuart Hawkins*, for the appellant (defendant).

Richard W. Callahan, for the appellee (plaintiff).

Campbell D. Barrett and *Jon T. Kukucka* filed a brief for the Connecticut Chapter of the American Academy of Matrimonial Lawyers as amicus curiae.

Samuel V. Schoonmaker IV, filed a brief for the Connecticut Bar Association as amicus curiae.

Opinion

McLACHLAN, J. The principal issue in this appeal is whether a trial court may modify unallocated alimony and child support payments following a change in the primary physical custody of the minor children from the party receiving the unallocated payments to the party making the payments, when the dissolution judgment incorporated a provision in the separation agreement providing that such payments are nonmodifiable. The defendant, John A. Tomlinson, appeals from the judgment of the Appellate Court reversing the judgment of the trial court granting his motion to modify the order that he make unallocated alimony and child support payments to the plaintiff, Debra Tomlinson, following the parties' decision to transfer primary physical custody of the children from the plaintiff to the defendant two years after the judgment dissolving their marriage was rendered. *Tomlinson* v. *Tomlinson*, 119 Conn. App. 194, 196, 986 A.2d 1119 (2010). On appeal, the defendant claims that the Appellate Court improperly determined that the trial court had no authority to modify the unallocated alimony and child support order (unallocated order) in the present case because, he argues, a trial court may *always* modify child support upon consideration of the children's best interests in spite of explicit language in a separation agreement prohibiting modification. Under the particular circumstances of the present case, we conclude that the trial court had the authority to modify the defendant's child support obligation, and, accordingly, we reverse the judgment of the Appellate Court.

The following relevant undisputed facts are set forth in the Appellate Court's opinion. "Following an uncontested dissolution hearing held on December 9, 2005, the [trial] court . . . accepted the separation agreement of the parties and incorporated it by reference into its judgment dissolving the parties' marriage. According to the terms of the agreement, the plaintiff and the defendant would have joint legal custody and the plaintiff primary physical custody of the parties' two children. The children, who were ages ten and five at the time, were not represented by counsel. The guardian ad litem for the children signed the agreement directly below a statement indicating that he approved and acknowledged the parties' agreement 'with respect to the custody, visitation and counseling issues pertaining to the minor children.'

"Paragraph 2.1 of the [separation] agreement provides in relevant part: 'Commencing the first day of the week following the [plaintiff's] removal from the residence at 1158 West River Street, Milford, Connecticut . . . the [defendant] agrees to pay to the [plaintiff] unallocated periodic alimony and child support, until June 30, 2018, or until her death, remarriage, or cohabitation pursuant to [General Statutes] § 46b-86 (b),

whichever shall first occur, the sum of Seventy Two Thousand Dollars ($72,000.00) per year or One Thousand Five Hundred Dollars ($1,384.00) per week.[1] THE UNALLOCATED PERIODIC [ALIMONY] AND CHILD SUPPORT SHALL BE [NONMODIFIABLE] IN AMOUNT AND TERM OF PAYMENTS EXCEPT AS NOTED ABOVE' [nonmodification provision]. The only exceptions 'noted above' in the agreement are those contained within paragraph 2.1 itself. The final sentence of the paragraph is the only portion of the separation agreement typed entirely in capital letters. The parties did not incorporate into their agreement any provision permitting modification of the [unallocated order] if primary custody of the children changed.

"The parties agreed by way of a stipulated order filed June 12, 2007, that primary physical custody of the children would be transferred to the defendant. However, despite this transfer, the plaintiff still enjoyed visitation with the children two [evenings] a week and every other weekend in her home. On November 16, 2007, the defendant filed a motion to modify the [unallocated order], seeking a reduction in the amount of support he paid to the plaintiff on the ground that custody had changed. The plaintiff opposed the motion, filing a motion asking the [trial] court to strike the defendant's modification request and arguing that the agreement by its terms precluded modification.

"The [trial] court . . . held a hearing on the defendant's motion on February 6, 2008, during which the plaintiff and the defendant testified. The defendant testified as to the change in custody, noting that he currently covered expenses such as the children's cellular telephones, gymnastics, entertainment and transportation and that the plaintiff did not contribute to these expenditures. The guardian ad litem for the children attended but did not participate in the hearing, and the children were not represented by counsel. . . . [T]he defendant presented no evidence that the children's needs for support had changed or were not being met sufficiently under the agreement. Nothing else in the record indicates that the children's needs were unmet. Nonetheless, the [trial] court held that despite the [nonmodification provision], the [unallocated order] was modifiable. It pointed to paragraphs 2.5 and 2.7 of the agreement, which provide direction in the event of a change in or termination of alimony and child support, opining that the provisions demonstrated the parties' clear contemplation of a future change in the [unallocated order]. The court found that the change in custody of the children constituted a substantial change in circumstances.

"At the conclusion of the hearing, the [trial] court granted the defendant's motion and modified the separation agreement, concluding that the defendant no longer was obligated to pay child support to the plain-

tiff. On the basis of the parties' financial affidavits and the child support guidelines in effect at the time the dissolution judgment entered, the court determined that the child support portion of the unallocated order was $604 per week, and it reduced the defendant's unallocated order of alimony and support to the plaintiff by that amount. The plaintiff subsequently filed a motion for reargument, which the [trial] court denied." Id., 196–99.

The plaintiff appealed from the judgment of the trial court to the Appellate Court, claiming, inter alia, that the trial court improperly had granted the defendant's motion to modify because the parties' separation agreement expressly prohibited modification of the unallocated order. Id., 196. The Appellate Court agreed and reversed the trial court's judgment. Id. The Appellate Court reasoned that public policy considerations and this court's precedent dictate that nonmodifiable unallocated orders in Connecticut, although disfavored, are enforceable, and that the clear and unambiguous language of the nonmodification provision in the present case barred the future modification of the unallocated order except for certain enumerated reasons, none of which had been demonstrated. Id., 202–11. Thereafter, this court granted the defendant's petition for certification to appeal.[2]

The defendant claims that the Appellate Court improperly determined that the nonmodification provision contained in the parties' separation agreement precluded modification of the unallocated order upon a change of custody in the absence of evidence that the children's needs were unmet. On the contrary, he argues that in *Guille* v. *Guille*, 196 Conn. 260, 492 A.2d 175 (1985), this court held that a child support order can always be modified because children have a common-law right to parental support. In response, the plaintiff contends that the Appellate Court properly reversed the order of modification because General Statutes § 46b-86 (a)[3] provides that a trial court may not alter a support order if the dissolution decree precludes modification, and the decree in the present case clearly precluded modification of the support payments. Although the plaintiff concedes that a facially nonmodifiable order of child support may be modified when public policy demands, she claims that the Appellate Court properly determined that, in the absence of evidence that the children's needs were unmet, such circumstances did not exist in the present case. We conclude that in cases such as the present one, in which primary physical custody is transferred from the party receiving the unallocated payments to the party making the payments, a nonmodification provision does not prevent the modification of the unallocated order in an amount attributable to child support. Accordingly, we agree with the defendant that the unallocated order herein could be altered to reduce or vacate child support in spite of

explicit language in the separation agreement providing that the unallocated order was nonmodifiable.

Because we must determine whether the Appellate Court properly interpreted existing statutes and case law to preclude the trial court from modifying the unallocated order, the issue in this case presents a question of law over which our review is plenary. *Zahringer* v. *Zahringer*, 262 Conn. 360, 367, 815 A.2d 75 (2003). To the extent that this task requires us to interpret the meaning and application of the relevant statutes in relation to the facts of the case, our analysis is guided by General Statutes § 1-2z, which "directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Testa* v. *Geressy*, 286 Conn. 291, 308, 943 A.2d 1075 (2008).

Section 46b-86 (a) provides in relevant part: "Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support . . . may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a . . . ." We have interpreted this language generally to "[provide] the trial court with continuing jurisdiction to modify support orders" after the date of a final judgment of dissolution. *Amodio* v. *Amodio*, 247 Conn. 724, 729, 724 A.2d 1084 (1999). It permits the court to modify alimony and child support orders if the circumstances demonstrate that: (1) either of the parties' circumstances have substantially changed; or (2) the final order of child support substantially deviates from the child support guidelines. The statute, however, expressly stipulates that the court may exercise this authority "[*u*]*nless and to the extent that the decree precludes modification* . . . ." (Emphasis added.) General Statutes § 46b-86 (a). Thus, by its terms, § 46b-86 (a) clearly contemplates that, in certain cases, the parties can, by agreement, restrict the trial court's power to modify alimony or support even when a substantial change in circumstances or a substantial deviation from the child support guidelines has occurred. See *Amodio* v. *Amodio*, supra, 730–31. Indeed, with respect to alimony, we have held that unambiguous provisions precluding modification of alimony are enforceable pursuant to the language of § 46b-86 (a). *Eckert* v. *Eckert*, 285 Conn. 687, 695–96, 941 A.2d 301 (2008).

In *Guille* v. *Guille*, supra, 196 Conn. 265, however,

with respect to child support, we observed that the minor children of a marriage have a right to support, which the parents cannot contractually limit.[4] Because the provision precluding modification in that case would have limited the children's right to support, we held that "neither the general language of . . . § 46b-86 (a) . . . nor the decree's broadly phrased nonmodifiability provision, was effective to restrict permanently the court's power to modify the terms of child support *under the circumstances of* [*that*] *case*." (Emphasis added.) Id. In so concluding, we recognized that at least in those particular circumstances, an ostensibly nonmodifiable child support arrangement could be modified in spite of the language of § 46b-86 (a) permitting modification "[u]nless and to the extent that the decree precludes modification . . . ."[5] See id.

In accordance with § 1-2z, we look to related statutes to determine whether the present case, like *Guille*, presents a scenario in which the support order could be modified in spite of the general language of § 46b-86 (a) and the unallocated order's broadly phrased nonmodification provision. Review of General Statutes § 46b-224 leads us to conclude that a change in custody is indeed one such circumstance.[6] Section 46b-224 specifically addresses the question of how a change in custody affects the payment of child support, and provides in relevant part: "Whenever . . . the Superior Court, in a family relations matter, as defined in section 46b-1, orders a change or transfer of the guardianship or custody of a child who is the subject of a preexisting support order, and the court makes no finding with respect to such support order, such guardianship or custody order shall operate to: (1) Suspend the support order if guardianship or custody is transferred to the obligor under the support order; or (2) modify the payee of the support order to be the person or entity awarded guardianship or custody of the child by the court, if such person or entity is other than the obligor under the support order." Thus, if the obligor becomes the new primary custodial parent, the obligor is no longer required to pay child support to the former custodian. Similarly, if custody is transferred to a third party, the obligor thereafter must make the child support payments to that third party rather than to the original custodian. The immediate result in either case is the same: the originally designated payee who no longer has custody of the child does not continue to receive support payments following the change in custody, and the payments are retained by or redirected to the party who does have custody.

Thus, while § 46b-86 (a) addresses the modification of child support in general, § 46b-224 covers the particular effect of a change in custody on preexisting child support orders. Notably, unlike § 46b-86 (a), § 46b-224 does not expressly except from its scope support orders that contain nonmodification provisions. Rather, the plain

language of § 46b-224 provides that "[*w*]*henever*" (1) the trial court orders "a change or transfer of the guardianship or custody of a child who is the subject of a preexisting support order," and (2) "the court makes no finding with respect to such support order," then the custody order "*shall* operate to . . . [s]uspend the support order . . . or . . . modify the payee of the support order . . . ." (Emphasis added.) General Statutes § 46b-224.[7] Use of the term "whenever" indicates that the statute applies every time in which the two specified conditions are met without other restriction. Similarly, the use of the term "shall" denotes a mandatory term, suggesting that the suspension or redirection of support occurs by operation of law. See *Hall Manor Owner's Assn.* v. *West Haven*, 212 Conn. 147, 153, 561 A.2d 1373 (1989) (when legislature has used word "shall," "[i]f it is a matter of convenience, the statutory provision is directory; if it is a matter of substance, the statutory provision is mandatory"). Together, this language signifies that § 46b-224 is invoked upon satisfaction of the two specified conditions automatically, without reference to any other factor such as the parties' agreement.

Such an inference is particularly apt in the present case given that "[p]rovisions which preclude modification of alimony [or support] tend to be disfavored." (Internal quotation marks omitted.) *Amodio* v. *Amodio*, supra, 247 Conn. 730; see also *Guille* v. *Guille*, supra, 196 Conn. 268 n.2 ("presumption favoring modifiability should apply with equal if not greater force with respect to orders for child support, given the broad grant of power to make and modify child support orders expressed in General Statutes § 46b-56"). Moreover, it is well established that, "in the absence of ambiguity, courts cannot read into statutes, by construction, provisions which are not clearly stated." (Citation omitted; internal quotation marks omitted.) *Carothers* v. *Capozziello*, 215 Conn. 82, 129, 574 A.2d 1268 (1990). In fact, the absence of a provision in § 46b-224 like the one in § 46b-86 (a), expressly limiting its application to support orders that do not contain nonmodification provisions, suggests that a different meaning was intended. See *Saunders* v. *Firtel*, 293 Conn. 515, 527, 978 A.2d 487 (2009) ("when a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed" [internal quotation marks omitted]). Thus, without any indication that the legislature intended that § 46b-224 would suspend or modify child support in circumstances when custody changes only when the judgment does not preclude modification, we decline to engraft such a condition on the statute. We therefore conclude that § 46b-224 applies to all support orders notwithstanding express language in the order barring future modification.

We recognize that a "[s]uspen[sion]" and a "modif[ication of] the payee" of support under § 46b-224 are, in effect, two different methods of modifying or altering a support arrangement. See *Grosso* v. *Grosso*, 59 Conn. App. 628, 633, 758 A.2d 367 (2000) (given trial court's broad discretion in deciding motions for modification, term " 'alter' " as used in § 46b-86 [a] is sufficiently broad to encompass "suspension" of alimony payments), cert. denied, 254 Conn. 938, 761 A.2d 761 (2000); see also *Eckert* v. *Eckert*, supra, 285 Conn. 695 (rejecting any practical distinction between words "modification" and "alteration" as used in § 46b-86 [a]); *Borkowski* v. *Borkowski*, 228 Conn. 729, 734–35, 638 A.2d 1060 (1994) ("[b]ecause a request for termination of alimony is, in effect, a request for a modification, this court has treated as identical motions to modify and motions to terminate brought under § 46b-86 [a]"). Consequently, upon first blush, our conclusion that § 46b-224 permits the modification of a facially nonmodifiable child support order when custody changes conflicts with the provision in § 46b-86 (a), permitting modification in general, "[u]nless and to the extent that the decree precludes modification . . . ." In other words, § 46b-224 would require modification of child support where § 46b-86 (a) would appear to preclude it.

Insofar as these two statutes are facially in tension, however, we are mindful that, "[i]n cases in which more than one [statutory provision] is involved, we presume that the legislature intended [those provisions] to be read together to create a harmonious body of law . . . and we construe the [provisions], if possible, to avoid conflict between them." (Internal quotation marks omitted.) *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 149, 998 A.2d 730 (2010). "It is a well-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling. . . . Where there are two provisions in a statute, one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of a general provision, then the particular provision must prevail; and if both cannot apply, the particular provision will be treated as an exception to the general provision." (Citation omitted; internal quotation marks omitted.) *Budkofsky* v. *Commissioner of Motor Vehicles*, 177 Conn. 588, 592, 419 A.2d 333 (1979). Additionally, "[i]f the expressions of legislative will are irreconcilable, the latest prevails . . . ." *State ex rel. Sloane* v. *Reidy*, 152 Conn. 419, 425, 209 A.2d 674 (1965); see also 2B N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2008) § 51:2, p. 228 ("where two statutes deal with the same subject matter, the more recent enactment prevails as the latest expression of legislative will").

To hold that the provision in § 46b-86 (a) permitting modification "[u]nless and to the extent that the decree precludes modification" supersedes § 46b-224 would violate these rules of statutory construction. As we previously observed, § 46b-224 clearly addresses the distinct factual scenario of a change in custody. In contrast, the language of § 46b-86 (a) is broad enough to encompass all cases in which a change in the support order is contemplated. Therefore, the more specific language of § 46b-224 prevails over the more general terms of § 46b-86 (a), even though the latter deals with the same overall subject matter. Moreover, because the legislature enacted § 46b-224 after § 46b-86 (a), § 46b-224 represents the more recent expression of the legislative will.[8] To the extent that the application of the specific language of § 46b-224 to suspend or modify a support order that purports to preclude modification appears to conflict with the general language of § 46b-86 (a), we conclude that § 46b-224 must prevail.

This interpretation of the statutes comports with the purpose of § 46b-224 and the policy underlying the custody and child support statutes as a whole. "[W]e presume that laws are enacted in view of existing relevant statutes . . . [and] we read each statute in a manner that will not thwart its intended purpose or lead to absurd results." (Citations omitted; internal quotation marks omitted.) *Linden Condominium Assn., Inc.* v. *McKenna*, 247 Conn. 575, 583–84, 726 A.2d 502 (1999). By its own language, § 46b-224 suspends or redirects child support payments upon a change of custody when "the court makes no finding with respect to such support order . . . ." It therefore sets forth a default rule that child support follows the children, unless the trial court has made a finding that another arrangement is appropriate. This statute indicates that the legislature viewed the provision of custody as the premise underlying the receipt of child support payments; the legislature did not envision that the custodian would be required to pay child support to a person who does not have custody, as well as (in cases in which the obligor obtains custody) expend resources to provide directly for the care and welfare of the child. In fact, under the Child Support and Arrearage Guidelines (guidelines), " 'child support award' " is defined as "the entire payment obligation of the *noncustodial* parent . . . ." (Emphasis added.) Regs., Conn. State Agencies § 46b-215a-1 (6).[9] Although the guidelines set forth a procedure for calculating *both* parents' child support obligation; see id., § 46b-215a-1 (4); the custodial parent's portion does not become a part of a court order because the amount "is retained by the custodial parent and is presumed spent on the children." Id., § 46b-215a-2b (c) (7) (B). Once custody is transferred, however, there is no longer any basis for the presumption that the former custodian is spending his or her share of the support on the children.

Indeed, ensuring that the custodian receives the support payments is consistent with the fundamental purpose of child support, which is "to provide for the care and well-being of minor children . . . ." *Battersby* v. *Battersby*, 218 Conn. 467, 473, 590 A.2d 427 (1991). General Statutes § 46b-84 (a),[10] which "impos[es] a duty on divorced parents to support the minor children of their marriage, creates a corresponding right in the children to such support." *Guille* v. *Guille*, supra, 196 Conn. 263. This right "does not come through their [parental custodian] . . . ." (Internal quotation marks omitted.) *Burke* v. *Burke*, 137 Conn. 74, 80–81, 75 A.2d 42 (1950). Child support therefore furnishes the custodian with the resources to maintain a household to provide for the care and welfare of the children; in essence, the custodian holds the payments for the benefit of the child. Consequently, once custody changes, there is no immediately apparent reason for the former custodian to continue to receive the payments because the presumption is that the former custodian is no longer primarily responsible for providing the children's necessary living expenses, including food, shelter and clothing. In turn, permitting the diversion of funds away from the parent providing for the care and well-being of minor children when custody changes, pursuant to the parents' contractual agreement, would contravene the purpose of child support. Thus, the traditional purpose of child support is consistent with our reading of the statutory scheme.

The plaintiff contends, in contrast, that this state's policy favoring the freedom of contract counsels in favor of upholding a nonmodification provision even when custody changes. She argues that any other conclusion would harm reliance interests and deny her the benefit of her bargain. Although we recognize that it is fundamental that "parties are free to contract for whatever terms on which they may agree," and, accordingly, that "[w]hether provident or improvident, an agreement moved on calculated considerations is entitled to the sanction of the law"; (internal quotation marks omitted) *Crews* v. *Crews*, 295 Conn. 153, 169, 989 A.2d 1060 (2010); it is equally clear that contracts relating to the maintenance or custody of children "will not be enforced longer than it appears to be for the best interests of the child, and parents entering into such a contract are presumed to do so in contemplation of their obligations under the law and the rights of the child." (Internal quotation marks omitted.) *Guille* v. *Guille*, supra, 196 Conn. 264. Because the parties enter into a contract in contemplation of their obligations under the law, a contractual provision is ineffective to prohibit modification of child support when, as in the present case, there has been a change in custody.

In the present case, the parties' dissolution decree placed primary physical custody of the minor children

with the plaintiff and ordered the defendant to pay unallocated alimony and child support to the plaintiff. Two years after judgment was entered dissolving the marriage, the trial court issued an order, pursuant to the parties' agreement, transferring custody of the children from the plaintiff to the defendant. At that time, the court did not make any finding with respect to child support.[11]

The defendant subsequently filed the motion for modification that is the subject of the present appeal. The parties do not dispute that the nonmodification provision contained in the separation agreement is clear and unambiguous, and that it purports to prohibit the parties from modifying the unallocated order under the circumstances of this case or, for that matter, in any case other than the plaintiff's death, remarriage or cohabitation. In light of our conclusion that a child support order may be altered under § 46b-86 (a) when custody changes, notwithstanding a provision in the order forbidding future modification, we conclude that the language in § 46b-86 (a), permitting modification "[u]nless and to the extent that the decree precludes modification," did not prevent the trial court from modifying the unallocated order to the extent that it incorporated child support. Because the Appellate Court improperly concluded that the nonmodification provision was effective to bar modification of the unallocated order without evidence of any unmet need even when custody had changed, we reverse the judgment of the Appellate Court.[12]

The plaintiff argues that if this court agrees with the defendant that the unallocated order was modifiable, we should remand the case to the trial court to reassess the proper amount attributable to child support.[13] We agree. Even though an unallocated order incorporates alimony and child support without delineating specific amounts for each component, the unallocated order, along with other financial orders, necessarily includes a portion attributable to child support in an amount sufficient to satisfy the guidelines. Because the child support portion of an otherwise nonmodifiable award can be modified upon a change in custody, as we have determined herein, but the alimony portion cannot, a trial court must determine what part of the original decree constituted modifiable child support and what part constituted nonmodifiable alimony. Given that "[t]he original decree [of dissolution] . . . is an adjudication by the trial court as to what is right and proper *at the time it is entered*"; (emphasis added) *Borkowski* v. *Borkowski*, supra, 228 Conn. 737; the trial court must first determine what portion of the unallocated order represented the child support component at the time of the dissolution. Additionally, because "questions involving modification of alimony and support depend . . . on conditions as they exist *at the time of the hearing*"; (emphasis added) *Milot* v. *Milot*, 174 Conn. 3, 5,

381 A.2d 528 (1977); it is necessary to evaluate the parties' present circumstances in light of the passage of time since the trial court's original calculation.

In entering an initial support order during the dissolution proceeding, a trial court must calculate the minimum amount of child support required by the guidelines, and it may deviate from such amount only upon "[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 . . . ." General Statutes § 46b-215b (a). "Any such finding shall include the amount required under the guidelines and the court's justification for the deviation, which must be based on the guidelines' [c]riteria for deviation . . . ." (Internal quotation marks omitted.) *Maturo* v. *Maturo*, 296 Conn. 80, 92, 995 A.2d 1 (2010). The deviation criteria include, inter alia, the coordination of total family support, shared physical custody, extraordinary disparity in parental income and the best interests of the child. See Regs., Conn. State Agencies § 46b-215a-3 (b) (5) and (6). The coordination of total family support criterion allows the trial court to deviate from the presumptive support amount calculated pursuant to the guidelines upon consideration of the "(A) division of assets and liabilities, (B) provision of alimony, and (C) tax planning considerations"; id., § 46b-215a-3 (b) (5); "[w]hen such considerations will not result in a lesser economic benefit to the child . . . ." Id.

In modifying the support order in a subsequent proceeding, a trial court may consider the same factors applied in the initial determination to assess any changes in the parties' circumstances since the last court order. *Borkowski* v. *Borkowski*, supra, 228 Conn. 737–38. Section 46b-215b (c) mandates that the guidelines "shall be considered in addition to and not in lieu of the criteria for such awards established in sections 46b-84, 46b-86" and other statutes not relevant to this appeal.[14] Specifically, § 46b-84 (d) stipulates that 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."

In the present case, because the parties do not dispute that the portion of the unallocated order attributable to alimony was nonmodifiable, the trial court was required to determine the child support component of the unallocated order. Review of the transcript of the hearing before the trial court on the defendant's motion to modify reveals that the trial court assumed that the portion of the unallocated order attributable to child

support at the time of the dissolution consisted of the presumptive support obligation pursuant to the guidelines. To determine whether this amount should be modified to reflect present circumstances, the court then reviewed evidence of the defendant's current finances, the expenses paid by the defendant beyond the children's basic needs and the plaintiff's unemployment, and found that the parties' financial circumstances had not significantly changed since the unallocated order was entered. Concluding that the circumstances at the time of the hearing did not require any further adjustment to the amount calculated under the guidelines, that court deducted the guidelines amount from the total unallocated order to arrive at the defendant's remaining alimony obligation.

We note that the trial court improperly may have relied solely on the presumptive guidelines amount in calculating the portion attributable to child support at the time of dissolution. Although there is a rebuttable presumption that the figure arrived at under the guidelines is the proper amount of child support; see General Statutes § 46b-215b (a); the trial court at the original dissolution proceeding in 2005 had discretion to deviate from such amount upon consideration of factors, such as the coordination of total family support, shared physical custody, extraordinary disparity in parental income and the best interests of the children. Although it is reasonable to conclude that the trial court found that the unallocated order provided adequate support when it incorporated the parties' separation agreement into the judgment, it does not follow necessarily that the child support portion was equivalent to the presumptive guidelines amount. Additionally, due to the passage of time since the trial court initially addressed the defendant's request for modification, reconsideration of the parties' present circumstances is necessary.[15]

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to remand the case to the trial court for further proceedings consistent with this opinion.

In this opinion the other justices concurred.

[1] There is no explanation as to the discrepancy between the amount of the weekly payments as described numerically and in writing. We thus agree with the Appellate Court that it is most likely due to a scrivener's error and that the numerical value is the proper one because it is referenced repeatedly in the parties' briefs. See *Tomlinson* v. *Tomlinson*, supra, 119 Conn. App. 197 n.1.

[2] The petition for certification to appeal was granted limited to the following issue: "Did the Appellate Court properly reverse the trial court's modification of child support on the ground that the parties' judgment of dissolution incorporated a separation agreement provision stating that the unallocated alimony and child support payments were nonmodifiable?" *Tomlinson* v. *Tomlinson*, 295 Conn. 916, 990 A.2d 868 (2010).

After oral argument before this court, we invited members of the Connecticut Bar Association and the Connecticut Chapter of the American Academy of Matrimonial Lawyers to submit amicus briefs addressing the question of whether General Statutes § 46b-86 precludes the modification of child support in all events when the parties' separation agreement purports to prohibit subsequent modification. Both organizations accepted our invitation and

filed briefs addressing this issue.

[3] General Statutes § 46b-86 (a) provides in relevant part: "Unless and to the extent that the decree precludes modification, any final order for the periodic payment of permanent alimony or support . . . may, at any time thereafter, be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines established pursuant to section 46b-215a . . . ."

Although § 46b-86 (a) was the subject of certain amendments in 2010; see Public Acts 2010, No. 10-36, § 6; those amendments have no bearing on this appeal. In the interest of simplicity, we refer herein to the current revision of the statute.

[4] In their briefs to this court, the parties analyzed lower court decisions following *Guille* v. *Guille*, supra, 196 Conn. 260, in an attempt to extract general principles concerning a trial court's authority to modify child support orders notwithstanding provisions in the decree precluding modification. The defendant argued that *Guille* stood for the proposition that child support is always modifiable, while the plaintiff countered that the language in *Guille*, stating that the child support was modifiable "under the circumstances of [that] case"; id., 265; expressly limited the holding to the facts of that case. Although we recognize that the existing jurisprudence on this issue does not contain an easily discernible thread, we need not set forth a general rule to reconcile any seeming conflict at this time in order to resolve the present case.

[5] In *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 501, 923 A.2d 657 (2007), we stated that "the sole purpose of the legislature in enacting § 1-2z was to *restore* the plain meaning rule," and that "[t]here [was] nothing in the legislative history to suggest that the legislature also intended to overrule every other case in which our courts, prior to the passage of § 1-2z, had interpreted a statute in a manner inconsistent with the plain meaning rule, as that rule is articulated in § 1-2z." Thus, although *Amodio* v. *Amodio*, supra, 247 Conn. 724, and *Guille* v. *Guille*, supra, 196 Conn. 260, were decided before the enactment of § 1-2z, these cases have not been overruled by the statute and still have vitality.

[6] Rather than address issues not raised in this appeal, we invite the legislature to clarify the circumstances, if any, under which child support may be made nonmodifiable, as well as the circumstances in which public policy would dictate that child support orders remain modifiable, notwithstanding language in the decree to the contrary.

[7] In referring to the existence of a court finding, the second condition also seems to contemplate that the court ordering a transfer of custody has the authority to address—that is, to alter or modify—the support order.

[8] Section 46b-86 was enacted in 1973 as part of Public Acts 1973, No. 73-373, while § 46b-224 was adopted in 2004 as part of Public Acts 2004, No. 04-100.

[9] Because the parties have not raised the issue in this appeal, we leave for another day the question of whether the new custodian can seek an order requiring the former custodian to pay child support.

[10] General Statutes § 46b-84 (a) provides in relevant part: "Upon or subsequent to the . . . dissolution of any marriage or the entry of a decree of . . . 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. . . ."

[11] Consequently, by operation of law pursuant to § 46b-224, the defendant's obligation to pay child support should have been suspended upon the order changing custody.

[12] In its decision, the Appellate Court emphasized that the modification in the present case was not proper because the defendant presented no evidence that the children's needs were not being met. *Tomlinson* v. *Tomlinson*, supra, 119 Conn. App. 211. This analysis is consistent with the Appellate Court's prior statement in *Rempt* v. *Rempt*, 5 Conn. App. 85, 89, 496 A.2d 988 (1985), that "there could be no showing of a 'substantial change of circumstances' to support the reduction of child support" in the absence of evidence as to the child's needs. We acknowledge that *Rempt* was following the public policy argument that this court articulated in *Guille* v. *Guille*, supra, 196 Conn. 260. We decide the present case on different grounds, namely, our interpretation of § 46b-86 (a) in harmony with § 46b-224 as discussed in this opinion. Therefore, we disagree with the Appellate Court that a separate showing of unmet need was necessary.

[13] The parties do not dispute the trial court's finding that the change in custody of the minor children constituted a substantial change in circumstances under § 46b-86 (a).

[14] General Statutes § 46b-215b (c) provides: "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."

[15] The plaintiff asserted two additional claims before the Appellate Court: that the trial court improperly (1) denied the plaintiff's motion for contempt, and (2) granted the plaintiff's request for attorney's fees and costs incurred in filing the motion for contempt in the amount of $750. With respect to the motion for contempt, the Appellate Court observed that the trial court denied the motion on the ground that the defendant's motion to modify did not constitute a wilful violation of a court order. Because the Appellate Court concluded that the unallocated order was not modifiable, that court reversed the judgment of the trial court "limited solely to the [trial] court's decision concerning the defendant's actions in seeking to modify the unallocated order," and remanded the case for further proceedings. *Tomlinson* v. *Tomlinson*, supra, 119 Conn. App. 216. With respect to the plaintiff's request for attorney's fees and costs, the Appellate Court also reversed the trial court's decision and remanded the case for reconsideration in view of the Appellate Court's conclusion that the unallocated order was nonmodifiable. Id., 217. Neither party raised or briefed these issues on appeal to this court. Because both issues relied on the improper legal determination that the unallocated order was nonmodifiable, we would ordinarily direct the Appellate Court to reconsider these decisions on remand; however, because the issues are outside the scope of the certified question before us, we merely remark that the trial court is bound to carry out the Appellate Court's instructions on remand in light of our reversal of that court's legal conclusion with respect to the motion for modification and the other findings contained herein.