MARIANNE OLSON *v.* FUSAINI MOHAMMADU
(SC 18963)

Rogers, C. J., and Palmer, Zarella, Eveleigh and McDonald, Js.

Argued September 25—officially released December 10, 2013

John F. Morris, for the appellant (defendant).

Campbell D. Barrett, with whom were *Jon T. Kukucka*, and, on the brief, *Kathleen M. Grover*, for the appellee (plaintiff).

Opinion

ROGERS, C. J. The question that we must resolve in this appeal is whether a trial court may properly deny a motion for modification of alimony and child support solely on the basis that a party's voluntary actions gave rise to the alleged substantial change in circumstances warranting modification. The defendant, Fusaini Mohammadu, appealed to the Appellate Court from the judgment of the trial court denying his postjudgment motion to modify his alimony and child support obligations to the plaintiff, Marianne Olson. *Olson* v. *Mohammadu*, 134 Conn. App. 252, 39 A.3d 744 (2012). The Appellate Court affirmed the judgment of the trial court. Id., 262. This court granted certification to appeal on the following issue: "Did the Appellate Court properly conclude that the defendant was not entitled to a modification of his alimony and child support obligations because his voluntary return to Connecticut to be closer to his son was an 'unacceptable reason' for his decreased income under *Sanchione* v. *Sanchione*, 173 Conn. 397, 378 A.2d 522 (1977)?" *Olson* v. *Mohammadu*, 304 Conn. 930, 42 A.3d 391 (2012). We conclude that it did not. Accordingly, we reverse the judgment of the Appellate Court.

The following facts and procedural history are set forth in the Appellate Court opinion. "The parties were married on June 7, 2001. During the marriage, the parties had one child together. In September, 2008, the plaintiff . . . who resided in Connecticut with [the child], filed a dissolution of marriage action against the defendant, who at that time resided in Florida. On August 5, 2009, the court rendered judgment dissolving the parties' marriage. In its orders contained in that judgment, the court ordered joint legal custody of the minor child with primary physical custody to the plaintiff and reasonable visitation rights to the defendant in Connecticut. The court further ordered the defendant to pay the plaintiff periodic alimony in the amount of $777 per week. . . . In addition, the court ordered the defendant to pay child support in the following amounts: $334 per week and 66 percent of day care, extracurricular activities and unreimbursed medical and dental expenses for the benefit of the minor child." (Footnote omitted.) *Olson* v. *Mohammadu*, supra, 134 Conn. App. 254.

The record reveals the following additional facts and procedural history. On April 14, 2010, the defendant filed a motion to modify the alimony and child support order. The defendant filed an amended motion to modify on June 18, 2010. As the grounds for his amended motion, the defendant alleged a substantial change in circumstances in that he had relocated from Florida to Connecticut and, consequently, had obtained new employment at a reduced salary. At the modification hearing, the court heard undisputed testimony that the

defendant voluntarily left employment as a physician in Florida earning a salary of approximately $180,000 annually. The defendant testified that he voluntarily relocated to Connecticut in order to have a more meaningful relationship with his child.[1] As a result of the relocation, the defendant's salary was reduced to approximately $150,000 annually. According to the defendant's testimony, the $150,000 salary is standard pay for someone of his experience in a comparable position in Connecticut.

After the hearing, the trial court denied the defendant's motion for modification. In denying the motion, the trial court stated in its memorandum of decision that it "relie[d] on the voluntary nature of the income change experienced by the defendant." While the court acknowledged that the defendant's "stated motivation might have been a good parental decision," the court concluded that the relocation was "a decision that ignored the realities of his financial obligation as set forth in the judgment issued just months earlier." The defendant appealed from the trial court's decision to the Appellate Court.

While the appeal was pending at the Appellate Court, the defendant filed a motion for articulation of the trial court's decision. The defendant sought articulation on the following three issues: "whether the trial court considered the fact of the [d]efendant's relocation to Connecticut to be nearer to his son to be a substantial change in circumstances"; "whether the trial court considered the reduction of the [d]efendant's earnings upon his relocation to be a substantial change in circumstances"; and "the figures used by the trial court to determine the relevant incomes of the parties." The trial court granted, in part, the motion for articulation and stated that "[t]he court did not consider the relocation to be a substantial change in circumstance[s] *because the move was a voluntary action* on the part of the defendant." (Emphasis added.) Relying on *Sanchione* v. *Sanchione*, supra, 173 Conn. 397, the court decided "not to treat [the defendant's] relocation and the change in income that resulted from that *voluntary decision* as a significant change in circumstances." (Emphasis added.) The court declined to articulate how it calculated the incomes of the parties, stating that "its rulings on the first two questions ma[d]e the third irrelevant to the decision."

Thereafter, the Appellate Court affirmed the judgment of the trial court. The Appellate Court concluded that the trial court properly determined that "a change in income resulting from a voluntary decision does not constitute a substantial change in circumstances." *Olson* v. *Mohammadu*, supra, 134 Conn. App. 261. The Appellate Court reasoned that "[although] the [trial] court noted that there might have been a good parental motivation underlying the defendant's relocation, the

court was correct not to reach the defendant's motivation in its determination that the defendant failed to prove a substantial change in circumstances." Id., 260–61. According to the Appellate Court, evidence of the defendant's stated motivation in relocating to Connecticut would be relevant only if he had made a threshold showing of a substantial change in circumstances. Id., 261 n.10. This appeal followed.

On appeal to this court, the defendant claims that the Appellate Court improperly concluded that his voluntary action in relocating to Connecticut, regardless of his stated motivations, precluded him from establishing a substantial change in circumstances warranting modification of his alimony and child support obligations. The defendant contends that the Appellate Court relied on a misconception of governing law under *Sanchione*. Specifically, he contends that an inability to pay that is "brought about by the defendant's own fault"; *Sanchione* v. *Sanchione*, supra, 173 Conn. 407; is not necessarily synonymous with an inability to pay brought about by voluntary conduct. Therefore, he posits that the voluntary action giving rise to an inability to pay should not foreclose a threshold showing of a substantial change in circumstances. The defendant also contends that if we agree with his claim that the trial court improperly denied his motion for modification because of his voluntary relocation to Connecticut, we should reverse the judgment of the Appellate Court and the case should be remanded to the trial court for a new hearing. We agree that the Appellate Court improperly concluded that the defendant's voluntary relocation and income change necessarily precluded him from establishing a substantial change in circumstances. We also agree that the case should be remanded to the trial court for a new hearing.

We begin our analysis with the standard of review. "The scope of our review of a trial court's exercise of its broad discretion in domestic relations cases is limited to the questions of whether the [trial] court correctly applied the law and could reasonably have concluded as it did." (Citation omitted; internal quotation marks omitted.) *Leo* v. *Leo*, 197 Conn. 1, 4, 495 A.2d 704 (1985). "In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *Williams* v. *Williams*, 276 Conn. 491, 497, 886 A.2d 817 (2005). Nevertheless, we may reverse a trial court's ruling on a modification motion if the trial court applied the wrong standard of law. Id.; see also *Morris* v. *Morris*, 262 Conn. 299, 305, 811 A.2d 1283 (2003); *Borkowski* v. *Borkowski*, 228 Conn. 729, 740, 638 A.2d 1060 (1994).[2]

"[General Statutes §] 46b-86 governs the modification or termination of an alimony or support order after the

date of a dissolution judgment. When, as in this case, the disputed issue is alimony [or child support], the applicable provision of the statute is § 46b-86 (a),[3] which provides that a final order for alimony may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred." (Footnote added; internal quotation marks omitted.) *Simms* v. *Simms*, 283 Conn. 494, 502, 927 A.2d 894 (2007). "To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order." *Borkowski* v. *Borkowski*, supra, 228 Conn. 737–38.

"Once a trial court determines that there has been a substantial change in the financial circumstances of one of the parties, the same criteria that determine an initial award of alimony and support are relevant to the question of modification." *Hardisty* v. *Hardisty*, 183 Conn. 253, 258–59, 439 A.2d 307 (1981). "More specifically, these criteria, outlined in General Statutes § 46b-82,[4] require the court to consider the needs and financial resources of each of the parties and their children, as well as such factors as the causes for the dissolution of the marriage and the age, health, station, occupation, employability and amount and sources of income of the parties." (Footnote altered.) *Borkowski* v. *Borkowski*, supra, 228 Conn. 736. "The power of the trial court to modify the existing order does not, however, include the power to retry issues already decided . . . or to allow the parties to use a motion to modify as an appeal. . . . Rather, the trial court's discretion includes only the power to adapt the order to some distinct and definite change in the circumstances or conditions of the parties." (Citations omitted.) Id., 738.

Thus, "'[w]hen presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties. . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and, on the basis of the § 46b-82 criteria, make an order for modification. . . . The court has the authority to issue a modification only if it conforms the order to the distinct and definite changes in the circumstances of the parties." (Emphasis omitted; internal quotation marks omitted.) *Gervais* v. *Gervais*, 91 Conn. App. 840, 850–51, 882 A.2d 731, cert. denied, 276 Conn. 919, 888 A.2d 88 (2005).

Two additional legal principles are relevant to our

disposition of this appeal. First, in *Borkowski* v. *Borkowski*, supra, 228 Conn. 737–38, this court clarified the two step method by which a trial court should proceed with a motion brought pursuant to § 46b-86. "By so bifurcating the trial court's inquiry . . . we did not mean to suggest that a trial court's determination of whether a substantial change in circumstances has occurred, and its determination to modify alimony, are two completely separate inquiries. . . . After the evidence introduced in support of the substantial change in circumstances establishes the threshold predicate for the trial court's ability to entertain a motion for modification, however, it also naturally comes into play in the trial court's structuring of the modification orders." (Citation omitted.) Id., 737. Second, in *Sanchione* v. *Sanchione*, supra, 173 Conn. 407, this court concluded that in order to meet the threshold of a substantial change in circumstances, the alleged inability to pay "must be excusable and not brought about by the defendant's own fault."

Turning to the facts of this case, the Appellate Court rejected the defendant's argument that the trial court should have considered the defendant's motivations in relocating to Connecticut rather than deny the motion solely on the basis that his relocation was voluntary. Relying on this court's decision in *Borkowski*, the Appellate Court concluded that evidence of the "motivation behind such a voluntary action would only be relevant if [a threshold showing of a substantial change in circumstances] had been met." *Olson* v. *Mohammadu*, supra, 134 Conn. App. 261 n.10. The Appellate Court determined that this court's holding in *Sanchione* reasonably supported the trial court's conclusion that "a change in income resulting from a voluntary decision does not constitute a substantial change in circumstances." Id., 261.

We disagree with the Appellate Court's analysis. In *Borkowski* v. *Borkowski*, supra, 228 Conn. 741, this court held that in determining the threshold inquiry of a substantial change in circumstances, the trial court is limited to considering events arising after the dissolution decree or the most recent modification thereof. In that case, this court concluded that the trial court properly admitted evidence concerning the cause of the plaintiff's alleged substantial change in circumstances as relevant to both parts of the court's modification inquiry. Id., 743.[5] Accordingly, this court clarified in *Borkowski* that the two parts of the trial court's modification inquiry, which include the threshold determination of a substantial change in circumstances and the subsequent determination of whether to modify alimony or child support, are not entirely separate inquiries. Id., 737. Indeed, *Borkowski* contemplates that "evidence introduced in support of the substantial change in circumstances . . . naturally comes into play in the trial court's structuring of the modification

orders." Id. Thus, *Borkowski* does not support the Appellate Court's conclusion that evidence of the motivation behind the defendant's voluntary action would become relevant only had the court found a substantial change in circumstances.

Moreover, the notion that a court cannot consider the reason underlying an alleged substantial change in circumstances in determining the threshold inquiry under a § 46b-86 motion for modification is at odds with the decision in *Sanchione* v. *Sanchione*, supra, 173 Conn. 397. In *Sanchione*, this court addressed the issue of whether the trial court properly granted a prospective reduction in alimony where the court found only that the financial affidavits were true and that there had been a "change of circumstances re the defendant's ability to pay . . . ." (Internal quotation marks omitted.) Id., 407. This court concluded that the trial court's findings on the affidavits were alone inadequate to support the modification without any record that the court had evaluated the circumstances surrounding the defendant's claimed inability to pay. Id. Accordingly, this court set aside the modification and ordered a new hearing. Id.

Under *Sanchione*, an " '[i]nability to pay' does not automatically entitle a party to a decrease of an alimony order. It must be excusable and not brought about by the defendant's own fault." Id. In order to make a determination on the threshold inquiry, *Sanchione* requires that the trial court ascertain whether the alleged substantial change in circumstances is the result of the moving party's "own extravagance, neglect, misconduct or other unacceptable reason . . . ."[6] Id. Simply put, *Sanchione* "stand[s] for the principle that if a party's *culpable* conduct causes an inability to pay an alimony award [or child support obligation], then the threshold question of whether a substantial change of circumstances exists is not met." (Emphasis added.) *Schade* v. *Schade*, 110 Conn. App. 57, 65 n.6, 954 A.2d 846, cert. denied, 289 Conn. 945, 959 A.2d 1009 (2008).[7]

The plaintiff correctly conceded at oral argument before this court that *Sanchione* does not state that voluntariness is an absolute bar to establishing a substantial change in circumstances. While the plaintiff acknowledged that this court in *Sanchione* instead concluded that fault is a bar to modification, she argued that fault has evolved through our Appellate Court's case law to encompass voluntariness. The plaintiff is correct that a review of the Appellate Court's case law in the three decades since *Sanchione* was decided reveals that the inquiry in that case has occasionally been shifted into a voluntariness based analysis.[8] To the extent that there is a split of Appellate Court authority that diverges on whether the touchstone of the threshold modification inquiry is culpability or voluntariness,[9] we take this opportunity to clarify the holding in *San-*

chione and the two part inquiry for a motion brought under § 46b-86.

In *Sanchione* v. *Sanchione*, supra, 173 Conn. 407, this court held that culpable conduct precludes a threshold showing of a substantial change in circumstances on a motion for modification. Indeed, the word "voluntary" does not appear in *Sanchione* precisely because the voluntariness of one's action is of limited utility in ascertaining fault. Nearly every human action is voluntary, but not every voluntary action is fault worthy. The words used by this court in *Sanchione*—"fault . . . extravagance, neglect, misconduct or other unacceptable reason"—underscore that the crux of the inquiry is culpability and not voluntariness. Id. An analysis that begins and ends with voluntariness, as was applied in the present case, renders meaningless the critical distinction enunciated in *Sanchione* between acceptable and "unacceptable reason[s]" for an alleged substantial change in circumstances. Id. A court simply cannot engage in the fault based inquiry of *Sanchione* without ascertaining the reasons motivating one's voluntary actions.[10]

The record in the present case reflects that the trial court did not make any factual findings regarding the reasons motivating the defendant's relocation from Florida to Connecticut. Although the defendant testified that he relocated to Connecticut in order to have a more meaningful relationship with his son; see footnote 1 of this opinion; the trial court did not consider the defendant's motivations in its analysis.[11] Indeed, the trial court's entire decision was predicated on its finding that "the move was a voluntary action on the part of the defendant." Instead, the trial court should have taken into account the defendant's motivation for relocating in deciding the threshold issue of whether there was a substantial change of circumstances warranting modification. In other words, consistent with *Sanchione*, the trial court should have determined whether the defendant's alleged "inability to pay was a result of his own extravagance, neglect, misconduct or other *unacceptable reason* . . . ." (Emphasis added.) *Sanchione* v. *Sanchione*, supra, 173 Conn. 407. Because the trial court made no finding on the culpability of the defendant's conduct, we conclude that the trial court incorrectly applied the law when it denied the defendant's motion for modification.

The plaintiff makes two arguments in support of her claim that the trial court properly denied the defendant's motion for modification. First, the plaintiff argues that the court *did* find that the defendant's voluntary decision to relocate to Connecticut was culpable. Specifically, the plaintiff suggests that the court found that the defendant's voluntary conduct in the face of recent financial orders was inappropriate, regardless of his stated motivation.[12] Alternatively, the plaintiff contends

that the trial court's findings regarding the defendant's financial circumstances sufficiently support the court's determination that the defendant failed to establish a substantial change in circumstances. We are not persuaded by the plaintiff's first argument and we decline to reach the merits of the plaintiff's alternative argument.

As a preliminary matter, we note that our resolution of the plaintiff's claims requires us to interpret the trial court's memorandum of decision and subsequent articulation. "The interpretation of a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Citations omitted; internal quotation marks omitted.) *Sosin* v. *Sosin*, 300 Conn. 205, 217–18, 14 A.3d 307 (2011); see also *Fisher* v. *Big Y Foods, Inc.*, 298 Conn. 414, 424–25, 3 A.3d 919 (2010) ("an opinion must be read as a whole without particular portions read in isolation, to discern the parameters of its holding"). If there is ambiguity in a court's memorandum of decision, we look to the articulations that the court provides. See, e.g., *Miller* v. *Kirshner*, 225 Conn. 185, 208, 621 A.2d 1326 (1993) ("[a]n articulation is appropriate [when] the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification" [internal quotation marks omitted]).

With these principles in mind, we turn to the language of the memorandum of decision and the articulation in the present case. Reading the memorandum as a whole together with the subsequent articulation, we conclude that the trial court's decision was clearly predicated on voluntariness, not culpable conduct. Although the trial court tangentially refers to the defendant's decision to relocate as one that "ignored the realities of his financial obligation[s],"[13] this observation, read in the context of the memorandum of decision and the articulation, does not amount to a finding of culpability under this court's precedent in *Sanchione*.

In the present case, the trial court undertook no inquiry to ascertain whether the alleged substantial change in circumstances "[was] excusable and not brought about by the defendant's own fault." *Sanchione* v. *Sanchione*, supra, 173 Conn. 407. Although the trial court opined that one consequence of the defendant's relocation was that it ignored the realities of the recent financial orders, the court did not find that the defendant relocated *in order to avoid* his financial obligations. Indeed, the trial court did not find that any of the fault based reasons set forth in *Sanchione* applied

in this case. Instead, the court denied the motion to modify for the singular reason that the defendant voluntarily relocated to Connecticut.[14]

To summarize our holding in this case, a court that is confronted with a motion for modification under § 46b-86 (a) must first determine whether the moving party has established a substantial change in circumstances. In making this threshold determination, if a party's voluntary action gives rise to the alleged substantial change in circumstances warranting modification, the court must assess the motivations underlying the voluntary conduct in order to determine whether there is *culpable* conduct foreclosing a threshold determination of a substantial change in circumstances. If the court finds a substantial change in circumstances, then the court may determine what modification, if any, is appropriate in light of the changed circumstances.

Accordingly, in the present case we conclude that the trial court improperly denied the defendant's motion for modification solely on the basis that the defendant's voluntary relocation to Connecticut gave rise to the alleged substantial change in circumstances warranting modification of his alimony and child support obligations.[15] As a result, this matter must be remanded to the trial court for a new hearing on the defendant's motion for modification. At the rehearing, the trial court must determine whether the defendant established a substantial change in circumstances and, if so, what modification of alimony or child support, if any, is appropriate.[16]

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to reverse the judgment of the trial court and to remand the case to that court for a new hearing on the motion for modification.

In this opinion the other justices concurred.

[1] On direct examination by his attorney, the defendant testified as follows: "It's been difficult living in Florida trying to see my son. And I've been trying to work with [the plaintiff] even to get a visitation right like in the summer time when he's on vacation to come and spend those times with me, or when he has school break he can come and spend time with me. But this time I had requested, [the plaintiff] refused. The only option she gives me is I had to buy a ticket for both of them together, or I'm not going to see my son. So it came to a point I cannot even have time to talk to him over the [tele]phone, so I finally decided, you know, I need to be closer to my son. And . . . so I moved back."

[2] In *Borkowski* v. *Borkowski*, supra, 228 Conn. 740, this court stated that "[n]otwithstanding the great deference accorded to the trial court in dissolution proceedings, a trial court's ruling on a modification may be reversed if, *in the exercise of its discretion*, the trial court applies the wrong standard of law." (Emphasis added.) To the extent that this court's reference in *Borkowski* to the trial court's "exercise of its discretion" in any way suggested that the trial court's application of the correct standard of law is discretionary, we take this opportunity to clarify that the trial court has no discretion in applying the correct standard of law.

[3] General Statutes § 46b-86 (a), as amended by No. 13-213, § 4, of the 2013 Public Acts, 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, an order for alimony or support pendente lite or an order requiring either party to maintain life insurance for the other

party or a minor child of the parties 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 . . . . If a court, after hearing, finds a substantial change in circumstances of either party has occurred, the court shall determine what modification of alimony, if any, is appropriate, considering the criteria set forth in section 46b-82 . . . ."

As for child support orders, "[§] 46b-86 (a) permits the court to modify child support orders in two alternative circumstances. Pursuant to this statute, a court may not modify a child support order unless there is first either (1) a showing of a substantial change in the circumstances of either party or (2) a showing that the final order for child support substantially deviates from the child support guidelines . . . . Both the substantial change of circumstances and the substantial deviation from child support guidelines' provision establish the authority of the trial court to modify existing child support orders to respond to changed economic conditions. The first allows the court to modify a support order when the financial circumstances of the individual parties have changed, regardless of their prior contemplation of such changes. The second allows the court to modify child support orders that were once deemed appropriate but no longer seem equitable in the light of changed social or economic circumstances in the society as a whole . . . ." (Citation omitted; internal quotation marks omitted.) *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 491–92, 934 A.2d 306 (2007).

[4] General Statutes § 46b-82 (a), as amended by No. 13-213, § 3, of the 2013 Public Acts, provides in relevant part: "In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties . . . ."

[5] In so holding, this court observed "no reason why the trial court, in determining whether alimony should be modified or terminated, should not be permitted also to consider the causes for a party's substantial change of circumstances." *Borkowski* v. *Borkowski*, supra, 228 Conn. 743.

Quoting from this passage in *Borkowski*, the Appellate Court asserted that only "*after* a finding of substantial change, can the court 'consider the causes for a party's substantial change of circumstances.' " (Emphasis added.) *Olson* v. *Mohammadu*, supra, 134 Conn. App. 259. The Appellate Court takes the language in *Borkowski* out of context. In *Borkowski*, this court addressed the trial court's broad equitable powers in fashioning an appropriate modification order. Ultimately, this court determined that "the trial court's equitable powers to consider any factor appropriate for a just and equitable modification of the parties' alimony" supported the conclusion that "the trial court properly considered the cause of the plaintiff's [substantial change in circumstances] in determining to modify the plaintiff's alimony." *Borkowski* v. *Borkowski*, supra, 228 Conn. 744. This court in *Borkowski* did not hold that a trial court may never consider the cause of a party's substantial change in circumstances under the first part of the modification inquiry. Rather, this court clarified that the trial court is limited to considering evidence antecedent to the dissolution decree or the most recent modification in determining whether there has been a substantial change in circumstances warranting modification. See id., 740.

[6] We emphasize that this fault based principle reinforces the well settled imperative that a party seeking modification pursuant to § 46b-86 (a) "demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it." *Borkowski* v. *Borkowski*, supra, 228 Conn. 737–38. A party whose *culpable* conduct forms the sole basis of an alleged substantial change in circumstances will likely be unable to demonstrate that it would be unjust or inequitable to maintain the existing alimony or child support orders.

[7] In *Schade* v. *Schade*, supra, 110 Conn. App. 57, the Appellate Court affirmed the judgment of the trial court temporarily reducing the defendant's alimony obligation but allowing the unpaid balance to accrue weekly, when "the [trial] court found that the defendant was not actively pursuing the options available to an individual with his experience and training"; id., 67; the defendant "reveal[ed] an intent to delay present income potential"; (internal quotation marks omitted) id., 68; and it was "clear to the court that [the defendant was] pacing himself so as to avoid to the extent possible his obligations for the twelve year alimony payment period to which he

himself had previously committed." (Internal quotation marks omitted.) Id.

[8] It appears that a shift in lexicon from "fault" to "voluntariness" may have originated in *Gleason* v. *Gleason*, 16 Conn. App. 134, 546 A.2d 966 (1988), wherein the Appellate Court reversed the trial court's decision granting a modification of alimony when there was "[no factual] basis for concluding that the defendant's employment situation was excusable *or beyond his control*." (Emphasis added.) Id., 138. Just prior to introducing the alternative phrase "or beyond his control"; id.; the Appellate Court recited the fault based principle of *Sanchione* that "the inability to pay alimony must be excusable and not brought about by the defendant's own fault . . . ." Id., 137.

It cannot reasonably be disputed that the phrases "beyond [one's] control"; id., 138; and "not brought about by one's own fault"; id., 137; carry different meanings. Conduct that is beyond one's control, that is, involuntary, is not brought about by one's own fault. But the converse is not necessarily true. Conduct that is within one's control, that is, voluntary, is not necessarily brought about by one's own fault. In other words, not all voluntary conduct is fault worthy.

[9] There are two lines of decisions in the Appellate Court that have applied *Sanchione*. One line of decisions focuses on voluntariness, while the other line focuses on culpability. Illustrating the Appellate Court authority focusing on voluntariness is the decision in *Richard* v. *Richard*, 23 Conn. App. 58, 579 A.2d 110 (1990). In that case, the trial court denied a motion for modification because "the defendant failed to show a substantial change in his circumstances [because] the defendant's decrease in income was *brought about by his own action*." (Emphasis added.) Id., 63. The Appellate Court reversed the trial court's decision and remanded the case for a new hearing because the trial court had not allowed the defendant to present any evidence on whether he *voluntarily* changed his job. Id., 62–63. In so holding, the Appellate Court improperly elevated the centrality of voluntariness in the threshold inquiry on a motion for modification.

By contrast, the Appellate Court decision in *Misinonile* v. *Misinonile*, 35 Conn. App. 228, 645 A.2d 1024 (1994), exemplifies the Appellate Court authority that properly focuses the inquiry on culpability and not voluntariness. In that case, the Appellate Court rejected the notion that voluntariness alone precludes a threshold showing of a substantial change in circumstances. Instead, the Appellate Court concluded that the trial court properly found that the defendant's voluntary retirement constituted a substantial change in circumstances. The motivation behind the defendant's voluntary retirement was integral to the Appellate Court's holding: "Our review of the record discloses no basis for a finding that the defendant retired *for the purpose of avoiding or reducing his obligation*. Rather, the defendant, who had been eligible for retirement six years earlier, chose, after working for thirty-three years with health problems, to retire at age sixty-eight. Under such circumstances, it is not unreasonable for the defendant, as he stated, to be 'tired' and to seek the less strenuous and demanding lifestyle offered by retirement. The trial court chose to credit the defendant's testimony. On the basis of these facts, we conclude that the finding of the [trial] court, that there was a substantial change of circumstances, was neither unreasonable nor constituted an abuse of discretion." (Emphasis added.) Id., 232.

[10] Accordingly, we have emphasized the relevance of the motivations behind a moving party's voluntary conduct in deciding the threshold inquiry on a modification motion. In *Simms* v. *Simms*, supra, 283 Conn. 494, for example, we concluded that the trial court properly found a substantial change in circumstances where the defendant voluntarily retired and sold his business despite the plaintiff's allegations that the defendant was still able to work if he so chose. We reasoned that "[t]he trial court reasonably could have concluded that the defendant sold his business because of his advancing age and poor health, *and not to avoid his obligations to the plaintiff*, and that the loss of a continuous stream of income from his business constituted a substantial change in his financial circumstances warranting review of his alimony obligation . . . ." (Emphasis added.) Id., 504.

[11] At oral argument before this court, the defendant's attorney argued that the trial court did find credible the defendant's stated motivation. Specifically, the defendant highlighted the following statement from the trial court's memorandum of decision: "While his stated motivation might have been a good parental decision, it was a decision that ignored the realities of his financial obligation as set forth in the judgment issued just months earlier." We are not persuaded. When read in context, it is clear that the trial court did not make any findings on the defendant's stated motivations. The trial court denied the motion because of the voluntary nature of the defendant's relocation without regard for his stated reasons for relocating to Con-

necticut.

[12] According to the plaintiff, "[the court] determined that the defendant's voluntary conduct in quitting his employment and his subsequent relocation, ignoring his financial obligations, was not an acceptable reason on which the court could find a substantial change in circumstances." Consistent with this perspective on how the court arrived at its decision, the plaintiff urges our caution in "[p]ermitting obligors, such as the defendant, to modify financial obligations based on a subjective motivation that sounds acceptable [because this] would provide strong incentive to many obligors to quit employment and take a lesser paying job, or go part-time in order to reduce their obligations."

We are mindful of the possibility that obligors may intentionally depress their income for the purpose of avoiding alimony or support obligations. See, e.g., *Schmidt* v. *Schmidt*, 180 Conn. 184, 189–90, 429 A.2d 470 (1980) ("[i]t is especially appropriate for the trial court to base its award on earning capacity rather than actual earned income where . . . there is evidence before the court that the person to be charged has wilfully depleted his or her earnings with a view toward denying or limiting the amount of alimony to be paid to a former spouse"). Nonetheless, we disagree with the suggestion that the motivation for a person's voluntary action should not enter the court's analysis simply because a person could fabricate "a subjective motivation that sounds acceptable." The trial court is afforded broad discretion in assessing the credibility of testimony in modification actions. See *Borkowski* v. *Borkowski*, supra, 228 Conn. 739 ("[a]s has often been explained, the foundation for [an abuse of discretion standard of review] 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]). The mere possibility that a party may fabricate testimony regarding the ostensibly acceptable reasons for his voluntary conduct resulting in an alleged inability to pay does not require that we abandon the settled methods for distinguishing between credible and incredible testimony.

In the present case, the trial court should have made a credibility determination regarding the defendant's alleged motivations for relocating to Connecticut. Without the benefit of these findings, the trial court could not properly ascertain whether the defendant had made a threshold showing of a substantial change in circumstances.

[13] We note that the plaintiff relies exclusively on the trial court's reference to the defendant's purported disregard for his obligations to support her contention that the court faulted the defendant for relocating to Connecticut. The plaintiff's argument, however, blurs the distinction between the consequences of one's actions and the motivations underlying one's actions. A decision that ostensibly ignores the realities of its consequences, here an alleged inability to meet one's financial obligations, is not necessarily a decision that is motivated by bringing about those consequences.

The following hypothetical illustrates this distinction. A parent, upon learning that his minor child has sustained serious injuries requiring lengthy rehabilitation, relocates in order to be closer to his child during the child's recovery. As a consequence, the parent obtains new employment in a comparable position but at a lower salary. Under these facts, a trial court could not reasonably conclude that the parent's voluntary relocation was culpable conduct despite the reality that one consequence of the relocation was reemployment at a lower salary.

Similarly in the present case, in the absence of a finding that the defendant moved to Connecticut for an unacceptable reason, such as avoiding his financial obligations, the voluntariness of his conduct does not alone support the court's determination that the defendant failed to show a substantial change in circumstances.

[14] To the extent that the plaintiff relies on the final sentence of the Appellate Court's opinion to bolster her interpretation of the trial court's decision, this argument is also unavailing. At the end of its opinion, the Appellate Court states that "the [trial] court reasonably could have concluded that the defendant's unilateral action in the face of his financial obligations set forth in the dissolution judgment was an unacceptable reason that did not justify a finding of a substantial change in circumstances." *Olson* v. *Mohammadu*, supra, 134 Conn. App. 261–62.

Because the trial court did not make any findings regarding whether the defendant's stated reasons for relocating were culpable, the Appellate Court's conclusion that the trial court reasonably could have concluded that the defendant's voluntary action was an unacceptable reason for the alleged change in circumstances is unfounded.

[15] We decline to address the alternate ground for affirmance raised by the plaintiff, namely, that the trial court's findings on the defendant's alleged income change independently support the trial court's conclusion that the defendant failed to demonstrate a substantial change in circumstances. In support of this claim, the plaintiff relies on a footnote in the trial court's memorandum of decision wherein the trial court observed, inter alia, that it was not persuaded that the defendant's relocation substantially changed his financial circumstances. Specifically, the footnote provides: "Additionally, the court is not convinced that the new income is significantly lower than [the defendant's] Florida income as presented in the financial affidavits presented to the court. There is only a 13 [percent] reduction between his gross Florida income and his actual present income not including his various bonus payments received from his employer. Additionally, his employment contract affords him the possibility of receiving further compensation in the form of an incentive compensation, a productivity incentive, a quality incentive and a patient satisfaction incentive as well as merit increases. Finally, his residence in Connecticut will reduce the high cost of travel previously required to see his son."

Consistent with the foregoing discussion, the trial court's memorandum of decision and articulation demonstrate that the defendant's financial circumstances played no part in the trial court's decision. Significantly, the trial court stated that because it did not consider the defendant's voluntary relocation and income change to be a substantial change in circumstances, the findings in the footnote of the trial court's memorandum of decision were "irrelevant to the decision." Accordingly, the plaintiff is asking that we affirm the trial court's decision on an alternative ground not reached by the trial court.

We decline to address the alternative ground for affirmance for two fundamental reasons. First, even if we were to assume that the plaintiff raised and briefed this alternative ground in the Appellate Court, the plaintiff was required, but failed, to file a statement with this court providing alternative grounds for affirmance of the Appellate Court decision in accordance with Practice Book § 84-11. Section 84-11 provides in relevant part: "(a) Upon the granting of certification, the appellee may present for review alternative grounds upon which the judgment may be affirmed provided those grounds were raised and briefed in the appellate court. . . .

"(c) Any party desiring to present alternative grounds for affirmance . . . shall file a statement thereof within fourteen days from the issuance of notice of certification. . . ."

Second, even if we were to assume no prejudice to the defendant, we still cannot affirm the trial court's decision on the alternative ground raised by the plaintiff. "[I]f the alternate issue was not ruled on by the trial court, the issue must be one that the trial court would have been forced to rule in favor of the appellee. Any other test would usurp the trial court's discretion." (Internal quotation marks omitted.) *Zahringer* v. *Zahringer*, 262 Conn. 360, 371, 815 A.2d 75 (2003), citing W. Horton & S. Cormier, Rules of Appellate Procedure (2003 Ed.) § 63-4 (a) (1), comment, p. 138. We cannot conclude as a matter of law that the trial court would have been forced to rule in the plaintiff's favor on the basis of the alternative ground raised by the plaintiff. There is no formulaic equation for determining whether an alleged income change constitutes a substantial change in circumstances. Thus, even if the trial court had articulated the findings in its footnote, we would still be unable to affirm the trial court's decision on that basis.

[16] We note that at oral argument before this court, both parties agreed that, if this court were to conclude that the trial court improperly denied the defendant's motion for modification, a rehearing on the modification motion would be appropriate. In view of the time that has elapsed since the defendant filed his amended motion for modification, both parties further agreed that, if the trial court were to award a modification on rehearing, the court should follow the principles articulated in *Zahringer* v. *Zahringer*, 124 Conn. App. 672, 6 A.3d 141 (2010), in fashioning an appropriate modification. See id., 689 ("The retroactive award may take into account the long time period between the date of filing a motion to modify . . . and the date that motion is heard, which in this case spans a number of years. The court may examine the changes in the parties' incomes and needs during the time the motion is pending to fashion an equitable award based on those changes. The current alimony need not be uniformly retroactive, if such a result would be inequitable.").