Because I believe that the transcript of the disposition hearing shows clearly and unambiguously that the prosecutor unilaterally nolled the burglary case, I would conclude that there is no bar to the reinstitution of those charges in the present case. Accordingly, I would reverse the judgment of the Appellate Court reversing the trial court's judgment of conviction following its denial of the defendant's motion to dismiss, and I would direct that court to uphold the judgment of conviction. I therefore dissent.

TOWN OF MIDDLEBURY ET AL. *v.* CONNECTICUT SITING COUNCIL
(SC 19799)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa and Robinson, Js.*

Syllabus

Pursuant to statute (§ 16-50p [c] [1]), in granting a certificate of environmental compatibility and public need for the operation of an electric generating or storage facility, the Connecticut Siting Council shall not grant such a certificate "unless it finds and determines a public benefit for the facility and considers neighborhood concerns . . . including public safety."

The plaintiffs, the town of Middlebury and sixteen residents and entities situated in Middlebury and adjacent towns, appealed from the judgment of the trial court dismissing their appeal from the decision of the defendant council granting the petition to open and modify a certificate permitting the construction, maintenance and operation of an electric generating facility filed by the intervening defendant, C Co. The petition identified various changed conditions since the granting of the certificate that C Co. alleged necessitated various updates and upgrades to the electric generating facility. The council granted the petition as to the request to open the certificate, but opened the original docket in its entirety and did not limit the proceedings to the changed conditions alleged in C Co.'s petition. The council held evidentiary hearings at

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Palmer, Eveleigh, McDonald, Espinosa and Robinson. Although Chief Justice Rogers was not present at oral argument, she has read the briefs and appendices, and has listened to a recording of oral argument prior to participating in this decision.

which the plaintiffs opposed the facility on the basis of the changed conditions alleged in C Co.'s petition and raised a broad range of concerns with respect to the purported adverse effects of the facility on the environment and public safety. The council then granted the petition as to the request to modify, approving the proposed modifications. The council acknowledged that there was "continued public opposition" that it "tried to use constructively" in its decision. On appeal to the trial court, the plaintiffs claimed, inter alia, that the council did not follow the directive under § 16-50p (c) (1) to consider neighborhood concerns, the council violated the plaintiffs' due process rights through numerous decisions during the proceedings that impaired their ability to make their case, and the council's decision granting the certificate modification was not supported by substantial evidence. The trial court rendered judgment dismissing the plaintiffs' appeal, from which the plaintiffs appealed. *Held*:

1. The trial court properly concluded that the council had considered neighborhood concerns in accordance with § 16-50p (c) (1) in granting C Co.'s petition to open and modify the certificate, the plaintiffs having failed to meet their burden of proving that the council acted contrary to law and ignored neighborhood concerns that had been presented to it; because the statutory scheme did not define the term "consider" or set forth procedural requirements that might indicate a meaning specific to its context, the ordinary meaning of the term simply referred to a deliberative process that required the council to take neighborhood concerns into account, and, because there was no requirement in § 16-50p (c) (1) that the council expressly articulate any such reflections or deliberations, such concerns should have informed the council's decision to the extent that they were material, but the council was not required to articulate how and to what extent each such concern impacted its decision; furthermore, although the council failed to use the word "neighborhood" in its findings of fact or decision, the council did address specific neighborhood concerns presented by the parties in its detailed findings of fact and decision, including issues of air emissions, visibility, noise, traffic, wetlands, wildlife, and public safety, and it specifically noted that it tried to incorporate those concerns raised in public opposition to improve the project.
2. This court could not review the plaintiffs' claim that the trial court improperly concluded that they had abandoned their due process and substantial evidence claims due to inadequate briefing; the plaintiffs having failed to challenge on appeal to this court the trial court's alternative conclusions that they had failed to establish the existence of a due process violation and that there was substantial evidence in the record to support the council's determination, this court could not afford the plaintiffs any practical relief because, even if it were to agree that the trial court abused its discretion in concluding that the plaintiffs had abandoned their claims due to inadequate briefing, the trial court's

unchallenged alternative conclusions on the merits would stand, and, accordingly, the plaintiffs' claim was moot and this court lacked subject matter jurisdiction to consider it.

Argued January 17—officially released June 27, 2017

Procedural History

Appeal from the decision of the defendant granting a petition to open and modify a certificate of environmental compatibility and public need to allow the expansion and reconfiguration of a previously permitted electric generating facility located in the town of Oxford, brought to the Superior Court in the judicial district of New Britain, where CPV Towantic, LLC, intervened as a party defendant; thereafter, the matter was tried to the court, *Schuman, J.*; judgment dismissing the appeal, from which the plaintiffs appealed. *Affirmed.*

Stephen L. Savarese, with whom was *Dana D'Angelo*, town attorney, for the appellants (plaintiffs).

Robert L. Marconi, assistant attorney general, with whom were *Clare E. Kindall*, assistant attorney general, and, on the brief, *George Jepsen*, attorney general, for the appellee (defendant).

Philip M. Small and *Franca L. DeRosa*, with whom, on the brief, was *Kyle R. Johnson*, for the appellee (intervening defendant).

Opinion

McDONALD, J. This appeal concerns a proviso contained in General Statutes § 16-50p,[1] which precludes

[1] General Statutes § 16-50p provides in relevant part: "(a) (1) In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate. . . .

"(3) The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine:

"(A) Except as provided in subsection (b) or (c) of this section, a public need for the facility and the basis of the need;

"(B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of

the defendant, Connecticut Siting Council, from granting a certificate of environmental compatibility and public need (certificate) for operation of an electric generating or storage facility unless the council, among other things, "considers neighborhood concerns" with respect to specified factors. The plaintiffs, the town of Middlebury and sixteen residents and entities situated in Middlebury and adjacent towns,[2] appeal from the

every significant adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, impact on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife;

"(C) Why the adverse effects or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application . . . .

"(c) (1) The council shall not grant a certificate for a facility described in subdivision (3) of subsection (a) of section 16-50i, either as proposed or as modified by the council, unless it finds and determines a public benefit for the facility and considers neighborhood concerns with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety. . . ."

Although § 16-50p has been amended by the legislature several times since the events underlying the present case; see, e.g., Public Acts 2016, No. 16-163, §§ 8 and 9; the amendments have no bearing on the merits of the appeal. In the interest of simplicity, we refer to the current revision of the statute.

[2] In addition to the town of Middlebury, the plaintiffs are: Raymond Pietrorazio, Marian R. Larkin, Wayne McCormack, Paul Coward, Peter Polstein, John D. Retartha, Jay Halpern, Greenfields, LLC, Middlebury Land Trust, Inc., Oxford Greens Association, Inc., Naugatuck River Revival Group, Inc., Chester Cornacchia, Lake Quassapaug Association, Inc., Lake Quassapaug Amusement Park, Inc., Middlebury Bridle Land Association, Inc., and Oxford Flying Club, Inc. We note that some of the plaintiffs were made parties to the proceeding before the council, others were permitted to intervene in the proceeding, and others simply submitted comments or offered statements at the public hearing. Whether all of these plaintiffs are aggrieved by the council's decision is unclear. Nonetheless, we note that one of the plaintiffs, the town of Middlebury, had been determined to be aggrieved in two prior proceedings involving the proposed electric generating facility at issue. See *Middlebury* v. *Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. CV-07-4013143-S (November 1, 2007) (44 Conn. L. Rptr. 432, 433); *Middlebury* v. *Connecticut Siting Council*, Superior Court, judicial district of New Britain, Docket No. CV-01-0508047-S (February 27, 2002). In the present case, one brief was filed on behalf of all of the plaintiffs. Accordingly, we need not consider whether all of the plaintiffs are aggrieved. See *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc.*

judgment of the trial court dismissing their appeal from the decision of the council granting the petition of CPV Towantic, LLC (CPV),[3] to open and modify a certificate for an electric generating facility. The plaintiffs' principal claim is that the trial court improperly determined that the council adequately had considered neighborhood concerns, despite the absence of express findings or analysis in its decision addressing the plaintiffs' concerns about adverse impacts from the facility. We affirm the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. On June 23, 1999, the council granted CPV's predecessor a certificate, pursuant to General Statutes (Rev. to 1999) § 16-50k (a), permitting the construction, maintenance, and operation of a 512 megawatt electric generating facility in the town of Oxford. A citizen's group unsuccessfully challenged that decision. See *Citizens for the Defense of Oxford* v. *Connecticut Siting Council*, Superior Court, judicial district of Hartford-New Britain at New Britain, Docket No. CV-99-0497075-S (November 14, 2000). As of late 2014, the council had granted CPV several extensions of time to complete construction of the facility, but it was not yet completed and operational.

On November 3, 2014, CPV submitted a petition to open and modify the certificate based on changed conditions, pursuant to General Statutes § 4-181a (b). The changed conditions identified therein included a greater need for electric capacity, the development of the electric market, advances in the use of renewable resources and combustion turbine technology, and more rigorous environmental regulations. On the basis of the identified

v. *Planning & Zoning Commission*, 220 Conn. 527, 529 n.3, 600 A.2d 757 (1991) (declining to resolve whether all plaintiffs were aggrieved when one plaintiff's standing to appeal is established).

[3] CPV was given permission to intervene as a party defendant after the plaintiffs appealed from the council's decision granting CPV's petition.

changed conditions, CPV sought permission to update and upgrade its proposed electric generating facility to, among other things, provide approximately 50 percent more electricity (from 512 to 785 megawatts), expand its site from approximately twenty acres to twenty-six acres, and reconfigure its buildings and stacks for a lower profile.

The council granted the petition as to the request to open the certificate, but opened the original docket in its entirety and thus did not limit the proceedings to the changed conditions alleged in CPV's petition. As a consequence, the plaintiffs and others sought to oppose the facility on the basis of other changed conditions that they claimed weighed against the facility as originally planned and as proposed. One of the individual plaintiffs was designated a party to the proceedings, other plaintiffs, including the town of Middlebury, were permitted to intervene in the proceedings, and others participated in the process by submitting public comments and/or speaking at the public hearings.

Between January and March, 2015, the council conducted a public inspection of the site and held seven evidentiary hearings. At the evidentiary hearings, the parties and intervenors were permitted to submit evidence and question witnesses. In addition, the council sought information from parties and intervenors through interrogatories and requests for late-filed exhibits. The plaintiffs raised a broad range of concerns on the purported adverse effects of the facility on the environment and public safety, including, but not limited to, the impact of harmful pollutants on nearby residents, the effect of increased pollution, noise, and traffic on the rural setting of the neighboring localities, and the proximity of the facility to the Waterbury-Oxford Airport and its attendant risk to aviation safety.

On May 14, 2015, the council issued a written decision granting the petition as to the request to modify the

certificate and approving CPV's proposed modifications, with certain conditions. The decision was issued in three parts: "Findings of Fact" (sixty-three pages containing 314 separate findings); "Opinion" (ten pages of ultimate findings of fact and legal conclusions); and "Decision and Order." The council determined therein that conditions had changed since it issued the original certificate in 1999, citing most, but not all, of the changes alleged in CPV's petition. It acknowledged the anticipated adverse effects of the facility, but concluded that such effects were "not disproportionate either alone or cumulatively with other effects when compared to [the] benefit" and were therefore "not sufficient reason to deny the proposed project." The council concluded: "[T]he current CPV proposal significantly improves on th[e] original project. CPV's project utilizes state-of-the-art combustion technology to increase the reliability of the power supply. It is equally as protective of natural resources as the approved project, and, in a few cases, more so, as the technical standards for measuring, monitoring and maintaining protection have risen. *Notwithstanding continued public opposition, which the* [*c*]*ouncil both acknowledges and has tried to use constructively in this decision*, it is the [c]ouncil's opinion that improvements offered by CPV's proposal do provide significant benefit to the public." (Emphasis added.)

The plaintiffs appealed from the council's decision to the Superior Court pursuant to General Statutes § 4-183 (a). On appeal, the plaintiffs principally claimed that (1) the council did not follow its statutory directive under § 16-50p (c) (1) to consider neighborhood concerns, (2) the council violated the plaintiffs' due process rights through numerous decisions during the proceedings that impaired their ability to make their case, and (3) the council's decision granting the certificate modification was not supported by substantial evidence.

After oral argument, the trial court dismissed the appeal. The trial court concluded that the council had "extensively considered neighborhood concerns" because "there can be no genuine dispute that the council heard and admitted massive amounts of evidence about neighborhood concerns and made extensive findings on these matters in its decision." The court deemed the plaintiffs' due process and substantial evidence claims abandoned due to inadequate briefing, but nonetheless explained why those claims failed on the merits. The trial court concluded that "[t]he plaintiffs enjoyed a full opportunity to present their case" and, in any event, had failed to identify any harm flowing from the rulings they challenged. In addition, the trial court concluded that there was substantial evidence to support the council's decision approving CPV's modifications. Accordingly, the trial court rendered judgment dismissing the plaintiffs' appeal.

The plaintiffs appealed to the Appellate Court, challenging the trial court's decision on the merits of their neighborhood concerns claim and on the abandonment of their due process and substantial evidence claims. We thereafter transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

I

The plaintiffs' principal claim is that the trial court improperly concluded that the council had discharged its duty under § 16-50p (c) (1) to consider neighborhood concerns in granting CPV's petition to open and modify its certificate. They disagree that it is sufficient for the council to entertain their evidence and broadly acknowledge their concerns. They contend, in effect, that, in order to "consider" neighborhood concerns, the council was required to formally acknowledge their individualized concerns in its decision and to articulate

a response, if not to all of them, at least to their major concerns. Although they advance a broad attack on the council's decision, the plaintiffs specifically identify only one concern that they claim was ignored by the council—the possible effect of the facility's air emissions on local production of hay and timber. We disagree that the council failed to satisfy its statutory obligation to consider neighborhood concerns.

The present case requires us both to discern the meaning of a statute and to ascertain whether that standard was met under the facts of the present case. As such, our analysis of § 16-50p (c) (1) is guided by General Statutes § 1-2z and well established principles of statutory construction. See *Lieberman* v. *Aranow*, 319 Conn. 748, 756–58, 127 A.3d 970 (2015); see also *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, 322 Conn. 1, 11, 145 A.3d 851 (2016). "[O]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature." (Internal quotation marks omitted.) *FairwindCT, Inc.* v. *Connecticut Siting Council*, 313 Conn. 669, 680, 99 A.3d 1038 (2014). Statutory construction presents a question of law over which we exercise plenary review. See *Indian Spring Land Co.* v. *Inland Wetlands & Watercourses Agency*, supra, 11.

Section 16-50p (c) (1), part of the Public Utility Environmental Standards Act (act) under chapter 277a of the General Statutes, provides in relevant part: "The council shall not grant a certificate for a facility . . . either as proposed or as modified by the council, unless it finds and determines a public benefit for the facility and *considers neighborhood concerns* with respect to the factors set forth in subdivision (3) of subsection (a) of this section, including public safety." (Emphasis added.)

We begin by acknowledging what is and is not at issue. There is no claim in the present case that the

concerns raised by the plaintiffs failed to relate to the factors set forth in § 16-50p (a) (3), which focuses on environmental impact and public safety. See footnote 1 of this opinion. Nor is there a claim that the concerns raised were not ones affecting the "neighborhood," a term that is not defined in the act. Instead, the present case turns on the nature of the council's obligation to "[consider] neighborhood concerns . . . ." General Statutes § 16-50p (c) (1).

Nowhere in the act is the term "consider" defined, nor does the act elaborate procedural requirements that might indicate a meaning specific to this context. "In the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Studer* v. *Studer*, 320 Conn. 483, 488, 131 A.3d 240 (2016); see General Statutes § 1-1 (a) (directing courts to use common meaning). As the trial court observed, and the plaintiffs themselves acknowledge and accept, "consider" is defined in Webster's Third New International Dictionary (1986) as "to reflect on: think about with a degree of care or caution . . . ." The American Heritage Dictionary of the English Language (5th Ed. 2011) similarly defines consider as "[t]o think carefully about," "[t]o take into account," and "[t]o look at thoughtfully . . . ." These definitions simply refer to a deliberative process.

Thus, although the council is required to take neighborhood concerns into account, notably absent from § 16-50p (c) (1) is any requirement that the council expressly articulate any such reflections or deliberations. By contrast, in that same subdivision of the statute, the legislature has provided that the council cannot

grant a certificate for an electric generating facility "unless it *finds and determines* a public benefit for the facility . . . ." (Emphasis added.) General Statutes § 16-50p (c) (1). Similarly, § 16-50p (a) (3) (B)—incorporated by reference in § 16-50p (c) (1)—directs the council to "*find and determine* . . . [t]he nature of the probable environmental impact of the facility . . . including a specification of every significant adverse effect" with respect to a nonexhaustive list of factors. (Emphasis added.) If the legislature intended for the council to make specific findings and determinations regarding neighborhood concerns, it presumably would have used similar language. Its failure to do so suggests an intent to place a lesser burden on the council with respect to neighborhood concerns.

Indeed, in other contexts, the legislature has required the fact finder both to "consider" specified matters and to make written findings relating to the considered matters. See, e.g., General Statutes § 19a-639 (a) (providing that, in deciding whether to grant certificate of need with respect to health-care facilities, Office of Health Care Access "shall take into consideration and make written findings" concerning enumerated guidelines and principles); see also General Statutes § 1-110a (b) (in determining whether public official and state or municipal employee convicted of crime related to his or her office should have his or her pension revoked or reduced, "the Superior Court shall consider and make findings" on listed factors); General Statutes § 17a-112 (k) (in determining whether termination of parental rights is in best interest of child, "the court shall consider and shall make written findings" concerning listed factors). The absence of a similar requirement in § 16-50p (c) (1) as to neighborhood concerns evidences an intention that such concerns inform the council's decision to the extent that they are material but does not

require the council to articulate how and to what extent each concern impacted its decision.

This interpretation of § 16-50p (c) (1) is consistent with how our courts and other courts have interpreted statutes with similar language mandating consideration of particular information. See, e.g., *Weiman* v. *Weiman*, 188 Conn. 232, 234, 449 A.2d 151 (1982) (under General Statutes § 46b-82, providing that court " 'shall consider' " enumerated factors in determining whether to award alimony, "[t]he court is not obligated to make express findings on each of the statutory criteria"); *Corcoran* v. *Connecticut Siting Council*, 50 Conn. Supp. 443, 448–49, 934 A.2d 870 (2006) (under General Statutes § 16-50x [a], providing in relevant part that council " 'shall give such consideration to other state laws and municipal regulations as it shall deem appropriate,' " court concluded that council "did consider the town zoning regulations because they were presented to the council as part of [the] application" [emphasis omitted]), aff'd, 284 Conn. 455, 934 A.2d 825 (2007); see also *Gonzalez* v. *Napolitano*, 684 F. Supp. 2d 555, 562–63 (D.N.J. 2010) (collecting federal cases interpreting requirement to "consider" specified matter), aff'd, 678 F.3d 254 (3d Cir. 2012); *Central Valley Chrysler-Jeep* v. *Witherspoon*, 456 F. Supp. 2d 1160, 1173 (E.D. Cal. 2006) ("a congressional requirement that a decision maker 'consider' a factor . . . requires an actor to merely 'investigate and analyze' the specified factor, but not necessarily act upon it").

In sum, the requirement to consider neighborhood concerns only obliges the council to reflect on the concerns of the neighborhood and take them into account when rendering a decision. There is no support for the more onerous interpretation proffered by the plaintiffs.

Nevertheless, the plaintiffs argue that the council failed to satisfy its obligations even under this more

limited interpretation because its failure to mention "neighborhood" anywhere in its findings of fact or decision suggests that the council did not consider neighborhood concerns. We disagree.

We first observe that "there is a strong presumption of regularity in the proceedings of a public agency, and we give such agencies broad discretion in the performance of their administrative duties, provided that no statute or regulation is violated." *Forest Walk, LLC* v. *Water Pollution Control Authority*, 291 Conn. 271, 286, 968 A.2d 345 (2009); see also *Brecciaroli* v. *Commissioner of Environmental Protection*, 168 Conn. 349, 356, 362 A.2d 948 (1975) ("[i]t must be presumed . . . that the defendant's denial of the application [to conduct a regulated activity on wetlands] was based on the standards set forth in § 22a-33 of the General Statutes, which requires the hearing officer to 'consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell-fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in sections 22a-28 to 22a-35, inclusive' "). This presumption is supported by the council's statement in its decision regarding "public opposition, which the [c]ouncil both acknowledges and has tried to use constructively in this decision . . . ." To place weight on the fact that the council declined to label the public opposition as "neighborhood concerns" would elevate form over substance.

More fundamentally, it is plain that the council did address specific neighborhood concerns presented by the parties and intervenors in its 314 findings of fact and detailed decision. The council made specific findings with respect to the factors in § 16-50p (a) (3) (B) that would have the most profound effect on persons and entities from the surrounding localities, including on issues of air emissions, visibility, noise, traffic, wet-

lands, wildlife, and public safety. In addition, the council noted that it tried to incorporate those concerns raised in the public opposition to improve the project. Indeed, the only concern that the plaintiffs specifically identify that the council purportedly ignored was the possible effect of air emissions from the facility on the local production of hay and timber. In its air quality and vegetation impact analysis, however, the council specifically found that the deposition rates of pollutants were considerably less than the United States Environmental Protection Agency's screening criteria for protection of deposition to soils and vegetation uptake, and that the deposition rates were lower than what was associated with the previously approved project.

Simply put, the plaintiffs have not met their burden of proving that the council acted contrary to law and ignored the neighborhood concerns that were presented to it. See *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343–44, 757 A.2d 561 (2000). Accordingly, we conclude that the trial court properly concluded that the council considered neighborhood concerns in accordance with § 16-50p (c) (1).

II

The plaintiffs also claim that the trial court improperly concluded that they had abandoned their due process and substantial evidence claims due to inadequate briefing. CPV contends, however, that this court cannot afford any practical relief on this claim because the plaintiffs have failed to challenge the trial court's alternative conclusions rejecting the claims on the merits. We agree with CPV. Consequently, we cannot review the plaintiffs' claim related to inadequate briefing, as it is moot.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . ." (Internal

quotation marks omitted.) *In re Jorden R.*, 293 Conn. 539, 555, 979 A.2d 469 (2009). It is well settled that "[a]n issue is moot when the court can no longer grant any practical relief." (Internal quotation marks omitted.) *Wyatt Energy, Inc.* v. *Motiva Enterprises, LLC*, 81 Conn. App. 659, 661, 841 A.2d 246 (2004). "In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way." (Internal quotation marks omitted.) *In re Jorden R.*, supra, 556.

"Where an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if this court were to agree with the appellant on the issues that he does raise, we still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims." (Internal quotation marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526–27, 153 A.3d 647 (2017). In such cases, the challenged ground is rendered moot. See *Doe* v. *Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 379 n.23, 119 A.3d 462 (2015) ("where alternative grounds found by the reviewing court and unchallenged on appeal would support the trial court's judgment, independent of some challenged ground, the challenged ground that forms the basis of the appeal is moot because the court on appeal could grant no practical relief to the complainant" [internal quotation marks omitted]); *State* v. *Abushaqra*, 151 Conn. App. 319, 326, 96 A.3d 559 (2014) (writ of error dismissed as moot where plaintiff in error failed to contest alternative holding of trial court).

In the present case, the trial court decided the plaintiffs' due process and substantial evidence claims both on procedural grounds and on the merits. In their brief before this court, the plaintiffs do not challenge the trial court's conclusions that they had failed to establish the existence of a due process violation and that there

was substantial evidence in the record to support the council's determination. As such, we cannot afford the plaintiffs any practical relief because, even if we were to agree that the trial court abused its discretion in concluding that they had abandoned their due process and substantial evidence claims due to inadequate briefing, the trial court's unchallenged decision on the merits would stand. Accordingly, the plaintiffs' claim is moot, and this court lacks subject matter jurisdiction to consider it.

The judgment is affirmed.

In this opinion the other justices concurred.

BRENMOR PROPERTIES, LLC *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF LISBON
(SC 19665)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa and Robinson, Js.

Syllabus

The plaintiff developer appealed to the trial court from the decision of the defendant planning and zoning commission denying its application for an affordable housing subdivision pursuant to statute (§ 8-30g). The commission had denied that application on the ground that the project, as proposed, did not comply with a municipal ordinance governing the construction of roads or the state fire safety code. The trial court rendered judgment sustaining the plaintiff's appeal, concluding that neither noncompliance with the ordinance nor noncompliance with the fire code constituted a valid ground on which to deny the application, and remanded the matter to the commission with direction to grant the application as presented. The commission appealed to the Appellate Court, which concluded that the trial court properly sustained the plaintiff's appeal and did not abuse its discretion by ordering the commission to approve the application as is. The commission, on the granting of certification, appealed to this court from the Appellate Court's judgment. *Held* that the Appellate Court properly affirmed the judgment of the trial court, this court having concluded that, following consideration of the arguments presented, the Appellate Court's opinion should be adopted as the proper statement of the issues and the applicable law

concerning those issues, and, in light of the commission's concession before both the Appellate Court and this court that the abuse of discretion standard of review applied to the trial court's decision to order the commission to approve the plaintiff's application as presented, this court declined to consider the standard applicable to a trial court's affordable housing remedy under § 8-30g.

Argued January 20—officially released June 27, 2017

Procedural History

Appeal from the decision of the defendant denying the plaintiff's application for subdivision approval, brought to the Superior Court in the judicial district of New London and transferred to the judicial district of Hartford, Land Use Litigation Docket; thereafter, the matter was tried to the court, *Shluger*, *J.*; judgment sustaining the appeal, from which the defendant, on the granting of certification, appealed to the Appellate Court, *Gruendel*, *Mullins* and *Sullivan*, *Js.*, which affirmed the judgment of the trial court, and the defendant, on the granting of certification, appealed to this court. *Affirmed*.

Michael A. Zizka, for the appellant (defendant).

Timothy S. Hollister, with whom were *Beth Bryan Critton* and *Andrea L. Gomes*, for the appellee (plaintiff).

Mark K. Branse and *Caleb F. Hamel* filed a brief for the Garden Homes Management Corporation as amicus curiae.

Opinion

PER CURIAM. This certified appeal requires us to consider the relationship between a town's roadway construction standards and the more flexible treatment given to development proposals made pursuant to the Affordable Housing Appeals Act, General Statutes § 8-30g. The defendant, the Planning and Zoning Commission of the Town of Lisbon (commission), appeals, upon

our grant of its petition for certification, from the judgment of the Appellate Court affirming the judgment of the trial court sustaining the administrative appeal of the plaintiff, Brenmor Properties, LLC. *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, 162 Conn. App. 678, 680, 136 A.3d 24 (2016); see footnote 4 of this opinion. On appeal, the commission claims that the Appellate Court improperly concluded that (1) the commission was required to grant the plaintiff's application for subdivision approval, despite the application's lack of compliance with a municipal road ordinance (road ordinance),[1] and (2) the trial court properly ordered the commission to approve the plaintiff's application "as is," rather than remand the case to the commission for consideration of potential conditions of approval. We disagree and, accordingly, we affirm the judgment of the Appellate Court.

The record and the Appellate Court's opinion reveal the following facts and procedural history.[2] "At all relevant times, the plaintiff owned a 12.92 acre parcel of undeveloped land with frontage on Ames Road and Route 169 in Lisbon (property). The property contains a small pond and 1.9 acres of the property are designated as wetlands. In May, 2012, the plaintiff filed an application with the commission pursuant to . . . § 8-30g for approval of an affordable housing subdivision. The proposed subdivision consisted of nineteen residential lots with an average size of 29,620 square feet. On all but one lot, a single-family, three bedroom modular home would be erected. The proposal also included

[1] See Town of Lisbon, "An Ordinance Concerning the Construction and Acceptance of Roads in the Town of Lisbon Connecticut" (June 29, 1995); see also *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 683 n.10.

[2] We note that the Appellate Court's opinion contains a more detailed recitation of the facts and procedural history underlying this certified appeal. See *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 681–91.

a dedicated septic system and well for each home. With respect to price restrictions, six of the eighteen proposed homes would be deed-restricted for forty years at prices within the economic reach of moderate income households . . . .

"Four of the proposed lots were to be located on the westerly side of the property and would be accessed by driveways on Route 169. The remaining lots were to be located on the easterly side of the property adjacent to Ames Road and would be accessed by a private roadway, which the plaintiff describes as a common driveway and the commission characterizes as an interior road network. This appeal concerns that roadway." (Footnotes omitted; internal quotation marks omitted.) *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 681–82.

The commission held a public hearing on the plaintiff's application over the course of five evenings in 2012. See id., 682–83. "In response to various comments raised during that hearing, the plaintiff submitted multiple revisions to its proposal, culminating with its November 13, 2012 'final submission materials.' Following the conclusion of the public hearing, the commission's legal counsel . . . prepared a document dated January 8, 2013, and entitled 'Brenmor Subdivision Application Issues and Potential Conditions of Approval' (document). That document delineated seven issues and provided analysis thereof. At the commission's regular meeting on January 8, 2013, the commission reviewed those seven issues. The proposed roadway's nonconformance with the . . . road ordinance . . . generated the most discussion, as the roadway violated its minimum width and maximum grade requirements." (Footnote omitted.) Id., 683. Following deliberations at the commission's regular meeting on January 8, 2013, the commission voted unanimously to deny the plaintiff's application, with counsel for the

commission remarking for the record that the plaintiff was "welcome" to return with a modified proposal "where the road meets town standards because . . . that would solve most of . . . the [commission's] issues . . . ." Id., 684–85.

"On January 30, 2013, the plaintiff filed with the commission a modified affordable housing proposal pursuant to § 8-30g (h)." Id., 685–86. Although the modified application "contained certain modifications that the plaintiff made 'in direct response to the [commission's] January 8, 2013 denial.' That revised plan nonetheless did not modify the width or grade of the proposed roadway . . . so as to fully comply with the requirements of the road ordinance. In its written response to the commission's January 8, 2013 denial of its subdivision application, the plaintiff acknowledged that the commission at that time had proposed, as a potential condition of approval, that the roadway 'shall conform to standards established' in the road ordinance. The plaintiff nonetheless submitted that such a condition was unnecessary, as '[t]here is no expert or other testimony in the record that the proposed [roadway is] unsafe.' The plaintiff thereafter further revised its proposal, as reflected in its revised plan that was received by the commission on March 5, 2013." (Footnote omitted.) Id., 686–87.

"On March 5, 2013, the commission held a public hearing on the plaintiff's modified application, as required by § 8-30g (h)." Id., 687. Admitting that the " 'internal roadway system' " did not satisfy the road ordinance, the plaintiff presented the commission with a traffic engineer's study that "concluded that the proposed subdivision was 'going to be a very low traffic generator, given the . . . small number of units,' " with proposed roadways that " 'will provide safe and efficient access, egress, and circulation for the residents and guests of the subdivision as well as the general

public entering or passing the property. In addition, the [proposed roadway] interior to the site will sufficiently accommodate circulation by emergency vehicles.' " Id., 687–88. As part of the plaintiff's modified application, the traffic engineer provided "both a written 'traffic safety review' and testimony before the commission, in which he opined that the plan set forth in the resubmission 'does provide for safe traffic operations and site circulation. It provides for safe ingress and egress for passenger cars and emergency vehicles [and] does not present any public health or safety concerns.' " Id., 688.

"At that public hearing, the commission's professional staff also commented on the modified proposal." Id. Lisbon's town planner and town engineer "disagreed with the plaintiff's assertion that the proposed roadway qualified as a driveway, as it would provide 'the only access to fifteen single-family dwellings,' " and emphasized that the "the proposed roadway did not comply with the minimum width or maximum grade requirements of the road ordinance." Id. Lisbon's fire marshal also submitted a letter expressing his concern that the proposed roadway did not conform to the State of Connecticut Fire Prevention Code (fire code). See id., 690, 708. Although the commission's professional staff members "repeatedly emphasized that the proposed roadway did not comply with the requirements of the road ordinance, [they did not indicate] that compliance was necessary to protect a substantial public interest or that the risk of harm thereto clearly outweighed the need for affordable housing." Id., 689.

"The commission deliberated the merits of the plaintiff's [modified] application at its April 2, 2013 meeting." Id. The commission voted unanimously, with one commissioner abstaining, to deny the modified application based on the recommendations of Lisbon's engineer and fire marshal given, inter alia, the failure of the

internal roadways to conform to the road ordinance and fire code. Id., 690–91.

"From that decision, the plaintiff appealed to the Superior Court. On June 13, 2014, the court issued its memorandum of decision. In sustaining the plaintiff's appeal, the court concluded that neither noncompliance with the road ordinance nor noncompliance with the fire code constituted a valid ground on which to deny the plaintiff's application.[3] As a result, the court reversed the 'denial of the plaintiff's resubmission and remand[ed] the case to the [commission] with direction to grant the plaintiff's resubmission as is.' " (Footnote altered.) Id., 691.

Following its grant of the commission's petition for certification to appeal pursuant to General Statutes § 8-8 (o), the Appellate Court affirmed the judgment of the trial court in a unanimous and comprehensive opinion. See id., 680, 691. The Appellate Court upheld the trial court's determination that the plaintiff's noncompliance with the road ordinance did not constitute a valid ground on which the commission could deny its modified affordable housing application under § 8-30g. See id., 693. The Appellate Court first concluded that, "the establishment of town-wide standards [by ordinance] for road construction is [a] matter of public health and safety that a commission may properly consider under the [A]ffordable [H]ousing [A]ppeals [A]ct," although "any deviation from those standards" does not constitute "a per se ground for denial of an affordable housing application." (Internal quotation marks omitted.) Id., 699–700. The Appellate Court then concluded that the evidence in the record demonstrated that fire and traffic

[3] The trial court declined to consider the fire marshal's letter expressing concerns about noncompliance with the fire code because it was not based on an analysis of the modified proposal that is the subject of this appeal. See *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 707–708.

safety were not adversely affected by the plaintiff's noncompliance with the road ordinance with respect to the proposed subdivision's internal roadways, which were in essence low traffic driveways that served only the homes in the subdivision. Id., 700–702. Turning to the remedy ordered by the trial court, the Appellate Court then held that the trial court did not abuse its discretion in remanding the case to the commission with direction to grant the plaintiff's modified application "as is," rather than for consideration of conditions of approval. Id., 714. This certified appeal followed.[4]

Our examination of the record and briefs and our consideration of the arguments of the parties persuade us that the judgment of the Appellate Court should be affirmed. Because the Appellate Court's well reasoned opinion fully addresses the certified issues, it would serve no purpose for us to repeat the discussion contained therein. We therefore adopt the Appellate Court's opinion as the proper statement of the issues and the applicable law concerning those issues. See, e.g., *Recall Total Information Management, Inc.* v. *Federal Ins. Co.*, 317 Conn. 46, 51, 115 A.3d 458 (2015); *State* v. *Buie*, 312 Conn. 574, 583–84, 94 A.3d 608 (2014).

We make one observation, however, with respect to the Appellate Court's analysis of the second certified issue,[5] which concerns the remedy ordered by the trial

[4] We granted the commission's petition for certification for appeal limited to the following issues: (1) "Did the Appellate Court properly conclude that the trial court correctly determined that the plaintiff's noncompliance with the road ordinance did not constitute a valid ground on which to deny its modified affordable housing application?"; and (2) "Did the Appellate Court correctly determine that the trial court properly ordered the commission to approve the plaintiff's subdivision application 'as is' rather than allowing the commission, on remand, to consider appropriate conditions of approval?" *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, 320 Conn. 928, 133 A.3d 460 (2016).

[5] Although we agree entirely with the Appellate Court's resolution of the first certified issue, we briefly address the commission's argument that the Appellate Court improperly failed to address two cases that it cited in support of its authority to deny the plaintiff's application on the basis of its failure to comply with the roadway ordinance. Specifically, the commission

court. Consistent with the commission's concession before that court, the Appellate Court determined that the abuse of discretion standard of review applies to the trial court's decision to order the commission to approve the plaintiff's application "as is," rather than remand the case to the commission for consideration of potential conditions of approval.[6] *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 711 and n.31. The commission has reiterated

relies on *Blue Sky Bar, Inc.* v. *Stratford*, 203 Conn. 14, 25–29, 523 A.2d 467 (1987), which rejected an equal protection challenge to an ordinance prohibiting vending from motor vehicles on the town's streets or public property, and *Cormier* v. *Commissioner of Motor Vehicles*, 105 Conn. App. 558, 566–68, 938 A.2d 1258 (2008), which rejected an equal protection challenge to the distinction between vehicles weighing less than 26,001 pounds for purposes of lifetime commercial driver's license disqualification under General Statutes § 14-44k (h). The commission argues that *Blue Sky Bar, Inc.*, and *Cormier* stand for the propositions that "safety standards in general are not susceptible to bright line analysis," and the "town's legislative judgment must prevail," notwithstanding its failure to provide "analytical data" to support its decision. Having reviewed these cases, we believe that the Appellate Court reasonably may have deemed them to be so inapposite as not to warrant mention, because they concern facial constitutional challenges to municipal ordinances calling for rational basis review. *Blue Sky Bar, Inc.* v. *Stratford*, supra, 28–29; *Cormier* v. *Commissioner of Motor Vehicles*, supra, 566–67. In contrast, the present case requires the court to apply a nuanced balancing test in determining whether an individual affordable housing application should be granted relief from a particular municipal ordinance pursuant to § 8-30g. See, e.g., *River Bend Associates, Inc.* v. *Zoning Commission*, 271 Conn. 1, 26, 856 A.2d 973 (2004).

[6] We note that appellate review of the trial court's other decisions under § 8-30g (g) is plenary. Thus, we first engage in plenary review of "whether the decision from which such appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record. . . . Specifically, the court must determine whether the record establishes that there is more than a mere theoretical possibility, but not necessarily a likelihood, of a specific harm to the public interest if the application is granted." (Citation omitted; internal quotation marks omitted.) *River Bend Associates, Inc.* v. *Zoning Commission*, 271 Conn. 1, 26, 856 A.2d 973 (2004). "If the court finds that such sufficient evidence exists, then it must conduct a plenary review of the record and determine independently whether the commission's decision was [1] necessary to protect substantial interests in health, safety or other matters that the commission legally may consider, [2] whether the risk of such harm to such public interests clearly outweighs the need for affordable housing, and [3] whether the public interest can be protected by reasonable changes to the affordable housing development." Id.

that concession in its brief and at oral argument before this court. Accordingly, we need not consider that issue further, and apply the abuse of discretion standard of review in this certified appeal with respect to the trial court's affordable housing remedy under § 8-30g as upheld by the Appellate Court.[7]

The judgment of the Appellate Court is affirmed.

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[7] Further, query the applicability of the well established principle that a directed grant of an application is an appropriate remedy only when it appears that the relevant municipal land use authority could reasonably reach only one conclusion on remand. See, e.g., *Bogue* v. *Zoning Board of Appeals*, 165 Conn. 749, 753–54, 345 A.2d 9 (1974) ("It is true that when on a zoning appeal it appears that as a matter of law there was but a single conclusion which the zoning authority could reasonably reach, the court may direct the administrative agency to do or to refrain from doing what the conclusion legally requires. . . . In the absence of such circumstances, however, the court upon concluding that the action taken by the administrative agency was illegal, arbitrary or in abuse of its discretion should go no further than to sustain the appeal taken from its action. For the court to go further and direct what action should be taken by the zoning authority would be an impermissible judicial usurpation of the administrative functions of the authority." [Citations omitted.]). Although the plaintiff seems to agree that this general principle applies in the affordable housing context, the Appellate Court held that it does not, relying on our decision in *AvalonBay Communities, Inc.* v. *Zoning Commission*, 284 Conn. 124, 140 n.15, 931 A.2d 879 (2007), and its decision in *Wisniowski* v. *Planning Commission*, 37 Conn. App. 303, 320–21, 655 A.2d 1146, cert. denied, 233 Conn. 909, 658 A.2d 981 (1995), for the proposition that judicial remedies are more "expansive" in affordable housing appeals under § 8-30g (g) than regular land use appeals. *Brenmor Properties, LLC* v. *Planning & Zoning Commission*, supra, 162 Conn. App. 710 and n.30. As a general matter, application of this general principle in the affordable housing context seems inconsistent with the abuse of discretion standard of review. Nevertheless, given the commission's concessions, and the fact that the trial court did not abuse its discretion in determining that a directed grant was appropriate even under the usurpation rule, we apply the abuse of discretion standard of review for purposes of this certified appeal.

STATE OF CONNECTICUT *v.* JAMES SEELEY (SC 19790)

Rogers, C. J., and Palmer, Eveleigh, McDonald, Espinosa and Robinson, Js.*

Syllabus

Convicted of the crime of forgery in the second degree, the defendant appealed. The defendant, who had been responsible for the dally operations of a company, M Co., sought to purchase a vehicle in the name of the company. Because the defendant did not wholly own M Co., the dealership selling the vehicle required a certified resolution signed by at least two different corporate officers. The defendant subsequently sent a certified resolution to the dealership purporting to contain the signature of a second corporate officer, B, through a fax machine located in the home of the defendant's father. Following a review of corporate bank records, B discovered certain unauthorized charges connected to the dealership. During a subsequent meeting of M Co.'s shareholders, the defendant referred to the purchase as a mistake and was visibly upset. B then pursued a criminal complaint against the defendant, claiming that B's signature was forged on the certified resolution. Following presentation of the state's case-in-chief during a trial to the court, the defendant filed a motion for a judgment of acquittal, which the court denied. Following the defendant's presentation of his case and the close of evidence, the trial court found the defendant guilty and rendered judgment of conviction. On appeal, the defendant claimed, inter alia, that this court should exercise its supervisory authority over the administration of justice to abandon the waiver rule, which provides that a criminal defendant may secure appellate review of a trial court's denial of a motion for a judgment of acquittal following the state's case-in-chief only by forgoing the right to put on evidence, in the context of bench trials. The defendant also claimed, in the alternative, that the state's evidence was insufficient to support his conviction. *Held*:

1. This court declined to consider whether to abandon the waiver rule in the context of bench trials, the evidence presented by the state during its case-in-chief having been sufficient to establish the defendant's guilt beyond a reasonable doubt.
2. The state's evidence was sufficient to support the defendant's conviction of forgery in the second degree: the state presented sufficient evidence to prove beyond a reasonable doubt that the defendant forged B's signa-

* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Palmer, Eveleigh, McDonald, Espinosa and Robinson. Although Justice Palmer was not present at oral argument, he has read the briefs and appendices, and has listened to a recording of oral argument prior to participating in this decision.

ture on the certified resolution in light of, inter alia, B's repeated denial of authorship of the signature in question, testimony from the state's handwriting experts, the fact that only the defendant stood to benefit from the forged signature, and the defendant's demeanor when confronted at the meeting of M Co.'s shareholders; moreover, the state presented sufficient evidence to establish that the defendant acted with an intent to deceive the dealership, the defendant having been aware of the requirement of a second signature and having faxed the certified resolution rather than delivering it to the dealership in person to circumvent the dealership's policy of requiring in person proof of identification for business purchases.

Argued January 26—officially released June 27, 2017

Procedural History

Substitute information charging the defendant with the crime of forgery in the second degree, brought to the Superior Court in the judicial district of Danbury geographical area number three, and tried to the court, *Russo*, *J.*, which denied the defendant's motion for a judgment of acquittal and rendered judgment of guilty, from which the defendant appealed. *Affirmed*.

Norman A. Pattis, with whom were *Christopher La Tronica* and, on the brief, *Kevin Smith*, for the appellant (defendant).

Matthew A. Weiner, assistant state's attorney, with whom were *Deborah P. Mabbett*, senior assistant state's attorney, and, on the brief, *Stephen J. Sedensky III*, state's attorney, for the appellee (state).

Opinion

ROBINSON, J. The principal issue in this appeal is whether, in a trial to the court, the state presented sufficient evidence in its case-in-chief to support the conviction of the defendant, James Seeley, of forgery in the second degree in violation of General Statutes

§ 53a-139 (a) (1)[1] in connection with a document created to facilitate the purchase of a vehicle on behalf of a corporation.[2] In challenging the sufficiency of the evidence presented, the defendant claims that we should exercise our supervisory authority over the administration of justice to abandon the waiver rule[3] in the context of court trials, and review the trial court's denial of his motion for judgment of acquittal following the state's case-in-chief, despite the fact that he elected to introduce evidence of his own. We need not reach the defendant's claim regarding the waiver rule because we conclude that there was sufficient evidence in the state's case-in-chief to support the defendant's conviction. Accordingly, we affirm the judgment of the trial court.

The record reveals the following relevant facts and procedural history. In 2009, the defendant and Joshua Bennett formed a company, Miller & Stone, Inc., for the purpose of manufacturing and selling dietary sup-

[1] General Statutes § 53a-139 provides in relevant part: "(a) A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument or issues or possesses any written instrument which he knows to be forged, which is or purports to be, or which is calculated to become or represent if completed: (1) A deed, will, codicil, contract, assignment, commercial instrument or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status . . . ."

[2] The defendant appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[3] "The so-called waiver rule provides that, when a motion for [a judgment of] acquittal at the close of the state's case is denied, a defendant may not secure appellate review of the trial court's ruling without [forgoing] the right to put on evidence in his or her own behalf. The defendant's sole remedy is to remain silent and, if convicted, to seek reversal of the conviction because of insufficiency of the state's evidence. If the defendant elects to introduce evidence, the appellate review encompasses the evidence in toto." (Internal quotation marks omitted.) *State* v. *Perkins*, 271 Conn. 218, 220, 856 A.2d 917 (2004).

plements. By May, 2010, the shareholders of Miller & Stone, Inc., were the defendant, Bennett, Sandra Scott, E. Duane Meyer, and Sean Macpherson. The defendant ran the daily operations of Miller & Stone, Inc., while Bennett developed and designed its products. Although the other shareholders did not actively participate in management, their consent was required prior to any substantial expenditure of funds. Despite the efforts of the defendant and Bennett, Miller & Stone, Inc., never became profitable and was valued at less than $100,000.

In June, 2010, the defendant went to BMW of Ridgefield (dealership) to purchase a vehicle in the name of Miller & Stone, Inc. In order to do so, the defendant was required to submit his driver's license and numerous documents to the dealership, including a "Certified Resolution for Business Entity" (certified resolution), which is the document at issue in the present case. Because the defendant sought to purchase a vehicle in the name of Miller & Stone, Inc., a company he did not wholly own, the dealership required a certified resolution signed by at least two different corporate officers. Generally, the dealership required the parties signing a certified resolution to provide identification upon submission. The certified resolution in the present case, however, was sent through a fax machine located at the home of the defendant's father, Ian Seeley, and the dealership did not subsequently request identification. On June 28, 2010, the defendant completed the sale in the name of Miller & Stone, Inc., and took possession of a BMW M6 automobile (automobile).

Shortly thereafter, Bennett began receiving calls from customers who were interested in products from Miller & Stone, Inc., but who complained that the defendant was not following through on orders. A subsequent review of corporate bank records, which previously had been sent to the defendant's home, revealed certain unauthorized charges and checks sent to the dealership.

After seeing these expenditures, Bennett and Sandra Scott's husband, Andrew Scott, drove to the dealership, where they discovered that the automobile had been purchased in the name of Miller & Stone, Inc. They informed the dealership that the purchase was unauthorized.

Bennett, Andrew Scott, Macpherson, Meyer, and the defendant subsequently met to discuss the unauthorized expenditures. During this meeting, the defendant was "[v]ery upset," "crying," and "apologetic," and referred to the purchase of the automobile as "a mistake . . . ." The defendant was told that he needed either to return the automobile or list himself on the title. The defendant agreed and, on the following day, returned the automobile to the dealership. The automobile was subsequently resold at auction for $18,000 less than the amount owed by Miller & Stone, Inc., on the loan.

In early 2011, Bennett met with George Bryce, a detective with the Bethel Police Department, to review potential evidence in connection with the defendant's purchase of the automobile in the name of Miller & Stone, Inc. Convinced that one of the three signatures that appeared on the certified resolution purported to be but was not actually his, Bennett pursued a criminal complaint.

The state charged the defendant with forgery in the second degree in violation of § 53a-139 (a) (1). The case was subsequently tried to the court, *Russo*, *J.* Following the presentation of the state's case-in-chief, the defendant filed a motion seeking a judgment of acquittal, which was denied. Following the presentation of evidence by the defendant, the court found the defendant guilty as charged. The court subsequently rendered a corresponding judgment of conviction and sentenced the defendant to five years incarceration, execution

suspended, and three years probation with special conditions. This appeal followed.

On appeal, the defendant asks us to exercise our supervisory powers over the administration of justice to hold the waiver rule inapplicable to court trials, and to consider his claim that the trial court improperly denied his motion for judgment of acquittal at the close of the state's case-in-chief. In the alternative, the defendant claims that the evidence, considered in its entirety, was insufficient to find him guilty of forgery in the second degree. Additional relevant facts and procedural history will be set forth as necessary.

I

We initially address the defendant's request that we abandon the waiver rule in the context of court trials.[4]

[4] The defendant acknowledges that this court has upheld the constitutionality of the waiver rule and reaffirmed our adherence to it in the context of jury trials. See *State* v. *Perkins*, 271 Conn. 218, 231, 856 A.2d 917 (2004). Nevertheless, he claims that we should reject the waiver rule in the context of court trials for two reasons. First, the defendant relies on the fact that, as observed in *State* v. *Rutan*, 194 Conn. 438, 440, 479 A.2d 1209 (1984), the denial of a defendant's motion for judgment of acquittal places the defendant in a dilemma—he either must maintain his silence and present no evidence, or expose himself to the waiver rule and present evidence, such that the judge's denial of the initial motion for judgment of acquittal becomes unreviewable. Turning to court trials specifically, the defendant emphasizes the trial judge's role as fact finder, and the risk that the judge's initial denial of the defendant's motion for judgment of acquittal may taint the judge's final deliberations with respect to the defendant's guilt. Specifically, the defendant questions whether a trial judge can disregard his or her prior decision when deciding the case at the close of all the evidence. In response, the state contends that the waiver rule remains valid in the context of court trials because "there is no reason to believe that a Superior Court judge cannot decide whether the evidentiary record, considered in its entirety, supports the defendant's guilt beyond a reasonable doubt, independent from a prior decision that evidence presented during the state's case-in-chief, if construed in the light most favorable to the state, could support each element of the charged crime." The state emphasizes that, "in this case, the trial court, in denying the defendant's motion, frequently acknowledged the different standard applicable to an acquittal motion as compared to a guilty verdict."

"The so-called waiver rule provides that, when a motion for [a judgment of] acquittal at the close of the state's case is denied, a defendant may not secure appellate review of the trial court's ruling without [forgoing] the right to put on evidence in his or her own behalf. The defendant's sole remedy is to remain silent and, if convicted, to seek reversal of the conviction because of insufficiency of the state's evidence. If the defendant elects to introduce evidence, the appellate review encompasses the evidence in toto." (Internal quotation marks omitted.) *State* v. *Perkins*, 271 Conn. 218, 220, 856 A.2d 917 (2004); see also *State* v. *Papandrea*, 302 Conn. 340, 350 and n.5, 26 A.3d 75 (2011); *State* v. *Rutan*, 194 Conn. 438, 440, 479 A.2d 1209 (1984).

We need not, however, presently consider abandoning the waiver rule in the context of court trials because, "[b]ased on a review of the state's evidence only, the state ha[s] proven beyond a reasonable doubt that the defendant was guilty of [the crime charged]. On its merits, the defendant's claim is a challenge to the sufficiency of the evidence at the end of the state's case. Our review of the state's evidence is limited to . . . whether [a finder of fact] could have reasonably concluded, upon the facts established and the inferences reasonably drawn therefrom, that the cumulative effect of the evidence established guilt beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Calonico*, 256 Conn. 135, 139–40, 770 A.2d 454 (2001); see also *State* v. *Perkins*, supra, 271 Conn. 230 and n.12. Accordingly, we leave for another day the issue of whether we should abandon the waiver rule in the context of court trials.

II

We turn next to the defendant's claims regarding the sufficiency of the state's evidence. The defendant claims that the evidence was insufficient to support

a conviction of forgery in the second degree for two reasons. First, he contends that the state failed to present evidence from which a fact finder reasonably could have concluded that the defendant forged the signature, namely, because the handwriting evidence was inconclusive and did not establish beyond a reasonable doubt that the defendant committed a forgery. Second, he claims that the state presented insufficient evidence from which a fact finder could have concluded that the defendant forged with intent to deceive. We address each of these claims in turn.

"The standard of review [that] we [ordinarily] apply to a claim of insufficient evidence is well established. In reviewing the sufficiency of the evidence to support a criminal conviction we apply a two-part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . In evaluating evidence, the trier of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The trier may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . This does not require that each subordinate conclusion established by or inferred from the evidence, or even from other inferences, be proved beyond a reasonable doubt . . . because this court has held that a [fact finder's] factual inferences that support a guilty verdict need only be reasonable. . . .

"[A]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by

the defendant that, had it been found credible by the trier, would have resulted in an acquittal. . . . [I]n [our] process of review, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact . . . but the cumulative impact of a multitude of facts [that] establishes guilt in a case involving substantial circumstantial evidence." (Internal quotation marks omitted.) *State* v. *Taylor*, 306 Conn. 426, 431–32, 50 A.3d 862 (2012); cf. *State* v. *Balbuena*, 168 Conn. App. 194, 199, 144 A.3d 540 (standard of appellate review applicable to denial of motion for judgment of acquittal), cert. denied, 323 Conn. 936, 151 A.3d 384 (2016).

To establish that a person is guilty of forgery in the second degree in violation of § 53a-139 (a), the state must prove that the defendant (1) forged a written instrument or issues or possesses a forged instrument knowing it to be forged, and (2) did so with the intent to deceive another. See, e.g., *State* v. *DeCaro*, 252 Conn. 229, 240–41, 745 A.2d 900 (2000); *State* v. *Etienne*, 103 Conn. App. 544, 558, 930 A.2d 726 (2007); *State* v. *Henderson*, 47 Conn. App. 542, 551, 706 A.2d 480, cert. denied, 244 Conn. 908, 713 A.2d 829 (1998).

A

We begin with the defendant's claim that the evidence was insufficient with respect to the act element of forgery in the second degree, namely, that he forged a written instrument or "possesse[d] any written instrument which he knows to be forged . . . ." General Statutes § 53a-139 (a). The defendant contends that the state's evidence with respect to this element was inconclusive, at best, in that (1) the sum of the two experts' testimony cannot be said to have reasonably contributed to a finding of guilt, (2) Bennett's testimony was purely speculative, and (3) the employees of the dealership could

not testify about how the documents had been prepared or signed, rendering their testimony inconclusive as to his guilt. In response, the state contends that the fact finder reasonably could have concluded that Bennett's signature was forged in light of the testimony from Bennett, Bryce, and the state's two handwriting experts. The state also claims that the fact finder reasonably could have concluded that it was the defendant who forged Bennett's signature. We agree with the state and conclude that there was sufficient evidence to prove beyond a reasonable doubt that the defendant forged Bennett's signature on the certified resolution.

First, the fact finder reasonably could have concluded that the third signature on the certified resolution that purported to belong to Bennett was forged in light of the testimony from Bennett, Bryce, and the state's handwriting experts. During Bennett's testimony, he categorically denied that the third signature was his. Specifically, although Bennett conceded that it was possible that two of the signatures on the certified resolution were his because he often signed documents for the defendant under a time constraint without first reading them, when asked, Bennett repeatedly denied authorship of the third signature on the certified resolution. In its decision, the trial court credited Bennett as remaining consistent, with a demeanor that was emphatic when he stated that the signature under personal guarantor was not his and that he did not remember signing it.

Second, Bryce, the lead police investigator with respect to the allegations against the defendant, testified. During the investigation, Bryce called Bennett to ask him about the certified resolution that contained his purported signatures. Bryce testified that Bennett stated that "he did not recall ever signing any paperwork putting that purchase on the company." As to that conversation, Bryce testified that he "believe[d] that [Ben-

nett] did not knowingly have anything to do with the purchase of the [automobile] in the company's name." Further, Bryce met with Bennett and showed him the signatures on the certified resolution. Although Bennett did not recall providing any of the signatures, he specifically pointed to the third signature and stated that it definitely was not his.

Third, the state's two handwriting experts testified that the third signature on the document did not match the handwriting provided on Bennett's exemplars. The first expert, Greg Kettering, reviewed the signatures contained in the certified resolution. He did so by comparing the signatures to handwriting exemplars provided by Bennett. When examining the faxed copy, Kettering was unable to determine whether the third signature belonged to Bennett because it had been rendered illegible by the fax process. Once granted access to the original document, Kettering concluded, however, that the first two signatures shared a common authorship, but the third signature did not share a common authorship with the other two signatures. He also determined that the third signature did not share a common authorship with Bennett's exemplars, whereas the first two did. Finally, Lisa Ragaza, a forensic examiner responsible for the technical review of Kettering's work, reached the same conclusions as had Kettering.

On review, we defer to the fact finder's assessment of a witness' character and demeanor. See, e.g., *State* v. *Trine*, 236 Conn. 216, 227, 673 A.2d 1098 (1996). Here, the trial court, sitting as the finder of fact, credited the emphatic and consistent nature of Bennett's testimony that the third signature was not his. Accordingly, from these facts, the trial court reasonably found that, with respect to the question of authenticity of Bennett's signature, the state had "easily carried its burden of proving beyond a reasonable doubt that someone other than

. . . Bennett affixed the name Josh Bennett to the bottom of the [document]."

An ample amount of circumstantial evidence also supported the trial court's finding that it was the defendant who had forged Bennett's signature, namely, testimony provided by Bennett, Katherine Ann Boehn and Cynthia Cardinal-Palanzo, employees of the dealership, and Ian Seeley. "When evaluating the sufficiency of the evidence, [t]here is no distinction between direct and circumstantial evidence so far as probative force is concerned . . . . Indeed, [c]ircumstantial evidence . . . may be more certain, satisfying and persuasive than direct evidence. . . . Therefore, the probative force of the evidence is not diminished because it consists, in whole or in part, of circumstantial evidence rather than direct evidence." (Citation omitted; internal quotation marks omitted.) *State* v. *Balbuena*, supra, 168 Conn. App. 200; see, e.g., *State* v. *Jackson*, 257 Conn. 198, 206, 777 A.2d 591 (2001). First, the defendant drove the automobile and was listed as the designated driver of the automobile on the document at issue. Thus, it was only the defendant who stood to benefit from the forged signature. Also, Bennett testified about the meeting at which the defendant was confronted about the unauthorized purchase of the automobile. Bennett described the defendant, as "upset," "crying," and "apologetic," during this meeting and testified that the defendant referred to the purchase as a "mistake . . . ." From this, the fact finder reasonably could have inferred a consciousness of guilt and concluded that the defendant was responsible for the forgery. Second, Boehn and Cardinal-Palanzo testified that a second signature on the certified resolution was necessary to complete the purchase transaction so that the defendant could purchase a vehicle. They also noted the dealership's policy of alerting a customer to missing signatures on its documents, from which the trial court

reasonably could have inferred that the defendant was aware that a second signature was needed on the documents to complete the purchase. Third, Ian Seeley testified that the fax number on the certified resolution faxed to the dealership matched the fax number from the machine at his home, a location at which the defendant frequently worked. Viewing this circumstantial evidence in the light most favorable to sustaining the court's finding of guilt; see, e.g., *State* v. *Taylor*, supra, 306 Conn. 432; we conclude that the fact finder reasonably could have inferred that it was the defendant who had forged Bennett's signature on the certified resolution, which he faxed to the dealership.

B

Having determined that the trial court reasonably could have found beyond a reasonable doubt that the defendant had forged the signature on the certified resolution, we turn to the defendant's claim with respect to the second element, namely, that the state failed to prove beyond a reasonable doubt that he forged Bennett's signature *with the intent to deceive*. Distinguishing *State* v. *Dickman*, 119 Conn. App. 581, 989 A.2d 613, cert. denied, 295 Conn. 923, 991 A.2d 569 (2010), the defendant claims that that the record does not contain sufficient evidence to allow the finder of fact to infer the requisite specific intent to sustain a conviction of forgery in the second degree. In response, the state contends that the fact finder reasonably could have found that the defendant acted with the intent to deceive the dealership in forging Bennett's name. Additionally, the state contends that *Dickman* supports the trial court's ruling. We agree with the state and conclude that the trial court reasonably could have concluded that, in forging Bennett's signature, the defendant acted with the intent to deceive the dealership into believing that more than one member of

Miller & Stone, Inc., had consented to his purchase of the automobile.

"As we frequently have observed, [i]ntent is generally proven by circumstantial evidence because direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom." (Internal quotation marks omitted.) *State* v. *Nash*, 316 Conn. 651, 672, 114 A.3d 128 (2015).

The record reveals ample circumstantial evidence to support the fact finder's conclusion that, by forging Bennett's name on the certified resolution, the defendant intended the dealership, as the recipient of the form, to believe that Bennett had, in fact, signed the form. First, Boehn testified that it was company policy that two signatures were required to make a purchase in the name of a company when an individual does not own 100 percent of the shares. From this, the fact finder reasonably could have inferred that the defendant was aware that a signature from another officer from Miller & Stone, Inc., was required in order to complete the purchase of the automobile. Thus, his forgery of the certified resolution was done with the intent to deceive the dealership into believing that a second officer had authorized the purchase of the automobile on behalf of Miller & Stone, Inc.

We find *State* v. *Dickman*, supra, 119 Conn. App. 588, instructive on this point. In that case, the defendant, Priscilla C. Dickman, was charged with, inter alia, forgery in the third degree in violation of General Statutes § 53a-140[5] in connection with altered documents that

[5] General Statutes § 53a-140 (a) provides that "[a] person is guilty of forgery in the third degree when, *with intent to defraud, deceive or injure another*, he falsely makes, completes or alters a written instrument, or issues or possesses any written instrument which he knows to be forged." (Emphasis added.) The specific intent required here is identical to that of § 53a-139.

were submitted to an insurance company with respect to a claim filed on behalf of her brother-in-law, for whom her husband had been appointed conservator. Id., 582–84. Dickman attempted to obtain information about her brother-in-law's insurance claim following an accident in which he was struck by a motor vehicle. Id., 583. After the insurance company refused to release information, Dickman faxed the insurance company a probate form, which she later admitted that she had altered by adding her name as a fiduciary and conservator. Id., 583–84, 587. When that form was insufficient, Dickman sent a letter of designation purporting to have been signed by her brother-in-law, authorizing her and her husband to handle his claim with the insurance company. Id., 584. Dickman then presented the insurance company with false information regarding her brother-in-law's injuries and treatments, causing the insurance company to believe it had been presented with a false claim and to pursue criminal proceedings, in which Dickman was subsequently convicted of one count of forgery in the third degree. Id., 584–85.

On appeal, Dickman conceded that she had altered the probate document sent to the insurance company, but claimed that there was insufficient evidence that she had done so with the intent to deceive or defraud. Id., 587. The Appellate Court concluded, however, that there was sufficient evidence to support the jury's finding that Dickman had intended to deceive the insurance company. Id., 588–89. The Appellate Court emphasized that Dickman sent an altered probate form listing herself as her brother-in-law's conservator only after learning that a representative of the insurance company, consistent with corporate policy, would not speak to her unless authorized by the brother-in-law. Id. From this fact, the Appellate Court determined that the "jury reasonably could have concluded that [Dickman] sent the altered probate form to [the insurance company]

to circumvent its policy of speaking only to third parties authorized to speak on behalf of claimants." Id., 589. The Appellate Court stated further that the jury "reasonably could have inferred that [Dickman] intended [the insurance company] to believe that she was [her brother-in-law's] conservator, and, thus, an [insurance] representative could discuss his claim with her. Because [Dickman] was not [her brother-in-law's] conservator, the jury could have concluded, on the basis of the circumstantial evidence, that [Dickman] intended to deceive [the insurance company] by causing it to believe that she was [her brother-in-law's] conservator." Id.

Similar to *Dickman*, in the present case, the defendant acted only after being informed that, to purchase the automobile in the name of Miller & Stone, Inc., a second signature was required. Thus, as in *Dickman*, the fact finder in the present case reasonably could have concluded that the defendant forged Bennett's name and faxed the certified resolution to the dealership, rather than bringing it in in person, to circumvent the policy of requiring a second signature with identification for business purchases. The fact finder also reasonably could have inferred that the defendant intended the dealership to believe that Bennett, as an officer of Miller & Stone, Inc., authorized the purchase of the automobile so that the dealership would sell a vehicle to the defendant. Because the signature on the form was not Bennett's, the fact finder could have concluded, on the basis of the circumstantial evidence, that the defendant intended to deceive the dealership by causing it to believe that two separate officers from Miller & Stone, Inc., authorized the purchase of the automobile. Accordingly, we conclude that, considering only the evidence presented in the state's case-in-chief, the state presented sufficient evidence to support the defen-

dant's conviction of forgery in the second degree beyond a reasonable doubt.

The judgment is affirmed.

In this opinion the other justices concurred.

MICHAEL J. O'BRIEN *v.* KATHLEEN E. O'BRIEN (SC 19635)

Rogers, C. J., and Palmer, McDonald, Espinosa, Robinson and Vertefeuille, Js.

Syllabus

The plaintiff, whose marriage to the defendant previously had been dissolved, appealed to the Appellate Court from certain financial orders that the trial court had entered on remand from a previous appeal from the judgment of dissolution. During the pendency of the dissolution action and the previous appeal, while certain automatic court orders prohibiting the sale, exchange, or transfer of any property without the consent of the other party or an order of the court were in effect, the plaintiff executed three stock transactions without the defendant's consent or a court order. The transactions consisted of the sale of vested shares of stock after the dissolution action was filed but before the divorce decree was entered, and the exercise of certain stock options that the plaintiff received after the dissolution action was filed and before the divorce decree was entered, but that vested and were exercised during the pendency of the previous appeal. The plaintiff executed these transactions in light of his concerns about the volatility of the stock market at the time of the transactions and the need to preserve, in the party's best interest, the current value of the stocks, and he placed the proceeds in a bank account and subsequently disclosed the transactions to the defendant. On remand from the previous appeal, the defendant filed a motion to hold the plaintiff in contempt for his purported violation of the automatic orders. At the remand trial, the defendant presented expert testimony indicating that the value of the stocks and options at the time of the transactions was approximately $2.5 million, that they would have had a value of approximately $6 million at the time of the remand trial, and that the transactions thus had caused a loss to the estate of approximately $3.5 million. The trial court found that, although the plaintiff had violated the automatic orders, the violations were not wilful and, therefore, declined to hold the plaintiff in contempt. Because the transactions had caused a significant loss to the marital estate, however, the trial court considered the violations in awarding the defendant approximately two thirds of the value of the marital property. On appeal, the Appellate Court concluded, inter alia,

that the trial court improperly had considered the violations in making its financial awards because it lacked authority to punish the plaintiff pursuant to its civil contempt power by reducing the plaintiff's share of the marital estate, as his actions did not rise to the level of contempt or a dissipation of marital assets. The Appellate Court therefore reversed the trial court's judgment with respect to the financial orders and remanded the case for a new hearing on all financial matters. On the granting of certification, the defendant appealed to this court, claiming that the Appellate Court incorrectly concluded that the trial court lacked authority to afford her a remedy for the plaintiff's violations of the automatic orders in the absence of a contempt finding. *Held*:

1. The trial court, having possessed inherent authority to make a party whole for harm caused by another party's violation of a court order, even when the court does not find the offending party in contempt, the Appellate Court incorrectly concluded that the trial court improperly had considered, in making its financial orders, the plaintiff's violations of the automatic orders stemming from his decision to conduct the stock transactions without the defendant's consent or the trial court's permission; a trial court may remedy any harm caused by a party's violation of a court order by compensating the harmed individual for losses sustained as a result of the violation, regardless of whether the court finds that party in contempt, prior decisions of the Appellate Court have upheld compensatory awards imposed in contempt proceedings for the violation of a court order, even in the absence of a contempt finding, and, accordingly, the trial court in the present case properly exercised its discretion by adjusting the property distribution to account for the loss caused by the plaintiff's violation of the automatic orders.
2. The plaintiff could not prevail on his claim that the trial court's financial award was erroneous because it was excessive and based on an improper method for valuing the loss to the marital estate; the trial court fairly determined the loss to the marital estate, the court's adjustment of the property distribution in favor of the defendant did not exceed the defendant's reasonable share of the loss resulting from the plaintiff's transactions, and, because the court's remedial award in adjusting the property distribution was made pursuant to its inherent authority to make a party whole for the violation of a court order rather than pursuant to the statute (§ 46b-81) governing equitable distribution of marital property, it was within the court's discretion to consider the value that the stocks and options would have had at the time of the trial on remand from the previous appeal rather than their value as of the date of dissolution or as of the dates that the violations of the automatic orders occurred, as the court was entitled to put the defendant in the position in which she would have been in the absence of the plaintiff's violation of the automatic orders.
3. The plaintiff could not prevail on his claims, as alternative grounds for affirming the Appellate Court's judgment, that the plaintiff's transactions

did not violate the automatic orders because those transactions were made in the usual course of business and that the trial court ignored the usual course of business exception to the provision in the automatic orders prohibiting the sale, transfer or exchange of property during the pendency of the dissolution proceeding: although the trial court did not expressly consider, in its memorandum of decision, the application of the usual course of business exception to the plaintiff's transactions, the trial court expressly found that the plaintiff had violated the automatic orders, which necessarily implied that the court also made the subsidiary finding that the plaintiff's conduct did not fall within any exception; moreover, this court declined to adopt a rule, urged by the plaintiff, that stock transactions during a dissolution proceeding are always made in the usual course of business or are presumed to fall within that exception, such a rule not having been supported by the text of the automatic orders or having been consistent with their purpose.

4. The trial court's conclusion that the stock options the plaintiff had exercised were marital property subject to distribution between the parties was not clearly erroneous; although the plaintiff's options did not vest and were not exercised until after the dissolution of the parties' marriage, the plaintiff received them during the marriage, and the court reasonably credited the portion of the plaintiff's testimony that the options represented payment for past services.

5. The plaintiff could not prevail on his claim, as an alternative ground for affirming the Appellate Court's judgment, that the trial court's award of retroactive alimony was improper because it purportedly required the plaintiff to pay the arrearage out his share of the marital assets, thereby effectively reducing his share of the property distribution; trial courts are vested with broad discretion to award alimony and are free to consider the marital assets distributed to the party paying the alimony as a potential source of alimony payments, and the court's property distribution award in combination with the retroactive alimony award were not inequitable, as they together were not excessive and reflected the unequal earnings potential of the parties, the alimony award was to diminish over time, justifying a greater upfront distribution, and a significant component of the distribution to the defendant was the trial court's remedial award for the plaintiff's violation of the automatic orders.

Argued December 14, 2016—officially released June 27, 2017

Procedural History

Action for the dissolution of marriage, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the defendant filed a cross complaint; thereafter, the case was tried to the court, *Hon. Howard T. Owens, Jr.*, judge trial referee; judgment

dissolving the marriage and granting certain other relief, from which the plaintiff appealed to the Appellate Court; subsequently, the court, *Hon. Howard T. Owens, Jr.*, judge trial referee, granted the defendant's motion for attorney's fees, and the plaintiff filed an amended appeal; thereafter, the Appellate Court, *Sheldon* and *West, Js.*, with *Lavine, J.*, dissenting, reversed in part the trial court's judgment and remanded the case for a new trial on all financial issues; on remand, the court, *Pinkus, J.*, rendered certain financial orders, and the plaintiff appealed to the Appellate Court, *Beach, Prescott* and *Bear, Js.*, which reversed the trial court's judgment and remanded the case for a new trial on all financial issues, and the defendant, on the granting of certification, appealed to this court. *Reversed*; *judgment directed.*

Daniel J. Krisch, with whom was *Aidan R. Welsh*, for the appellant (defendant).

Daniel J. Klau, for the appellee (plaintiff).

Opinion

PALMER, J. In this certified appeal arising from a marital dissolution action, we must determine whether a trial court properly may consider a party's violation of a court order when distributing marital property, even if the trial court finds that the violation is not contemptuous. The plaintiff, Michael J. O'Brien, filed this action to dissolve his marriage to the defendant, Kathleen E. O'Brien. During the pendency of the action, the plaintiff sold shares of stock and exercised certain stock options without first receiving permission from either the defendant or the trial court, as required by Practice Book § 25-5,[1] which also provides that a party

[1] Practice Book § 25-5 provides in relevant part: "The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage . . . . The automatic orders shall be effective with regard to the plaintiff . . . upon the signing of the complaint . . . and with regard to the defendant . . . upon service and shall remain in place during the pendency of

who fails to obey the orders automatically entered thereunder may be held in contempt of court. The trial court found that the plaintiff's transactions violated those orders but did not hold the plaintiff in contempt because the court concluded the violations were not wilful. Nevertheless, because the transactions had caused a significant loss to the marital estate, the court considered that loss when it distributed the marital property between the parties, awarding a greater than even distribution to the defendant. On appeal, the Appellate Court concluded that, in the absence of a finding of contempt, the trial court lacked the authority to afford the defendant a remedy for the plaintiff's violation of the automatic orders. See *O'Brien* v. *O'Brien*, 161 Conn. App. 575, 591, 128 A.3d 595 (2015). We thereafter granted the defendant's petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly determine that the trial court abused its discretion when it considered the plaintiff's purported

the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

* * *

"(b) In all cases involving a marriage . . . whether or not there are children:

"(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

* * *

"(d) The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage . . . and shall set forth the following language in bold letters:

"**Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable period of time**.

"The clerk shall not accept for filing any complaint for dissolution of marriage . . . that does not comply with this subsection." (Emphasis in original.)

violations of the automatic orders in its decision dividing marital assets [even though the court did not hold the plaintiff in contempt of court for those violations]?" *O'Brien* v. *O'Brien*, 320 Conn. 916, 131 A.3d 751 (2016). We agree with the defendant that the trial court properly exercised its discretion in considering the plaintiff's violations of the automatic orders in its division of the marital assets, and, therefore, we reverse the judgment of the Appellate Court.

The Appellate Court's opinion and the record contain the following undisputed facts and procedural history relevant to this appeal. The parties were married in 1985 and had three children together, all of whom were under the age of eighteen when the trial court rendered the dissolution judgment. See *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 578. The parties are each well educated and have had lucrative careers. See id. The plaintiff holds a law degree and is employed as senior vice president, general counsel, and secretary of Omnicom Group, Inc. (Omnicom). Id. His base salary is $700,000 per year, and his compensation has also included a cash bonus of varying amounts and noncash compensation, usually in the form of stock or stock options. Id. In the years leading up to the dissolution, the plaintiff's annual cash compensation averaged at least $1.2 million, along with additional noncash compensation. See id. The defendant holds a college degree and was previously employed as a managing director for Credit Suisse, earning more than $1 million annually. Id. She left her employment in 2003 to devote her time to raising the parties' children. Id. The defendant later participated in a "returnship" program with JP Morgan Chase, earning about $143,000 annually. Id.

At the time of the dissolution action, the parties' assets consisted principally of numerous bank and investment accounts, their principal residence in the town of Greenwich, a second home, and personal prop-

erty. The plaintiff also held vested shares of Omnicom stock and unvested Omnicom stock options.

The plaintiff filed the present action in 2008, alleging that the marriage had irretrievably broken down. See id., 579 and n.3. He sought a judgment dissolving the marriage, an equitable division of the marital estate, and orders regarding child custody and support.

Attached to the plaintiff's complaint was a copy of the automatic orders required by Practice Book § 25-5 (d). In accordance with the requirement of § 25-5 (b) (1), that attachment included the admonition that the parties were not permitted to "sell, transfer, exchange, assign, remove, or in any way dispose of . . . any property" while the dissolution action was pending without the prior consent of the other party or the court.

The trial court rendered judgment dissolving the parties' marriage in September, 2009. The court also entered custody orders regarding the minor children and financial orders distributing the marital property between the parties. In its financial orders, the trial court effectively awarded 55 percent of the marital assets to the defendant and 45 percent to the plaintiff. *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 580. These marital assets included all of the plaintiff's vested and unvested Omnicom stock shares and options. See id., 580 n.4. The trial court also ordered the plaintiff to pay unallocated alimony and child support to the defendant. See *O'Brien* v. *O'Brien*, 138 Conn. App. 544, 545–46, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 938, 66 A.3d 500 (2013).

The plaintiff appealed from the trial court's financial orders, challenging, inter alia, its unallocated alimony and child support award. Id., 545. The Appellate Court agreed with the plaintiff's claim concerning the alimony and child support award and reversed the trial court's judgment as to its financial orders, but did not disturb

the decree dissolving the marriage. See id., 546, 557. The Appellate Court remanded the case to the trial court for a new trial on all financial issues. Id., 557. The parties do not dispute that the appeal stayed the trial court's financial orders and that the automatic orders remained in effect during the pendency of the appeal.

While the dissolution action or the appeal from the judgment of dissolution was pending—and while the automatic orders thus remained in effect—the plaintiff executed three stock transactions that are the subject of the present appeal. See *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 579, 581. The plaintiff made the first transaction in February, 2009, one year after filing the dissolution action but before the dissolution decree entered in September, 2009. See id., 579. In the first transaction, the plaintiff sold all of his 28,127 vested Omnicom shares. Id. He did so without first seeking the consent of the defendant or the approval of the trial court. Id. According to the plaintiff, he was concerned about volatility in the stock market following a market decline in 2008 and thought that preserving the current value of the shares through a sale was in the parties' best, immediate interest. See id. The plaintiff placed the proceeds from the sale into a bank account and disclosed the sale to the defendant approximately two months later when he submitted an updated financial affidavit.

The plaintiff executed the second and third transactions in 2010 and 2012, respectively, after the original trial and while the first appeal was pending. See id., 581. In these two transactions, the plaintiff exercised a total of 75,000 Omnicom stock options that he had received as part of his noncash compensation while the dissolution action was still pending and before the trial court rendered judgment dissolving the marriage. Id. The options had vested after the trial court's dissolution

judgment was rendered but before the Appellate Court reversed the trial court's financial orders. See id., 581–82. He exercised 22,500 options in the first transaction and 52,500 options in the second transaction. Each time, the plaintiff immediately converted the options to cash and retained the cash proceeds in a bank account. As with his earlier stock sale, the plaintiff did not seek consent from the defendant or approval from any judicial authority before exercising the options. Id.

On remand, the defendant filed a motion for contempt with respect to the plaintiff's transactions. Id., 582. The defendant asserted that the plaintiff's transactions violated the automatic orders because he had sold, exchanged or disposed of property without prior permission, as required by Practice Book § 25-5 (b) (1). See id. In her motion, the defendant requested that the court find the plaintiff in contempt, order the plaintiff to pay legal fees and costs in connection with the contempt motion, and award any other relief that the court deemed appropriate. Id.

At the remand trial in February, 2014, the defendant presented expert testimony to establish the economic loss resulting from the plaintiff's transactions. See id. The defendant's expert testified that the stock shares and options were worth approximately $2.5 million at the time the plaintiff sold and exercised them, respectively. The expert further testified that, if the plaintiff had not sold or exercised the shares and options but instead had retained them, they would have had a value, as of the date of the retrial, of about $6 million. See id. Thus, according to the defendant's expert, the plaintiff's decision to sell the shares of stock and exercise his stock options had caused a net loss to the marital estate of about $3.5 million. Id.

For his part, the plaintiff admitted that he had not sought permission to engage in the transactions. He

nevertheless testified that he had consulted with attorneys concerning the transactions before executing them and that he did not believe that he otherwise needed permission to execute the transactions. The plaintiff further testified that he thought converting the shares to cash would best preserve their value in the face of ongoing market volatility. Id., 579.

After trial following the remand, the trial court issued a memorandum of decision and new financial orders. The court first explained that, in crafting its financial orders, it had considered the testimony and exhibits presented, along with the required statutory criteria, set forth in General Statutes § 46b-81,[2] governing the trial court's distribution of marital property. The court then turned to its findings of fact. After setting forth the history of the parties' marriage and careers, the court determined that the plaintiff's earning capacity exceeded the defendant's, finding that the plaintiff had earned at least $1.2 million annually in the years leading up to the dissolution, compared to $143,000 that the defendant earned annually. With respect to the marital assets, the court explained that it had valued them as of the original date of dissolution. Id., 583. The parties had agreed to the value of most of the marital assets in a pretrial stipulation, which the court incorporated by reference. Id.

[2] General Statutes § 46b-81 provides in relevant part: "(a) At the time of entering a decree annulling or dissolving a marriage . . . the Superior Court may assign to either spouse all or any part of the estate of the other spouse. . . .

* * *

"(c) In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, 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, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

With respect to the transactions, the trial court found that the plaintiff had sold 28,127 shares of Omnicom stock and exercised 75,000 Omnicom stock options while the automatic orders were in effect and without the defendant's consent or the court's permission. Id., 579, 581. Although concluding that the plaintiff's transactions "did in fact violate the automatic orders," the court did not hold the plaintiff in contempt because it found that the plaintiff had sought the advice of counsel concerning the transactions, and, consequently, his violations were not wilful. Nevertheless, the court explained that the transactions caused "a significant loss to the marital estate" and that the court had "taken into account these transactions in making [its financial] awards."

The trial court then turned to property distribution. The assets in the marital estate had a value of approximately $6.5 million.[3] The trial court awarded the defendant the principal residence and permitted her to keep a pension from Credit Suisse, as well as portions of the parties' bank and retirement accounts, among other assets. The total value of the award to the defendant was approximately $4.4 million. The trial court awarded the plaintiff portions of the parties' bank and retirement accounts, among other assets. The total value of the award to the plaintiff was approximately $2.1 million. According to the plaintiff's accounting, the award amounted to a 68 percent distribution of the marital estate to the defendant and a 32 percent distribution to the plaintiff. The trial court also ordered the plaintiff to pay the defendant child support and alimony for a

[3] The parties disagree about the precise value of the property distribution, and the trial court made no specific findings with respect to that value. For purposes of this appeal, however, we rely on the plaintiff's valuation of the marital estate and property distribution.

period of twenty-one years, with a reduction in the amount of alimony every seven years.[4]

After the trial court issued its new financial orders, the plaintiff filed a motion for articulation, asking the court to explain the effect of the plaintiff's transactions on the court's property distribution and how the trial court had valued the loss that the transactions caused to the marital estate. In an articulation, the trial court explained that "financial orders in dissolution proceedings often have been described as a mosaic, in which all of the various financial components are carefully interwoven with one another. . . . Therefore, it is impossible to say, with great specificity, exactly how the court 'took into account' the [sale] of the shares and the exercise of the stock options by the plaintiff. However, these transactions by the plaintiff were taken into account when the defendant was awarded the family home and her pension from Credit Suisse, as well as the equitable division of all of the other assets of the parties." (Citation omitted.) As for the loss to the estate, the trial court explained that it had credited the testimony of the defendant's expert. The court thus determined that, if the plaintiff had not sold the shares and exercised the stock options when he did but, instead, had retained them as contemplated by the automatic orders, they would have been worth about $3.5 million more at the time of the trial following remand when compared to their value at the time that the plaintiff actually sold or exercised them.

The plaintiff appealed to the Appellate Court, which reversed the trial court's financial orders. See *O'Brien*

[4] Specifically, the trial court ordered the plaintiff to pay alimony in the amount of $45,000 per month for the first seven years commencing from the date of dissolution, $37,500 per month for the next seven years, and then $25,000 per month for the next seven years. The alimony payments terminated after the third seven year period, unless one of the parties died or the defendant remarried beforehand.

v. *O'Brien*, supra, 161 Conn. App. 577, 593. Among other claims, the plaintiff asserted that the trial court improperly had considered the transactions when fashioning its orders. See id., 587–88. The plaintiff argued that, even if his actions technically violated the automatic orders, the trial court improperly held his actions against him when distributing the property because he had not been found in contempt and did not otherwise intentionally dissipate the assets or cause any legally cognizable harm. See id., 588–89.

The Appellate Court agreed with the plaintiff, concluding that the plaintiff's violations of the automatic orders could be considered by the court only if they rose to the level of contempt or a dissipation of marital assets. Id., 589. The court explained that, "even if the plaintiff technically violated the automatic orders when he sold stock and exercised options during the pendency of the dissolution action without permission . . . the resulting sanction imposed on the plaintiff by the court—namely, some unspecified reduction in the plaintiff's share of the marital estate—was not legally justified and, thus, an abuse of discretion. First, the court expressly found that the plaintiff's actions were not contumacious, and, thus, we conclude that it lacked any authority to punish the plaintiff pursuant to its civil contempt powers. Second, although in exercising its statutory authority under § 46b-81, the court certainly could take into account, when dividing the parties' assets, whether a party had engaged in a dissipation of those assets, there is nothing in the present record that would support a finding that the plaintiff intended to hide or to dissipate assets, nor did the court make such a finding." (Footnote omitted.) Id.

Concerning the trial court's contempt powers, the Appellate Court further explained that "[j]udicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to

coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. . . . [If] compensation is intended, a fine is imposed, payable to the complainant." (Internal quotation marks omitted.) Id., 590. Because, however, the trial court had not found the plaintiff in contempt, the Appellate Court concluded that the trial court had "lost its authority pursuant to its contempt powers to take any remedial action against the plaintiff simply because, with the luxury of hindsight, those transactions had proven unprofitable or even unwise. In other words, if the court had found the plaintiff in contempt of the automatic orders, that conclusion might have justified its further consideration of the effect those violations had on the assets available for distribution. In such circumstances, the court could have taken remedial action, perhaps reducing the plaintiff's distribution in an amount necessary to compensate the defendant. Nevertheless, having effectively denied the defendant's motion for contempt, the court was required to dispose of the marital assets in accordance with its authority under § 46b-81, which did not include the power to punish in the absence of dissipation." Id., 591.

With respect to the trial court's authority to consider dissipation under § 46b-81, the Appellate Court noted that the trial court had not made a finding of dissipation, and that such a finding would be unwarranted in the present case because, as this court explained in *Gershman* v. *Gershman*, 286 Conn. 341, 348, 351, 943 A.2d 1091 (2008), "[p]oor investment decisions, without more, generally do not give rise to a finding of dissipation. . . . [A]t a minimum, dissipation in the marital dissolution context requires financial misconduct involving marital assets, such as intentional waste or a selfish financial impropriety, coupled with a purpose unrelated to the marriage." (Citation omitted; internal

quotation marks omitted.) *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 592.

Because the trial court had not found contempt or dissipation, the Appellate Court concluded that the trial court did not have the authority to compensate the defendant for the plaintiff's transactions, even though those transactions had violated the automatic orders. Id., 593. The Appellate Court reversed the trial court's judgment with respect to its financial orders and remanded the case for a new hearing on all financial matters. Id.

We then granted the defendant's petition for certification to decide whether the Appellate Court correctly concluded that the trial court should not have considered the plaintiff's violations of the automatic orders in its division of the marital assets because the court had not held the plaintiff in contempt for those violations. *O'Brien* v. *O'Brien*, supra, 320 Conn. 916. We answer the certified question in the negative. The plaintiff also has raised three alternative grounds for affirming the Appellate Court's judgment, all of which we reject.

I

We begin with the certified question. The defendant claims that the Appellate Court incorrectly concluded that the trial court lacked the authority to afford her a remedy for the plaintiff's violations of the automatic orders in the absence of a contempt finding. In support of this claim, the defendant contends that the trial court has the power to consider the plaintiff's actions under § 46b-81, which governs a trial court's distribution of marital assets in a dissolution proceeding and empowers the trial court to divide marital assets between the parties upon consideration of "the contribution of each of the parties in the acquisition, *preservation* or *appreciation* in value of" the marital assets. (Emphasis added.) General Statutes § 46b-81 (c). The defendant

further contends that the plaintiff's unilateral decision to swap a substantial equity stake—along with its potential for increase in value and dividends—for an asset like cash is the antithesis of preservation and appreciation, and thus may be considered by a court when it divides property under the statute.

We agree with the defendant that the trial court had the authority to consider the plaintiff's transactions when distributing the marital property, but for reasons different from those advanced by the defendant. Applying plenary review to this question of law; see, e.g., *Maturo* v. *Maturo*, 296 Conn. 80, 88, 995 A.2d 1 (2010); we conclude in part I A of this opinion that a trial court possesses inherent authority to make a party whole for harm caused by a violation of a court order, even when the trial court does not find the offending party in contempt. In part I B of this opinion, we conclude that the trial court properly exercised that authority in the present case.[5]

A

It has long been settled that a trial court has the authority to enforce its own orders. This authority arises from the common law and is inherent in the court's function as a tribunal with the power to decide disputes. *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 737–38, 444 A.2d 196 (1982). The court's enforcement power is necessary to "preserve its dignity

[5] In her brief to this court, the defendant did not specifically argue that the trial court possessed the *inherent* authority to address the plaintiff's violations but instead focused her arguments on the trial court's *statutory* authority under § 46b-81. We nevertheless resolve the present appeal in reliance on the trial court's inherent authority because (1) the defendant raised this ground in her brief to the Appellate Court, and (2) at oral argument before this court, the plaintiff's counsel acknowledged that the trial court had inherent authority to address the plaintiff's violations of the automatic orders and clarified that the plaintiff was disputing only how the trial court exercised that authority in the present case.

and to protect its proceedings." (Internal quotation marks omitted.) *Allstate Ins. Co.* v. *Mottolese*, 261 Conn. 521, 530, 803 A.2d 311 (2002); see also *Middlebrook* v. *State*, 43 Conn. 257, 268 (1876) ("[a] court of justice must of necessity have the power to preserve its own dignity and protect itself"). A party to a court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in "self-help" by disobeying a court order to achieve the party's desired end. (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, 258 Conn. 713, 719–20, 784 A.2d 890 (2001); see also *Tyler* v. *Hamersley*, 44 Conn. 393, 412 (1877) ("[e]very court must of necessity possess the power to enforce obedience to its lawful orders"); *Rocque* v. *Design Land Developers of Milford, Inc.*, 82 Conn. App. 361, 366, 844 A.2d 882 (2004) ("[t]he interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter" [internal quotation marks omitted]), quoting *United States* v. *United Mine Workers of America*, 330 U.S. 258, 303, 67 S. Ct. 677, 91 L. Ed. 884 (1947).

The court has an array of tools available to it to enforce its orders, the most prominent being its contempt power.[6] Our law recognizes two broad types of contempt: criminal and civil. See, e.g., *DeMartino* v. *Monroe Little League, Inc.*, 192 Conn. 271, 278, 471 A.2d 638 (1984). The two are distinguished by the type of penalty imposed. See, e.g., *In re Jeffrey C.*, 261 Conn.

[6] Other tools not addressed in the present case include the court's power to sanction parties and their attorneys for "dilatory, bad faith and harassing litigation conduct, even in the absence of a specific rule or order of the court that is claimed to have been violated." (Internal quotation marks omitted.) *Millbrook Owners Assn., Inc.* v. *Hamilton Standard*, 257 Conn. 1, 9–10, 776 A.2d 1115 (2001). Sanctions may include awarding litigation costs to the party harmed by the improper conduct, exclusion of certain evidence or testimony, or even the entry of a default, nonsuit or dismissal. See id., 11.

189, 197–98, 802 A.2d 772 (2002); *McTigue* v. *New London Education Assn.*, 164 Conn. 348, 352–53, 321 A.2d 462 (1973). A finding of criminal contempt permits the trial court to punish the violating party, usually by imposing an unconditional fine or a fixed term of imprisonment. See, e.g., General Statutes § 51-33a. Criminal contempt penalties are punitive in nature and employed against completed actions that defy "the dignity and authority of the court." (Internal quotation marks omitted.) *In re Jeffrey C.*, supra, 197. Civil contempt, by contrast, is not punitive in nature but intended to coerce future compliance with a court order, and "the contemnor should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree." *Connolly* v. *Connolly*, 191 Conn. 468, 482, 464 A.2d 837 (1983). A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court. See id.

To impose contempt penalties, whether criminal or civil, the trial court must make a contempt finding, and this requires the court to find that the offending party wilfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt. See, e.g., *Marshall* v. *Marshall*, 151 Conn. App. 638, 650, 97 A.3d 1 (2014). Rather, "to constitute contempt, a party's conduct must be wilful." *Eldridge* v. *Eldridge*, 244 Conn. 523, 529, 710 A.2d 757 (1998). "A good faith dispute or legitimate misunderstanding" about the mandates of an order may well preclude a finding of wilfulness. (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, supra, 258 Conn. 718. Whether a party's violation was wilful depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court. Id. Without a finding of wilfulness, a

trial court cannot find contempt and, it follows, cannot impose contempt penalties.

But a trial court in a contempt proceeding may do more than impose penalties on the offending party; it also may remedy any harm to others caused by a party's violation of a court order. When a party violates a court order, causing harm to another party, the court may "compensate the complainant for losses sustained" as a result of the violation. (Internal quotation marks omitted.) *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 278. A court usually accomplishes this by ordering the offending party to pay a sum of money to the injured party as "special damages . . . ." (Internal quotation marks omitted.) Id., 279.

Unlike contempt penalties, a remedial award does not require a finding of contempt. Rather, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Emphasis omitted; internal quotation marks omitted.) *Clement* v. *Clement*, 34 Conn. App. 641, 647, 643 A.2d 874 (1994); see also *Brody* v. *Brody*, 153 Conn. App. 625, 636, 103 A.3d 981, cert. denied, 315 Conn. 910, 105 A.3d 901 (2014); *Nelson* v. *Nelson*, 13 Conn. App. 355, 367, 536 A.2d 985 (1988). Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation even if the violation was not wilful. See, e.g., *Clement* v. *Clement*, supra, 646–47; cf. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 279 ("[s]ince the purpose is remedial, it matters not with what intent the [offending party] did the prohibited act" [internal quotation marks omitted]).

Following this principle, the Appellate Court has upheld compensatory awards imposed in contempt pro-

ceedings even when the trial court did not make a contempt finding. For example, in *Clement* v. *Clement*, supra, 34 Conn. App. 641, one party failed to make payments on a home mortgage loan, in violation of a court order, which led to a foreclosure and a loss of equity in the home. See id., 643–44 and n.2. The trial court ultimately vacated an earlier contempt finding but nevertheless declined to vacate a compensatory award equal to the lost equity. Id., 646. The Appellate Court affirmed, explaining that a trial court "has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with [a] court order" and may do so "even in the absence of a finding of contempt . . . ." (Emphasis omitted; internal quotation marks omitted.) Id., 647. And in *McGuire* v. *McGuire*, 102 Conn. App. 79, 81, 924 A.2d 886 (2007), a court order required the parties to a dissolution proceeding to sell their marital home. When one party delayed the closing date, causing a contract for sale to fall through, the trial court did not find contempt but nevertheless ordered the delaying party to pay the other party compensation for the delay. See id., 81–82. On appeal, the Appellate Court, consistent with prior precedent, concluded that a trial court need not find contempt before compensating a party harmed by the violation of a court order. Id., 88–89.

We cited this principle with approval in *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 243, 796 A.2d 1164 (2002), and again in *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 489, 501 n.20, 970 A.2d 570 (2009). In *AvalonBay Communities, Inc.*, for instance, we explained that, "[i]t would defy common sense to conclude that, merely because a party's violation of a court order was not wilful, the trial court is deprived of its authority to enforce the order." *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, supra, 241–42.

The Appellate Court's reasoning and result in the present case are inconsistent with these decisions. The Appellate Court recognized that a court might compensate a party harmed by a violation of a court order, including by reducing the party's share of the marital assets, but only if the court found the offending party in contempt. See *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 591. According to the Appellate Court, "[h]aving determined that the plaintiff's transactions were not contumacious . . . the [trial] court lost its authority pursuant to its contempt powers to take any remedial action against the plaintiff" and in favor of the defendant. Id. In light of the decisions from this court and the Appellate Court holding to the contrary, the Appellate Court's conclusion in the present case cannot stand. Parties subject to a court order are bound to follow it and reasonably may rely on an expectation that other parties will also obey the order. Irrespective of whether a violation is wilful, the party violating a court order properly may be held responsible for the consequences of the violation. To hold otherwise would shift the cost of the violation to the innocent party.

We therefore conclude that, although the trial court could not punish the plaintiff because it had not found him in contempt, the court nevertheless properly determined that it could compensate the defendant for any losses caused by the plaintiff's violations of the automatic orders. The plaintiff's transactions—in which he sold and exchanged stock shares and options for cash—plainly violated the automatic orders, which expressly provide that, while the dissolution proceedings are pending, no party shall "sell, transfer, [or] exchange" any property without permission from the other party or the court. Practice Book § 25-5 (b) (1). The automatic orders are intended to "keep the financial situation of the parties at a status quo during the pendency of the dissolution action." *Ferri* v. *Powell-Ferri*, 317 Conn.

223, 232, 116 A.3d 297 (2015). Allowing parties to sell, exchange, or dispose of assets while a dissolution action is pending, and without permission of the other party or the court, would frustrate the trial court's ability to determine which of the parties' property constituted marital property and to distribute the marital assets fairly between the parties. In the present case, the plaintiff's transactions, made without proper permission, disrupted the status quo and prevented the trial court from determining the proper disposition of the stock shares and options, in violation of the automatic orders.

Even if the plaintiff did not intend to violate the court's order, if his unilateral decision to sell the shares and exercise the options caused a loss to the marital estate—and in turn to the defendant—then the trial court was justified in determining that the plaintiff should bear the losses. To be sure, the plaintiff may not have appreciated the extent of the harm his transactions might cause in the future. And, ordinarily, a party in a dissolution proceeding is not responsible for poor or shortsighted business decisions concerning marital assets. See *Gershman* v. *Gershman*, supra, 286 Conn. 346–47. But, in the present case, the plaintiff's transactions were not just questionable investment decisions; they also violated a court order. Even if the court order imposes a burden on a party, or the party believes his actions are otherwise justified, the party may not act unilaterally in contravention of the order. See, e.g., *Sablosky* v. *Sablosky*, supra, 258 Conn. 719–20. Moreover, if the plaintiff in the present case did not wish to bear sole responsibility for the potential risks of his actions, he should not have engaged in self-help by selling the stocks and exercising the options without first consulting the defendant or the court. Because the defendant had no say in the transactions that the plaintiff executed, the trial court acted within its discre-

tion when it determined that the plaintiff had violated the automatic orders and that he should bear any losses caused by his actions.

We also conclude that the trial court acted properly in remedying the defendant's loss of her share of the marital estate by adjusting in her favor the distribution of the marital assets. Even though the trial court's property distribution is governed by § 46b-81, and providing a remedy for a violation of a court order is not one of the enumerated statutory factors, the trial court nevertheless had the discretion to remedy the plaintiff's violations of a court order through its distribution of the parties' marital property. See *Robinson* v. *Robinson*, 187 Conn. 70, 71–72, 444 A.2d 234 (1982) ("Although created by statute, a dissolution action is essentially equitable in nature. . . . The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances [that] arise out of the dissolution of a marriage." [Citation omitted; internal quotation marks omitted.]). The trial court could have distributed the marital assets pursuant to § 46b-81 and then separately ordered the plaintiff to issue a distinct payment to the defendant pursuant to its inherent authority. See *Clement* v. *Clement*, supra, 34 Conn. App. 643–44; cf. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 278–79. The trial court, exercising its equitable discretion, instead combined these two steps into one, a method that is not without precedent. See, e.g., *Greenan* v. *Greenan*, 150 Conn. App. 289, 303, 91 A.3d 909 (upholding trial court's remedy for violation of court order and noting that trial court had "taken the plaintiff's [violation] into consideration in fashioning its [financial] orders" instead of issuing "a specific order to restore the funds" lost from violation [internal quotation marks omitted]), cert. denied, 314 Conn. 902, 99 A.3d 1167 (2014). Whether the trial court in the present case had ordered a payment separate from the property dis-

tribution or effected the payment as part of the property distribution, as it did, is a difference of form, not substance. The result of either method would be the same—each ultimately transfers funds to cover the value of the defendant's loss from the plaintiff to the defendant. We conclude, therefore, that the trial court properly exercised its discretion in affording the defendant a remedy by adjusting the property distribution to account for the loss.

B

The plaintiff claims that the trial court's award is nevertheless erroneous because it was based on an improper method for valuing the loss to the marital estate, rendering it excessive. We disagree.

If a trial court elects to make whole a party injured by another party's violation of a court order, any award it makes must be reasonable in light of the harm to the injured party. A trial court has the equitable discretion to choose whether to provide a remedy in the first place and to determine the amount of any remedial award in light of the specific circumstances of the case. See *Clement* v. *Clement*, supra, 34 Conn. App. 647; see also *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, supra, 260 Conn. 243. "The essential goal" in making a remedial award "is to do rough justice, not to achieve auditing perfection," and, thus, the award may be based on reasonable estimations of the harm caused and the trial court's own "superior understanding of the litigation . . . ." (Internal quotation marks omitted.) *Goodyear Tire & Rubber Co.* v. *Haeger*, U.S. , 137 S. Ct. 1178, 1187, 197 L. Ed. 2d 585 (2017). The trial court's discretion, however, is not limitless. If the court elects to provide a remedial award, then the value of the award may not exceed the reasonable value of the injured party's losses. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. 279. Although a

trial court may choose to award less under the circumstances of a particular case, a decision to order an award greater than the party's loss would exceed the award's remedial purpose. See id.; see also *Goodyear Tire & Rubber Co.* v. *Haeger*, supra, 1186 (trial court's "award may go no further than to redress the wronged party for losses sustained; in may not impose an additional amount as punishment for the sanctioned party's misbehavior" [internal quotation marks omitted]). In such a case, the excess instead serves merely to punish the offending party, a sanction that, as we have explained, requires a finding of contempt and thus likely would constitute an abuse of the trial court's discretion. See part I A of this opinion.

Moreover, the trial court's conclusions concerning the appropriate remedial award must be based on evidence presented to the court. *Nelson* v. *Nelson*, supra, 13 Conn. App. 367. The court must therefore allow the parties to present evidence concerning the loss and the proper amount of compensation, and to cross-examine adverse witnesses. Id. As with any other factual determination, the trial court's findings must be supported by the evidence. Id.

In the present case, the trial court determined the amount of the loss after a trial at which the parties were each afforded the opportunity to present evidence concerning the extent of the loss, and the defendant adduced testimony from an expert witness. The plaintiff's counsel cross-examined the defendant's expert and also had the opportunity to call witnesses on behalf of the plaintiff but did not do so. The trial court further entertained argument on the issue.

After considering the parties' positions, the trial court credited the testimony of the defendant's expert and found that the transactions caused a net loss to the marital estate of $3.5 million. The court arrived at that

amount by looking to the difference between (1) the value of the stock shares and options at the time the plaintiff either sold or exercised them, and (2) the value the shares and options would have had at the time of the trial following remand, when the shares or options would have been distributed, if the plaintiff had not sold or exercised them in violation of the automatic orders. The trial court determined that the shares and options had a total value of $2,562,190 when the plaintiff sold or exercised them and that, if the plaintiff had not done so, they would have had a value of $6,093,019 at the time of the trial. Taking the difference between these two values, the trial court found that the plaintiff's transactions had caused a net loss of approximately $3.5 million in value to the marital estate.

The defendant, however, was not necessarily entitled to be compensated for the full $3.5 million loss to the marital estate. Because that value reflected the loss amount to the entire marital estate, and not just the defendant's share, she presumably should have received no more than the losses fairly attributable to her share of the marital estate. Thus, the defendant's counsel acknowledged during closing argument that if, for example, the court awarded the defendant 55 percent of the marital assets, including the stock shares and options, she would be entitled to compensation for no more than 55 percent of the total losses to the marital estate.[7] The defendant's counsel also acknowledged that the amount of any remedial award should be adjusted for the taxes that would have been paid on

[7] Because the plaintiff's transactions removed the stock shares and options from the marital estate before the trial court could distribute them on remand, we do not know precisely what portion of the stock shares and options the trial court might have awarded to the defendant, if they were still available for distribution. In these circumstances, a court could reasonably conclude that a party should be compensated for a percentage of the losses commensurate with that party's share of the marital estate as awarded by the trial court.

any subsequent sale of the stock and exercise of the options, which was not reflected in the expert's valuation of the stock shares. In light of these factors, and the plaintiff's own valuations of the marital assets distributed, it is apparent that the trial court fairly determined the loss to the estate to be $3.5 million and that its adjustment of the distribution in favor of the defendant did not exceed the defendant's reasonable share of the loss resulting from the unauthorized transactions.[8]

Nevertheless, the plaintiff claims that the trial court improperly determined that the loss to the marital estate

[8] The trial court in the present case took the plaintiff's transactions into account by adjusting the distribution of marital assets in the defendant's favor, but it did not articulate precisely what share of the marital estate it had awarded to the defendant. Nor did it articulate how much of its total property distribution was attributable to the plaintiff's violations of the automatic orders. The plaintiff has not claimed that the lack of articulation in this respect itself requires reversal. In the future, however, the trial court should articulate both the adverse impact that a party's violation had on the value of the marital estate *and* precisely how it compensated the injured party for that violation.

Nevertheless, in the present case, considering the plaintiff's valuation of the trial court's total property distribution and the plaintiff's suggested split of the marital assets, we conclude that the trial court's remedial award to the defendant did not exceed the defendant's reasonable share of the loss. According to the plaintiff's valuation of the marital assets, the total value of the assets divided, without regard to the stocks and options, was $6,514,836. The plaintiff had asked the trial court to divide the marital assets evenly between the parties. Even if the trial court followed the plaintiff's suggestion, the defendant would have been entitled to one half of this amount, that is, $3,257,418. In this scenario, the trial court also would have been justified in awarding the defendant 50 percent of the $3.5 million in losses caused by the plaintiff's violations of the automatic orders, an additional $1,750,000. The defendant was actually awarded a total of $4,428,784—meaning that she effectively received $3,257,418 of the marital assets and an additional $1,171,366 for the losses caused by the plaintiff. Accordingly, under the plaintiff's valuation, the defendant effectively received exactly one half of the losses caused by the plaintiff, less a discount of 33 percent for taxes. Consequently, even if we assume that the trial court gave the defendant exactly the share of the estate that the plaintiff argued that the defendant was entitled to, and even if we use the plaintiff's own valuation of the trial court's distribution, it is evident that the trial court's award did

was $3.5 million. He claims that the trial court was required to calculate the loss to the marital estate by considering the value that the stock shares and options would have had on the date of the dissolution decree, September, 2009, rather than at the time of the remand trial in February, 2014. For support, he relies on *Sunbury* v. *Sunbury*, 216 Conn. 673, 583 A.2d 636 (1990), in which we determined that a trial court issuing new property distribution orders on remand from an appellate court must divide the marital assets based on their value as of the original date of the dissolution decree, rather than based on their value at the time of any trial after remand. Id., 674, 676. We explained that, when dividing property pursuant to § 46b-81, "[i]n the absence of any exceptional intervening circumstances occurring in the meantime, [the] date of the granting of the divorce would be the proper time as of which to determine the value of the estate of the parties [on] which to base the division of property. . . . An increase in the value of the property following a dissolution does not constitute such an exceptional intervening circumstance." (Citation omitted; internal quotation marks omitted.) Id., 676.

Seizing on our conclusion in *Sunbury*, the plaintiff asks us to extend its reasoning to instances in which, as in the present case, the trial court is not valuing marital property for the purpose of distributing it under § 46b-81 but, rather, determining the proper remedy for a violation of a court order. Because the trial court effected the remedial award by adjusting its property distribution, the plaintiff argues that *Sunbury* applied to the trial court's remedial award and barred the court from considering the value that the stock shares and options would have had as of the time of the trial following remand, if the plaintiff had not sold or exercised them. Instead, he argues, the court should have looked

not exceed the reasonable value of the defendant's losses and thus did not amount to a penalty for the plaintiff's violations of the automatic orders.

to their value as of the dissolution date and determined the harm to the marital estate using that value. He also maintains that, because the trial court did not make any findings about the value of the stock shares and options as of the date of dissolution, a new hearing on all financial issues is required.

We disagree that *Sunbury* applies to the trial court's decision to remedy the plaintiff's violations of its orders. As the plaintiff tacitly admits in his brief to this court, *Sunbury* applies to the distribution of marital property between spouses pursuant to § 46b-81 but does not purport to place limits on the trial court's inherent authority to make a party whole when another party has violated a court order. *Sunbury* therefore did not limit the discretion of the trial court in the present case to consider the present value of the stocks and options when fashioning an appropriate remedy.[9] In considering how to make the defendant whole for the violation pursuant to its inherent authority, the trial court was justified in looking beyond the value of the stocks and options on the date of dissolution and, instead, to the value the defendant might actually have received from any stocks and options the court could have distributed to the defendant at the time of trial on remand. The trial court's decision in the present case to effect its remedial award by adjusting the distribution, rather than by ordering the plaintiff to make a separate payment, does not alter the fact that its remedial award

[9] To be sure, if the plaintiff had not sold the stocks or exercised the options, the stocks and options would have remained a part of the marital estate and have been subject to distribution under § 46b-81. In that circumstance, *Sunbury* would have required the trial court to look to the value of the stocks and options as of the dissolution date. Of course, if the plaintiff had not sold the stocks or exercised the options, the defendant would nevertheless have benefited from any increase in the actual value of any stocks or options she received in the distribution, even if the trial court could not have formally considered the increased value when distributing the assets.

was made pursuant to its inherent authority, not § 46b-81. Thus, our holding in *Sunbury* does not apply to the trial court's remedial award.

The plaintiff further contends that, if *Sunbury* does not apply, the trial court should have valued the loss to the defendant by using the value the stocks and options would have had on the date of the violations, not the date of the trial following remand. Borrowing from principles of contract law, the plaintiff asserts that the defendant's damages should be calculated by looking only to the losses the defendant incurred as of the date of the breach, without regard to any later change in the value of the stocks and options. Thus, the plaintiff agrees that if, for example, he had sold the stock for less than fair market value at the time he sold it, he might be responsible to the defendant for the loss, but, because he exchanged the stock for its fair market value in cash, he argues that there was no cognizable loss to the estate on the date of the breach and, as a result, no basis for a remedial award to the defendant. The plaintiff contends that determining loss by looking to the stock value at the time of the trial on remand entails the use of an arbitrary date in time to fix the value because that value fluctuates daily.

We disagree that assessing the value of the stocks and options at the time of the remand trial was arbitrary or irrational. At the time of that trial, the court could determine with certainty the precise value of the loss to the marital estate caused by the plaintiff's transactions. The defendant rightfully expected that the plaintiff would obey the automatic orders and that the stocks and options would remain in the marital estate until distributed to the parties by the court following a trial on remand. If the plaintiff had not sold the stock or exercised the options, and the trial court divided the marital assets between the parties, including the stocks and options, the defendant would have enjoyed the

benefit of any increase in their value. The plaintiff, however, unilaterally removed the stocks and options from the marital estate, preventing the court from distributing them in the form of stocks and options, and thus depriving the defendant of the opportunity to benefit from the increase in their value. Lacking the stocks and options to distribute, the court essentially awarded the defendant the *value* that her putative share of the stocks and options would have had at the time of the remand trial, putting the plaintiff in precisely the position she would have occupied at that time if the plaintiff had not violated the automatic orders. At that point, through its remedial award, the trial court made the value of the defendant's share of the marital estate whole against the losses caused by the plaintiff's violations. Certainly, the value of the stocks and options would fluctuate over time, meaning that the value required to make the defendant whole on a particular day would also fluctuate. But the trial court was entitled to put the defendant in the position she would have occupied in the absence of the plaintiff's violations of the automatic orders. As we previously observed, if the plaintiff did not wish to risk being held solely responsible for changes in the value of the stocks and options, he should not have sold the stock and exercised the options without proper authorization. In these circumstances, the trial court properly used the date of the remand trial to value the loss to the marital estate caused by the plaintiff's transactions.[10]

[10] We are thus unpersuaded by the plaintiff's contract law analogy. A plaintiff in a breach of contract action is ordinarily entitled to be placed in as good a position as he would have been in the absence of the breach, and an award of damages may include lost profits. E.g., *West Haven Sound Development Corp.* v. *West Haven*, 201 Conn. 305, 319–20, 514 A.2d 734 (1986) ("The general rule in breach of contract cases is that the award of damages is designed to place the injured party, so far as can be done by money, in the same position as that which he would have been in had the contract been performed. . . . [I]t is our rule that [u]nless [prospective profits] are too speculative and remote, [they] are allowable as an element of damage whenever their loss arises directly from and as a natural conse-

For these reasons, we conclude that the Appellate Court incorrectly determined that the trial court had lacked the authority to make the defendant whole for the plaintiff's violations of the automatic orders. We further conclude that the trial court's exercise of that authority was proper.

II

In light of our conclusions in part I of this opinion, we next consider whether the Appellate Court's judgment may nevertheless be affirmed on one of three alternative grounds raised by the plaintiff. The first two concern the plaintiff's violations of the automatic orders and the third involves the trial court's award of retroactive alimony.

A

The plaintiff first claims that his stock and option transactions did not violate the automatic orders established under Practice Book § 25-5 because they fall within the exception for transactions made "in the usual course of business . . . ." Practice Book § 25-5 (b) (1). The plaintiff argues that the trial court must have ignored the exception because it did not explicitly address the exception in its memorandum of decision. The plaintiff asserts that, in light of the trial court's failure to address this exception explicitly, the court's decision must be read as concluding that stock transactions can *never* fall within a person's usual course of business, a determination contrary to the plain language of § 25-5 (b) (1). We disagree that the trial court ignored this exception and conclude instead that the trial court implicitly determined that the exception does not apply.

The following additional facts and procedural history are relevant to our resolution of this issue. At trial, the

quence of the breach." [Citations omitted; internal quotation marks omitted.]).

defendant called an expert to quantify the economic loss to the marital estate incurred by the plaintiff's transactions, and the plaintiff's counsel objected to the testimony as irrelevant. While arguing the objection, the plaintiff's counsel suggested that the transactions did not violate the automatic orders, claiming they fell within the usual course of business exception inasmuch as the plaintiff believed he was making a "prudent business" decision at the time. The trial court rejected this argument, responding that the plaintiff was "not in the business. If he were a used car dealer and sold a car in his lot, or if he were a boat salesman and sold a boat, he can do that. That's the ordinary course of business." After brief additional argument, the trial court overruled the objection and permitted the defendant's expert to testify.

In its memorandum of decision, the trial court found that the plaintiff had violated the automatic orders, explaining its finding as follows: "During the pendency of the action, and while the automatic orders were in effect, the plaintiff sold 28,127 shares of Omnicom . . . stock and exercised 75,000 Omnicom . . . stock options without court order or consent from the defendant. . . . The result of the sales was a significant loss to the marital estate. The court finds that these transactions did in fact violate the automatic orders."

Although the trial court did not explicitly state that it had found that the usual course of business exception was inapplicable in the present case, the lack of an express finding on this point is of no moment. When construing a trial court's memorandum of decision, "[e]ffect must be given to that which is clearly implied as well as to that which is expressed." (Internal quotation marks omitted.) *Wheelabrator Bridgeport, L.P.* v. *Bridgeport*, 320 Conn. 332, 355, 133 A.3d 402 (2016). When, as in the present case, a trial court makes an ultimate finding of fact, we presume, in the absence of

evidence to the contrary, that the court also made the subsidiary findings necessary to support its ultimate finding. See, e.g., *Sosin* v. *Sosin*, 300 Conn. 205, 244–45 n.25, 14 A.3d 307 (2011) (noting that subsidiary finding of wrongful conduct is implicit in trial court's award of compensatory interest under General Statutes § 37-3a); *Bornemann* v. *Bornemann*, 245 Conn. 508, 526, 752 A.2d 978 (1998) (explaining that trial court implicitly must have found that stock options were marital property when court distributed options between parties).

In the present case, the trial court expressly found that the plaintiff had violated the automatic orders, which necessarily implies that the court also made a subsidiary finding that the plaintiff's conduct did not fall within any exception. Moreover, even if there were any doubt, arising from the trial court's memorandum of decision, as to whether the court considered the exception, it would be dispelled by the court's consideration and rejection of the exception in overruling the plaintiff's objection to the defendant's proffered expert testimony. We therefore disagree that the trial court ignored the exception or failed to determine whether it applied.[11]

The plaintiff nevertheless contends that, even if the trial court rejected his claim that the exception applied, this court should adopt one of two rules concerning stock transactions during a dissolution proceeding. He first argues for a bright line rule that stock sales are *always* made in the usual course of business and thus

[11] The trial court was fully justified in finding that the exception did not apply in the present case. The plaintiff was an attorney by profession, not a stockbroker, and the plaintiff has not directed us to any evidence that he otherwise had a regular practice of buying and selling stocks, either as a hobby or in the management of his personal finances. Nor did he present evidence of a regular practice of transacting his Omnicom stock that he had received as compensation for his employment. In fact, the plaintiff testified that his sale of Omnicom stock in 2009—when the automatic orders were in effect—was the first time he had sold such stock.

not subject to the automatic orders. As an alternative to this categorical rule, he urges us to adopt a rule *presuming* that stock sales fall within the usual course of business exception.

We decline to adopt either of these proposed rules because they are not supported by the text of the automatic orders set forth in Practice Book § 25-5. Those orders govern the transaction of "any property" and make no exception for transactions concerning certain types of assets, including stocks. Practice Book § 25-5 (b) (1). Instead, whether a particular transaction has been conducted in the usual course of business presents a question of fact, to be determined by looking to the circumstances of each case. See *Quasius* v. *Quasius*, 87 Conn. App. 206, 208, 866 A.2d 606 (reviewing trial court's finding concerning usual course of business exception for abuse of discretion because trial court is "in the best position to assess all of the circumstances surrounding a dissolution action" [internal quotation marks omitted]), cert. denied, 274 Conn. 901, 876 A.2d 12 (2005). Whether a transaction is conducted in the usual course of business does not turn solely on the type of asset or transaction but on whether the transaction at issue was "*a continuation of prior activities*" carried out by the parties before the dissolution action was commenced.[12] (Emphasis in original.) Id.

[12] We do not suggest, as the trial court did, that the usual course of business exception is reserved only for transactions made in connection with a party's business or profession; rather, because the automatic orders are intended to maintain the status quo between the parties, the exception would appear to extend to personal transactions, but only if any such transactions are conducted in the normal course of the parties' ordinary activities, such that both parties would fully expect the transactions to be undertaken without prior permission or approval. Even if the trial court took a more limited view of the exception, however, that view would not provide a basis for reversal of the trial court's financial orders. The testimony in the present case indicates that the plaintiff had not previously sold stocks earned as part of his compensation, and, thus, he cannot establish a preexisting practice of selling these assets, even under a more expansive interpretation of the exception. See footnote 11 of this opinion.

The plaintiff's proposed rules are also inconsistent with the purpose of the automatic orders. The status quo at the commencement of the litigation and the parties' usual course of business will vary significantly from case to case. A one size fits all rule or presumption will not accurately capture the status quo or usual course for all parties in the myriad of dissolution cases filed in our courts. The regular sale of stocks might be usual for a professional stock trader but unusual for someone who invests in stock funds through a retirement account, had not previously sold any of the stocks, and had no preexisting plan to sell those stocks until retirement. Moreover, a rule allowing a party either unconditional or presumptive permission to sell stocks without restraint would be subject to abuse. Significant stock sales have the potential to alter the character of a marital estate and might expose the other party to unwanted financial or tax consequences. For these reasons, determining a party's usual course of business is best treated as a question of fact to be decided by the trial court, unfettered by rules or guidelines that may or may not be appropriate under the unique circumstances of a particular case.

B

The plaintiff next claims the trial court incorrectly concluded that the stock options that he had exercised were marital property, subject to distribution between the parties. We again disagree.[13]

Certain additional facts are necessary to our determination of this claim. The plaintiff received the options at issue in March, 2009, after filing the dissolution action but approximately six months before the trial court

[13] The Appellate Court did not address this argument, concluding that the plaintiff had waived it. *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 580 n.4. Because the claim cannot succeed on its merits even if preserved, we need not consider whether it was waived.

rendered judgment dissolving the parties' marriage in September, 2009. See *O'Brien* v. *O'Brien*, supra, 161 Conn. App. 581. The options did not vest until after the entry of the dissolution decree, with one group of options vesting in 2010, and the remainder in 2012. See id. The plaintiff exercised the options in two groups after they had vested, converting the options to cash. Id.

At the trial on remand, the plaintiff testified about the purpose of the options. He initially testified that the options "are not compensatory" and "are not earned," but are issued solely as retention incentives to employees "so that they stay at the company until . . . [the options] vest." Shortly thereafter, however, he clarified that the options had been awarded as compensation for his performance in the prior year, 2008, but that the options had a retentive component because they vested over time to create an incentive for him to stay with the company.

In its memorandum of decision, the trial court found that the options were marital property, explaining that, although "the options had not yet vested at the time of the original trial, they were awarded prior to the dissolution," and that the exercise of the options caused "a significant loss to the marital estate." The plaintiff challenges the court's determination that the options were marital property because, although they were awarded while the parties were still married, they did not vest until 2010 and thereafter, following the dissolution of the marriage in 2009. He further argues that they were not granted as compensation for any services performed during the marriage but were solely an incentive to remain employed until the time the options had vested. For these reasons, he contends that the unvested options were not marital property subject to distribution between the parties, and, consequently, the

defendant could not have suffered any cognizable loss by virtue of his decision to exercise them.[14]

Unvested stock options may be considered marital property if they are earned during the marriage. See *Bornemann* v. *Bornemann*, supra, 245 Conn. 525. If they are awarded as compensation for services performed during the marriage, unvested options may properly be considered marital property, even if they will not vest until after the marriage is dissolved. See id. If unvested options are awarded for future services to be performed after the dissolution, however, then they are not considered marital property. See id., 524–25. Determining when the options were earned, and whether they are for predissolution or postdissolution services, poses a question of fact for the trial court, and this court must accept the finding unless it is clearly erroneous. Id., 527.

In the present case, the record supports the trial court's finding that the plaintiff's options were marital property. The plaintiff's testimony about the purpose of the options award was conflicting: although he initially testified that they were exclusively a retention incentive for future services to be performed after the marriage was dissolved, he later testified that they were compensation for past services but that they had a delayed vesting schedule to encourage him to stay employed with Omnicom. The court apparently credited his testimony that the options represented payment for past services and did not credit his earlier assertion to the

[14] We note that, in the present case, whether the options were marital property is irrelevant to our determination that the plaintiff's exercise of those options violated the automatic orders, which expressly bar the sale, transfer, or exchange of "any property," not just marital property, during the pendency of the dissolution proceedings. Practice Book § 25-5 (b) (1). We consider whether the options were marital property because that issue is relevant to determining the extent of any losses that the defendant may have sustained and that are attributable to those transactions and, thus, to the plaintiff.

contrary. The trial court had the opportunity to observe the testimony firsthand and to evaluate the witness' attitude, candor, and demeanor while he was testifying. As the finder of fact, the trial court was free to credit all or any portion of the plaintiff's testimony.[15] See, e.g., *State* v. *Andrews*, 313 Conn. 266, 323, 96 A.3d 1199 (2014) ("[i]t is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony" [internal quotation marks omitted]). Because the court's finding that the options were marital property has a sound basis in the evidence, that finding was not clearly erroneous, and, consequently, it must stand.

C

Finally, the plaintiff takes issue with the trial court's award of retroactive alimony. After the remand trial in February, 2014, the trial court ordered the plaintiff to pay alimony to the defendant, and made its order retroactive to the date when the court originally entered the dissolution decree after the original trial in 2009. The total retroactive alimony due under the order was $646,472, with payment to be made to the defendant no more than forty-five days from the issuance of the order.

The plaintiff does not dispute the trial court's power to award retroactive alimony generally but claims that the award in this case was improper. He argues that the short payment period will require him to pay the arrearage out of his share of the marital assets distributed by the trial court, effectively making it a reduction in his property distribution. Because he must pay the

[15] The trial court's finding is also supported by the Omnicom plan governing the issuance of stock options, which was entered into evidence at trial. That plan makes no reference to options being awarded for future services or retention purposes, and does not make the exercise of any options contingent on meeting any future performance goals.

retroactive alimony from his own property distribution, he asserts, the award constitutes improper "double dipping." (Internal quotation marks omitted.) We are not persuaded.

The retroactive alimony award was not improper because trial courts are free to consider the marital assets distributed to the party *paying* alimony as a potential source of alimony payments. See, e.g., *Krafick* v. *Krafick*, 234 Conn. 783, 804–805 n.26, 663 A.2d 365 (1995). Trial courts are vested with broad discretion to award alimony, and, when a court determines whether to award alimony and the amount of any such award, General Statutes § 46b-82 expressly authorizes the court to consider the marital assets distributed to each party in connection with the dissolution proceeding.[16] See General Statutes § 46b-82; see also *Krafick* v. *Krafick*, supra, 805 n.26. A trial court's alimony award constitutes impermissible double dipping only if the court considers, as a source of the alimony payments, assets distributed to the party *receiving* the alimony. See *Krafick* v. *Krafick*, supra, 804–805 n.26; see also *Greco* v. *Greco*, 275 Conn. 348, 357 n.8, 880 A.2d 872 (2005) (double dipping occurs only when trial court considers, as source for alimony, asset not available to payor). That is, if a trial court assigns a certain asset—a bank account, for example—to the party *receiving* alimony,

[16] General Statutes § 46b-82 (a) provides in relevant part: "At the time of entering the decree, the Superior Court may order either of the parties to pay alimony to the other, in addition to or in lieu of an award pursuant to section 46b-81. . . . 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 *and the award, if any, which the court may make pursuant to section 46b-81*, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment." (Emphasis added.)

it cannot consider that same bank account as a source of future alimony payments because the account has not been distributed to the party *paying* the alimony. In the present case, even if the plaintiff must, as he claims, use his own share of the marital assets to pay the retroactive alimony award, the trial court's award did not constitute double dipping because the assets the plaintiff might use to pay the alimony award were all awarded to him, not the defendant.

Nevertheless, the plaintiff asserts his double dipping claim as a basis for challenging the overall fairness of the trial court's property distribution award. He claims that, when the retroactive alimony payment is factored in, the trial court effectively awarded 78 percent of the marital estate to the defendant and awarded him only 22 percent. He asserts that "such a distribution is grossly inequitable and cannot be sustained." Once again, we disagree.

"[T]rial courts are endowed with broad discretion to distribute property in connection with a dissolution of marriage"; *Greco* v. *Greco*, supra, 275 Conn. 354; and are "empowered to deal broadly with property and its equitable division incident to dissolution proceedings." (Internal quotation marks omitted.) Id., 355. "Although a trial court is afforded broad discretion when distributing marital property, it must take into account several statutory factors. . . . These factors, enumerated in . . . § 46b-81 (c), include the age, health, station, occupation, amount and sources of income, vocational skills, employability . . . and needs of each of the parties . . . . Although the trial court need not give each factor equal weight . . . or recite the statutory criteria that it considered in making its decision or make express findings as to each statutory factor, it must take each into account." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 354–55.

"[J]udicial 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. . . . In making those determinations, we allow every reasonable presumption . . . in favor of the correctness of [the trial court's] action." (Citation omitted; internal quotation marks omitted.) *Bornemann* v. *Bornemann*, supra, 245 Conn. 531. "Generally, we will not overturn a trial court's division of marital property unless [the court] misapplies, overlooks, or gives a wrong or improper effect to any test or consideration [that] it was [its] duty to regard." (Internal quotation marks omitted.) *Greco* v. *Greco*, supra, 275 Conn. 355.

Even if we accept the plaintiff's valuation of the trial court's property distribution for purposes of this appeal, we reject his contention that the trial court abused its discretion for at least three reasons. First, a distribution ratio of 78 percent to 22 percent is not, on its face, excessive, as the plaintiff contends. Indeed, we have upheld distributions awarding as much as 90 percent of the marital estate to one party. *Sweet* v. *Sweet*, 190 Conn. 657, 664, 462 A.2d 1031 (1983); but cf. *Greco* v. *Greco*, supra, 275 Conn. 355–56 (under circumstances of case, 98.5 percent distribution to one party was excessive). Second, the court's distribution reflected the unequal earnings potential of the parties. The trial court found that the plaintiff had cash compensation in excess of $1.2 million in the years prior to the dissolution, whereas the defendant had an earnings potential of $143,000. The plaintiff thus had an earnings potential of at least eight times that of the defendant. In addition, the trial court found that the plaintiff had received significant noncash compensation and would continue to do so in the future. Although the trial court awarded the defendant alimony to supplement her income, the

amount of the award was to diminish every seven years, leaving the defendant with a progressively smaller income over time and justifying a greater up-front distribution. See footnote 4 of this opinion. Finally, as we have discussed, a significant component of the defendant's distribution was the trial court's remedial award for the plaintiff's violations of the automatic orders. See part I of this opinion. In these circumstances, we cannot conclude that the trial court's property distribution award was inequitable, as the plaintiff contends. We therefore reject this alternative ground for affirmance.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.