LAURA E. MATURO *v.* FRANK A. MATURO
(SC 17776)

Norcott, Katz, Palmer, Vertefeuille, Zarella, Schaller and McLachlan, Js.*

Argued September 19, 2008—officially released May 4, 2010

Robert M. Shields, Jr., with whom were *Kenneth J. Bartschi* and, on the brief, *Wesley W. Horton*, for the appellant (defendant).

Steven D. Ecker, with whom, on the brief, was *George C. Jepsen*, for the appellee (plaintiff).

Campbell D. Barrett, *Steven R. Dembo*, *Justine Rakich-Kelly* and *Felicia Depaola*, certified legal intern, filed a brief for the Children's Law Center of Connecticut, Inc., as amicus curiae.

Opinion

ZARELLA, J. The defendant, Frank A. Maturo, appeals[1] from the judgment of the trial court dissolving his marriage to the plaintiff, Laura E. Maturo, and entering certain financial orders. The defendant claims that the trial court abused its discretion when it (1) ordered him to pay the plaintiff a fixed percentage of his annual net cash bonus as child support, (2) ordered him to pay the plaintiff a fixed percentage of his annual state and federal income tax refunds as additional alimony and child support, and (3) divided the parties' marital assets. The plaintiff responds that the child support award was proper and is consistent with General Statutes § 46b-84.[2] Additionally, the plaintiff argues that the trial court is not bound to consider the child support and arrearage guidelines (guidelines) enacted by the commission for child support guidelines (commission) to implement the statute when the parties' annual income exceeds the income range set forth in the schedule of basic child support obligations (schedule). The plaintiff also argues that the trial court did not abuse its discretion when it ordered the defendant to share 20 percent of his annual tax refund with the plaintiff and 20 percent with his children, respectively, and when it divided the marital property. We reverse in part the judgment of the trial court.

We begin with a brief discussion of the facts found by the trial court and the relevant portions of the dissolution order. The parties were married on May 21, 1988, and are the parents of twin boys born on July 22, 1993. The plaintiff is forty-nine years old and holds a bachelor's degree in psychology from Boston College. Since the couple became parents in 1993, she has been a stay-at-home mother. The defendant is fifty-one years old and holds an undergraduate degree from Yale University and a master's degree in business administration from the Wharton School of Business. The defendant has been employed at the Manhattan office of Merrill Lynch since 1999, working in the area of global equity markets.

The defendant has been successful in his career and the family has enjoyed the financial benefits of his success. At the time of the dissolution, the defendant was earning a yearly base salary of approximately $200,000. He also was earning incentive compensation each year consisting of an annual cash bonus and an annual stock bonus, the latter comprised of both stock options and restricted Merrill Lynch stock. The trial court valued the defendant's net cash bonus for his performance in the years 2005, 2004 and 2003 as $489,449.50, $597,137.67 and $500,000, respectively,[3] although the defendant states that his annual bonus historically has been much higher and reached approximately $3.8 million in the years 2000 and 2001.[4] The trial court also valued the defendant's unexercised stock options at the

time of the dissolution at $3,529,000, and his restricted stock at $1,850,000.

The parties' total assets were likewise substantial, amounting to almost $18 million, of which approximately $10.65 million was awarded to the plaintiff and approximately $7.1 million to the defendant. The plaintiff's share of the marital assets consisted of the mortgage free $2.55 million marital home and the bulk of the family's liquid assets, including approximately $8.1 million in cash and investment accounts. Of the $7.1 million in assets awarded to the defendant, approximately $5.7 million was in the relatively illiquid form of restricted shares, unexercised stock options, deferred compensation and the balance of a retirement account. The court also awarded the plaintiff alimony in the amount of $1215 per week plus 20 percent of the defendant's annual net cash bonus and 20 percent of any future tax refund that the defendant might receive. The court further ordered the defendant to maintain comprehensive medical insurance benefits for the plaintiff at his expense for the maximum period allowed by law and to obtain a life insurance policy in favor of the plaintiff in the amount of $2 million, authorizing him, however, to reduce the amount of the policy so long as it remained sufficient to meet his payment obligations for alimony and child support.

The court designated the plaintiff as the sole custodian of the parties' two minor children but granted the defendant regular visitation rights. The court based the child custody plan on a five week rotation, during which the children were to be with the defendant from Thursday afternoon through Monday morning three out of the five weeks, and Wednesday afternoon through Thursday morning the other two weeks. Under the court's schedule, this rotation was to continue during summer vacations, except that each parent was granted an exclusive period of two weeks with the children. The effect of the schedule was to place physical custody and responsibility for the children with the plaintiff approximately 60 percent of the time and with the defendant approximately 40 percent of the time.

With respect to child support, the court awarded the plaintiff $636 per week, plus 20 percent of the defendant's annual net cash bonus and 20 percent of any future tax refund that the defendant might receive. The court also ordered the defendant to pay 100 percent of the children's private school tuition until they complete high school and to pay for "all work related day care expenses and summer day camp and extracurricular activities." In addition, the court ordered the defendant to "maintain and pay for all medical and dental insurance for the benefit of the children . . . [and] 100 percent of all unreimbursed medical, dental, orthodontia, optical and psychological expenses." The court did not enter an order regarding payment of the children's col-

lege expenses, but reserved jurisdiction to enter such an order at the appropriate time.

In entering the financial orders, the trial court explained that it had considered "all of the statutory criteria set forth in . . . § 46b-84 as to support of a minor child, § 46b-215a-1 et seq. of the Regulations of Connecticut State Agencies, as to child support . . . [and] [General Statutes] § 46b-82, as to the award of alimony . . . ." The court acknowledged, however, that the child support award departed from the schedule contained in the guidelines, which does not address circumstances in which the combined net weekly income of the parties exceeds $4000, because of "the [defendant's] substantial assets, the [defendant's] superior earning capacity, the extraordinary disparity in parental income and the significant and essential needs of the [plaintiff] including, but not limited to, the need to provide a home for the children." The court further noted that it had not considered the defendant's yearly noncash compensation, consisting of $530,000 in stock options and restricted stock for the year 2005, in making the alimony and child support awards. Judgment was entered on June 12, 2006, and this appeal followed.

We begin by setting forth the applicable standard of review. "The well settled standard of review in domestic relations cases is that this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . As has often been explained, the foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations case . . . ." (Internal quotation marks omitted.) *Simms* v. *Simms*, 283 Conn. 494, 502, 927 A.2d 894 (2007), quoting *Borkowski* v. *Borkowski*, 228 Conn. 729, 739, 638 A.2d 1060 (1994). "In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Internal quotation marks omitted.) *Bender* v. *Bender*, 258 Conn. 733, 740, 785 A.2d 197 (2001). "Notwithstanding the great deference accorded the trial court in dissolution proceedings, a trial court's ruling . . . may be reversed if, in the exercise of its discretion, the trial court applies the wrong standard of law." *Borkowski* v. *Borkowski*, supra, 740. The question of whether, and to what extent, the child support guidelines apply, however, is a question of law over which this court should exercise plenary review. See *In re T.K.*, 105 Conn. App. 502, 506, 939 A.2d 9 ("[t]he application of a statute to a particular set of facts is a question of law to which we apply a plenary standard of review"), cert. denied, 286 Conn. 914, 945 A.2d 976 (2008); *Unkelbach* v. *McNary*, 244 Conn. 350, 357, 710 A.2d 717 (1998) (interpretation of statutory scheme that governs child support determinations constitutes question of law).

I

NET CASH BONUS AWARD

The defendant first claims that the trial court improperly ordered him to pay 20 percent of his annual net cash bonus award as child support. He claims that the order was inconsistent with the guidelines and that the court's proffered justification for its deviation from the guidelines was contrary to law. He further claims that the order was improper because it was not based on the needs of the children and thus amounts to disguised alimony. The plaintiff responds that the trial court is not bound by the guidelines when a couple's income exceeds the maximum amount listed in the schedule. The plaintiff asserts that, in such cases, the only applicable criteria for setting an appropriate child support award are those set forth in § 46b-84, which grants the trial court broad discretion in determining the amount of child support and allows the court to consider other factors in addition to the financial needs of the child. We conclude that, although the trial court correctly acknowledged the general applicability of § 46b-84 and the guidelines, the child support order was improper because it was inconsistent with the statutory criteria and with the principles expressed in the guidelines.[5] The court ordered an open-ended, variable child support award that constituted an increase, rather than a decrease, in the percentage of the parties' combined net weekly income over that established for families at the upper limit of the guidelines' schedule. In addition, it misapplied the deviation criteria and failed to expressly consider the factors set forth in § 46b-84 (d), thus providing no acceptable rationale for its decision. Accordingly, we conclude that the trial court abused its discretion and that the judgment with respect to the child support orders must be reversed.

A

Governing Statutes and Regulations

The legislature has enacted several statutes to assist courts in fashioning child support orders. Section 46b-84 provides in relevant part: "(a) Upon or subsequent to the annulment or dissolution of any marriage or the entry of a decree of legal separation or divorce, the parents of a minor child of the marriage, shall maintain the child according to their respective abilities, if the child is in need of maintenance. Any postjudgment procedure afforded by chapter 906 shall be available to secure the present and future financial interests of a party in connection with a final order for the periodic payment of child support. . . .

"(d) In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and

sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child. . . ."

The legislature also has provided for a commission to oversee the establishment of child support guidelines, which must be updated every four years, "to ensure the appropriateness of child support awards . . . ." General Statutes " 46b-215a.[6] General Statutes § 46b-215c further provides that the updated guidelines issued by the commission shall be submitted to the standing legislative regulation review committee and adopted in accordance with the provisions of chapter 54, the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq. Moreover, the legislature has thrown its full support behind the guidelines, expressly declaring that "[t]he . . . guidelines established pursuant to section 46b-215a and in effect on the date of the support determination *shall be considered in all determinations of child support amounts* . . . . In all such determinations, there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount of support . . . . A specific finding on the record that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under criteria established by the [commission] under section 46b-215a, shall be required in order to rebut the presumption in such case." (Emphasis added.) General Statutes § 46b-215b (a).

The guidelines are defined as "the rules, principles, schedule and worksheet established under [the applicable sections] of the Regulations of Connecticut State Agencies for the determination of an appropriate child support award . . . ." Regs., Conn. State Agencies § 46b-215a-1 (5). A " '[c]hild support award' " is further defined as "the entire payment obligation of the noncustodial parent, *as determined under the . . . guidelines* . . . ." (Emphasis added.) Id., § 46b-215a-1 (6). The guidelines include a schedule for calculating "the basic child support obligation" for families that have two minor children and a combined net weekly income ranging from $310 to $4000. Id., § 46b-215a-2b (f). The guidelines provide in relevant part that, "[w]hen the parents' combined net weekly income exceeds [$4000], child support awards shall be determined on a case-by-case basis, and the current support prescribed at the [$4000] net weekly income level shall be the minimum presumptive amount." Id., § 46b-215a-2b (a) (2). In "appropriate cases," the guidelines also permit "the entry of a supplemental order . . . to pay a percentage of a future lump sum payment, such as a bonus. Such supplemental orders may be entered only when . . . the percentage is generally consistent with the schedule . . . ." Id., § 46b-215a-2b (c) (1) (B) (ii); see also id.,

§ 46b-215a-1 (11) (A) (iii) (permitting, inter alia, bonuses to be included in calculation of "gross income"). In accordance with the statutory directives set forth in General Statutes § 46b-215b (a), the guidelines emphasize that the support amounts calculated thereunder are the correct amounts to be ordered by the court unless rebutted by a specific finding on the record that such an amount would be inequitable or inappropriate. Id., § 46b-215a-3 (a). Any such finding shall include the amount required under the guidelines and the court's justification for the deviation, which must be based on the guidelines' "[c]riteria for deviation . . . ." Id., § 46b-215a-3 (b); see also General Statutes § 46b-215b (a). None of the guidelines suggest that an increase, rather than a decrease, in the support obligation in higher income families is appropriate merely because the noncustodial parent has the greater earning capacity.[7]

The guidelines are accompanied by a preamble that is not part of the regulations but is intended to assist in their interpretation. Child Support and Arrearage Guidelines (2005), preamble, § (a), p. i. The preamble states that the primary purpose of the guidelines is "[t]o provide uniform procedures for establishing an adequate level of support for children"; id., § (c) (1), p. ii; and "[t]o make awards more equitable by ensuring the consistent treatment of persons in similar circumstances." Id., § (c) (2), p. ii. The preamble explains that the commission extended the applicable range of the schedule in 2005 to include families with a combined net weekly income of up to $4000, an increase from the combined net weekly income limit of $2500 contained in the 1999 schedule, "to promote consistency in the setting of support orders at all income levels" by taking advantage of more recent data on child-rearing costs that included higher income families. Id., § (e) (6), p. vi.

The preamble further explains that the guidelines are based on the income shares model, which considers the income of both parents and "presumes that the child should receive the same proportion of parental income as he or she would have received if the parents lived together." Id., § (d), p. ii. Children's economic needs do not increase automatically, however, with an increase in household income. Although parents may spend more on their children in absolute dollars as their income grows, thus raising the child's station and standard of living, the income shares model reflects the principle that spending on children as a *percentage* of household income actually declines as family income rises. The preamble specifically notes that "economic studies have found that spending on children declines as a proportion of family income as that income increases, and a diminishing portion of family income is spent on each additional child." Id., § (d), p. iii; see also *Gentile* v. *Carneiro*, 107 Conn. App. 630, 648, 946 A.2d 871 (2008) ("[t]he guidelines are based on the

premise that a parent with a high net income pays a lower percentage of his income for child support as compared to an obligor with a lower net income"). The preamble suggests that spending declines because "families at higher income levels do not have to devote most or all of their incomes to perceived necessities. Rather, they can allocate some proportion of income to savings and other [nonconsumption] expenditures, as well as discretionary adult goods." Child Support and Arrearage Guidelines (2005), preamble, § (e) (4) (A), p. iv; see also *Ford* v. *Ford*, 600 A.2d 25, 30 (Del. 1991) ("When the income of an individual is substantial, he or she will use a smaller percentage of that income to maintain a certain standard of living as compared to an individual with less income. This is because, outside of unusually extravagant lifestyles, only a limited sum can be spent on a standard of living. At some point income is directed less and less towards 'needs' and more and more towards savings or investments and thus becomes part of an individual's estate."); *In re Marriage of Bush*, 191 Ill. App. 3d 249, 261, 547 N.E.2d 590 (1989) ("A large income does not necessarily trigger an extravagant [lifestyle] or the accumulation of a trust fund. A large increase in income will not necessarily result in an equal change in one's [lifestyle]. There are other rational options for an individual with a large income than just conspicuous consumption. The wealthy person may prefer personal frugality, or the enrichment of others through charitable giving, or simply deferring income through tax-delay investments, in order to build an estate."), appeal denied, 129 Ill. 2d 561, 550 N.E.2d 553 (1990). Consequently, the 2005 guidelines, like those that came before them, "incorporate declining percentages at all levels of combined net weekly income . . . consistent with the income shares model . . . ." Child Support and Arrearage Guidelines (2005), preamble, § (e) (4) (B), p. iv.

In sum, the applicable statutes, as well as the guidelines, provide that *all* child support awards must be made in accordance with the principles established therein to ensure that such awards promote "equity," "uniformity" and "consistency" for children "at *all income levels*." (Emphasis added.) Id., § (c) (1) and (2), p. ii; id., § (e) (6), p. vi. General Statutes § 46b-84 specifically instructs that courts shall consider various characteristics and needs of the child in determining whether support is required, the amount of support to be awarded and the respective abilities of the parents to provide such support. Although the guidelines grant courts discretion to make awards on a "case-by-case" basis above the amount prescribed for a family at the upper limit of the schedule when the combined net weekly income of the parents exceeds that limit, which is presently $4000; Regs., Conn. State Agencies § 46b-215a-2b (a) (2); the guidelines also indicate that such awards should follow the principle expressly acknowl-

edged in the preamble and reflected in the schedule that the child support obligation as a percentage of the combined net weekly income should decline as the income level rises. Thus, an award of child support based on a combined net weekly income of $8000 must be governed by the same *principles* that govern a child support award based on a combined net weekly income of $4000, even though the former does not fall within the guidelines' *schedule*. Finally, although courts may, in the exercise of their discretion, determine the correct percentage of the combined net weekly income assigned to child support in light of the circumstances in each particular case, including a consideration of other, additional obligations imposed on the noncustodial parent, any deviation from the schedule or the principles on which the guidelines are based must be accompanied by the court's explanation as to why the guidelines are inequitable or inappropriate and why the deviation is necessary to meet the needs of the child.[8] See also General Statutes § 46b-84 (d).

B

Amount of Award

Under the schedule, the required support payment for two children declines from 35.99 percent when the combined net weekly income of the family is $310 to 15.89 percent when the combined net weekly income of the family is $4000. Regs., Conn. State Agencies § 46b-215a-2b (f). Consequently, the support payment for two children under the guidelines should presumptively not exceed 15.89 percent when the combined net weekly income of the family exceeds $4000, and, in most cases, should reflect less than that amount.

In the present case, the trial court first awarded the plaintiff $636 per week, the amount designated in the schedule when there are two children and the combined net weekly income of the family is $4000 per week. The court, however, also awarded the plaintiff 20 percent of the defendant's annual net cash bonus, which has varied in recent years from $489,449.50 to $1.368 million. See footnote 4 of this opinion. This translates into an increase in child support of approximately $1882 to $5261 per week, or three to eight times more than the base award. If the defendant's bonus reaches such levels in future years, the total child support payment will increase to approximately $130,000 to $306,000 per year, or approximately $2500 to $5900 per week. Although the guidelines permit the consideration of bonuses when calculating a family's combined weekly net income; Regs., Conn. State Agencies §§ 46b-215a-1 (11) (A) (iii) and 46b-215a-2b (c) (1) (B); an open-ended child support award of 20 percent, rather than 15.89 percent or less, of the defendant's variable bonus violates the guideline principles that a declining percentage of the combined net family income should be awarded as the income level rises and that the percentage of

any future bonus allocated for child support should be "generally consistent"; id., § 46b-215a-2b [c] [B] [ii]; with the percentages established in the schedule in order to ensure consistency, uniformity and equity in the treatment of persons in such circumstances.[9] See id., §§ 46b-215a-1 (6), 46b-215a-2b (c) (1) (B) and (f); see *Unkelbach* v. *McNary*, supra, 244 Conn. 357–58 ("The percentage allocations contained in the guidelines aim to reflect the average proportions of income spent on children in households of various income and family sizes . . . . The result is that the guidelines incorporate an allocation of resources between parents and children that the legislature has decided is the appropriate allocation. Consequently, our interpretation of the guidelines must seek to *preserve* this allocation." [Citation omitted; emphasis added.]). An increase of this magnitude over the minimum award at the high end of the income spectrum, as established in the schedule, also raises serious questions regarding the trial court's rationale and appears to be inconsistent with the statutory mandate to consider the actual needs of the children. See General Statutes § 46b-84 (d).

C

Application of Deviation Criteria

The trial court explained its reasons for deviating from the guidelines as the "[defendant's] substantial assets . . . [and] superior earning capacity, the extraordinary disparity in parental income and the significant and essential needs of the [plaintiff] including, but not limited to, the need to provide a home for the children." As if to downplay the significance of the deviation, the court further noted that it had not considered the defendant's yearly noncash compensation, consisting of stock options and restricted stock in the amount of $530,000 for the year 2005. The court provided no other reasons, however, for its decision. We conclude that, although the court ostensibly applied the deviation criteria in awarding the plaintiff 20 percent, rather than 15.89 percent or less, of the defendant's annual net cash bonus, it did not understand and apply the criteria correctly, thus failing to preserve the allocation of resources between parents and children authorized by the legislature under the relevant statutes and established by the commission. See General Statutes §§ 46b-215a and 46b-215b.

The deviation criteria are narrowly defined and require the court to make a finding on the record as to why the guidelines are inequitable or inappropriate. In the present case, the court did not make such a finding. The court also misconstrued the deviation criteria. The court's first reason for the large, open-ended award of bonus income was the defendant's "substantial assets" and "superior earning capacity . . . ." This rationale appears to have been drawn from the first criteria, which permits the court to consider "[o]ther financial

resources available to a parent [such as substantial assets and superior earning capacity] . . . that are not included in the definition of net income, but could be used by the parent for the benefit of the child or for meeting the needs of the parent." Regs., Conn. State Agencies § 46b-215a-3 (b) (1); see also id., § 46b-215a-3 (b) (1) (A) and (B). The defendant's annual net cash bonus, however, is not another "available" financial resource under the first criteria because bonuses are included in the definition of net income. Id., § 46b-215a-1 (11) (A) (iii) and (17). Thus, the court was not permitted to consider the defendant's "substantial assets" and "superior earning capacity" to justify the additional child support award derived from his annual bonus. Furthermore, even if bonuses were not included in the guidelines' definition of "net income" and could have been considered another "available" financial resource, the court did not explain how an increase in the level of support of 15.89 percent or more of the defendant's bonus would have benefited the children or met the needs of the plaintiff, especially in light of yearly changes in bonus income unrelated to family circumstances. Indeed, it appears that the parties placed much of the defendant's extraordinary income during their marriage into savings and investment accounts that had little effect on their daily standard of living. See Child Support and Arrearage Guidelines (2005), preamble, § (e) (4) (A), p. iv (higher income families devote more income to savings, other nonconsumption expenditures and discretionary adult goods); *Ford* v. *Ford*, supra, 600 A.2d 30 (higher income families spend less and less on " 'needs' " and put more and more into savings or investments). Finally, the plaintiff's share of the property distribution award was considerably greater than the defendant's, particularly with respect to cash and other readily accessible liquid assets. Thus, to the extent that both parties were left with substantial assets after the property division, the defendant's assets could not have provided a sufficient ground for the court's departure from the guidelines.

The court next referred to "the extraordinary disparity in parental income . . . ." The court apparently was relying on the sixth criteria, in which income disparity is one of several "[s]pecial circumstances that permit a departure from the guidelines. Regs., Conn. State Agencies § 46b-215a-3 (b) (6). Income disparity may be considered, however, only when the *custodial parent* has the higher income and deviation from the presumptive support amount "would enhance the lower income [noncustodial] parent's ability to foster a relationship with the child . . . ." Id., § 46b-215a-3 (b) (6) (B) (i). This consideration is unambiguously intended to protect the noncustodial parent in circumstances where the income of the custodial parent far exceeds the income of the parent obligated to pay child support, which is not the case here. Thus, the court's consider-

ation of income disparity under the sixth deviation criteria was improper.

The court's third and final reason for departing from the guidelines was the "significant and essential needs of the [plaintiff] including, but not limited to, the need to provide a home for the children." An award made to satisfy the "essential needs of the [plaintiff]" is improper, however, because child support awards, by definition, must benefit the children or foster their relationship to their parents. See General Statutes § 46b-84 (d). Any consideration of the *plaintiff's* needs thus must be restricted to the fashioning of an alimony award under General Statutes § 46b-82[10] and cannot justify a deviation from the guidelines. In addition, the court made no specific finding regarding how an open-ended bonus award would foster the needs of the children, nor did the court explain why the plaintiff, to whom it had awarded significant assets in the form of a mortgage free house, approximately $7 million in liquid assets and 20 percent of the defendant's net cash bonus as alimony, required additional funds "to provide a home for the children."[11] The court also apparently failed to consider that, because the defendant was awarded physical custody of the children approximately 40 percent of the time, the plaintiff's needs with respect to providing a home for the children would be correspondingly diminished.

In addition, although the court stated that it had considered all of the statutory criteria, it failed to provide any explicit justification for the award of bonus income that was related to the financial *or* nonfinancial needs or characteristics of the children under General Statutes § 46b-84 (d), which requires consideration of the child's "age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs . . . ." In fact, there is no evidence that the court considered *anything* other than the defendant's income and earning capacity in making the child support award. Thus, absent a finding as to how the additional funds would be used for the benefit of the children and how the award was related to the factors identified in § 46b-84 (d), we conclude that the court exceeded its legitimate discretion. Indeed, we are at a loss to explain how approximately $360 to $840 every single day of the year, which is the amount the plaintiff would receive in income based child support if the defendant earned an annual net cash bonus of $490,000 to $1.368 million, can seriously be justified, especially when the costs of the children's education, health care and extracurricular activities will be paid solely by the defendant and not by the plaintiff out of the child support award.

The dissent argues that the focus of the plurality is on the "physical needs of the children" and that this opinion "ignores the 'new wave' of cases that recognizes

the significance of the standard of living of children of affluent parents." We disagree. We recognize that children in high income families are accustomed to a more affluent lifestyle that should be maintained to the extent reasonably possible. Indeed, § 46b-84 mandates that the court consider factors such as the occupation, station, earning capacity and amount and sources of income of the parents as well as the age, health, station, educational status, expectation, estate and needs of the child. Section 46b-215b (a), however, provides that the guideline principles must be considered in "all determinations of child support amounts . . . ." Accordingly, the trial court should not have *unfettered* discretion in high income cases to make lavish child support awards that appear to be unrelated both to the needs of the children, even after considering their station, and to the principles articulated in the guidelines, including the principle that an award based on bonus income should be generally consistent with the schedule.

The dissent overlooks the trial court's failure to provide any justification relating to the characteristics and needs of the children when the court granted the award of bonus income. The court made no findings regarding how much of the family's disposable income before the divorce had been spent on the children to justify such an award and apparently did not consider that it already had (1) granted the defendant physical custody and responsibility for the children 40 percent of the time, (2) awarded the plaintiff the mortgage free $2.55 million marital home and more than $8 million in cash and investment accounts, and (3) ordered the defendant to pay all of the children's private school tuition, medical and dental insurance, unreimbursed medical, dental, orthodontia, optical and psychological expenses and all summer camp and extracurricular activity expenses. Thus, it is difficult to understand why the court made such a high net cash bonus award absent any findings or evidence in the record that it was needed by, or would be spent on, the children.

The effect of unrestrained child support awards in high income cases is a potential windfall that transfers *wealth* from one spouse to another or from one spouse to the children under the guise of child support. In the present case, the award of 20 percent of the defendant's indeterminate annual bonus without any justification relating to the characteristics or needs of the children closely resembles the "disguise[d] alimony" this court disapproved of in *Brown* v. *Brown*, 190 Conn. 345, 349, 460 A.2d 1287 (1983).

In *Brown*, the plaintiff's weekly household expenses amounted to $340.23. Id., 348. The trial court nonetheless ordered the defendant to pay $325 per week in child support, in addition to maintaining medical insurance and paying for 50 percent of the child's unreimbursed medical expenses. Id. On appeal, we concluded

that the child support award was improper because it was "grossly disproportionate to the child's needs." Id., 349. Recognizing that "[c]hild support orders must be based on the statutory criteria enumerated in . . . § 46b-84 of which the most important is the needs of the child," we held that "support award[s] may not be used to disguise alimony awards to the custodial parent." Id.; see also *Loughlin* v. *Loughlin*, 280 Conn. 632, 655–56, 910 A.2d 963 (2006) (alimony and child support serve distinct purposes and one must not be used to disguise improper increased payment of other). Other courts have similarly noted that "guidelines and percentages used without limitation are unrealistic and unfair when both parents have substantial incomes. . . . When a parent has an ability to pay a large amount of support, the determination of a child's needs can be generous, but all any parent should be required to pay, regardless of his or her ability, is a fair share of the amount *actually necessary* to maintain the child in a reasonable standard of living. Court-ordered support that is more than reasonably needed for the child becomes, in fact, [tax free] alimony." (Citations omitted; emphasis added.) *Kalter* v. *Kalter*, 155 Mich. App. 99, 104, 399 N.W.2d 455 (1986), leave to appeal denied, 428 Mich. 862 (1987); *Rodriguez* v. *Rodriguez*, 834 S.W.2d 369, 372 (Tex. App. 1992) ("[a]n award of child support above the guidelines without regard to needs and solely because the obligor has great income would amount to de facto alimony"), rev'd on other grounds, 860 S.W.2d 414 (Tex. 1993); accord *Williams* v. *Williams*, 261 N.C. 48, 58, 134 S.E.2d 227 (1964) ("[i]t is never the purpose of a support order to divide the [noncustodial parent's] wealth or to distribute his estate"). Consequently, the trial court's discretion must be informed by careful consideration of guideline principles to lessen the risk of improper child support awards in high income cases.

We therefore conclude that, when a family's combined net weekly income exceeds $4000, the court should treat the percentage set forth in the schedule at the highest income level as the presumptive ceiling on the child support obligation, subject to rebuttal by application of the deviation criteria enumerated in the guidelines, as well as the statutory factors described in § 46b-84 (d). Additionally, when there is a proven, routine consistency in annual bonus income, as when a bonus is based on an established percentage of a party's steady income, an additional award of child support that represents a percentage of the net cash bonus also may be appropriate if justified by the needs of the child. When there is a history of wildly fluctuating bonuses, however, or a reasonable expectation that future bonuses will vary substantially, as in the present case, an award based on a fixed percentage of the net cash bonus is impermissible *unless* it can be linked to the child's characteristics and demonstrated needs.

In determining whether to supplement the basic child

support obligation with bonus income, the court also must consider the property division and custody schedule as well as any additional support obligations imposed on the noncustodial parent for education, health care, recreation, insurance and other matters. In the present case, the court entered separate orders requiring the defendant to pay all of the children's medical and health related expenses as well as all expenses relating to the children's "summer day camp and extracurricular activities," which presumably would cover many of the luxuries to which children of affluent families are accustomed and would expect to be maintained following a divorce. When not covered by separate orders, however, such expenses are not infinite, and thus are not likely to represent a uniform percentage of a defendant's variable bonus income, regardless of the income level in any given year. See *Marriage of Edwards*, 99 Wash. 2d 913, 918–19, 665 P.2d 883 (1983) ("[A]n open-ended percentage of income support award may not necessarily relate to the child's support needs. Thus, a limitation on the concept is needed. In fashioning such awards, the trial judge should determine a maximum amount of child support that would be reasonable and needed in the future and set that amount as a ceiling above which the support payments cannot rise."); see also *Harmon* v. *Harmon*, 173 App. Div. 2d 98, 111, 578 N.Y.S.2d 897 (1992) ("[T]o apply blindly the statutory formula to the parties' aggregate income over [the maximum provided for in the guidelines] without any express findings or record evidence of the child's actual needs would constitute both an abdication of the judicial responsibility and a trespass upon the right of parents to make [lifestyle] choices for their children. Although entitled to support in accordance with the preseparation standard, a child is not a partner in the marital relationship, entitled to a 'piece of the action.' ").

We emphasize that trial courts remain free to exercise their discretion in determining the appropriate child support award in light of the particular circumstances of each case. As one court has stated: "When the [parties'] combined adjusted gross income exceeds the uppermost limit of the . . . schedule, the amount of child support awarded must rationally relate to the reasonable and necessary needs of the child, taking into account the lifestyle to which the child was accustomed and the standard of living the child enjoyed before the divorce, *and* must reasonably relate to the obligor's ability to pay for those needs. . . . To avoid a finding of an abuse of discretion on appeal, a trial court's judgment of child support must satisfy both prongs." (Emphasis in original; internal quotation marks omitted.) *Burgett* v. *Burgett*, 995 So. 2d 907, 913 (Ala. App. 2008). Although we do not specifically endorse this approach as the standard to be applied in Connecticut, it has an intuitive appeal and is consistent with § 46b-

84 (d) because it suggests that the total child support obligation must be capped at a sum bearing some rational relation to the "estate and needs of the child."

Relying on *Battersby* v. *Battersby*, 218 Conn. 467, 473, 590 A.2d 427 (1991), and the preamble to the guidelines, the plaintiff argues that the trial court did not abuse its discretion in awarding 20 percent of the defendant's net cash bonus as child support. She argues that the court's discretion is limited in high income cases only by the factors set forth in § 46b-84, and not by the guidelines, and that the award was justified in the present case as necessary to avoid a dramatic change in the children's standard of living that might result in their emotional and psychological harm. A thorough review of both *Battersby* and the preamble to the guidelines, however, indicates otherwise. Moreover, the court's other orders ensured that there would be little or no change in the children's standard of living.

We first note that the plaintiff improperly conflates the guidelines and the schedule contained therein. To the extent that the parties' combined net weekly income exceeds $4000, the upper limit of the schedule, we agree with the plaintiff that the schedule cannot, and does not, apply, except insofar as the guidelines mandate a minimum child support payment. This does not mean, however, that the guideline principles that *inform* the schedule, including equity, consistency and uniformity in the treatment of persons in similar circumstances; Child Support and Arrearage Guidelines (2005), preamble, § (c) (1) and (2), p. ii.; do not continue to apply merely because the parties' income exceeds the schedule's upper limit. As previously discussed, § 46b-215b requires that the guidelines "*shall* be considered in *all* determinations of child support amounts"; (emphasis added); which, according to the preamble, have been established in the schedule on the basis of the income shares model and reflect the principle that spending on children declines as a proportion of family income as income levels rise. Child Support and Arrearage Guidelines (2005), preamble, § (d), pp. ii–iii. Accordingly, the guidelines cannot be ignored when the combined net family income exceeds the upper limit of the schedule, but remain applicable to all determinations of child support.

The plaintiff's reliance on *Battersby* is also misguided because she takes its language out of context. In that case, the plaintiff husband's weekly income exceeded the highest income level in the schedule. *Battersby* v. *Battersby*, supra, 218 Conn. 468. The defendant wife, who was the custodial parent for the couple's two minor children, appealed from the trial court's *downward* departure from the schedule, arguing that the top percentage in the schedule, which at the time was 44 percent, should be applied to the plaintiff's higher income. Id., 469, 472–73. We explained, however, that the trial

court properly had declined to employ the maximum percentage because "applying the [g]uidelines [schedule] to incomes in excess of [the maximum] would be inequitable because the statistical basis for the [schedule] loses its validity as the disposable income of the family increases; that is, the proportion of household income spent on children declines as household income increases." Id., 473. We therefore endorsed the trial court's rationale, explaining that, "while a family earning [the maximum combined net weekly income] may spend 44 percent of its income supporting two children, a family earning [a considerably greater weekly income than the maximum established in the schedule] ordinarily spends a lower percentage. Since the purpose of a child support order is to provide for the care and well-being of minor children, and *not to equalize the available income of divorced parents*, the trial court had the authority to reject the defendant's suggested extrapolation of the [g]uidelines' percentage as inappropriate and inequitable in the circumstances before it." (Emphasis added.) Id.

We nonetheless did not endorse a completely ad hoc approach to higher income support awards, but noted with approval that the trial court had "considered the [g]uidelines, found the [schedule] inapplicable for arriving at a presumptive support amount, and considered the statutory criteria *and other* [*g*]*uideline factors* in arriving at its decision." (Emphasis added.) Id., 472. Accordingly, *Battersby* implicitly *bars* the use of percentages greater than the highest provided for in the schedule when determining appropriate child support obligations in higher income cases and instructs, first, that the plaintiff in the present case is incorrect in concluding that the guidelines are inapplicable to high income cases, and, second, that the application of a percentage *greater* than the maximum provided in the schedule is highly questionable and must at least be justified by "other [g]uideline factors . . . ." Id. In short, the plaintiff's argument misses the crucial point that *Battersby* actually *contradicts* her view that the award in the present case was proper.

Our reasoning in *Battersby* was recently applied by the Appellate Court in *Gentile* v. *Carneiro*, supra, 107 Conn. App. 630, which held, inter alia, that the trial court improperly had ordered the defendant "to pay an excessive percentage of his future commissions as supplemental support." Id., 644. In *Gentile*, the court first explained that a supplemental order mandating a payment based on a percentage of future lump sum income must be "generally consistent with the guidelines' schedule"; Child Support Arrearage Guidelines (2005), preamble, § (g) (6), p. ix; and that this occurs "when [the payment] is of a percentage that, as a whole, is in harmony with the schedule"; *Gentile* v. *Carneiro*, supra, 644; and "account[s] for a parent's declining percentage support obligation that accompanies an

increase in income." Id., 648. Recognizing that such future income may cause the obligor's income to exceed the range of the schedule, the court established a general principle based on the economic policy underlying the guidelines that "a supplemental support order must account for the schedule's inverse relationship between a parent's net income and his weekly support obligation, while also accounting for those instances in which a future payment of unknown amount exceeds the range of the schedule." Id., 649. The Appellate Court found that the supplemental award in *Gentile* "excessively burdened the defendant . . . [because] [n]o matter what the actual value of the defendant's future commission, he will always be obligated to pay as support a higher percentage than what the schedule mandates." Id., 650. Thus, the case was remanded so that the trial court could "craft a supplemental order that requires the defendant to pay a declining percentage of supplemental support as the future lump sum payment increases while also accounting for those instances in which the future lump sum payment exceeds the range of the schedule. The percentages in the court's order should be within the range utilized by the schedule." Id. The rationale articulated by the court in *Gentile*, which is no more than a restatement of the reasoning expressed in the guidelines, is applicable even in cases in which a family's net income exceeds the maximum established in the schedule. We therefore approve of the analysis in *Battersby* and *Gentile* and conclude that the guidelines' requirement of "general consisten[cy]" must be applied to all child support awards. Child Support and Arrearage Guidelines (2005), preamble, § (g) (6), p. ix.

With respect to the plaintiff's concern that the children may suffer emotional harm because of a change in their standard of living, we reiterate that the court awarded the plaintiff $10.65 million, of which $8.1 million was in cash and investment accounts, the parties' mortgage free $2.55 million marital home and alimony in the amount of $1215 per week plus 20 percent of the defendant's annual net cash bonus and 20 percent of any future tax refund the defendant may receive. Additionally, the defendant was ordered to provide comprehensive medical insurance benefits for the plaintiff at his expense for the maximum period allowed by law and to obtain a life insurance policy in favor of the plaintiff in the amount of $2 million. He also was ordered to pay 100 percent of the children's private school tuition until they complete high school and "all work related day care expenses and summer day camp and extracurricular activities," and to "maintain and pay for all medical and dental insurance for the benefit of the children . . . [and] 100 percent of all unreimbursed medical, dental, orthodontia, optical and psychological expenses." The court also left the door open for a future order regarding payment of the children's college

expenses. Accordingly, it does not appear that the court's financial orders will cause the children to suffer a significant change in their standard of living, and, as noted elsewhere in this opinion, the award would not survive review even if the only test applied was based on the factors set forth in § 46b-84 (d).

As we have stated previously, the guidelines do not cease to apply and permit trial courts unlimited discretion in setting child support awards merely because the income of a particular family exceeds some talismanic number on a chart. Neither this court, nor the trial court, is at liberty, where a particular family enjoys a relatively high income, to disregard the significant progress that has been made in standardizing child support awards since the advent of the guidelines. See 42 U.S.C. § 667 (b) (2) (1988). Removing consideration of the guidelines from child support decisions deprives high income families of the fairness and consistency the guidelines require and leaves the trial and appellate courts adrift, unanchored to the core principles that guide support awards in cases falling *within* the guidelines' schedule. We therefore conclude that the trial court abused its discretion in awarding the plaintiff 20 percent of the defendant's annual net cash bonus in child support.

In his concurrence, Justice Schaller claims that the plurality incorrectly elevates the child support guidelines to "controlling authority" in cases in which the parties' combined net weekly income exceeds the upper limit of the schedule, thus infringing on trial courts' broad discretion to determine child support awards in such cases on the basis of statutory authority alone, "unfettered" by the strict principles of the guidelines except as a factor to be "considered." We disagree. The concurrence misconstrues our decision, which does not rely solely on the guidelines, but takes significant account of the applicable statutory authority on which the guidelines are based. The concurrence also fails to recognize that, in establishing a commission to promulgate and regularly update child support guidelines, subject to legislative approval, the legislature *intended* to limit the courts' traditionally broad judicial discretion in child support matters.

Knowledge of the guidelines' legislative history is essential in understanding how and why they limit judicial discretion, a subject that we previously addressed in *Favrow* v. *Vargas*, 222 Conn. 699, 707–708, 610 A.2d 1267 (1992), but review again here. The legislature initially considered establishing guidelines to assist courts in dissolution proceedings in 1984, when it enacted Special Acts 1984, No. 84-74. Id., 707. The special act had two goals, the first being to establish pilot programs in two judicial districts for the mediation and conciliation of disputes arising in marriage dissolution proceedings, and the second being to appoint an inter-agency

commission to develop *family* support guidelines for use by family relations counselors in the selected districts. Id.

The guidelines developed at that time were not intended to limit judicial discretion in entering family support orders, but to be flexible and nondirective. Id., 708. To this end, the commission specifically recommended that they be used by family relations counselors as part of the mediation process. Id., 710. In an addendum to the commission's report, however, the mediators appointed under the special act "recommended that the guidelines be formally incorporated as guidelines to be considered by judges in the adjudication of family support matters." (Internal quotation marks omitted.) Id.

In 1985, the legislature revisited the issue and enacted Public Acts 1985, No. 85-548 (P.A. 85-548), entitled "An Act Implementing the Federal Child Support Enforcement Amendments of 1984." Id. Section 8 of the act established a second commission "to develop guidelines, not later than January 1, 1987, for *child support* award amounts within the state. Such guidelines shall be available but not binding upon judges and other officials who have the power to determine child support awards." (Emphasis added; internal quotation marks omitted.) Id., 710–11. Thus, although P.A. 85-548 specified that the new guidelines would address child support awards and expanded their use from family relations counselors to the courts, the act also explained, consistent with past practice, that the guidelines were not intended to be binding. Id., 711.

In 1989, the legislature considered the issue once again and enacted Public Acts 1989, No. 89-203, entitled, "An Act Concerning Child Support Guidelines." Id. Section 1 of the act established a third commission "to review the child support guidelines promulgated pursuant to [§] 8 of [P]ublic [A]ct 85-548 . . . to establish criteria for the establishment of guidelines to ensure the appropriateness of child support awards and . . . to issue updated guidelines not later than January 1, 1991 and every four years thereafter." (Internal quotation marks omitted.) Id., 711–12. Section 1 of the act is now codified as § 46b-215a and §§ 2 and 3 are now codified as § 46b-215b. Id., 712.

As we noted in *Favrow*, § 46b-215b (a) made four significant changes in the child support guidelines that had the effect of "*displac*[*ing*] the flexible and nondirective approach" previously taken. (Emphasis added.) Id. These changes included requirements that (1) the guidelines " 'shall be considered in *all* determinations of child support amounts within the state' "; (emphasis added) id.; (2) " 'there shall be a rebuttable presumption that the amount of such awards which resulted from the application of such guidelines is the amount of support to be ordered' "; id.; (3) in order " 'to rebut the presump-

tion in such case,' " the court or magistrate must make a " 'specific finding on the record that the application of the guidelines would be inequitable or inappropriate in a particular case' "; id., 712–13; and (4) such a specific finding must be " 'determined under criteria established by the commission.' " Id., 713. The commission subsequently promulgated new guidelines in response to the statutory mandate, describing the deviation criteria in more detail and expanding them to ensure that child support orders would be in the best interests of the child and financially equitable to the parties. Id.

In summarizing this history, we observed in *Favrow* that "the guidelines evolved from an experimental, intentionally nondirective and flexible approach to the imposition of standards that are presumptively binding on the court or magistrate, from which deviations would be permitted only in accordance with specific findings related to specific criteria established by the commission. Thus, in general, the 1989 legislation and the ensuing work of the commission substantially circumscribes the traditionally broad judicial discretion of the court in matters of child support." Id., 715.

In light of the foregoing history, we no longer may view trial courts as having broad discretion to make child support awards in high income cases, "unfettered" by guideline principles that, according to Justice Schaller's concurrence, need only be "considered." The legislature in very clear terms delegated authority to the commission to establish the guidelines for the purpose of ensuring that child support awards are appropriate; General Statutes § 46b-215a; and further directed that the guidelines "*shall* be considered in *all* determinations of child support amounts . . . ." (Emphasis added.) General Statutes § 46b-215b (a). The statutory mandate to consider the guidelines cannot have a different meaning in the context of a high income family merely because the parties' joint income exceeds the upper limit of the schedule. The guidelines are not restricted to the schedule alone, but also include "the *rules, principles . . . and worksheet*" contained therein. (Emphasis added.) Regs., Conn. State Agencies § 46b-215a-1 (5). Moreover, the guidelines define "[c]hild support award" as, inter alia, "the entire payment obligation of the noncustodial parent, *as determined under the . . . guidelines . . . .*" (Emphasis added.) Id., § 46b-215a-1 (6). Neither provision allows for an exception to be made in high income cases.

Furthermore, to construe the word consider differently in high income cases would not make sense when the purpose of the guidelines is to limit judicial discretion in child support matters "[t]o make awards more equitable by ensuring the consistent treatment of persons in similar circumstances." Child Support and Arrearage Guidelines (2005), preamble, § (c) (2), p. ii. In its final report issued in January, 1991, the commis-

sion that promulgated the latest guidelines under the mandate of § 46b-215b noted that the guidelines "have been working quite well . . . . The order establishment process has been expedited . . . and . . . orders of support are generally more consistent. Generally, there is less litigation, and much more thought is being given to the reasons for deviation from the guidelines." (Internal quotation marks omitted.) *Favrow* v. *Vargas*, supra, 222 Conn. 713. To permit courts unlimited discretion to make awards in high income cases would be contrary to the directives contained in the relevant statutes and guidelines, to the legislature's intent to circumscribe the authority of the courts in child support matters and to the legislature's stated goal of achieving equity and consistency in child support awards.

In his concurrence, Justice Schaller also claims that applying the guidelines in high income cases constitutes an inappropriate expansion of regulatory authority. We disagree. The guidelines follow the statutory mandates closely and remain subject to legislative control through the statutory requirement that they be updated every four years and submitted to the standing legislative regulation review committee for approval and adoption. See General Statutes § 46b-215c.

Insofar as Justice Schaller relies on *Battersby*, he takes the *Battersby* language out of context. Although the court in *Battersby* noted that the guidelines' schedule contained no provision for extrapolating the percentages and award amounts therein to higher income levels, it also observed that several other factors in the guidelines were relevant in determining the support amount. *Battersby* v. *Battersby*, supra, 218 Conn. 471–72. The court thus concluded that, although the trial court had found the schedule inapplicable, it properly had considered "other [g]uideline factors" as well as the statutory criteria in arriving at its decision. Id., 472. Furthermore, *Favrow* v. *Vargas*, supra, 222 Conn. 699, was decided after *Battersby* and, although the issue in *Favrow* did not involve a high income family, the *Favrow* court clarified that the guidelines were intended to "substantially [circumscribe] the traditionally broad judicial discretion of the court in matters of child support." Id., 715. Finally, when the *Favrow* case returned to this court in 1994, we specifically referred to the authority of § (a) (1) of the guidelines, which provides that "[t]he . . . guidelines shall be considered in *all* determinations of child support amounts within the state" and that "the guidelines consist of the Schedule of Basic Child Support Obligations as well as *the principles and procedures set forth* [*therein*]." (Emphasis added; internal quotation marks omitted.) *Favrow* v. *Vargas*, 231 Conn. 1, 27, 647 A.2d 731 (1994).

Justice Schaller's concurring opinion maintains that, having elevated the guidelines improperly to governing

authority, the plurality consigns the relevant statutes to a minor role in its analysis. We do not agree. The governing statutes, principally §§ 46b-84 (d), 46b-215a and 46b-215b, have been addressed at length throughout our analysis and we regard them as the foundation for the guidelines, which merely satisfy the statutory mandate of assisting the courts in making appropriate child support awards. Accordingly, this assertion has no merit.

II

TAX REFUND AWARD

The defendant also challenges the trial court's order allocating 20 percent of any undetermined future tax refund as additional alimony and 20 percent as additional child support. The defendant specifically claims that the order is unworkable, subject to manipulation, will hinder his tax planning and will lead to unintended results. He describes various hypothetical scenarios that could result in such a refund, and, therefore, additional child support and alimony payments to the plaintiff that were not intended by the court and that could lead to hostile court proceedings between the parties. The plaintiff responds that the order was not improper because it was necessary to discourage the defendant from manipulating his tax withholding amounts to the plaintiff's disadvantage, and adds that the defendant's claim is purely speculative and without any legal basis. We conclude that the order was improper only with respect to the payment of additional child support.

The following additional facts and procedural history are relevant to our resolution of this claim. The trial court ordered the defendant to pay to the plaintiff 20 percent of any state or federal tax refund that he receives as child support for any year in which child support is owed, and 20 percent of any state and federal tax refund that he receives as alimony for any year in which alimony is owed. In response to the plaintiff's motion seeking further articulation of this order, the trial court explained that "the plaintiff shall share in 20 percent of any tax refund awarded the defendant relating to over withholding on his base salary or cash bonus. The intention of the court is to discourage over withholding of taxes by the defendant in an attempt to reduce his support payments." The defendant did not seek further clarification or articulation of the order.

We conclude that, insofar as the order allocated 20 percent of the defendant's tax refund as alimony, it was not improper. The purpose of the order was to discourage the over withholding of taxes by the defendant to reduce his support payments and applies only if the defendant receives a tax refund for withholding more taxes than necessary from his base salary or cash bonus. We agree with the defendant that implementation of the order may prove cumbersome and that the

same result of discouraging tax manipulation could have been achieved by a simple, direct order that the defendant not over withhold on his taxes or by an order that the defendant pay a smaller, capped percentage of his gross, or pretax, cash bonus as supplemental alimony, thereby eliminating the practical difficulties inherent in the current order. Nevertheless, we cannot say that the trial court abused its broad discretion in entering such an order. We further conclude, however, that insofar as the order pertains to the defendant's child support obligation, it is inconsistent with the guidelines and must be reversed for all of the reasons described in part I of this opinion regarding the calculation of child support.

III

DIVISION OF ASSETS

The defendant's third and final claim is that the trial court improperly divided the parties' marital assets. The defendant specifically claims that, although the court awarded the plaintiff assets valued at $10,650,719, or approximately 60 percent of the marital estate, and the defendant assets valued at $7,099,879, or approximately 40 percent of the marital estate, he will be required to pay income tax at ordinary income rates on most of the assets he received, whereas the plaintiff will pay income taxes for the assets she received at more favorable rates under applicable state and federal law. The defendant thus contends that the actual value of the assets he received is dramatically lower than the value indicated by the court, and, consequently, the disparity between the value of the assets awarded to the parties is much larger than the 60 to 40 percent allocation that the trial court intended. The plaintiff responds that the court did not intend to award 60 percent of the marital estate to the plaintiff and 40 percent to the defendant. Accordingly, it cannot have erred by ignoring tax effects that allegedly would frustrate an unintended outcome. We agree with the plaintiff.

The following relevant facts and procedural history are necessary to our resolution of this claim. At the time of the dissolution, the court awarded the plaintiff assets valued at $10,650,719 and the defendant assets valued at $7,099,879. In its memorandum of decision, the court stated that it had made the award after considering all of the statutory criteria set forth in General Statutes § 46b-66a[12] and General Statutes § 46b-81,[13] together with the applicable case law and the evidence presented by the parties. The defendant subsequently filed a motion for articulation asking the court to further explain: "Was it the court's intention to divide the marital estate proportionately by distributing approximately 60 [percent] of its value to [the] plaintiff and 40 [percent] of its value to [the] defendant?" The court granted the defendant's motion and clarified its judgment as follows: "The [c]ourt did not ascribe any particular per-

centages of the marital estate in its June 12, 2006 [m]emorandum of [d]ecision . . . ."

In *Powers* v. *Powers*, 186 Conn. 8, 10, 438 A.2d 846 (1982), we observed that a trial court may consider the tax consequences of its financial orders in dissolution actions but did not address whether a court is *required* to consider this factor. The Appellate Court, however, has repeatedly stated that "neither statute nor case law requires that a trial court consider the federal tax implications of the financial awards." (Internal quotation marks omitted.) *Rolla* v. *Rolla*, 48 Conn. App. 732, 747, 712 A.2d 440, cert. denied, 245 Conn. 921, 717 A.2d 237 (1998); see also *Hawkins* v. *Hawkins*, 11 Conn. App. 195, 197–98, 526 A.2d 872 (1987); *Seaver* v. *Seaver*, 10 Conn. App. 134, 521 A.2d 1053 (1987).

Mindful of this principle, we conclude that the defendant's claim has no merit. The court expressly articulated that it had not ascribed any particular percentage of the assets to either party. Its failure to consider the tax implications of the property division thus had no effect on its alleged intent to distribute the assets proportionately between the plaintiff and the defendant because it had no such intent. Moreover, in light of consistent holdings that a trial court is permitted, but not required, to consider the tax implications of its orders, the court's apparent failure to do so was not improper. Finally, with respect to its underlying rationale for the division of assets, the court stated in its memorandum of decision that it had considered all of the applicable case law, evidence and statutory criteria, including §§ 46b-66a and 46b-81. Under § 46b-81 (c), the court is presumed to have considered "the length of the marriage, the causes for the . . . dissolution of the marriage . . . the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income . . . [as well as] the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

As we have previously stated, "this court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts." (Internal quotation marks omitted.) *Simms* v. *Simms*, supra, 283 Conn. 502. In making this determination, we allow every reasonable presumption in favor of the correctness of the trial court's action. *Bender* v. *Bender*, supra, 258 Conn. 740. We will reverse a trial court's ruling if, in exercising its discretion, it applies the wrong standard of law. *Borkowski* v. *Borkowski*, supra, 228 Conn. 740. In this case, although the trial court's decision to give most of the liquid assets to the plaintiff and most of the illiquid assets to the defendant may appear unfair, the court applied the

proper legal principles. Furthermore, the plaintiff was a stay-at-home mother, the defendant was in his early fifties and at the height of his earning capacity, which was substantial, and the 60 to 40 percent division of assets did not overwhelmingly favor the plaintiff. Accordingly, we cannot conclude that the court abused its broad discretion in dividing the parties' assets without regard for their tax implications.

IV

REMEDY

"We previously have characterized the financial orders in dissolution proceedings as resembling a mosaic, in which all the various financial components are carefully interwoven with one another." (Internal quotation marks omitted.) *Finan* v. *Finan*, 287 Conn. 491, 509, 949 A.2d 468 (2008). Accordingly, "when an appellate court reverses a trial court judgment based on an improper alimony, property distribution, or child support award, the appellate court's remand typically authorizes the trial court to reconsider all of the financial orders." *Smith* v. *Smith*, 249 Conn. 265, 277, 752 A.2d 1023 (1999). We also have stated, however, that "[e]very improper order . . . does not necessarily merit a reconsideration of all of the trial court's financial orders. A financial order is severable when it is not in any way interdependent with other orders and is not improperly based on a factor that is linked to other factors." Id. In other words, an order is severable if "its impropriety does not place the correctness of the other orders in question." Id., 279; see *Lowe* v. *Lowe*, 47 Conn. App. 354, 358, 704 A.2d 236 (1997) (reversing order of postmajority support but upholding alimony order); *Main* v. *Main*, 17 Conn. App. 670, 676, 555 A.2d 997 (reversing child support order but upholding all remaining financial orders), cert. denied, 211 Conn. 809, 559 A.2d 1142 (1989); *Zern* v. *Zern*, 15 Conn. App. 292, 296–97, 544 A.2d 244 (1988) (reversing order on division of assets but upholding alimony and child support orders).

We conclude that the financial orders requiring the defendant to pay 20 percent of his annual net cash bonus and 20 percent of any undetermined future tax refund in child support are severable from the alimony, property division and other unrelated financial orders but are inextricably linked to the remaining child support orders concerning comprehensive health insurance, unreimbursed medical expenses, education, day care, summer camp and extracurricular activities. Although the defendant does not challenge those orders, the open-ended award of bonus income constituted a significant component of the total child support award. Consequently, any new determination of child support will necessitate reconsideration of all of the child support orders to ensure that the total award will be sufficient to address the children's needs.

The judgment is reversed only with respect to the child support orders and the case is remanded to the trial court for further proceedings according to law; the judgment is affirmed in all other respects.

In this opinion NORCOTT and McLACHLAN, Js., concurred.

* This case originally was argued before a panel of this court consisting of Justices Norcott, Katz, Vertefeuille, Zarella and Schaller. Thereafter, the court, pursuant to Practice Book § 70-7 (b), sua sponte, ordered that the case be considered en banc. Accordingly, Justices Palmer and McLachlan were added to the panel, and they have read the record, briefs and transcript of oral argument.

The listing of justices reflects their seniority status as of the date of oral argument.

[1] 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.

[2] Section 46b-84 provides for child support awards and is more fully described in part I of this opinion.

[3] According to the Merrill Lynch compensation summary statements included in the record, the defendant's gross cash bonus for the three years prior to the dissolution proceedings averaged approximately $863,000.

[4] This presumably included both cash and stock. The record shows that the cash portion of the defendant's bonus in the years 2003 to 2005 constituted more than 60 percent of the total award. Applying the same percentage to the defendant's claimed $3.8 million bonus in the years 2000 and 2001, he would have received a cash bonus award during those years of approximately $2.28 million, or $1.368 million after taxes of 40 percent. Accordingly, his net cash bonus award in the years 2000 and 2001 would have been more than double the award he received in the years 2003 through 2005.

[5] Both Justice Schaller's concurring opinion and the dissenting opinion mischaracterize the holding in this case when they state, respectively, that "the plurality . . . bases its decision on the presumed authority of the . . . guidelines . . . rather than on statutory authority" and that the plurality concludes that "the guidelines control the trial court's determination of child support" for high income families. To the contrary, we not only recognize, but emphasize, that trial courts must consider the statutory criteria as well as the guidelines when making child support awards.

[6] The commission consists of eleven members, including the chief court administrator or his designee, the commissioner of social services or his designee, the attorney general or his designee, the chairpersons and ranking members of the joint standing committee on the judiciary or their designees, a representative of the Connecticut Bar Association, a representative of legal services, a representative of the financial concerns of child support obligors and a representative of the permanent commission on the status of women, all of whom are appointed by the governor. General Statutes § 46b-215a.

[7] Section 46b-215a-3 (b) of the Regulations of Connecticut State Agencies lists the six criteria that may justify deviation from the presumptive support amounts as, (1) other financial resources available to a parent "that are not included in the definition of net income, but could be used by such parent for the benefit of the child or for meeting the needs of the parent," (2) "[e]xtraordinary expenses for care and maintenance of the child," (3) "[e]xtraordinary parental expenses . . . that are not considered allowable deductions from gross income, but which are necessary for the parent to maintain a satisfactory parental relationship with the child, continue employment, or provide for the parent's own medical needs," (4) "[n]eeds of a parent's other dependents . . . [where] a parent may be legally responsible for the support of individuals other than the child whose support is being determined," (5) "[c]oordination of total family support" when considerations involving the division of assets, provision of alimony and tax planning "will not result in a lesser economic benefit to the child," and (6) "[s]pecial circumstances" relating to reasons of "equity," including shared physical custody, extraordinary disparity in parental income, the best interests of the child and "[o]ther" equitable factors.

[8] We note that the relevant statutes and guidelines are consistent with federal regulations that require the states to adopt child support guidelines. For instance, 45 C.F.R. § 302.56 (a) provides: "Effective October 13, 1989,

as a condition of approval of its [s]tate plan, the [s]tate shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the [s]tate." There is no allowance in § 302.56 for states to depart from their adopted guidelines and deviation requirements in high income cases. See id. We also note that there would be potential constitutional concerns if this were not the case, implicating both the equal protection and due process rights of the party paying support.

[9] The dissent states that, because the trial court "did not award any of the defendant's annual stock bonus as supplemental child support," it is not possible "to determine the exact percentage of total family net income that is ordered for child support." The dissent nonetheless inexplicably concludes that "if the defendant's annual stock bonus has any material value at all, then the supplemental child support ordered by the trial court would likely be *less than 15.89 percent* of total family net income . . . ." (Emphasis added.) This defies both logic and common sense. Without a valuation of the options and restricted stock, it is impossible to say what percentage of total family income will be paid as child support and one cannot possibly conclude, as does the dissenting opinion, that it would likely be less than 15.89 percent. What we do know is that it is unlikely that there was much value at all to the options and restricted stock.

Although the trial court did not explain why it did not allocate the defendant's future stock bonus as income when making the child support award, a review of the record provides several clues. We first note that the defendant's previously awarded stock bonuses, some of which would be paid out in future years, were subject to the court's equitable distribution order. Thus, they may not be counted because, to require payment of a portion of these bonuses when received by the defendant would result in "double-dipping." It is also important to note that, at the time of the dissolution order, the children were thirteen years old. The defendant received a bonus each January for work performed the preceding year. Accordingly, the first time the defendant would have been expected to receive a bonus following the divorce was in January, 2007. Exhibits filed at trial indicate that the defendant's stock bonuses in the past had consisted of options and restricted stock. The exhibits also indicate that the options awarded to the defendant after January, 2003, did not vest immediately but became exercisable at a rate of 25 percent per year on the anniversary date of the award. Similarly, restricted stock awarded to the defendant did not become vested and released until four years after the date of the award. The trial court made no factual findings regarding the division of the defendant's stock bonus between options and restricted stock. Other jurisdictions have concluded, however, that stock awards in divorce cases are not included in gross income for the purpose of making alimony and child support orders until they vest and may be exercised. See, e.g., *Murray* v. *Murray*, 128 Ohio App. 3d 662, 670, 716 N.E.2d 288 (App.), appeal denied, 85 Ohio St. 3d 1499, 710 N.E.2d 718 (1999); *Robinson* v. *Thiel*, 201 Ariz. 328, 333, 35 P.3d 89 (App. 2001); *In re Marriage of Cheriton*, 92 Cal. App. 4th 269, 288, 111 Cal. Rptr. 2d 755, review denied, 2001 Cal. LEXIS 8989 (2001). Mindful of this principle, we may deduce, on the basis of past stock bonuses awarded to the defendant, that any restricted stock awarded in January, 2007, would not become vested and exercisable until January, 2011, and that any options granted in January, 2007, would vest at a rate of 25 percent each year thereafter. Extrapolating from this data, any restricted stock bonus issued in January, 2007, would not be exercisable and considered income until the children were seventeen and one-half years old, and any restricted stock bonus awarded thereafter would not become exercisable and considered income until after the children reached the age of majority in July, 2011. In addition, only some of the stock options awarded to the defendant as part of his bonus would be exercisable and considered income before the children reached the age of majority. Furthermore, the stock options would be considered income only if the stock price increased above the option value during the succeeding four years. See *Finan* v. *Finan*, 100 Conn. App. 297, 307 n.4, 918 A.2d 910 (2007) (when market value of stock sinks below exercise price of option, option has no value or is "under water" [internal quotation marks omitted]), rev'd on other grounds, 287 Conn. 491, 949 A.2d 468 (2008). Consequently, it is understandable why the trial court made no factual findings regarding the defendant's future stock bonus awards and why it did not include such awards in its calculations of child support. The lack of information regarding how the defendant's future stock bonus would be divided between restricted stock and stock options, the lengthy time required in the past for both types

of stock to vest and become exercisable, the uncertainty of the future value of the stock options and the fact that the children were only a few years short of the age of majority at the time of the divorce rendered the monetary value of any future stock bonus awarded to the defendant before the children reached the age of majority unknowable and, to the extent that it could be known, most likely insignificant in comparison to the defendant's net cash bonus award. Accordingly, the trial court likely concluded that the defendant's annual stock bonus award would have had little effect on the defendant's gross income for the five remaining years before the children reached the age of majority.

[10] General Statutes § 46b-82 (a) provides in relevant part: "In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall . . . consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate 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 of such parent's securing employment."

[11] The trial court's award in the present case, in addition to lacking any explicit justification based on the reasonable needs of the children, also ignored the statutory mandate that, subsequent to a dissolution, "the parents of . . . minor child[ren] of the marriage, shall maintain the child[ren] *according to their respective abilities* . . . ." (Emphasis added.) General Statutes § 46b-84 (a). In this respect, the preamble to the guidelines provides in relevant part: "[T]he commission emphasizes that it is the obligation of both parents to contribute to the support of their children to the extent of their ability . . . . In addition to spending the designated support payments on the child, the parent receiving such payments remains obligated to expend a portion of his or her own personal income on the child's behalf." Child Support and Arrearage Guidelines (2005), preamble, § (e) (1), p. iv. In this case, however, the trial court apparently gave no consideration to the substantial assets and investment income of the plaintiff or the substantial alimony award that the plaintiff stands to receive in the form of her 20 percent share of the defendant's annual bonus in fashioning the child support obligations of the defendant. Thus, the court must have expected that the plaintiff would spend nothing on the support of the children or that she would spend a substantially similar amount as the defendant. In either case, the award is not only inconsistent with the relevant statutes and guidelines, but totally ignores the income shares model, which serves as the basis for the guidelines.

[12] General Statutes § 46b-66a provides: "(a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may order the husband or wife to convey title to real property to the other party or to a third person.

"(b) When any party is found to have violated an order of the court entered under subsection (a) of this section, the court may, by decree, pass title to the real property to either party or to a third person, without any act by either party, when in the judgment of the court it is the proper action to take.

"(c) When the decree is recorded on the land records in the town where the real property is situated, it shall effect the transfer of the title of such property as if it were a deed of the party or parties."

[13] General Statutes § 46b-81 provides: "(a) At the time of entering a decree annulling or dissolving a marriage or for legal separation pursuant to a complaint under section 46b-45, the Superior Court may assign to either the husband or wife all or any part of the estate of the other. The court may pass title to real property to either party or to a third person or may order the sale of such real property, without any act by either the husband or the wife, when in the judgment of the court it is the proper mode to carry the decree into effect.

"(b) A conveyance made pursuant to the decree shall vest title in the purchaser, and shall bind all persons entitled to life estates and remainder interests in the same manner as a sale ordered by the court pursuant to the provisions of section 52-500. When the decree is recorded on the land records in the town where the real property is situated, it shall effect the transfer of the title of such real property as if it were a deed of the party or parties.

"(c) In fixing the nature and value of the property, if any, to be assigned, the court, after hearing the witnesses, if any, of each party, except as provided in subsection (a) of section 46b-51, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or

legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."