MARIA F. MCKEON *v.* WILLIAM P. LENNON
(AC 30067)
(AC 30068)
(AC 30069)
(AC 30070)
(AC 30636)

Lavine, Robinson and Lavery, Js.

Argued November 18, 2010—officially released September 27, 2011

(Appeal from Superior Court, judicial district of Tolland, Schluger, J.)

Campbell D. Barrett, with whom were *Jon T. Kukucka*, and, on the brief, *C. Michael Budlong*, for the appellant (plaintiff).

Proloy K. Das, with whom were *Debra C. Ruel* and, on the brief, *Dara P. Goings* and *James M. Ruel*, for the appellee (defendant).

Opinion

LAVERY, J. In these consolidated appeals, the plaintiff, Maria F. McKeon, appeals from several judgments of the trial court issued in connection with the judgment dissolving her marriage to the defendant, William P. Lennon. On appeal, the plaintiff claims that the court improperly (1) denied her motion to open the dissolution judgment (AC 30067); (2) denied her motions for modification of child support (AC 30068); (3) awarded attorney's fees to the defendant incurred in defending against her motions for modification (AC 30069); (4) clarified certain orders concerning the parties' beach home and certain accounts during a contempt hearing (AC 30070); and (5) awarded attorney's fees to the defendant incurred in defending against a motion for contempt (AC 30636 and AC 30636, as amended). We dismiss the appeal in AC 30067, reverse the judgments of the trial court in AC 30068 and AC 30069, affirm the judgment of the trial court in AC 30070, dismiss the appeal in AC 30636 and reverse the judgment of the trial court in AC 30636, as amended.

The record discloses the following relevant facts and procedural history. The parties were married on August 29, 1981. During the course of their marriage, the parties had three children, none of whom had reached the age of majority by August 3, 2005, when the plaintiff initiated the action to dissolve the parties' marriage. Following a ten day trial, the court rendered judgment dissolving the parties' marriage on December 31, 2007. The court issued a wide range of orders in connection with the dissolution judgment, including, among other things, orders regarding the custody and care of the parties' minor children, the children's medical care and finances, the distribution of the parties' real and personal property, and the payment of child support and alimony as well as the parties' tax liabilities.

On January 18, 2008, the plaintiff filed a motion for reconsideration and reargument of several of the foregoing orders, which the court denied on March 27, 2008. Neither party appealed from that ruling. On April 28, 2008, the plaintiff filed a motion to open the dissolution judgment, which the court granted in part and denied in part on June 10, 2008. On June 26, 2008, the plaintiff filed her first appeal, AC 30067, to challenge the validity of the court's judgment concerning her motion to open.

On May 8, 2008, the plaintiff filed a motion for modification of the child support orders issued in connection with the dissolution judgment. The defendant filed an objection on May 23, 2008, in which he asserted a claim for attorney's fees incurred in defending against the plaintiff's motion for modification. On May 27, 2008, the plaintiff filed an amended motion for modification. The defendant responded by filing a second objection on May 30, 2008, in which he again asserted a claim

for attorney's fees incurred in defending against the plaintiff's motions for modification. On June 10, 2008, the court issued a memorandum of decision denying the plaintiff's motions and granting the defendant's request for attorney's fees. The plaintiff filed her second appeal, AC 30068, on June 26, 2008, challenging the court's judgment denying her motions for modification. Shortly thereafter, on July 2, 2008, the court issued a memorandum of decision ordering the plaintiff to pay the defendant attorney's fees in the amount of $6497.60. The plaintiff then filed her third appeal, AC 30069, on July 21, 2008, challenging the award of attorney's fees.

On June 17, 2008, the defendant filed a motion for contempt, alleging that the plaintiff had failed to convey to him her interest in certain real property, located at 8 Crooked Road in Stonington (beach house), as required under the terms of the dissolution judgment. The next day, the defendant filed an amended motion for contempt, alleging that the plaintiff also had failed to divide certain accounts, established pursuant to the Connecticut Uniform Transfers to Minors Act (CUTMA), General Statutes §§ 45a-557 through 45a-560b, as required under the dissolution judgment. The plaintiff filed an objection to the defendant's motions for contempt on June 19, 2008, claiming that the court had provided her with an ownership interest in the parties' beach house and that the court had abused its discretion in allowing the parties to use the CUTMA accounts to fund the children's education. On July 8, 2008, the court conducted a hearing on the plaintiff's motion for contempt. During the hearing, the court stated that it never had intended to provide the plaintiff with a property interest in the parties' beach house and declined to open or reconsider its orders concerning the children's CUTMA accounts. On July 28, 2008, the plaintiff filed her fourth appeal, AC 30070, challenging the court's decision regarding the beach house and the children's CUTMA accounts.

On July 8, 2008, the plaintiff filed a separate motion for contempt alleging that the defendant had failed to comply with certain provisions of the dissolution judgment. The defendant filed an objection on July 15, 2008, denying the material allegations of that motion and requesting an award of attorney's fees. After hearing two days of argument and testimony from both parties, the court, on October 27, 2008, issued a memorandum of decision denying the plaintiff's motion for contempt and requesting that the defendant's attorney submit an affidavit of attorney's fees incurred in responding to that motion. On December 23, 2008, the plaintiff filed her fifth appeal, AC 30636, challenging the court's decision to award attorney's fees to the defendant. Thereafter, on August 4, 2009, the defendant filed an affidavit of attorney's fees. Following a hearing, the court granted the defendant's request for attorney's fees in the amount of $6127.50. The plaintiff then filed an amended appeal with this court in AC 30636 on September 15,

2009, again challenging the trial court's award of attorney's fees to the defendant. On February 20, 2009, the plaintiff filed a motion to consolidate her appeals, which this court granted on March 11, 2009. Additional facts and procedural history will be set forth as necessary.

I

AC 30067

In her first appeal, AC 30067, the plaintiff challenges the trial court's ruling denying her motion to open the dissolution judgment. The plaintiff claims that the court improperly denied her motion to open without first conducting an evidentiary hearing regarding her claim against the defendant for fraudulent nondisclosure of assets. The defendant responds that this court lacks subject matter jurisdiction over this appeal because it was not taken from a final judgment. We agree with the defendant.

The following additional facts and procedural history are relevant to the plaintiff's appeal. On January 18, 2008, the plaintiff filed a motion for reconsideration and reargument of the financial and support orders issued in connection with the dissolution judgment. In that motion, the plaintiff challenged (1) the division of the parties' pension accounts; (2) the division of the defendant's 401 (k) retirement plan; (3) the assignment of responsibility for the children's medical expenses; (4) the requirement that the plaintiff maintain life insurance coverage; (5) the award of child support; (6) the valuation of the parties' personal property; (7) the assignment of the parties' tax liabilities; (8) the distribution of the parties' real property; and (9) the failure to rule on a pendente lite motion for support that the plaintiff previously had filed with the court. The court denied the plaintiff's motion for reconsideration on March 27, 2008.

On April 28, 2008, the plaintiff filed a motion to open the dissolution judgment, claiming that (1) the judgment improperly required her to cover certain expenses incurred due to her adult daughter's operation of a motor vehicle; (3) the defendant fraudulently had failed to disclose certain assets that he had inherited from his brother; (4) the judgment improperly failed to award the defendant's preretirement survivor annuity to the plaintiff; (5) the judgment improperly failed to award cost of living adjustments and other increases to the plaintiff with respect to the portion of the defendant's preretirement benefits that she had been awarded; (6) the judgment improperly failed to assign responsibility for gains and losses on the parties' pension accounts; (7) the distribution of the parties' real property left the plaintiff "financially pinned"; (8) the order awarding the plaintiff two weeks at the parties' beach house was not in the best interest of the children; and (9) the judgment must be modified to require the parties to report amounts paid to their child care assistant on

their individual tax returns in compliance with Internal Revenue Service regulations.[1]

On June 10, 2008, the court issued a memorandum of decision in connection with the plaintiff's motion to open. The court granted the plaintiff's request to open the judgment with respect to her first claim, vacating the order requiring that the parties maintain a vehicle for their adult daughter. The court then denied the plaintiff's request with respect to the third, seventh and eighth claims of her motion but determined that an evidentiary hearing was required in order to resolve the fourth, fifth, sixth and ninth claims of that motion. Accordingly, the court ordered the parties to secure a trial date and reserved judgment with respect to those four unresolved claims pending the outcome of the evidentiary hearing.

On June 26, 2008, the plaintiff filed this appeal, AC 30067, from the court's June 10, 2008 decision. Thereafter, on March 12, 2009, the plaintiff filed a motion for articulation in which she requested, among other things, that the court articulate the basis for its partial denial of the motion to open as well as its conclusion that the plaintiff knew of, or could easily have discovered, the defendant's inheritance. The court denied the plaintiff's motion for articulation on April 8, 2009, and the plaintiff timely filed a motion for review. On July 15, 2009, this court granted the plaintiff's motion for review and the relief requested therein. In its August 10, 2009 articulation, the trial court stated that it had reserved judgment with respect to the four unresolved claims pending the outcome of the evidentiary hearing contemplated in its June 10, 2008 memorandum of decision. The court also stated that, on the basis of its review of the record and the docket, "no such hearing has been scheduled by the parties . . . and thus no final decision on the four [unresolved claims] has been rendered."

Before addressing the merits of the plaintiff's claim on appeal, we must first consider the defendant's claim that this court lacks subject matter jurisdiction. "It is axiomatic that the jurisdiction of this court is restricted to appeals from judgments that are final. General Statutes §§ 51-197a and 52-263; Practice Book § 61-1 . . . . Thus, as a general matter, an interlocutory ruling may not be appealed pending the final disposition of a case. . . . Our Supreme Court has, however, determined that certain interlocutory orders may be treated as final judgments for purposes of appeal. *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them." (Citations omitted; internal quotation marks omitted.) *Parrotta* v. *Parrotta*, 119 Conn. App. 472, 475–76, 988 A.2d 383 (2010).

The defendant argues that this court lacks subject matter jurisdiction over the appeal in AC 30067 because the trial court's ruling rejecting the plaintiff's claim of fraudulent nondisclosure is not an appealable final judgment. In response, the plaintiff argues that the court's ruling terminated a separate and distinct proceeding, satisfying the first prong of the *Curcio* test. Our Supreme Court has defined the type of order that would terminate a separate and distinct proceeding and thus give rise to an immediate right to appeal. "The first prong of the *Curcio* test . . . requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*. . . . Obviously a ruling affecting the merits of the controversy would not pass the first part of the *Curcio* test. The fact, however, that the interlocutory ruling does not implicate the merits of the principal issue at the trial . . . does not necessarily render that ruling appealable. It must appear that the interlocutory ruling will not impact directly on any aspect of the [action]." (Internal quotation marks omitted.) *Abreu* v. *Leone*, 291 Conn. 332, 339, 968 A.2d 385 (2009).

In the present case, the trial court's ruling rejecting the plaintiff's claim of fraudulent nondisclosure did not terminate a separate and distinct proceeding. On the contrary, that ruling disposed of a single claim raised in the plaintiff's motion to open, and was "merely a step along the road to final judgment . . . ." (Internal quotation marks omitted.) Id. The plaintiff argues that her decision to raise eight claims in one motion to open, instead of individually raising each claim in an independent motion to open, should not deprive this court of subject matter jurisdiction. It is well established, however, that "[t]he policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level." (Internal quotation marks omitted.) *DeCorso* v. *Calderaro*, 118 Conn. App. 617, 624, 985 A.2d 349 (2009), cert. denied, 295 Conn. 919, 991 A.2d 564 (2010). Were we to accept the plaintiff's argument, which we do not, we would open the floodgates to piecemeal appeals from interlocutory orders. To do so would, in effect, ignore the policy concerns underlying the final judgment rule.

In light of the foregoing analysis, we conclude that the trial court's ruling rejecting the plaintiff's claim of fraudulent nondisclosure did not terminate a separate and distinct proceeding. As a consequence, we do not have subject matter jurisdiction to hear the plaintiff's appeal under the first prong of the *Curcio* test. Accordingly, we dismiss the plaintiff's appeal in AC 30067.

II

In her second appeal, AC 30068, the plaintiff challenges the trial court's ruling denying her motions for modification of child support. The plaintiff claims that the court improperly denied her motions for modification without first conducting an evidentiary hearing with respect to her claim that there had been a substantial change in the parties' financial circumstances since the date of the dissolution judgment.[2] The defendant responds that an evidentiary hearing was not required because the allegations set forth in the plaintiff's motions were insufficient to support her claim. We agree with the plaintiff.

The following additional facts and procedural history are relevant to the plaintiff's appeal. In its memorandum of decision dissolving the parties' marriage, the trial court ordered the defendant to pay to the plaintiff $439 per week in child support plus 50 percent of the children's unreimbursed medical expenses and private school tuition.[3] In addition, the court ordered both parties to maintain life insurance policies. Specifically, the court ordered the plaintiff to maintain a $500,000 life insurance policy for the benefit of the children, naming the defendant as trustee, and ordered the defendant to maintain a $2 million life insurance policy "naming the [plaintiff] and children as irrevocable beneficiaries as their interests may appear."

On May 8, 2008, pursuant to General Statutes § 46b-86,[4] the plaintiff filed a motion for modification of child support, which was amended on May 27, 2008. In her amended motion, the plaintiff claimed that there had been a substantial change in the parties' financial circumstances since the date of the dissolution judgment. In support of her claim, the plaintiff alleged that the cost of gasoline, home heating oil, her mortgage and the children's private school tuition had increased, and that the value of her home had decreased. She also alleged that the defendant's bonus income, as well as his income from certain stock options and restricted stock, had increased substantially. The defendant filed an objection to the plaintiff's original motion for modification on May 23, 2008, and an objection to the plaintiff's amended motion for modification on June 2, 2008. In both of his objections, the defendant denied the foregoing allegations and claimed that the plaintiff had failed to set forth a valid claim under § 46b-86. On June 10, 2008, the trial court issued its memorandum of decision denying the plaintiff's motions for modification without conducting an evidentiary hearing. This appeal followed.

We initially set forth the well established standard of review and principles of law relevant to the plaintiff's appeal. "The standard of review in family matters is well settled. An appellate court will not disturb a trial

court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . It is within the province of the trial court to find facts and draw proper inferences from the evidence presented. . . . 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.) *McKenna* v. *Delente*, 123 Conn. App. 146, 165–66, 2 A.3d 38 (2010).

"[Section] 46b-86 governs the modification of a child support order after the date of a dissolution judgment. . . . Section 46b-86 (a) permits the court to modify child support orders in two alternative circumstances. Pursuant to this statute, a court may not modify a child support order unless there is first either (1) a showing of a substantial change in the circumstances of either party or (2) a showing that the final order for child support substantially deviates from the child support guidelines . . . . Both the substantial change of circumstances and the substantial deviation from child support guidelines' provision establish the authority of the trial court to modify existing child support orders to respond to changed economic conditions. The first allows the court to modify a support order when the financial circumstances of the individual parties have changed, regardless of their prior contemplation of such changes. The second allows the court to modify child support orders that were once deemed appropriate but no longer seem equitable in the light of changed social or economic circumstances in the society as a whole . . . .

"As to the substantial change of circumstances provision of § 46b-86 (a), [w]hen presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties. . . . Second, if the court finds a substantial change in circumstances, it may properly consider the motion and . . . make an order for modification. . . . A party moving for a modification of a child support order must clearly and definitely establish the occurrence of a substantial change in the circumstances of either party that makes the continuation of the prior order unfair and improper. . . . The power of the trial court to modify the existing order does not, however, include the power to retry issues already decided . . . or to allow the parties to use a motion to modify as an appeal. . . . Rather, [t]he court has the authority to issue a modification only if it conforms the order to the distinct and definite changes in the circumstances of the parties. . . . The inquiry, then, is limited to a comparison between the current conditions and the last court order. . . . The party seeking modification bears the burden of showing the existence of a substantial change in the circum-

stances." (Citations omitted; internal quotation marks omitted.) *Weinstein* v. *Weinstein*, 104 Conn. App. 482, 491–93, 934 A.2d 306 (2007), cert. denied, 285 Conn. 911, 943 A.2d 472 (2008).

In the present case, the trial court did not conduct an evidentiary hearing with respect to the plaintiff's claim that there had been a substantial change in the parties' financial circumstances. Rather, the court characterized the plaintiff's motions as "list[s] of requests for the court to change its mind regarding issues which it has carefully considered and reconsidered," and cited its previous decision denying the plaintiff's motion for reconsideration as support. In doing so, the court "fail[ed] to recognize that there is a fundamental distinction between a motion for modification of child support . . . and a motion for reconsideration, namely, that a party's changed financial circumstances are relevant to the former but not the latter. That is because a motion for reconsideration is merely a request that the court reconsider its original ruling on the basis of the evidence that was before it when that ruling was made." *Weinstein* v. *Weinstein*, 275 Conn. 671, 737, 882 A.2d 53 (2005) (*Zarella*, *J.*, dissenting). A motion for modification, on the other hand, requires "the moving party [to] demonstrate that circumstances have changed *since the last court order* such that it would be unjust or inequitable to hold either party to it." (Emphasis added; internal quotation marks omitted.) *Rosier* v. *Rosier*, 103 Conn. App. 338, 344, 928 A.2d 1228, cert. denied, 284 Conn. 932, 934 A.2d 247 (2007). Thus, the trial court's ruling denying the plaintiff's motion for reconsideration was irrelevant to its consideration of the plaintiff's motions for modification.

We conclude that the court abused its discretion in denying the plaintiff's motions for modification without first conducting an evidentiary hearing. The trial court was faced with several disputed issues of fact concerning changes in the parties' financial circumstances after the date of the dissolution judgment. "As we have often stated, [g]enerally, when the exercise of the court's discretion depends on issues of fact which are disputed, due process requires that a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses." (Internal quotation marks omitted.) *Temlock* v. *Temlock*, 95 Conn. App. 505, 517, 898 A.2d 209, cert. denied, 279 Conn. 910, 902 A.2d 1070 (2006). Accordingly, we reverse the judgment of the trial court in AC 30068.

III

AC 30069

In her third appeal, AC 30069, the plaintiff challenges the trial court's award of attorney's fees to the defendant in connection with the plaintiff's motions for modification of child support. The plaintiff claims that the

award is premised on a finding that she had acted in bad faith in filing her motions for modification and that the award is invalid, as the court's finding of bad faith is clearly erroneous. The defendant responds that the court issued the award pursuant to its discretionary authority under General Statutes § 46b-62,[5] and that the award is a valid exercise of the court's discretion. We agree with the plaintiff.

The following additional facts and procedural history are relevant to the plaintiff's appeal. As mentioned previously in this opinion, the plaintiff filed a motion for modification of child support on May 8, 2008. The defendant responded by filing an objection to the plaintiff's motion on May 23, 2008, in which he requested that the plaintiff pay the attorney's fees and costs that he would incur in defending against the plaintiff's motion. Thereafter, on May 27, 2008, the plaintiff filed an amended motion for modification in which she objected to the defendant's claim for attorney's fees.[6] The defendant then filed an objection to the plaintiff's amended motion for modification on May 30, 2008, in which he again requested that the plaintiff pay the attorney's fees and costs that he would incur in defending against the plaintiff's motions for modification pursuant to our Supreme Court's decision in *Ramin* v. *Ramin*, 281 Conn. 324, 915 A.2d 790 (2007) (en banc).

On June 10, 2008, the trial court issued a memorandum of decision granting the defendant's request for attorney's fees. The court found, without conducting an evidentiary hearing, "that the motions to modify were filed without a good faith basis and that the assessment of attorney's fees is warranted." The court then ordered the defendant to file an affidavit detailing the fees expended in defending against the plaintiff's motions for modification. The defendant filed an affidavit of attorney's fees June 18, 2008, and the plaintiff filed an objection to the amount requested therein on June 27, 2008. The plaintiff then filed a revised affidavit of attorney's fees on June 30, 2008, and, on July 2, 2008, the court issued a memorandum of decision ordering the plaintiff to pay the defendant attorney's fees in the amount of $6497.60. This appeal followed.

Before addressing the merits of the plaintiff's claim, we must discern the legal principles and standard of review that govern our analysis. The parties disagree as to the basis of the trial court's decision awarding attorney's fees to the defendant. The plaintiff argues that the court issued its decision in accordance with our Supreme Court's decision in *Maris* v. *McGrath*, 269 Conn. 834, 850 A.2d 133 (2004). Accordingly, she argues that the trial court's decision is premised on a finding of bad faith and that the court's finding is subject to the clearly erroneous standard of review. The defendant responds that the court issued its decision in accordance with our Supreme Court's decision in *Ramin* v.

Ramin, supra, 281 Conn. 324. Accordingly, he argues that the trial court issued its decision pursuant to its discretionary authority under § 46b-62 and that the court's decision therefore is subject to the abuse of discretion standard of review.

In the present case, the court specifically granted the defendant's motion for attorney's fees based on its finding that the plaintiff had filed her motions for modification without a "good faith basis . . . ." Accordingly, we conclude that the court's decision is premised on a finding of bad faith and that the award was issued in accordance with our Supreme Court's decision in *Maris* v. *McGrath*, supra, 269 Conn. 834. Having determined the basis of the trial court's decision, we now set forth the applicable standard of review. "Whether a party has acted in bad faith is a question of fact, subject to the clearly erroneous standard of review." *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 837, 3 A.3d 992 (2010). "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Waterview Site Services, Inc.* v. *Pay Day, Inc.*, 125 Conn. App. 561, 566–67, 11 A.3d 692 (2010), cert. denied, 300 Conn. 910, 12 A.3d 1005 (2011).

We next turn to our Supreme Court's decision in *Maris* v. *McGrath*, supra, 269 Conn. 834. In *Maris*, the court reaffirmed that "[s]ubject to certain limitations, a trial court in this state has the inherent authority to impose sanctions against an attorney and his client for a course of claimed 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. . . .

"As a procedural matter, before imposing any such sanctions, the court must afford the sanctioned party or attorney a proper hearing on the . . . motion for sanctions. . . . There must be fair notice and an opportunity for a hearing on the record. . . . This limitation, like the substantive limitations stated in the following discussion, is particularly appropriate with respect to a claim of bad faith or frivolous pleading by an attorney, which implicates his professional reputation. . . .

"As a substantive matter, [t]his state follows the general rule that, except as provided by statute or in certain defined exceptional circumstances, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser. . . . That rule does not apply, however, where the opposing party has acted in bad faith. . . . This bad faith exception applies, not only to the filing of an action, but also in the conduct of the litigation. . . . It applies both to the party and his counsel. . . . Moreover, the trial court must make

a specific finding as to whether counsel's [or a party's] conduct . . . constituted or was tantamount to bad faith, a finding that would have to precede any sanction under the court's inherent powers to impose attorney's fees for engaging in bad faith litigation practices." (Citations omitted; internal quotation marks omitted.) Id., 844–45.

Applying these principles to the case at hand, we conclude that the trial court was not justified in awarding attorney's fees to the defendant. It is undisputed that the court did not afford the plaintiff an opportunity for a hearing on the record concerning the issue of bad faith. Moreover, our review of the record reveals that the court's finding of bad faith is premised solely on its characterization of the plaintiff's motions for modification as "list[s] of requests for the court to change its mind regarding issues which it ha[d] carefully considered and reconsidered." As mentioned in part II of this opinion, however, the plaintiff's motions for modification were, in fact, premised on several disputed issues of fact that the court had not considered previously. Because the court failed to conduct a hearing on those issues, it is impossible to determine whether the plaintiff had a good faith basis for seeking modification of the orders of child support. Thus, it is impossible on the basis of the record before us to determine whether the plaintiff had filed her motions for modification in bad faith. We therefore conclude that the court's finding of bad faith is clearly erroneous. Accordingly, we reverse the judgment awarding attorney's fees to the defendant in AC 30069.

IV

AC 30070

In her fourth appeal, AC 30070, the plaintiff challenges the trial court's clarification of two orders issued in connection with the dissolution judgment. The plaintiff claims that the court (1) improperly modified its order concerning ownership of the parties' beach house and (2) abused its discretion in allowing the parties to use certain CUTMA accounts to provide for the children's education. We affirm the judgment of the trial court.

The following additional facts and procedural history are relevant to the plaintiff's appeal. The dissolution decree contains several orders concerning the parties' beach house. In dividing the parties' real property, the court ordered the plaintiff to convey her interest in the beach house to the defendant by way of a quitclaim deed.[7] The court then ordered the defendant to make the beach house available to the plaintiff for two weeks each summer so that the plaintiff could spend time with the children at the beach house during the children's summer vacation. The court specified, however, that the foregoing arrangement would expire at the end of

the summer of 2014 or as soon as one of the parties' minor children chooses not to spend his summer vacation at the beach house.[8]

The dissolution judgment also incorporates the terms of an agreement between the parties concerning certain trust accounts. The relevant portion of the dissolution judgment provides: "The [parties] shall equally divide and take possession of each child's education accounts . . . and each shall have discretion to apply the funds from his or her accounts to his or her share of the children's educational expenses." These "education accounts" included certain accounts established pursuant to CUTMA.[9]

On June 17, 2008, the defendant filed a motion for contempt, alleging that the plaintiff had failed to convey her interest in the beach house to him. The next day, the defendant filed an amended motion for contempt, alleging that the plaintiff also had failed to divide the children's CUTMA accounts. The plaintiff filed an objection to the defendant's motions for contempt on June 19, 2008. In that motion, the plaintiff alleged that the court, in granting her use of the beach house, intended to provide her with an ownership interest in the property. The plaintiff also alleged that the court abused its discretion in allowing the parties to use the funds in the CUTMA accounts to provide for the children's education.

Following a hearing, the court denied both of the defendant's motions for contempt. In doing so, however, the court clarified its orders concerning the beach house and the CUTMA accounts. With respect to the order concerning the beach house, the court explicitly stated that it intended to provide the defendant with title to the property in fee simple absolute and did not intend to provide the plaintiff with any interest therein.[10] With respect to the order concerning the CUTMA accounts, the court declined to alter its original order allowing the parties to use the funds therein to provide for the children's education. This appeal followed.

A

The plaintiff claims that the trial court impermissibly modified its original property award after the date of the dissolution judgment. Specifically, she argues that the court implicitly awarded her an ownership interest in the beach house at the time of the dissolution judgment and impermissibly modified that award in rendering judgment denying the defendant's motions for contempt. The defendant responds that the plaintiff lacks standing to assert this claim because she is not aggrieved by the court's judgment denying his motions for contempt. We conclude that the plaintiff's argument is without merit.

We first address the defendant's argument that the plaintiff is not aggrieved by the judgment and therefore

has no standing to appeal. "Aggrievement, in essence, is appellate standing. . . . In the appellate context, [a]ggrievement is established *if there is a possibility*, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Emphasis added; internal quotation marks omitted.) *Oxford House at Yale* v. *Gilligan*, 125 Conn. App. 464, 465 n.1, 10 A.3d 52 (2010). Although judgment was rendered in her favor, we conclude that the plaintiff is aggrieved because there is a possibility that the trial court's judgment denying the defendant's motions for contempt adversely affected her alleged interest in the beach house.

We next address the issue of whether the court impermissibly modified its award of the beach house in rendering its judgment denying the defendant's motions for contempt. The plaintiff's argument is premised on two assertions. First, the plaintiff asserts that the court awarded her an ownership interest in the beach house at the time of the dissolution judgment. Second, the plaintiff asserts that the court deprived her of that interest during the hearing on the defendant's motions for contempt. The plaintiff's argument ignores the plain language of the dissolution decree, which provides: "The [plaintiff] shall quitclaim *all* of her right, title and interest in and to the [beach house] to the [defendant]." (Emphasis added.) In light of the foregoing, we conclude that the court did not award the plaintiff an ownership interest in the beach house at the time of the dissolution judgment. Because logically it is impossible for the court to have deprived the plaintiff of a property interest that did not exist, we conclude that the plaintiff's argument is without merit. We therefore conclude that the court did not modify impermissibly its original award after the date of the dissolution judgment and affirm the court's judgment in AC 30070 insofar as it concerns the beach house. Moreover, we conclude that all other arguments with respect to the beach house are without merit.

B

The plaintiff also claims that the trial court abused its discretion in allowing the parties to use the CUTMA accounts to provide for the children's education. Specifically, she argues that the parties are not permitted to use these custodial accounts to discharge their child support obligations. The defendant responds that the court properly declined to open or modify the child support orders during the hearing on the defendant's motion for contempt. We agree with the defendant.

We agree with the plaintiff that "[a] parent has both a statutory and common law duty to support his minor children within the reasonable limits of his ability." (Internal quotation marks omitted.) *Tomlinson* v. *Tomlinson*, 119 Conn. App. 194, 201, 986 A.2d 1119, cert. granted on other grounds, 295 Conn. 916, 990 A.2d 868

(2010). It is well established, however, that "a contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed . . . and . . . there is no privilege to disobey a court's order because the alleged contemnor believes that it is invalid." (Internal quotation marks omitted.) *Zoll* v. *Zoll*, 112 Conn. App. 290, 304, 962 A.2d 871 (2009). In light of the foregoing, we conclude that the court properly declined to reconsider the basis of its order concerning the children's CUTMA accounts. Accordingly, we affirm the court's judgment concerning the CUTMA accounts in AC 30070.

V

AC 30636

In her fifth and fifth amended appeals, in AC 30636, the plaintiff challenges the trial court's decision granting the defendant's request for attorney's fees incurred in defending against the plaintiff's motion for contempt. The plaintiff claims that the court's finding of bad faith is not supported by the evidence in the record and that the award of attorney's fees is therefore invalid. The defendant responds that this court lacks jurisdiction to hear this appeal because the appeal was not taken from a final judgment. We dismiss the plaintiff's appeal in AC 30636 for lack of subject matter jurisdiction but reverse the award of attorney's fees pursuant to the plaintiff's amended appeal in AC 30636.

The following additional facts and procedural history are relevant to these appeals. On July 8, 2008, the plaintiff filed a motion for contempt alleging that the defendant had failed to comply with certain provisions of the dissolution judgment. Specifically, the plaintiff alleged that the defendant had failed to convey two kayaks, an oriental rug and a variety of tools to her. The plaintiff also alleged that the defendant had failed to cover certain expenses related to the transportation, education and care of the parties' children, and that the defendant had violated the agreed parenting plan by leaving the children, aged ten and sixteen, unattended for more than six hours on several occasions. The defendant filed an objection on July 15, 2008, denying the material allegations of the plaintiff's motion and requesting an award of attorney's fees and sanctions.

After hearing two days of argument and testimony from both parties, the court, on October 27, 2008, issued a memorandum of decision denying the plaintiff's motion for contempt. The court concluded that the plaintiff had abandoned her allegations concerning the kayaks, the agreed parenting plan and certain of the children's education expenses. The court also concluded that the plaintiff had failed to prove the remaining allegations of her motion by a preponderance of the evidence. Accordingly, the court found that the defendant was not in contempt of the dissolution judg-

ment. Moreover, the court concluded that the motion was not brought in good faith and requested that the defendant's attorney submit an affidavit of attorney's fees incurred in responding to the plaintiff's motion for contempt. Thereafter, the plaintiff filed a motion to reargue her motion for contempt on November 17, 2008, which the court denied on December 3, 2008. The plaintiff then filed an appeal with this court on December 23, 2008, AC 30636, challenging the trial court's award of attorney's fees to the defendant.

On August 4, 2009, the defendant filed an affidavit of attorney's fees in which his attorney, Debra C. Ruel, attested to a total of $10,905 in fees incurred in responding to the plaintiff's motion for contempt. On August 26, 2009, the plaintiff filed a motion for a hearing on the defendant's affidavit of attorney's fees. Following a hearing, the court granted the defendant's request for attorney's fees in the amount of $6127.50. The plaintiff then filed an amended appeal in AC 30636 with this court on September 15, 2009, again challenging the trial court's award of attorney's fees to the defendant.

As a threshold matter, we must address the defendant's argument that the lack of a final judgment deprives this court of subject matter jurisdiction to consider the plaintiff's appeals. As mentioned previously in this opinion, "[t]he lack of final judgment . . . implicates the subject matter jurisdiction of this court. . . . If there is no final judgment, we cannot reach the merits of the appeal." (Internal quotation marks omitted.) *Singhaviroj* v. *Board of Education*, 124 Conn. App. 228, 231–32, 4 A.3d 851 (2010). "In *Paranteau* v. *DeVita*, [208 Conn. 515, 524 n.11, 544 A.2d 634 (1988)], our Supreme Court determined that [a] supplemental postjudgment award of attorney's fees becomes final and appealable . . . not when there is a finding of liability for such fees, but when the amount of fees are conclusively determined. An award of attorney's fees without a determination of the amount of the attorney's fees is not an appealable final judgment." (Internal quotation marks omitted.) *Sullivan* v. *Brown*, 116 Conn. App. 660, 663, 975 A.2d 1289, cert. denied, 294 Conn. 914, 983 A.2d 852 (2009).

It is undisputed in the present case that the plaintiff filed her initial appeal, AC 30636, before the amount of attorney's fees had been conclusively determined. Accordingly, we conclude that the plaintiff's appeal in AC 30636 was not taken from a final judgment. We therefore dismiss that portion of the plaintiff's appeal for lack of subject matter jurisdiction. This conclusion, however, does not end our analysis, as we must now determine whether this court has subject matter jurisdiction over the plaintiff's amended appeal in AC 30636.

With regard to our consideration of the plaintiff's amended appeal, we note that Practice Book § 61-9 provides in relevant part: "If, after an amended appeal

is filed, the original appeal is dismissed for lack of jurisdiction, the amended appeal shall not be void as long as the amended appeal was filed from a judgment or order from which an original appeal could have been filed." The foregoing language is the result of an amendment to § 61-9, which became effective on January 1, 2010, during the pendency of the plaintiff's amended appeal. Pursuant to Practice Book § 86-2, "[w]henever a new rule is adopted or a change is made to an existing rule, the new rule or rule change shall apply to all appeals pending on the effective date of the new rule or rule change and to all appeals filed thereafter. . . ." Accordingly, we conclude that this court has subject matter jurisdiction over the plaintiff's amended appeal in AC 30636.

The court's award of attorney's fees is premised on its finding that the plaintiff acted in bad faith in filing her motion for contempt. As mentioned previously in this opinion, "[w]hether a party has acted in bad faith is a question of fact, subject to the clearly erroneous standard of review." (Internal quotation marks omitted.) *Harley* v. *Indian Spring Land Co.*, supra, 123 Conn. App. 837. "A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Waterview Site Services, Inc.* v. *Pay Day, Inc.*, supra, 125 Conn. App. 566–67.

Our Supreme Court has determined that in order "[t]o ensure . . . that fear of an award of attorneys' fees against them will not deter persons with colorable claims from pursuing those claims, we have declined to uphold awards under the bad-faith exception absent both clear evidence that the challenged actions are entirely without color and [are taken] for reasons of harassment or delay or for other improper purposes . . . and a high degree of specificity in the factual findings of [the] lower courts." (Internal quotation marks omitted.) *Maris* v. *McGrath*, supra, 269 Conn. 845.

The standard for colorability varies depending on whether the claimant is an attorney or a party to the litigation. Id., 846–48. If the claimant is an attorney, a claim is colorable if "a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts had been established." (Internal quotation marks omitted.) Id., 846. If the claimant is a party to the litigation, "a claim is colorable, for purposes of the bad faith exception to the American rule, if a reasonable person, given his or her first hand knowledge of the underlying matter, could have concluded that the facts supporting the claim might have been established." (Internal quotation marks omitted.) Id., 847.

Applying these principles to the case at hand, we conclude that the trial court was not justified in awarding attorney's fees to the defendant. Although the court found that the plaintiff had filed her motion for contempt in bad faith, the court failed to set forth, with a high degree of specificity, the facts that support its finding. With respect to the colorability of the plaintiff's claim, the factual situation presented in this case is somewhat unique in that the claimant is both a party to the litigation and an attorney licensed to practice law in Connecticut. Nevertheless, because we conclude that the plaintiff's claim satisfies both varieties of the standard for colorability, we need not determine which variety of the standard applies. The court accepted a number of the factual allegations underlying the plaintiff's motion for contempt. Thus, it is impossible to conclude that the plaintiff, either as an attorney or a party to the litigation, could not reasonably have concluded that the facts underlying her claim of contempt might be established. Accordingly, we conclude that this portion of the plaintiff's appeal must be reversed and the case remanded with direction to vacate the award of attorney's fees to the defendant in AC 30636, as amended.

The appeal in AC 30067 is dismissed for lack of a final judgment. The judgments denying the plaintiff's motions for modification of child support in AC 30068 and awarding attorney's fees to the defendant in AC 30069 are reversed and the case is remanded for evidentiary hearings consistent with this opinion. The judgment is affirmed in AC 30070. The appeal in AC 30636 is dismissed for lack of a final judgment, and the judgment in AC 30636, as amended, awarding attorney's fees to the defendant, is reversed and the case is remanded with direction to vacate that award.

In this opinion ROBINSON, J., concurred.

[1] The plaintiff raised a total of eight claims in her motion to open the dissolution judgment. Due to an apparent typographical error, these claims are numbered one and three through nine. In an effort to avoid confusion, we will refer to these claims as they are labeled in the plaintiff's motion.

[2] The plaintiff also claimed that the child support award deviated from the child support guidelines established pursuant to General Statutes § 46b-215a. The plaintiff does not address this claim in her brief, and, therefore, it is deemed abandoned. See *Atkinson* v. *Commissioner of Correction*, 125 Conn. App. 632, 636 n.5, 9 A.3d 407 (2010), cert. denied, 300 Conn. 919, 14 A.3d 1006 (2011).

[3] The trial court also ordered each party to pay for one half of all costs associated with (1) work-related after school day care; (2) transportation to and from school; (3) extracurricular activities in excess of $150; and (4) the continued employment of the parties' child care assistant.

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

[5] General Statutes § 46b-62 provides in relevant part: "In any proceeding

seeking relief under the provisions of this chapter . . . the court may order either spouse or, if such proceeding concerns the custody, care, education, visitation or support of a minor child, either parent to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82. . . ."

[6] The plaintiff also asserted a claim for attorney's fees against the defendant. The plaintiff does not address this claim in her brief, and, therefore, it is deemed abandoned. See *Atkinson* v. *Commissioner of Correction*, 125 Conn. App. 632, 636 n.5, 9 A.3d 407 (2010), cert. denied, 300 Conn. 919, 14 A.3d 1006 (2011).

[7] The court stated: "The parties are joint owners of real property located at 8 Crooked Road, Stonington, Connecticut. The [plaintiff] shall quitclaim all of her right, title and interest in and to the property to the [defendant]."

[8] The court stated: "The [defendant] is awarded possession and ownership of the [beach] home by the court. [The defendant] shall make the [beach] home available to [the plaintiff], for the express purpose of summer vacation time with the children, for two (2) weeks, to be taken during the last week in July and/or any week in August. She shall select her two weeks in writing by June 1 of each year. . . .

"This arrangement shall terminate at the end of the summer season in 2014, or if [one of the minor children] no longer uses the cottage with [the plaintiff], (e.g. he is working or at camp away from the [beach home])."

[9] The order also referenced a variety of individual retirement accounts. These accounts are not at issue in this appeal.

[10] During the July 8, 2008 hearing on the defendant's motions for contempt, the court stated: "[I]t was the court's intention to give the [beach house] to the defendant . . . in fee simple absolute and . . . he could have sold the [beach house] the very next day, if he so wished without being in violation of the court order, and had it burned to the ground the very next day, the [plaintiff's] use would have been extinguished just the same. . . .

"It was not the court's intention to grant a property interest in the [beach] home which would be a cloud on the title, specifically, the language was that . . . the [plaintiff] shall quitclaim all of her right, title and interest in and to the [beach house] . . . .

"The summer use was simply that, a use of a place that was obviously cherished by both parties. . . . It was not the court's intention to create a property interest, and, for that reason, the plaintiff is ordered forthwith to execute a quitclaim deed to the [defendant] of the [beach house] granting to him all right, title and interest absolutely and forever without reservation."