5-3

Proposal by the CT Chapter of The American Academy of Matrimonial Lawyers (AAML) to amend Section 25-5 (b) regarding the purchase or sale of securities in light of *O'Brien v. O'Brien,* 326 Conn. 81 (2017). Received letter from Attorney Parrino on 2-6-18. On 2-26-18, RC referred matter to Judge Bozzuto. On 3-20-18, I received letter from AAML with explanation of proposal. On 2-26-18, RC referred to Judge Bozzuto, CAJ Family. On 3-26-18, RC tabled matter to its May meeting. On 5-14-18, RC referred matter to CBA (both original proposal and alternate language worked out by Judge Bozzuto and Attorney Parrino). To be placed on agenda for September, 2018. (Submitted to CBA on 9-9-18.) On 9-17-18, counsel made report to RC and RC tabled the matter to 10-15-18 pending review by Judge Albis and Judge Abrams and referred the matter to the CBA for comment. On 10-4-18, I received comments from Judge Albis indicating that he and Judge Abrams would like to review the CBA's comments before responding to the RC. On 10-10-18, comments received from CBA. On 10-15-18, RC tabled matter to 11-19-18 to allow Judge Albis and Judge Abrams to review CBA's comments. **Received Judge Albis's comments on 11-14-18. On 12-18-18, RC tabled matter to 1-22-19 and asked Counsel to invite Judge Albis to address the RC at 1-22-19 meeting.**

5-3a

AAML

Connecticut Chapter

Protecting the Family, Improving the Practice.

Officers

President
Frederic J. Siegel
1266 East Main Street, 6th Floor
Stamford, CT 06902
Tel (203) 326-5115
Fax (203) 965-0509
Email: [illegible]

President-Elect
[illegible] Blomberg

Vice-President
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March 20, 2018

Joseph J. Del Ciampo
Deputy Director, Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

RE: <u>Proposed Rule Change</u>

Dear Attorney Del Ciampo:

Enclosed with this letter, you will find "Proposed Revisions to Automatic Orders, Practice Book Section, 25-5" which has been prepared by the Rules Committee of the Connecticut Chapter of the American Academy of Matrimonial Lawyers (AAML), approved by its board of managers, and voted on by its fellows for submission to this Committee for your consideration.

The AAML is a national organization of approximately 1600 attorneys frequently recognized as experts in the field of family law. The AAML was founded in 1962 to encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, with the goal of protecting the welfare of the family and society. There are thirty (30) fellow in the Connecticut Chapter.

The fellows of the AAML, including those of the Connecticut Chapter, work with married couples every day and provide counsel and advice regarding their clients' rights before and during marriage, including prenuptial agreements, adoption, dissolution of marriage, custody and parenting-time with children, valuation and disposition of property, and the apportionment of financial support. AAML fellows not only advocate for and counsel clients in contested dissolution of marriage actions, but also assist clients in reaching negotiated settlements without the need for trial.

The suggested rule change submitted has been prepared in light of our Supreme Court's decision in <u>O'Brien v. O'Brien</u>, 326 Conn. 81 (2017) which held that routine stock sales or trades, even if done in an effort to preserve the marital estate and the proceeds are kept intact and available to the trial court for equitable distribution, violate the automatic orders pursuant to Practice Book, Section 25-5.

Although its obvious that different shares of stock may have different values, all stock shares have one thing in common, they are only worth what they can be sold for on any given day. Stock shares lack the uniqueness of most tangible property that may not be able to be adequately exchanged for cash.

A stock's value can change frequently and drastically as a result of a company's performance and/or constantly changing market conditions. Accordingly, requiring litigants to obtain a court order prior to consummating a stock transaction when such decisions to sell or trade, routinely need to be made quickly, will result in delays and more importantly lost opportunities. Rather than converting a declining stock into cash before it loses value or trading it for another that is ready to skyrocket, in the time it takes

to make a phone call or push a few buttons on a computer, one is now required to file a motion, wait for it to appear on the short calendar list, participate in an evidentiary hearing that may require expert testimony regarding valuation and finally wait for the court's decision prior to executing the transaction. Even if the court issues its ruling expeditiously, at a minimum, weeks will pass and due to the changing market conditions, money or opportunity will be lost.

These "Permission/Valuation" hearings present public policy concerns, as well. The vast number of evidentiary hearings that will be needed as a result will wreak havoc on our family court system which is already overburdened and stretched to near its limits considering the voluminous pending actions, coupled with the recent reductions in court personnel. These hearings will take up valuable court time while people with more pressing issues that need to be promptly addressed by the court, such as child support, custody, alimony, and applications for relief from abuse, wait in the halls. Such a condition is contrary to the policy in favor of judicial economy and the principle of the sound and effective administration of justice.

Accordingly, we believe that Practice Book Section 25-5 should be amended in accordance with the enclosed submission. Although we would welcome the opportunity to respond to any inquiries by this Committee or provide additional testimony at any hearing on this subject, please consider this letter as written testimony at any such hearing.

Thank you for your time and consideration.

AAML CONNECTICUT CHAPTER

Thomas P. Parrino,
Its Past President

Lee Marlow,
Its Secretary

enclosure
LM/me

PROPOSED REVISIONS TO AUTOMATIC ORDERS SECTION 25-5

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

1b. Nothing in Paragraph 1a should be construed to preclude a party from purchasing or selling securities held in an individual or jointly held investment account, provided that the purchase or sale is transacted on an open and public market, and the purchased securities or sales proceeds resulting from a sale remain - subject to the provisions and exceptions recited in paragraph 1a above - in the account in which the securities or cash were maintained prior to the transaction.

6/6

Del Ciampo, Joseph

From:	Nicole Melendez <nmelendez@parrinoshattuck.com> on behalf of Thomas Parrino <tparrino@parrinoshattuck.com>
Sent:	Tuesday, February 06, 2018 11:25 AM
To:	karen.viklinetz@connappjud.ct.gov
Cc:	Del Ciampo, Joseph; Thomas Parrino; Nicole Melendez
Subject:	Proposed Revision to Practice Book Section 25-5
Attachments:	DRAFT PROPOSED REVISIONS TO AUTOMATIC ORDERS SECTION 25.pdf

Dear Justice Robinson:

I am a Fellow and Past President of the Connecticut Chapter of The American Academy of Matrimonial Lawyers. I currently serve on the Chapter's Rules Committee, which has considered the teachings of the Connecticut Supreme Court's decision in the *O'Brien* matter. The Rules Committee respectfully submits for consideration by the Connecticut Supreme Court's Rules Committee the attached proposed revision to Practice Book Section 25-5. I understand that the Rules Committee that you Chair is scheduled to meet on Monday, February 26, 2018 at 2:00 p.m. and respectfully request that you add to the agenda for consideration the proposed practice book revision.

If the Committee has any questions or wishes to engage in a dialog, I am available to attend the meeting on February 26, 2018 or can address any questions in writing.

Respectfully,

Thomas P. Parrino, Esq.
PARRINO|SHATTUCK, PC
285 Riverside Ave.
Westport, CT 06880
P.O. Box 831
203-557-9755 – Phone
203-557-8018 - Facsimile

Past President, American Academy of Matrimonial Lawyers, CT Chapter
Fellow, International Academy of Family Lawyers

DRAFT PROPOSED REVISIONS TO AUTOMATIC ORDERS SECTION 25-5

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

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326 Conn. 81
Supreme Court of Connecticut.
Michael J. **O'BRIEN**
v.
Kathleen E. **O'BRIEN**
SC 19635
|
Argued December 14, 2016
|
Officially released June 27, 2017

Synopsis
Background: Husband filed action to dissolve his marriage to wife. The Superior Court, Judicial District of Fairfield, Howard T. Owens, Jr., Judge Trial Referee, dissolved marriage and entered financial orders distributing marital property. Husband appealed. The Appellate Court, Sheldon, J., 138 Conn.App. 544, 53 A.3d 1039, reversed in part and remanded for new trial on all financial issues. On remand, the Superior Court, Pinkus, J., 2014 WL 1284432, denied wife's motion for contempt based on husband's sale of stock during pendency of action without first receiving permission, but awarded greater than even distribution to wife based on husband's sale of stock. Husband appealed. The Appellate Court, Prescott, J., 161 Conn.App. 575, 128 A.3d 595, reversed financial orders and remanded. Wife filed petition for certification, which was granted.

Holdings: The Supreme Court, Palmer, J., held that:

[1] trial court had authority to compensate wife for losses caused by husband's sale of stock, even in absence of contempt finding;

[2] trial court did not abuse its discretion by remedying wife's losses by adjusting distribution of marital assets in ex-wife's favor;

[3] court's remedial award to wife did not exceed her reasonable share of the loss caused by sale of stock;

[4] trial court was justified in looking beyond value of stocks on date of marriage dissolution in considering how to make wife whole;

[5] decision to assess value of stocks on date of new trial on remand, rather than on date of violations, was not arbitrary or irrational;

[6] sale of stock was not excepted from automatic orders as a transaction made in the usual course of business;

[7] evidence supported finding that stocks were marital property subject to distribution; and

[8] alimony award in favor of wife did not result in improper distribution of marital property.

Reversed and remanded with direction.

West Headnotes (48)

[1] Motions
⇐Enforcement of orders

Trial court's authority to enforce its own orders arises from common law and is inherent in court's function as a tribunal with the power to decide disputes.

1 Cases that cite this headnote

[2] Motions
⇐Enforcement of orders

Trial court's power to enforce its own orders is necessary to preserve its dignity and to protect its proceedings.

1 Cases that cite this headnote

[3] Contempt
⇐Disobedience to Mandate, Order, or Judgment

Party to court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in self-help by disobeying a court order to achieve the party's

desired end.

1 Cases that cite this headnote

[4] **Contempt**
⇐Criminal contempt
Contempt
⇐Civil contempt

The law recognizes two broad types of contempt: criminal and civil, which are distinguished by the type of penalty imposed. Conn. Gen. Stat. Ann. § 51-33a.

Cases that cite this headnote

[5] **Contempt**
⇐Criminal contempt

Criminal contempt penalties are punitive in nature and employed against completed actions that defy the dignity and authority of the court. Conn. Gen. Stat. Ann. § 51-33a.

Cases that cite this headnote

[6] **Contempt**
⇐Civil contempt
Contempt
⇐Purging contempt after adjudication

Civil contempt is not punitive in nature, but intended to coerce future compliance with a court order, and the contemner should be able to obtain release from the sanction imposed by the court by compliance with the judicial decree.

Cases that cite this headnote

[7] **Contempt**
⇐Indemnity to Party Injured
Contempt
⇐Imprisonment to compel performance of act required

Civil contempt finding permits trial court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court.

1 Cases that cite this headnote

[8] **Attorney and Client**
⇐Liability for costs; sanctions
Costs
⇐Nature and Grounds of Right

Tools available to trial court to enforce its orders include court's power to sanction parties and their attorneys for dilatory, bad faith and harassing litigation conduct, even in the absence of a specific rule or order of the court that is claimed to have been violated.

Cases that cite this headnote

[9] **Costs**
⇐Nature and Grounds of Right
Pretrial Procedure
⇐Failure to Disclose; Sanctions

Sanctions imposed by court for improper conduct, such as discovery abuse, may include awarding litigation costs to the party harmed by the improper conduct, exclusion of certain evidence or testimony, or even the entry of a default, nonsuit, or dismissal.

Cases that cite this headnote

[10] **Contempt**
⇐Findings

To impose contempt penalties, whether criminal or civil, trial court must make a contempt finding, which requires the court to find that offending party wilfully violated court's order. Conn. Gen. Stat. Ann. § 51-33a.

2 Cases that cite this headnote

[11] Contempt
⇐Disobedience to Mandate, Order, or Judgment

Failure to comply with a trial court order, alone, will not support a finding of contempt; rather, to constitute contempt, a party's conduct must be wilful.

Cases that cite this headnote

[12] Contempt
⇐Disobedience to Mandate, Order, or Judgment

Good faith dispute or legitimate misunderstanding about the mandates of a trial court order may well preclude a finding of wilfulness required to find a party in contempt.

Cases that cite this headnote

[13] Contempt
⇐Disobedience to Mandate, Order, or Judgment

Whether a party's violation of trial court order was wilful, as required to find party in contempt, depends on the circumstances of the particular case and, ultimately, is a factual question committed to the sound discretion of the trial court.

1 Cases that cite this headnote

[14] Contempt
⇐Indemnity to Party Injured

When a party violates a trial court order, causing harm to another party, court may compensate the injured party in contempt proceeding for losses sustained as a result of the violation, which is usually accomplished by ordering the offending party to pay a sum of money to the injured party as special damages.

1 Cases that cite this headnote

[15] Contempt
⇐Indemnity to Party Injured

Unlike contempt penalties, remedial award does not require a finding of contempt; rather, in a contempt proceeding, even in the absence of a finding of contempt, trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order.

2 Cases that cite this headnote

[16] Contempt
⇐Indemnity to Party Injured

Because trial court's power to compensate an injured party by granting remedial award in contempt proceedings based on offending party's violation of court order does not depend on the offending party's intent, court may order compensation even if the violation was not wilful.

1 Cases that cite this headnote

[17] Divorce
⇐Injunction against disposition of property before award

Even in absence of contempt finding, trial court

had authority to compensate ex-wife for any losses caused by ex-husband's sale of stock during pendency of marriage dissolution proceeding, since sale of stock violated court's automatic orders precluding sale, transfer, or exchange of property without permission; ex-husband was bound to follow court's orders and was responsible for consequences of violation, and transactions disrupted status quo and prevented court from determining proper disposition of stock shares and options. Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[18] **Divorce**
⚖Injunction against interference with person or property

Automatic orders are intended to keep the financial situation of the parties at a status quo during the pendency of dissolution of marriage action. Conn. Practice Book § 25–5.

Cases that cite this headnote

[19] **Divorce**
⚖Other marital conduct; misconduct in general

Ordinarily, a party in a dissolution of marriage proceeding is not responsible for poor or shortsighted business decisions concerning marital assets.

Cases that cite this headnote

[20] **Contempt**
⚖Disobedience to Mandate, Order, or Judgment

Even if trial court order imposes a burden on a party, or party believes his actions are otherwise justified, party may not act unilaterally in contravention of the order.

Cases that cite this headnote

[21] **Divorce**
⚖Injunction against disposition of property before award

Trial court did not abuse its discretion by remedying ex-wife's loss of her share of marital estate caused by ex-husband's sale of stock in violation of court's automatic orders by adjusting distribution of marital assets in ex-wife's favor in dissolution of marriage proceeding; although providing a remedy for a violation of a court order was not one of the enumerated factors in statute governing property distribution, court had inherent authority to order ex-husband to issue distinct payment to ex-wife for any losses caused by ex-husband's sale of stock, and court merely exercised it equitable discretion to combine steps of distributing marital assets pursuant to statute and separately ordering ex-husband to issue payment to ex-wife. Conn. Gen. Stat. Ann. § 46b-81; Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[22] **Divorce**
⚖Injunction against disposition of property before award

Trial court's remedial award to ex-wife in marriage dissolution proceedings based on ex-husband's sale of stock, in violation of automatic orders precluding sale, transfer, or exchange of property without permission, did not exceed ex-wife's reasonable share of the loss, and thus did not amount to a penalty for ex-husband's violation of automatic orders; court determined amount of loss after trial at which parties were each afforded opportunity to present evidence concerning extent of loss, and ex-wife was awarded no more than the losses fairly attributable to her share of marital estate. Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[23] Contempt
⇐Indemnity to Party Injured
Contempt
⇐Amount of fine

Trial court has the equitable discretion in contempt proceedings to choose whether to provide a remedy in the first place to party injured by another party's violation of a court order and to determine the amount of any remedial award in light of the specific circumstances of the case.

Cases that cite this headnote

[24] Contempt
⇐Indemnity to Party Injured

Essential goal in making a remedial award for violation of court order in contempt proceedings is to do rough justice, not to achieve auditing perfection, and thus award may be based on reasonable estimations of the harm caused and trial court's own superior understanding of the litigation.

Cases that cite this headnote

[25] Contempt
⇐Amount of fine

If the court elects to provide a remedial award for violation of court order in contempt proceeding, then the value of the award may not exceed the reasonable value of injured party's losses.

Cases that cite this headnote

[26] Contempt
⇐Evidence
Contempt
⇐In general; counsel

Trial court's conclusions concerning the appropriate remedial award for violation of court order in contempt proceeding must be based on evidence presented to the court; court must therefore allow parties to present evidence concerning the loss and the proper amount of compensation, and to cross-examine adverse witnesses.

Cases that cite this headnote

[27] Contempt
⇐Evidence

As with any other factual determination, trial court's findings concerning remedial award for violation of court order must be supported by evidence in contempt proceeding.

Cases that cite this headnote

[28] Divorce
⇐Injunction against disposition of property before award

In considering how to make ex-wife whole for ex-husband's sale of stock in violation of trial court's automatic orders, court was justified in looking beyond the value of the stocks and options on the date of marriage dissolution and, instead, to the value ex-wife might actually have received from any stocks and options court could have distributed to her following remand for new trial on financial issues; court was not valuing marital property for purposes of distributing it under statute governing distribution of property, but rather court was determining proper remedy for violation of court order pursuant to its inherent authority to enforce its orders. Conn. Gen. Stat. Ann. §

46b-81; Conn. Practice Book § 25-5(b)(1).

Cases that cite this headnote

[29] Divorce
⚖Injunction against disposition of property before award

Trial court's decision, in considering how to make ex-wife whole for ex-husband's sale of stock in violation of court's automatic orders, to assess value of stocks on date of new trial following remand, rather than on date of violations, was not arbitrary or irrational in marriage dissolution proceedings; at time of new trial, court was able to determine with certainty the precise value of the loss to marital estate caused by ex-husband's transactions, ex-wife rightfully expected that ex-husband would obey automatic orders and that stocks would remain in marital estate until distributed following trial on remand, and court's decision essentially placed ex-wife in the position she would have occupied at that time had ex-husband not violated automatic orders. Conn. Gen. Stat. Ann. § 46b-81; Conn. Practice Book § 25-5(b)(1).

Cases that cite this headnote

[30] Damages
⚖Breach of contract
Damages
⚖Mode of estimating damages in general

Plaintiff in breach of contract action is ordinarily entitled to be placed in as good a position as he would have been in the absence of the breach, and award of damages may include lost profits.

Cases that cite this headnote

[31] Divorce
⚖Injunction against disposition of property before award

Ex-husband's sale of stock during pendency of marriage dissolution proceeding was not a transaction made in the usual course of business, and thus sale of stock did not fall within exception to automatic order precluding sale, transfer, or exchange of property without permission; ex-husband was an attorney by profession, not a stockbroker, and there was no indication that ex-husband had a regular practice of buying and selling stocks. Conn. Practice Book § 25-5(b)(1).

Cases that cite this headnote

[32] Judgment
⚖Application of general rules of construction

When construing a trial court's memorandum of decision, effect must be given to that which is clearly implied as well as to that which is expressed.

Cases that cite this headnote

[33] Appeal and Error
⚖Necessity of finding facts

When trial court makes an ultimate finding of fact, appellate court presumes, in the absence of evidence to the contrary, that trial court also made the subsidiary findings necessary to support its ultimate finding.

Cases that cite this headnote

[34] Divorce
⚖Injunction against disposition of property before award

Supreme court would adopt neither a bright line rule that stock sales were always made in the usual course of business, and thus not subject to automatic orders precluding sale, transfer, or

exchange of property without permission, nor a rule presuming that stock sales always fall within usual course of business exception to automatic orders in marriage dissolution actions; automatic orders governed transactions of any property and made no exception for transactions concerning certain types of assets, whether a particular type of transaction had been conducted in the usual course of business presented a question of fact to be determined by looking to the circumstances of each case, and proposed rules were inconsistent with purpose of automatic orders. Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[35] Divorce
⇐Injunction against disposition of property before award

Whether a transaction is conducted in the usual course of business, and thus excepted from automatic orders in marriage dissolution proceedings precluding sale, transfer, or exchange of property without permission, does not turn solely on the type of asset or transaction, but on whether the transaction at issue was a continuation of prior activities carried out by the parties before the dissolution action was commenced. Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[36] Divorce
⇐Injunction against disposition of property before award

Evidence supported trial court's finding that stock options ex-husband sold without permission from ex-wife or trial court during pendency of dissolution of marriage proceeding were marital property subject to distribution between parties, and thus that sale violated automatic orders precluding sale, transfer, or exchange of property without permission; although evidence showed options had not vested at time of original trial, evidence demonstrated that options were awarded prior to dissolution, and ex-husband testified that options were compensation for past services. Conn. Gen. Stat. Ann. § 46b-81; Conn. Practice Book § 25–5(b)(1).

Cases that cite this headnote

[37] Divorce
⇐Employment benefits in general

Unvested stock options may be considered marital property subject to distribution in marriage dissolution proceedings if they are earned during the marriage. Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

[38] Divorce
⇐Employment benefits in general

If unvested stock options are awarded as compensation for services performed during the marriage, unvested options may properly be considered marital property subject to distribution, even if they will not vest until after the marriage is dissolved. Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

[39] Divorce
⇐Employment benefits in general

If unvested options are awarded for future services to be performed after marriage dissolution, then they are not considered marital property subject to distribution. Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

[40] Divorce
⇐Hearing
Divorce
⇐Disposition of Property

Determining when stock options were earned, and whether they are for predissolution or postdissolution services, poses a question of fact for the trial court when determining whether options are marital property subject to distribution in marriage dissolution proceedings, and appellate court must accept the finding unless it is clearly erroneous. Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

[41] Evidence
⇐Credibility of witnesses in general

As the finder of fact, trial court is free to credit all or any portion of plaintiff's testimony.

Cases that cite this headnote

[42] Divorce
⇐Double-counting, 'double-dipping,' dual use

Trial court's award of retroactive alimony to ex-wife in marriage dissolution proceeding did not constitute impermissible double dipping in marriage dissolution proceedings, even if award required ex-husband to pay arrearage out of his share of marital assets distributed by court; trial court was free to consider marital assets distributed to party paying alimony as a potential source of alimony payments, and assets ex-husband might have used to pay alimony award were all awarded to him, not to ex-wife. Conn. Gen. Stat. Ann. §§ 46b-81, 46b-82.

Cases that cite this headnote

[43] Divorce
⇐Double-counting, 'double-dipping,' dual use

Trial court's alimony award constitutes impermissible double dipping only if court considers, as a source of the alimony payments, assets distributed to the party receiving the alimony in marriage dissolution proceedings. Conn. Gen. Stat. Ann. §§ 46b-81, 46b-82.

Cases that cite this headnote

[44] Divorce
⇐Particular applications of multiple factors

Even if alimony together with property distribution meant that trial court effectively awarded 78% of marital estate to ex-wife and 22% to ex-husband in marriage dissolution action, trial court did not abuse its discretion in making award; distribution ratio of 78% to 22% was not excessive on its face, award reflected that ex-husband had an earnings potential of at least eight times that of ex-wife, and significant part component of ex-wife's distribution was remedial award for ex-husband's violations of automatic orders. Conn. Gen. Stat. Ann. § 46b-81; Conn. Practice Book § 25-5(b)(1).

Cases that cite this headnote

[45] Divorce
⇐Power and authority of court
Divorce
⇐Discretion of court in general

Trial courts are endowed with broad discretion to distribute property in connection with a dissolution of marriage and are empowered to deal broadly with property and its equitable division incident to dissolution proceedings.

Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

[46] Divorce
Factors and considerations in general
Divorce
Verdict, Findings, or Determination

Although trial court need not give each factor under statute governing distribution of marital property equal weight when making distribution decision, recite statutory criteria that it considered in making its decision, or make express findings as to each statutory factor, it must take each into account when distributing marital property in marriage dissolution proceedings. Conn. Gen. Stat. Ann. § 46b-81(c).

1 Cases that cite this headnote

[47] Divorce
Presumptions
Divorce
Discretion of court

Judicial review of a trial court's exercise of its broad discretion in domestic relations cases is limited to the questions of whether trial court correctly applied the law and could reasonably have concluded as it did; in making those determinations, appellate court allows every reasonable presumption in favor of the correctness of trial court's action.

Cases that cite this headnote

[48] Divorce
Disposition of Property

Generally, appellate court will not overturn trial court's division of marital property unless trial court misapplies, overlooks, or gives a wrong or improper effect to any test or consideration that it was its duty to regard. Conn. Gen. Stat. Ann. § 46b-81.

Cases that cite this headnote

Attorneys and Law Firms

**1242 Daniel J. Krisch, with whom was Aidan R. Welsh, for the appellant (defendant).

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

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

Opinion

PALMER, J.

**84 In this certified appeal arising from a marital dissolution action, we must determine whether a trial court properly may consider a party's violation of a court order when distributing marital property, even if the trial court finds that the violation is not contemptuous. The plaintiff, Michael J. O'Brien, filed this action to dissolve his marriage to the defendant, Kathleen E. O'Brien. During the pendency of the action, the plaintiff sold shares of stock and exercised certain stock options without first receiving permission from either the defendant or the trial court, as required by Practice Book § 25–5,[1] which also provides that a party *85 who fails to obey the orders automatically entered thereunder may be held in contempt of court. The trial court found that the plaintiff's transactions violated those orders but did not hold the plaintiff in contempt because the court concluded the violations were not wilful. Nevertheless, because the transactions had caused a significant loss to the marital estate, the court considered that loss when it distributed the marital property between the parties, awarding a greater than even distribution to the defendant. On appeal, the Appellate Court concluded that, in the absence of a finding of contempt, the trial court lacked the authority to afford the defendant a remedy for the plaintiff's violation of the automatic orders. See *O'Brien* v. *O'Brien*, 161 Conn.App. 575, 591, 128 A.3d 595 (2015). We thereafter granted the defendant's petition for certification to appeal, limited to the following issue: "Did the Appellate Court correctly determine that the trial court abused its discretion when it considered the plaintiff's purported *86 violations of the automatic orders in its decision dividing

marital assets [even though the court did not hold the plaintiff in contempt of court for those violations]?" **1244 *O'Brien* v. *O'Brien*, 320 Conn. 916, 131 A.3d 751 (2016). We agree with the defendant that the trial court properly exercised its discretion in considering the plaintiff's violations of the automatic orders in its division of the marital assets, and, therefore, we reverse the judgment of the Appellate Court.

The Appellate Court's opinion and the record contain the following undisputed facts and procedural history relevant to this appeal. The parties were married in 1985 and had three children together, all of whom were under the age of eighteen when the trial court rendered the dissolution judgment. See *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 578, 128 A.3d 595. The parties are each well educated and have had lucrative careers. See id. The plaintiff holds a law degree and is employed as senior vice president, general counsel, and secretary of Omnicom Group, Inc. (Omnicom). Id. His base salary is $700,000 per year, and his compensation has also included a cash bonus of varying amounts and noncash compensation, usually in the form of stock or stock options. Id. In the years leading up to the dissolution, the plaintiff's annual cash compensation averaged at least $1.2 million, along with additional noncash compensation. See id. The defendant holds a college degree and was previously employed as a managing director for Credit Suisse, earning more than $1 million annually. Id. She left her employment in 2003 to devote her time to raising the parties' children. Id. The defendant later participated in a "returnship" program with JP Morgan Chase, earning about $143,000 annually. Id.

At the time of the dissolution action, the parties' assets consisted principally of numerous bank and investment accounts, their principal residence in the town of Greenwich, a second home, and personal property. *87 The plaintiff also held vested shares of Omnicom stock and unvested Omnicom stock options.

The plaintiff filed the present action in 2008, alleging that the marriage had irretrievably broken down. See id., at 579, 128 A.3d 595 and n.3. He sought a judgment dissolving the marriage, an equitable division of the marital estate, and orders regarding child custody and support.

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

The trial court rendered judgment dissolving the parties' marriage in September, 2009. The court also entered custody orders regarding the minor children and financial orders distributing the marital property between the parties. In its financial orders, the trial court effectively awarded 55 percent of the marital assets to the defendant and 45 percent to the plaintiff. *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 580, 128 A.3d 595. These marital assets included all of the plaintiff's vested and unvested Omnicom stock shares and options. See id., at 580 n.4, 128 A.3d 595. The trial court also ordered the plaintiff to pay unallocated alimony and child support to the defendant. See *O'Brien* v. *O'Brien*, 138 Conn.App. 544, 545–46, 53 A.3d 1039 (2012), cert. denied, 308 Conn. 937, 938, 66 A.3d 500 (2013).

The plaintiff appealed from the trial court's financial orders, challenging, inter alia, its unallocated alimony and child support award. Id., at 545, 53 A.3d 1039. The Appellate Court agreed with the plaintiff's claim concerning the alimony and child **1245 support award and reversed the trial court's judgment as to its financial orders, but did not disturb *88 the decree dissolving the marriage. See id., at 546, 557, 53 A.3d 1039. The Appellate Court remanded the case to the trial court for a new trial on all financial issues. Id., at 557, 53 A.3d 1039. The parties do not dispute that the appeal stayed the trial court's financial orders and that the automatic orders remained in effect during the pendency of the appeal.

While the dissolution action or the appeal from the judgment of dissolution was pending—and while the automatic orders thus remained in effect—the plaintiff executed three stock transactions that are the subject of the present appeal. See *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 579, 581, 128 A.3d 595. The plaintiff made the first transaction in February, 2009, one year after filing the dissolution action but before the dissolution decree entered in September, 2009. See id., at 579, 128 A.3d 595. In the first transaction, the plaintiff sold all of his 28,127 vested Omnicom shares. Id. He did so without first seeking the consent of the defendant or the approval of the trial court. Id. According to the plaintiff, he was concerned about volatility in the stock market following a market decline in 2008 and thought that preserving the current value of the shares through a sale was in the parties' best, immediate interest. See id. The plaintiff placed the proceeds from the sale into a bank account and disclosed the sale to the defendant approximately two months later when he submitted an updated financial affidavit.

The plaintiff executed the second and third transactions in 2010 and 2012, respectively, after the original trial and while the first appeal was pending. See id., at 581, 128 A.3d 595. In these two transactions, the plaintiff exercised a total of 75,000 Omnicom stock options that he had received as part of his noncash compensation while the dissolution action was still pending and before the trial court rendered judgment dissolving the marriage. Id. The options had vested after the trial court's dissolution *89 judgment was rendered but before the Appellate Court reversed the trial court's financial orders. See id., at 581–82, 128 A.3d 595. He exercised 22,500 options in the first transaction and 52,500 options in the second transaction. Each time, the plaintiff immediately converted the options to cash and retained the cash proceeds in a bank account. As with his earlier stock sale, the plaintiff did not seek consent from the defendant or approval from any judicial authority before exercising the options. Id.

On remand, the defendant filed a motion for contempt with respect to the plaintiff's transactions. Id., at 582, 128 A.3d 595. The defendant asserted that the plaintiff's transactions violated the automatic orders because he had sold, exchanged or disposed of property without prior permission, as required by Practice Book § 25–5 (b) (1). See id. In her motion, the defendant requested that the court find the plaintiff in contempt, order the plaintiff to pay legal fees and costs in connection with the contempt motion, and award any other relief that the court deemed appropriate. Id.

At the remand trial in February, 2014, the defendant presented expert testimony to establish the economic loss resulting from the plaintiff's transactions. See id. The defendant's expert testified that the stock shares and options were worth approximately $2.5 million at the time the plaintiff sold and exercised them, respectively. The expert further testified that, if the plaintiff had not sold or exercised the shares and options but instead had retained them, they would have had a value, as of the date of the retrial, of about $6 **1246 million. See id. Thus, according to the defendant's expert, the plaintiff's decision to sell the shares of stock and exercise his stock options had caused a net loss to the marital estate of about $3.5 million. Id.

For his part, the plaintiff admitted that he had not sought permission to engage in the transactions. He *90 nevertheless testified that he had consulted with attorneys concerning the transactions before executing them and that he did not believe that he otherwise needed permission to execute the transactions. The plaintiff further testified that he thought converting the shares to cash would best preserve their value in the face of ongoing market volatility. Id., at 579, 128 A.3d 595.

After trial following the remand, the trial court issued a memorandum of decision and new financial orders. The court first explained that, in crafting its financial orders, it had considered the testimony and exhibits presented, along with the required statutory criteria, set forth in General Statutes § 46b–81,[3] governing the trial court's distribution of marital property. The court then turned to its findings of fact. After setting forth the history of the parties' marriage and careers, the court determined that the plaintiff's earning capacity exceeded the defendant's, finding that the plaintiff had earned at least $1.2 million annually in the years leading up to the dissolution, compared to $143,000 that the defendant earned annually. With respect to the marital assets, the court explained that it had valued them as of the original date of dissolution. Id., at 583, 128 A.3d 595. The parties had agreed to the value of most of the marital assets in a pretrial stipulation, which the court incorporated by reference. Id.

*91 With respect to the transactions, the trial court found that the plaintiff had sold 28,127 shares of Omnicom stock and exercised 75,000 Omnicom stock options while the automatic orders were in effect and without the defendant's consent or the court's permission. Id., at 579, 581, 128 A.3d 595. Although concluding that the plaintiff's transactions "did in fact violate the automatic orders," the court did not hold the plaintiff in contempt because it found that the plaintiff had sought the advice of counsel concerning the transactions, and, consequently, his violations were not wilful. Nevertheless, the court explained that the transactions caused "a significant loss to the marital estate" and that the court had "taken into account these transactions in making [its financial] awards."

The trial court then turned to property distribution. The assets in the marital estate had a value of approximately $6.5 million.[4] The trial court awarded the defendant **1247 the principal residence and permitted her to keep a pension from Credit Suisse, as well as portions of the parties' bank and retirement accounts, among other assets. The total value of the award to the defendant was approximately $4.4 million. The trial court awarded the plaintiff portions of the parties' bank and retirement accounts, among other assets. The total value of the award to the plaintiff was approximately $2.1 million. According to the plaintiff's accounting, the award amounted to a 68 percent distribution of the marital estate to the defendant and a 32 percent distribution to the plaintiff. The trial court also ordered the plaintiff to pay

the defendant child support and alimony for a *92 period of twenty-one years, with a reduction in the amount of alimony every seven years.[4]

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

The plaintiff appealed to the Appellate Court, which reversed the trial court's financial orders. See *93 *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 577, 593, 128 A.3d 595. Among other claims, the plaintiff asserted that the trial court improperly had considered the transactions when fashioning its orders. See id., at 587–88, 128 A.3d 595. The plaintiff argued that, even if his actions technically violated the automatic **1248 orders, the trial court improperly held his actions against him when distributing the property because he had not been found in contempt and did not otherwise intentionally dissipate the assets or cause any legally cognizable harm. See id., at 588–89, 128 A.3d 595.

The Appellate Court agreed with the plaintiff, concluding that the plaintiff's violations of the automatic orders could be considered by the court only if they rose to the level of contempt or a dissipation of marital assets. Id., at 589, 128 A.3d 595. The court explained that, "even if the plaintiff technically violated the automatic orders when he sold stock and exercised options during the pendency of the dissolution action without permission ... the resulting sanction imposed on the plaintiff by the court—namely, some unspecified reduction in the plaintiff's share of the marital estate—was not legally justified and, thus, an abuse of discretion. First, the court expressly found that the plaintiff's actions were not contumacious, and, thus, we conclude that it lacked any authority to punish the plaintiff pursuant to its civil contempt powers. Second, although in exercising its statutory authority under § 46b–81, the court certainly could take into account, when dividing the parties' assets, whether a party had engaged in a dissipation of those assets, there is nothing in the present record that would support a finding that the plaintiff intended to hide or to dissipate assets, nor did the court make such a finding." (Footnote omitted.) Id.

Concerning the trial court's contempt powers, the Appellate Court further explained that "[j]udicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to *94 coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. ... [If] compensation is intended, a fine is imposed, payable to the complainant." (Internal quotation marks omitted.) Id., at 590, 128 A.3d 595. Because, however, the trial court had not found the plaintiff in contempt, the Appellate Court concluded that the trial court had "lost its authority pursuant to its contempt powers to take any remedial action against the plaintiff simply because, with the luxury of hindsight, those transactions had proven unprofitable or even unwise. In other words, if the court had found the plaintiff in contempt of the automatic orders, that conclusion might have justified its further consideration of the effect those violations had on the assets available for distribution. In such circumstances, the court could have taken remedial action, perhaps reducing the plaintiff's distribution in an amount necessary to compensate the defendant. Nevertheless, having effectively denied the defendant's motion for contempt, the court was required to dispose of the marital assets in accordance with its authority under § 46b–81, which did not include the power to punish in the absence of dissipation." Id., at 591, 128 A.3d 595.

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

marriage." (Citation omitted; internal *95 quotation marks omitted.) ***O'Brien*** v. ***O'Brien***, supra, 161 Conn.App. at 592, 128 A.3d 595.

Because the trial court had not found contempt or dissipation, the Appellate Court concluded that the trial court did not have the authority to compensate the defendant for the plaintiff's transactions, even though those transactions had violated the automatic orders. Id., at 593, 128 A.3d 595. The Appellate Court reversed the trial court's judgment with respect to its financial orders and remanded the case for a new hearing on all financial matters. Id.

**1249 We then granted the defendant's petition for certification to decide whether the Appellate Court correctly concluded that the trial court should not have considered the plaintiff's violations of the automatic orders in its division of the marital assets because the court had not held the plaintiff in contempt for those violations. *O'Brien* v. *O'Brien*, supra, 320 Conn. at 916, 131 A.3d 751. We answer the certified question in the negative. The plaintiff also has raised three alternative grounds for affirming the Appellate Court's judgment, all of which we reject.

I

We begin with the certified question. The defendant claims that the Appellate Court incorrectly concluded that the trial court lacked the authority to afford her a remedy for the plaintiff's violations of the automatic orders in the absence of a contempt finding. In support of this claim, the defendant contends that the trial court has the power to consider the plaintiff's actions under § 46b–81, which governs a trial court's distribution of marital assets in a dissolution proceeding and empowers the trial court to divide marital assets between the parties upon consideration of "the contribution of each of the parties in the acquisition, *preservation* or *appreciation* in value of" the marital assets. (Emphasis added.) General Statutes § 46b–81 (c). The defendant *96 further contends that the plaintiff's unilateral decision to swap a substantial equity stake—along with its potential for increase in value and dividends—for an asset like cash is the antithesis of preservation and appreciation, and thus may be considered by a court when it divides property under the statute.

We agree with the defendant that the trial court had the authority to consider the plaintiff's transactions when distributing the marital property, but for reasons different from those advanced by the defendant. Applying plenary review to this question of law; see, e.g., *Maturo* v. *Maturo*, 296 Conn. 80, 88, 995 A.2d 1 (2010); we conclude in part I A of this opinion that a trial court possesses inherent authority to make a party whole for harm caused by a violation of a court order, even when the trial court does not find the offending party in contempt. In part I B of this opinion, we conclude that the trial court properly exercised that authority in the present case.[3]

A

[1] [2] [3]It has long been settled that a trial court has the authority to enforce its own orders. This authority arises from the common law and is inherent in the court's function as a tribunal with the power to decide disputes. *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 737–38, 444 A.2d 196 (1982). The court's enforcement power is necessary to "preserve its dignity *97 and to protect its proceedings." (Internal quotation marks omitted.) *Allstate Ins. Co.* v. *Mottolese*, 261 Conn. 521, 530, 803 A.2d 311 (2002); see also *Middlebrook* v. *State*, 43 Conn. 257, 268 (1876) ("[a] court of justice must of necessity have **1250 the power to preserve its own dignity and protect itself"). A party to a court proceeding must obey the court's orders unless and until they are modified or rescinded, and may not engage in "self-help" by disobeying a court order to achieve the party's desired end. (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, 258 Conn. 713, 719–20, 784 A.2d 890 (2001); see also *Tyler* v. *Hamersley*, 44 Conn. 393, 412 (1877) ("[e]very court must of necessity possess the power to enforce obedience to its lawful orders"); *Rocque* v. *Design Land Developers of Milford, Inc.*, 82 Conn.App. 361, 366, 844 A.2d 882 (2004) ("[t]he interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter" [internal quotation marks omitted]), quoting *United States* v. *United Mine Workers of America*, 330 U.S. 258, 303, 67 S.Ct. 677, 91 L.Ed. 884 (1947).

[4] [5] [6] [7] [8] [9]The court has an array of tools available to it to enforce its orders, the most prominent being its contempt power." Our law recognizes two broad types of contempt: criminal and civil. See, e.g., *DeMartino* v. *Monroe Little League, Inc.*, 192 Conn. 271, 278, 471 A.2d 638 (1984). The two are distinguished by the type of penalty imposed. See, e.g., *98 *In re Jeffrey C.*, 261 Conn. 189, 197–98, 802 A.2d 772 (2002); *McTigue* v. *New London Education Assn.*, 164 Conn. 348, 352–53,

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

[10] [11] [12] [13]To impose contempt penalties, whether criminal or civil, the trial court must make a contempt finding, and this requires the court to find that the offending party wilfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt. See, e.g., *Marshall* v. *Marshall*, 151 Conn.App. 638, 650, 97 A.3d 1 (2014). Rather, "to constitute contempt, a party's conduct must be wilful." *Eldridge* v. *Eldridge*, 244 Conn. 523, 529, 710 A.2d 757 (1998). "A good faith dispute or legitimate misunderstanding" about the mandates of an order may well preclude a finding of wilfulness. (Internal quotation marks omitted.) *Sablosky* v. *Sablosky*, supra, 258 Conn. at 718, 784 A.2d 890. Whether a party's violation was wilful depends on the circumstances of the particular case and, **1251 ultimately, is a factual question committed to the sound discretion of the trial court. Id. Without a finding of wilfulness, a *99 trial court cannot find contempt and, it follows, cannot impose contempt penalties.

[14]But a trial court in a contempt proceeding may do more than impose penalties on the offending party; it also may remedy any harm to others caused by a party's violation of a court order. When a party violates a court order, causing harm to another party, the court may "compensate the complainant for losses sustained" as a result of the violation. (Internal quotation marks omitted.) *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. at 278, 471 A.2d 638. A court usually accomplishes this by ordering the offending party to pay a sum of money to the injured party as "special damages ...." (Internal quotation marks omitted.) Id., at 279, 471 A.2d 638.

[15] [16]Unlike contempt penalties, a remedial award does not require a finding of contempt. Rather, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Emphasis omitted; internal quotation marks omitted.) *Clement* v. *Clement*, 34 Conn.App. 641, 647, 643 A.2d 874 (1994); see also *Brody* v. *Brody*, 153 Conn.App. 625, 636, 103 A.3d 981, cert. denied, 315 Conn. 910, 105 A.3d 901 (2014); *Nelson* v. *Nelson*, 13 Conn.App. 355, 367, 536 A.2d 985 (1988). Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation even if the violation was not wilful. See, e.g., *Clement* v. *Clement*, supra, at 646–47, 643 A.2d 874; cf. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. at 279, 471 A.2d 638 ("[s]ince the purpose is remedial, it matters not with what intent the [offending party] did the prohibited act" [internal quotation marks omitted]).

Following this principle, the Appellate Court has upheld compensatory awards imposed in contempt proceedings *100 even when the trial court did not make a contempt finding. For example, in *Clement* v. *Clement*, supra, 34 Conn.App. at 641, 643 A.2d 874, one party failed to make payments on a home mortgage loan, in violation of a court order, which led to a foreclosure and a loss of equity in the home. See id., at 643–44, 643 A.2d 874 and n.2. The trial court ultimately vacated an earlier contempt finding but nevertheless declined to vacate a compensatory award equal to the lost equity. Id., at 646, 643 A.2d 874. The Appellate Court affirmed, explaining that a trial court "has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with [a] court order" and may do so "even in the absence of a finding of contempt ...." (Emphasis omitted; internal quotation marks omitted.) Id., at 647, 643 A.2d 874. And in *McGuire* v. *McGuire*, 102 Conn.App. 79, 81, 924 A.2d 886 (2007), a court order required the parties to a dissolution proceeding to sell their marital home. When one party delayed the closing date, causing a contract for sale to fall through, the trial court did not find contempt but nevertheless ordered the delaying party to pay the other party compensation for the delay. See id., at 81–82, 924 A.2d 886. On appeal, the Appellate Court, consistent with prior precedent, concluded that a trial court need not find contempt before compensating a party harmed by the violation of a court order. Id., at 88–89, 924 A.2d 886.

We cited this principle with approval in *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 243, 796 A.2d 1164 (2002), and again in **1252 *New Hartford* v. *Connecticut Resources Recovery Authority*, 291 Conn. 489, 501 n.20, 970 A.2d 570 (2009).

In *AvalonBay Communities, Inc.*, for instance, we explained that, "[i]t would defy common sense to conclude that, merely because a party's violation of a court order was not wilful, the trial court is deprived of its authority to enforce the order." *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, supra, at 241–42, 796 A.2d 1164.

[17] *101 The Appellate Court's reasoning and result in the present case are inconsistent with these decisions. The Appellate Court recognized that a court might compensate a party harmed by a violation of a court order, including by reducing the party's share of the marital assets, but only if the court found the offending party in contempt. See *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 591, 128 A.3d 595. According to the Appellate Court, "[h]aving determined that the plaintiff's transactions were not contumacious ... the [trial] court lost *its* authority pursuant to its contempt powers to take any remedial action against the plaintiff" and in favor of the defendant. Id. In light of the decisions from this court and the Appellate Court holding to the contrary, the Appellate Court's conclusion in the present case cannot stand. Parties subject to a court order are bound to follow it and reasonably may rely on an expectation that other parties will also obey the order. Irrespective of whether a violation is wilful, the party violating a court order properly may be held responsible for the consequences of the violation. To hold otherwise would shift the cost of the violation to the innocent party.

[18]We therefore conclude that, although the trial court could not punish the plaintiff because it had not found him in contempt, the court nevertheless properly determined that it could compensate the defendant for any losses caused by the plaintiff's violations of the automatic orders. The plaintiff's transactions—in which he sold and exchanged stock shares and options for cash—plainly violated the automatic orders, which expressly provide that, while the dissolution proceedings are pending, no party shall "sell, transfer, [or] exchange" any property without permission from the other party or the court. Practice Book § 25–5 (b) (1). The automatic orders are intended to "keep the financial situation of the parties at a status quo during the pendency of the dissolution action." *102 *Ferri* v. *Powell-Ferri*, 317 Conn. 223, 232, 116 A.3d 297 (2015). Allowing parties to sell, exchange, or dispose of assets while a dissolution action is pending, and without permission of the other party or the court, would frustrate the trial court's ability to determine which of the parties' property constituted marital property and to distribute the marital assets fairly between the parties. In the present case, the plaintiff's transactions, made without proper permission, disrupted the status quo and prevented the trial court from determining the proper disposition of the stock shares and options, in violation of the automatic orders.

[19] [20]Even if the plaintiff did not intend to violate the court's order, if his unilateral decision to sell the shares and exercise the options caused a loss to the marital estate—and in turn to the defendant—then the trial court was justified in determining that the plaintiff should bear the losses. To be sure, the plaintiff may not have appreciated the extent of the harm his transactions might cause in the future. And, ordinarily, a party in a dissolution proceeding is not responsible for poor or shortsighted business decisions concerning marital assets. See *Gershman* v. *Gershman*, supra, 286 Conn. at 346–47, 943 A.2d 1091. But, in the present case, the plaintiff's transactions were not just **1253 questionable investment decisions; they also violated a court order. Even if the court order imposes a burden on a party, or the party believes his actions are otherwise justified, the party may not act unilaterally in contravention of the order. See, e.g., *Sablosky* v. *Sablosky*, supra, 258 Conn. at 719–20, 784 A.2d 890. Moreover, if the plaintiff in the present case did not wish to bear sole responsibility for the potential risks of his actions, he should not have engaged in self-help by selling the stocks and exercising the options without first consulting the defendant or the court. Because the defendant had no say in the transactions that the plaintiff executed, the trial court acted within its discretion *103 when it determined that the plaintiff had violated the automatic orders and that he should bear any losses caused by his actions.

[21]We also conclude that the trial court acted properly in remedying the defendant's loss of her share of the marital estate by adjusting in her favor the distribution of the marital assets. Even though the trial court's property distribution is governed by § 46b–81, and providing a remedy for a violation of a court order is not one of the enumerated statutory factors, the trial court nevertheless had the discretion to remedy the plaintiff's violations of a court order through its distribution of the parties' marital property. See *Robinson* v. *Robinson*, 187 Conn. 70, 71–72, 444 A.2d 234 (1982) ("Although created by statute, a dissolution action is essentially equitable in nature. ... The power to act equitably is the keystone to the court's ability to fashion relief in the infinite variety of circumstances [that] arise out of the dissolution of a marriage." [Citation omitted; internal quotation marks omitted.]). The trial court could have distributed the marital assets pursuant to § 46b–81 and then separately ordered the plaintiff to issue a distinct payment to the defendant pursuant to its inherent authority. See *Clement* v. *Clement*, supra, 34 Conn.App. at 643–44, 643 A.2d

874; cf. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. at 278–79, 471 A.2d 638. The trial court, exercising its equitable discretion, instead combined these two steps into one, a method that is not without precedent. See, e.g., *Greenan* v. *Greenan*, 150 Conn.App. 289, 303, 91 A.3d 909 (upholding trial court's remedy for violation of court order and noting that trial court had "taken the plaintiff's [violation] into consideration in fashioning its [financial] orders" instead of issuing "a specific order to restore the funds" lost from violation [internal quotation marks omitted]), cert. denied, 314 Conn. 902, 99 A.3d 1167 (2014). Whether the trial court in the present case had ordered a payment separate from the property distribution *104 or effected the payment as part of the property distribution, as it did, is a difference of form, not substance. The result of either method would be the same—each ultimately transfers funds to cover the value of the defendant's loss from the plaintiff to the defendant. We conclude, therefore, that the trial court properly exercised its discretion in affording the defendant a remedy by adjusting the property distribution to account for the loss.

B

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

[23] [24] [25]If a trial court elects to make whole a party injured by another party's violation of a court order, any award it makes must be reasonable in light of the harm to the injured party. A trial court has the equitable discretion to choose **1254 whether to provide a remedy in the first place and to determine the amount of any remedial award in light of the specific circumstances of the case. See *Clement* v. *Clement*, supra, 34 Conn.App. at 647, 643 A.2d 874; see also *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, supra, 260 Conn. at 243, 796 A.2d 1164. "The essential goal" in making a remedial award "is to do rough justice, not to achieve auditing perfection," and, thus, the award may be based on reasonable estimations of the harm caused and the trial court's own "superior understanding of the litigation ...." (Internal quotation marks omitted.) *Goodyear Tire & Rubber Co.* v. *Haeger*, — U.S. —, 137 S.Ct. 1178, 1187, 197 L.Ed.2d 585 (2017). The trial court's discretion, however, is not limitless. If the court elects to provide a remedial award, then the value of the award may not exceed the reasonable value of the injured party's losses. *DeMartino* v. *Monroe Little League, Inc.*, supra, 192 Conn. at 279, 471 A.2d 638. Although a *105 trial court may choose to award less under the circumstances of a particular case, a decision to order an award greater than the party's loss would exceed the award's remedial purpose. See id.; see also *Goodyear Tire & Rubber Co.* v. *Haeger*, supra, at 1186 (trial court's "award may go no further than to redress the wronged party for losses sustained; it may not impose an additional amount as punishment for the sanctioned party's misbehavior" [internal quotation marks omitted]). In such a case, the excess instead serves merely to punish the offending party, a sanction that, as we have explained, requires a finding of contempt and thus likely would constitute an abuse of the trial court's discretion. See part I A of this opinion.

[26] [27]Moreover, the trial court's conclusions concerning the appropriate remedial award must be based on evidence presented to the court. *Nelson* v. *Nelson*, supra, 13 Conn.App. at 367, 536 A.2d 985. The court must therefore allow the parties to present evidence concerning the loss and the proper amount of compensation, and to cross-examine adverse witnesses. Id. As with any other factual determination, the trial court's findings must be supported by the evidence. Id.

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

After considering the parties' positions, the trial court credited the testimony of the defendant's expert and found that the transactions caused a net loss to the marital estate of $3.5 million. The court arrived at that *106 amount by looking to the difference between (1) the value of the stock shares and options at the time the plaintiff either sold or exercised them, and (2) the value the shares and options would have had at the time of the trial following remand, when the shares or options would have been distributed, if the plaintiff had not sold or exercised them in violation of the automatic orders. The trial court determined that the shares and options had a total value of $2,562,190 when the plaintiff sold or exercised them and that, if the plaintiff had not done so, they would have had a value of $6,093,019 at the time of the trial. Taking the difference between these two values, the trial court found that the plaintiff's transactions had caused a net loss of approximately $3.5 million in value to the marital estate.

**1255 The defendant, however, was not necessarily entitled to be compensated for the full $3.5 million loss to the marital estate. Because that value reflected the loss amount to the entire marital estate, and not just the defendant's share, she presumably should have received no more than the losses fairly attributable to her share of the marital estate. Thus, the defendant's counsel acknowledged during closing argument that if, for example, the court awarded the defendant 55 percent of the marital assets, including the stock shares and options, she would be entitled to compensation for no more than 55 percent of the total losses to the marital estate.' The defendant's counsel also acknowledged that the amount of any remedial award should be adjusted for the taxes that would have been paid on *107 any subsequent sale of the stock and exercise of the options, which was not reflected in the expert's valuation of the stock shares. In light of these factors, and the plaintiff's own valuations of the marital assets distributed, it is apparent that the trial court fairly determined the loss to the estate to be $3.5 million and that its adjustment of the distribution in favor of the defendant did not exceed the defendant's reasonable share of the loss resulting from the unauthorized transactions."

Nevertheless, the plaintiff claims that the trial court improperly determined that the loss to the marital estate *108 was $3.5 **1256 million. He claims that the trial court was required to calculate the loss to the marital estate by considering the value that the stock shares and options would have had on the date of the dissolution decree, September, 2009, rather than at the time of the remand trial in February, 2014. For support, he relies on *Sunbury* v. *Sunbury*, 216 Conn. 673, 583 A.2d 636 (1990), in which we determined that a trial court issuing new property distribution orders on remand from an appellate court must divide the marital assets based on their value as of the original date of the dissolution decree, rather than based on their value at the time of any trial after remand. Id., at 674, 676, 583 A.2d 636. We explained that, when dividing property pursuant to § 46b–81, "[i]n the absence of any exceptional intervening circumstances occurring in the meantime, [the] date of the granting of the divorce would be the proper time as of which to determine the value of the estate of the parties [on] which to base the division of property. ... An increase in the value of the property following a dissolution does not constitute such an exceptional intervening circumstance." (Citation omitted; internal quotation marks omitted.) Id., at 676, 583 A.2d 636.

Seizing on our conclusion in *Sunbury*, the plaintiff asks us to extend its reasoning to instances in which, as in the present case, the trial court is not valuing marital property for the purpose of distributing it under § 46b–81 but, rather, determining the proper remedy for a violation of a court order. Because the trial court effected the remedial award by adjusting its property distribution, the plaintiff argues that *Sunbury* applied to the trial court's remedial award and barred the court from considering the value that the stock shares and options would have had as of the time of the trial following remand, if the plaintiff had not sold or exercised them. Instead, he argues, the court should have looked *109 to their value as of the dissolution date and determined the harm to the marital estate using that value. He also maintains that, because the trial court did not make any findings about the value of the stock shares and options as of the date of dissolution, a new hearing on all financial issues is required.

[28]We disagree that *Sunbury* applies to the trial court's decision to remedy the plaintiff's violations of its orders. As the plaintiff tacitly admits in his brief to this court, *Sunbury* applies to the distribution of marital property between spouses pursuant to § 46b–81 but does not purport to place limits on the trial court's inherent authority to make a party whole when another party has violated a court order. *Sunbury* therefore did not limit the discretion of the trial court in the present case to consider the present value of the stocks and options when fashioning an appropriate remedy.' In considering how to make the defendant whole for the violation pursuant to its inherent authority, the trial court was justified in looking beyond the value of the stocks and options on the date of dissolution and, instead, to the value the defendant might actually have received from any stocks and options the court could have distributed to the defendant at **1257 the time of trial on remand. The trial court's decision in the present case to effect its remedial award by adjusting the distribution, rather than by ordering the plaintiff to make a separate payment, does not alter the fact that its remedial award *110 was made pursuant to its inherent authority, not § 46b–81. Thus, our holding in *Sunbury* does not apply to the trial court's remedial award.

[29]The plaintiff further contends that, if *Sunbury* does not apply, the trial court should have valued the loss to the defendant by using the value the stocks and options would have had on the date of the violations, not the date of the trial following remand. Borrowing from principles of contract law, the plaintiff asserts that the defendant's damages should be calculated by looking only to the losses the defendant incurred as of the date of the breach, without regard to any later change in the value of the stocks and options. Thus, the plaintiff agrees that if, for example, he had sold the stock for less than fair market value at the time he sold it, he might be responsible to the

defendant for the loss, but, because he exchanged the stock for its fair market value in cash, he argues that there was no cognizable loss to the estate on the date of the breach and, as a result, no basis for a remedial award to the defendant. The plaintiff contends that determining loss by looking to the stock value at the time of the trial on remand entails the use of an arbitrary date in time to fix the value because that value fluctuates daily.

[20]We disagree that assessing the value of the stocks and options at the time of the remand trial was arbitrary or irrational. At the time of that trial, the court could determine with certainty the precise value of the loss to the marital estate caused by the plaintiff's transactions. The defendant rightfully expected that the plaintiff would obey the automatic orders and that the stocks and options would remain in the marital estate until distributed to the parties by the court following a trial on remand. If the plaintiff had not sold the stock or exercised the options, and the trial court divided the marital assets between the parties, including the stocks and options, the defendant would have enjoyed the *111 benefit of any increase in their value. The plaintiff, however, unilaterally removed the stocks and options from the marital estate, preventing the court from distributing them in the form of stocks and options, and thus depriving the defendant of the opportunity to benefit from the increase in their value. Lacking the stocks and options to distribute, the court essentially awarded the defendant the *value* that her putative share of the stocks and options would have had at the time of the remand trial, putting the plaintiff in precisely the position she would have occupied at that time if the plaintiff had not violated the automatic orders. At that point, through its remedial award, the trial court made the value of the defendant's share of the marital estate whole against the losses caused by the plaintiff's violations. Certainly, the value of the stocks and options would fluctuate over time, meaning that the value required to make the defendant whole on a particular day would also fluctuate. But the trial court was entitled to put the defendant in the position she would have occupied in the absence of the plaintiff's violations of the automatic orders. As we previously observed, if the plaintiff did not wish to risk being held solely responsible for changes in the value of the stocks and options, he should not have sold the stock and exercised the options without proper authorization. In these circumstances, the trial court properly used the date of the remand trial to value the loss **1258 to the marital estate caused by the plaintiff's transactions.[16]

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

II

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

A

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

The following additional facts and procedural history are relevant to our resolution of this issue. At trial, the *113 defendant called an expert to quantify the economic loss to the marital estate incurred by the plaintiff's transactions, and the plaintiff's counsel objected to the testimony as irrelevant. While arguing the objection, the plaintiff's counsel suggested that the transactions did not violate the automatic orders, claiming they fell within the usual course of business exception inasmuch as the plaintiff believed he was making a "prudent business" decision at the time. The trial court rejected this argument, responding that the plaintiff was "not in the business. If he were a used car dealer and sold a car in his lot, or if he were a boat salesman and sold a boat, he can do that. That's the ordinary course of business." After brief additional argument, the trial court overruled the objection and permitted the defendant's expert to testify.

In its memorandum of decision, the trial court found that the plaintiff had violated the automatic orders, explaining its finding as follows: "During the pendency of the action, and while the automatic orders were in effect, the plaintiff sold 28,127 shares of Omnicom ... stock and exercised **1259 75,000 Omnicom ... stock options without court order or consent from the defendant. ... The result of the sales was a significant loss to the marital estate. The court finds that these transactions did in fact violate the automatic orders."

[32] [33]Although the trial court did not explicitly state that it had found that the usual course of business exception was inapplicable in the present case, the lack of an express finding on this point is of no moment. When construing a trial court's memorandum of decision, "[e]ffect must be given to that which is clearly implied as well as to that which is expressed." (Internal quotation marks omitted.) *Wheelabrator Bridgeport, L.P.* v. *Bridgeport*, 320 Conn. 332, 355, 133 A.3d 402 (2016). When, as in the present case, a trial court makes an ultimate finding of fact, we presume, in the absence of *114 evidence to the contrary, that the court also made the subsidiary findings necessary to support its ultimate finding. See, e.g., *Sosin* v. *Sosin*, 300 Conn. 205, 244–45 n.25, 14 A.3d 307 (2011) (noting that subsidiary finding of wrongful conduct is implicit in trial court's award of compensatory interest under General Statutes § 37–3a); *Bornemann* v. *Bornemann*, 245 Conn. 508, 526, 752 A.2d 978 (1998) (explaining that trial court implicitly must have found that stock options were marital property when court distributed options between parties).

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

[34]The plaintiff nevertheless contends that, even if the trial court rejected his claim that the exception applied, this court should adopt one of two rules concerning stock transactions during a dissolution proceeding. He first argues for a bright line rule that stock sales are *always* made in the usual course of business and thus *115 not subject to the automatic orders. As an alternative to this categorical rule, he urges us to adopt a rule *presuming* that stock sales fall within the usual course of business exception.

[35]We decline to adopt either of these proposed rules because they are not supported by the text of the automatic orders set forth in Practice Book § 25–5. Those orders govern the transaction of "any property" and make no exception for transactions concerning certain types of assets, including stocks. Practice Book § 25–5 (b) (1). Instead, whether a particular transaction has been conducted in the usual course of business presents a question of fact, to be determined by looking to the circumstances of each case. See **1260 *Quasius* v. *Quasius*, 87 Conn.App. 206, 208, 866 A.2d 606 (reviewing trial court's finding concerning usual course of business exception for abuse of discretion because trial court is "in the best position to assess all of the circumstances surrounding a dissolution action" [internal quotation marks omitted]), cert. denied, 274 Conn. 901, 876 A.2d 12 (2005). Whether a transaction is conducted in the usual course of business does not turn solely on the type of asset or transaction but on whether the transaction at issue was "*a continuation of prior activities*" carried out by the parties before the dissolution action was commenced." (Emphasis in original.) Id.

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

B

[36]The plaintiff next claims the trial court incorrectly concluded that the stock options that he had exercised were marital property, subject to distribution between the parties. We again disagree.[15]

Certain additional facts are necessary to our determination of this claim. The plaintiff received the options at issue in March, 2009, after filing the dissolution action but approximately six months before the trial court *117 rendered judgment dissolving the parties' marriage in September, 2009. See *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 581, 128 A.3d 595. The options did not vest until after the entry of the dissolution decree, with one group of options vesting in 2010, and the remainder in 2012. See id. The plaintiff exercised the options in two **1261 groups after they had vested, converting the options to cash. Id.

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

In its memorandum of decision, the trial court found that the options were marital property, explaining that, although "the options had not yet vested at the time of the original trial, they were awarded prior to the dissolution," and that the exercise of the options caused "a significant loss to the marital estate." The plaintiff challenges the court's determination that the options were marital property because, although they were awarded while the parties were still married, they did not vest until 2010 and thereafter, following the dissolution of the marriage in 2009. He further argues that they were not granted as compensation for any services performed during the marriage but were solely an incentive to remain employed until the time the options had vested. For these reasons, he contends that the unvested options were not marital property subject to distribution between the parties, and, consequently, the *118 defendant could not have suffered any cognizable loss by virtue of his decision to exercise them.[16]

[37] [38] [39] [40]Unvested stock options may be considered marital property if they are earned during the marriage. See *Bornemann* v. *Bornemann*, supra, 245 Conn. at 525, 752 A.2d 978. If they are awarded as compensation for services performed during the marriage, unvested options may properly be considered marital property, even if they will not vest until after the marriage is dissolved. See id. If unvested options are awarded for future services to be performed after the dissolution, however, then they are not considered marital property. See id., at 524–25, 752 A.2d 978. Determining when the options were earned, and whether they are for predissolution or postdissolution services, poses a question of fact for the trial court, and this court must accept the finding unless it is clearly erroneous. Id., at 527, 752 A.2d 978.

[41]In the present case, the record supports the trial court's finding that the plaintiff's options were marital property. The plaintiff's testimony about the purpose of the options award was conflicting: although he initially testified that they were exclusively a retention incentive for future services to be performed after the marriage was dissolved, he later testified that they were compensation for past services but that they had a delayed vesting schedule to encourage him to stay employed with Omnicom. The court apparently credited his testimony that the options represented payment for past services and did not credit his earlier assertion to the *119 contrary. The trial court had the opportunity **1262 to observe the testimony firsthand and to evaluate the witness' attitude, candor, and demeanor while he was testifying. As the finder of fact, the trial court was free to credit all or any portion of the plaintiff's testimony.[17] See, e.g., *State* v. *Andrews*, 313 Conn. 266, 323, 96 A.3d 1199 (2014) ("[i]t is the exclusive province of the trier of fact to weigh conflicting testimony and make determinations of credibility, crediting some, all or none of any given witness' testimony" [internal quotation marks omitted]). Because the court's finding that the options were marital property has a sound basis in the evidence, that finding was not clearly erroneous, and, consequently, it must stand.

C

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

The plaintiff does not dispute the trial court's power to award retroactive alimony generally but claims that the award in this case was improper. He argues that the short

payment period will require him to pay the arrearage out of his share of the marital assets distributed by the trial court, effectively making it a reduction in his property distribution. Because he must pay the *120 retroactive alimony from his own property distribution, he asserts, the award constitutes improper "double dipping." (Internal quotation marks omitted.) We are not persuaded.

[43]The retroactive alimony award was not improper because trial courts are free to consider the marital assets distributed to the party *paying* alimony as a potential source of alimony payments. See, e.g., *Krafick* v. *Krafick*, 234 Conn. 783, 804–805 n.26, 663 A.2d 365 (1995). Trial courts are vested with broad discretion to award alimony, and, when a court determines whether to award alimony and the amount of any such award, General Statutes § 46b–82 expressly authorizes the court to consider the marital assets distributed to each party in connection with the dissolution proceeding.[16] See General Statutes § 46b–82; see also *Krafick* v. *Krafick*, supra, at 805 n.26, 663 A.2d 365. A trial court's alimony award constitutes impermissible double dipping only if the **1263 court considers, as a source of the alimony payments, assets distributed to the party *receiving* the alimony. See *Krafick* v. *Krafick*, supra, at 804–805 n.26, 663 A.2d 365; see also *Greco* v. *Greco*, 275 Conn. 348, 357 n.8, 880 A.2d 872 (2005) (double dipping occurs only when trial court considers, as source for alimony, asset not available to payor). That is, if a trial court assigns a certain asset—a bank account, for example—to the party *receiving* alimony, *121 it cannot consider that same bank account as a source of future alimony payments because the account has not been distributed to the party *paying* the alimony. In the present case, even if the plaintiff must, as he claims, use his own share of the marital assets to pay the retroactive alimony award, the trial court's award did not constitute double dipping because the assets the plaintiff might use to pay the alimony award were all awarded to him, not the defendant.

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

[45] [46]"[T]rial courts are endowed with broad discretion to distribute property in connection with a dissolution of marriage"; *Greco* v. *Greco*, supra, 275 Conn. at 354, 880 A.2d 872; and are "empowered to deal broadly with property and its equitable division incident to dissolution proceedings." (Internal quotation marks omitted.) Id., at 355, 880 A.2d 872. "Although a trial court is afforded broad discretion when distributing marital property, it must take into account several statutory factors. ... These factors, enumerated in ... § 46b–81 (c), include the age, health, station, occupation, amount and sources of income, vocational skills, employability ... and needs of each of the parties .... Although the trial court need not give each factor equal weight ... or recite the statutory criteria that it considered in making its decision or make express findings as to each statutory factor, it must take each into account." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., at 354–55, 880 A.2d 872.

[47] [48] *122 "[J]udicial review of a trial court's exercise of its broad discretion in domestic relations cases is limited to the questions of whether the [trial] court correctly applied the law and could reasonably have concluded as it did. ... In making those determinations, we allow every reasonable presumption ... in favor of the correctness of [the trial court's] action." (Citation omitted; internal quotation marks omitted.) *Bornemann* v. *Bornemann*, supra, 245 Conn. at 531, 752 A.2d 978. "Generally, we will not overturn a trial court's division of marital property unless [the court] misapplies, overlooks, or gives a wrong or improper effect to any test or consideration [that] it was [its] duty to regard." (Internal quotation marks omitted.) *Greco* v. *Greco*, supra, 275 Conn. at 355, 880 A.2d 872.

Even if we accept the plaintiff's valuation of the trial court's property distribution for purposes of this appeal, we reject his contention that the trial court abused its discretion for at least three reasons. First, a distribution ratio of 78 percent to 22 percent is not, on its face, excessive, as the plaintiff contends. Indeed, we have upheld distributions awarding as much as 90 percent of the marital estate to one party. *Sweet* v. *Sweet*, 190 Conn. 657, 664, 462 A.2d 1031 (1983); but cf. **1264 *Greco* v. *Greco*, supra, 275 Conn. at 355–56, 880 A.2d 872 (under circumstances of case, 98.5 percent distribution to one party was excessive). Second, the court's distribution reflected the unequal earnings potential of the parties. The trial court found that the plaintiff had cash compensation in excess of $1.2 million in the years prior to the dissolution, whereas the defendant had an earnings potential of $143,000. The plaintiff thus had an earnings potential of at least eight times that of the defendant. In addition, the trial court found that the plaintiff had received significant noncash compensation and would continue to do so in the future. Although the trial court awarded the defendant alimony to supplement her income, the *123 amount of the award was to diminish

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

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

In this opinion the other justices concurred.

All Citations

326 Conn. 81, 161 A.3d 1236

Footnotes

1 Practice Book § 25–5 provides in relevant part: "The following automatic orders shall apply to both parties, with service of the automatic orders to be made with service of process of a complaint for dissolution of marriage .... The automatic orders shall be effective with regard to the plaintiff ... upon the signing of the complaint ... and with regard to the defendant ... upon service and shall remain in place during the pendency of the action, unless terminated, modified, or amended by further order of a judicial authority upon motion of either of the parties:

"(b) In all cases involving a marriage ... whether or not there are children:
"(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

"(d) The automatic orders of a judicial authority as enumerated above shall be set forth immediately following the party's requested relief in any complaint for dissolution of marriage ... and shall set forth the following language in bold letters:
"Failure to obey these orders may be punishable by contempt of court. If you object to or seek modification of these orders during the pendency of the action, you have the right to a hearing before a judge within a reasonable period of time.
"The clerk shall not accept for filing any complaint for dissolution of marriage ... that does not comply with this subsection." (Emphasis in original.)

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

> "(c) In fixing the nature and value of the property, if any, to be assigned, the court, after considering all the evidence presented by each party, shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, *amount and sources* of income, earning capacity, vocational skills, education, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates."

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

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

5 In her brief to this court, the defendant did not specifically argue that the trial court possessed discretion, pursuant to its *inherent* authority, to address the plaintiff's violations but instead focused her arguments on the trial court's *statutory*

authority under § 46b–81. We nevertheless resolve the present appeal in reliance on the trial court's inherent authority because (1) the defendant raised this ground in her brief to the Appellate Court, (2) the Appellate Court decided the case in part on this ground, concluding that the trial court lacked the inherent authority in a contempt proceeding to afford the defendant a remedy for the plaintiff's violations unless it first found contempt; *O'Brien v. O'Brien*, supra, 161 Conn. App. 589–91; (3) this ground falls within the scope of the certified question, which was not limited to the trial court's statutory authority but more broadly asked whether "the Appellate Court correctly determine[d] that the trial court [had] abused its discretion when it considered the plaintiff's purported violations of the automatic orders in its decision dividing marital assets"; *O'Brien v. O'Brien*, supra, 320 Conn. 916; and (4) at oral argument before this court, the plaintiff's counsel acknowledged that the trial court had inherent authority to address the plaintiff's violations of the automatic orders and clarified that the plaintiff was disputing only how the trial court exercised that authority in the present case. See, e.g., *McManus v. Commissioner of Environmental Protection*, 229 Conn. 654, 661 n.6, 642 A.2d 1199 (1994) ("We recognize that although this precise claim was raised and briefed before the trial court, it was neither considered by the Appellate Court nor explicitly briefed before this court. Nevertheless, this court may consider claims that fall within the scope of the certified question.").

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

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

8 The trial court in the present case took the plaintiff's transactions into account by adjusting the distribution of marital assets in the defendant's favor, but it did not articulate precisely what share of the marital estate it had awarded to the defendant. Nor did it articulate how much of its total property distribution was attributable to the plaintiff's violations of the automatic orders. The plaintiff has not claimed that the lack of articulation in this respect itself requires reversal. In the future, however, the trial court should *articulate* both the adverse impact that a party's violation had on the value of the marital estate *and* precisely how it compensated the injured party for that violation.
Nevertheless, in the present case, considering the plaintiff's valuation of the trial court's total property distribution and the plaintiff's suggested split of the marital assets, we conclude that the trial court's remedial award to the defendant did not exceed the defendant's reasonable share of the loss. According to the plaintiff's valuation of the marital assets, the total value of the assets divided, without regard to the stocks and options, was $6,514,836. The plaintiff had asked the trial court to divide the marital assets evenly between the parties. Even if the trial court followed the plaintiff's suggestion, the defendant would have been entitled to one half of this amount, that is, $3,257,418. In this scenario, the trial court also would have been justified in awarding the defendant 50 percent of the $3.5 million in losses caused by the plaintiff's violations of the automatic orders, an additional $1,750,000. The defendant was actually awarded a total of $4,428,784—meaning that she effectively received $3,257,418 of the marital assets and an additional $1,171,366 for the losses caused by the plaintiff. Accordingly, under the plaintiff's valuation, the defendant effectively received exactly one half of the losses caused by the plaintiff, less a discount of 33 percent for taxes. Consequently, even if we assume that the trial court gave the defendant exactly the *share* of the estate that the plaintiff argued that the defendant was entitled to, and even if we use the plaintiff's own valuation of the trial court's distribution, it is evident that the trial court's award did not exceed the reasonable value of the defendant's losses and thus did not amount to a penalty for the plaintiff's violations of the automatic orders.

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

10 We are thus unpersuaded by the plaintiff's contract law analogy. A plaintiff in a breach of contract action is ordinarily entitled to be placed in as good a position as he would have been in the absence of the breach, and an award of damages may include lost profits. E.g., *West Haven Sound Development Corp. v. West Haven*, 201 Conn. 305, 319–20, 514 A.2d 734 (1986) ("The general rule in breach of contract cases is that the award of damages is designed

to place the injured party, so far as can be done by money, in the same position as that which he would have been in had the contract been performed. ... [I]t is our rule that [u]nless [prospective profits] are too speculative and remote, [they] are allowable as an element of damage whenever their loss arises directly from and as a natural consequence of the breach." [Citations omitted; internal quotation marks omitted.]).

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

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

13 The Appellate Court did not address this argument, concluding that the plaintiff had waived it. *O'Brien* v. *O'Brien*, supra, 161 Conn.App. at 580 n.4, 128 A.3d 595. Because the claim cannot succeed on its merits even if preserved, we need not consider whether it was waived.

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

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

16 General Statutes § 46b–82 (a) provides in relevant part: "At the time of entering the decree, the Superior Court may order either of the parties to pay alimony to the other, in addition to or in lieu of an award pursuant to section 46b–81.... In determining whether alimony shall be awarded, and the duration and amount of the award, the court shall consider the evidence presented by each party and shall consider the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate and needs of each of the parties *and the award, if any, which the court may make pursuant to section 46b–81*, and, in the case of a parent to whom the custody of minor children has been awarded, the desirability and feasibility of such parent's securing employment." (Emphasis added.)

End of Document

STATE OF CONNECTICUT

SUPERIOR COURT

Michael A. Albis
Chief Administrative Judge
Family Division

1 COURT STREET
MIDDLETOWN, CT 06457
PHONE: (860) 343-6570
FAX: (860) 343-6589

October 4, 2018

Hon. Andrew J. McDonald
Chair of the Rules Committee of the Superior Court
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

RE: Proposal by the Rules Committee of the Connecticut Chapter of the American Academy of Matrimonial Lawyers to amend Practice Book Section 25-5 (b).

Dear Justice McDonald:

It is my understanding that on September 17, 2018, the Rules Committee tabled the above matter in order to obtain comments on the proposal from the Connecticut Bar Association (CBA) and from me in my capacity as Chief Administrative Judge of the Family Division.

As far as I am aware, the CBA has not yet provided its comments. It would be useful for me to have a chance to consider the CBA's position on the proposal as part of my review of the issue. Therefore, I would like to have the benefit of the CBA comments before providing my own. However, if the Rules Committee would like to hear from me before the CBA has responded, please let me know.

Thank you for the opportunity to provide comment on this issue.

Respectfully yours,

Michael A. Albis
Chief Administrative Judge, Family Division

cc: Hon. Patrick L. Carroll III
Hon. Elizabeth Bozzuto
Attorney Joseph J. Del Ciampo

From: Del Ciampo, Joseph
Sent: Sunday, September 09, 2018 12:21 PM
To: Jonathan M. Shapiro
Cc: 'Bill Chapman (bchapman@ctbar.org)'
Subject: Referral from the Rules Committee of the Superior Court; Proposed Amendment to Section 25-5 of the Practice Book

Dear Attorney Shapiro,

Attached is a referral from the Rules Committee to the Connecticut Bar Association. Please contact me with any questions. Thank you.

Joseph J. Del Ciampo
Director of Legal Services
Connecticut Judicial Branch
100 Washington Street, 3rd Floor
Hartford, CT 06106

e-mail: Joseph.DelCiampo@jud.ct.gov

Tel: (860) 706-5120
Fax: (860) 566-3449

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30 Bank Street
New Britain, CT 06051
T. (860) 223-4400

www.ctbar.org

October 10, 2018

Via Email: Andrew.McDonald@connapp.jud.ct.gov

Justice Andrew J. McDonald
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT 06106

Dear Justice McDonald:

You have asked the CT Bar Association to comment on a Proposed Amendment to the Practice Book to which the CBA Family Law Section submits the following comments to the Rules Committee regarding the proposed changes to CT Practice Book Section 3-8(a) and 25-5.

Practice Book Section 3-8(a):
The CBA Family Law Section approves of the rule change proposed by Judge Adelman provided that this proposed change does not apply to limited scope representation.

Practice Book Section 25-5:
The CBA Family Law Section provides the following comments to the proposed rule change:

- Members of the section questioned whether it is necessary to include the "*purchasing*" of securities in the proposed change. However, other members raised the issue that a day-trader and/or someone exercising stock options may need to make a "purchase".

- Members of the section raised the issue that the additional requirements that the sale/purchase is (1) *intended to preserve the marital estate*; and (2) *is time urgent in nature* could make the rule confusing, subjective, and likely to lead to increased litigation.

- Members of the section raised the issue that the reference to the phrase "*in the normal course of business*" in the proposed change is confusing given that this language is also used in subsection (a).

- Members of the section also raised the issue that the term "*marital estate*" may be confusing, in light of Connecticut being an all-property state.

If you have any questions please contact me or the CBA Family Law section member CCd on this email (Aidan Welsh).

Sincerely,

William L. Chapman
Government & Community Relations

Cc: Joseph J. Del Ciampo
Joseph.DelCiampo@jud.ct.gov

STATE OF CONNECTICUT
JUDICIAL BRANCH

COURT OPERATIONS DIVISION

LEGAL SERVICES
Joseph J. Del Ciampo, *Director of Legal Services*

100 Washington Street, P.O. Box 150474
Hartford, Connecticut 06115-0474
(860)706-5120 Fax (860) 566-3449
Judicial Branch Website: www.jud.ct.gov

September 9, 2018

Jonathan M. Shapiro
President, Connecticut Bar Association
30 Bank Street
New Britain, CT 06051

Dear Attorney Shapiro:

At its meeting on May 14, 2018, the Rules Committee of the Superior Court considered the attached proposal submitted by the CT Chapter of The American Academy of Matrimonial Lawyers to amend Section 25-5 (b) regarding the purchase or sale of securities in light of *O'Brien* v. *O'Brien,* 326 Conn. 81 (2017). Also considered were the attached comments on the proposal from Judge Bozzuto, Chief Administrative Judge, Civil Division.

After discussion, the Rules Committee decided to refer the matter to the family law section of the Connecticut Bar Association for its review and comment. Once that section has considered the proposal, please send its comments to me on behalf of the Rules Committee

Please contact me with any questions.

Very truly yours,

Joseph J. Del Ciampo
Director of Legal Services

Attachment

c: Justice Andrew J. McDonald, Chair, Rules Committee of the Superior Court
Bill Chapman, CBA

Del Ciampo, Joseph

8-7

From: Bozzuto, Elizabeth
Sent: Friday, May 11, 2018 12:17 PM
To: Del Ciampo, Joseph
Cc: tparrino@parrinoshattuck.com
Subject: 5/14/2018 meeting: Agenda item 8-7
Attachments: PROPOSED REVISIONS TO AUTOMATIC ORDERS SECTION 25.docx

Dear Attorney Del Ciampo:

My apologies. Given the timing of the submission by Attorney Thomas Parrino and Attorney Lee Marlow, on behalf of the American Academy of Matrimonial Lawyers, I misunderstood and thought this matter was going to be deferred until the first meeting of the Rules Committee in September 2018.

In any event, I did have the opportunity to discuss the proposal with Attorney Thomas Parrino. Although I understand the Academy's concern, I did express reservation in that the proposed rule change is arguably inconsistent with the intent of the automatic orders (P.B. 25-5). We did agree on compromised language, which I attach hereto. Notwithstanding, I also suggested, given the nature of this proposal, that it would be appropriate to submit the proposal to the family law section of the Connecticut Bar Association, for their consideration and feedback, before the Rules Committee takes up the proposed rule change for consideration. Respectfully, I still believe this is the appropriate course of action.

If I can be of further assistance to the Rules Committee, please let me know. Unfortunately, I will be unavailable for the May 14, 2018 meeting.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Honorable Elizabeth A. Bozzuto
Chief Administrative Judge, Family
90 Washington Street
Hartford, CT 06106
Tel. 860.706.5060 Fax 860.706.5077
Email: elizabeth.bozzuto@jud.ct.gov
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

PROPOSED REVISIONS TO AUTOMATIC ORDERS SECTION 25-5

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

(Revision) 1b. Nothing in Paragraph 1a should be construed to preclude a party from purchasing or selling securities, ***in the normal course of business***, held in an individual or jointly held investment account, provided that the purchase or sale is: ***1) intended to preserve the marital estate; 2) time urgent in nature; 3)*** transacted on an open and public market; and ***4)*** the purchased securities or sales proceeds resulting from a sale remain-subject to the provisions and exceptions recited in paragraph 1a above-in the account in which the securities or cash were maintained prior to the transaction.

3/23/2018