

circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order." *Id.* at 672. If the court makes such a change, the court must consider the motion on the basis of the applicable statutory criteria, and may only issue a modification "if it conforms the order to the distinct and definite changes in the circumstances of the parties." *Id.* at 673-674. These two steps are not "two completely separate inquiries." *Id.* In order to meet the threshold of a substantial change in circumstances, "the alleged inability to pay must be excusable and not brought about by the defendant's own fault." *Id.*

The plaintiff's motion for contempt seeks a finding of civil contempt against the defendant, for his failure to pay child support and alimony in accordance with the court orders, and failure to pay extracurricular expenses for the parties' children. "Contempts of court may also be classified as either direct or indirect, the test being whether the contempt is offered within or outside the presence of the court.... A refusal to comply with an injunctive decree is an indirect contempt of court because it occurs outside the presence of the trial court." *Brody v. Brody*, 315 Conn. 300, 317 (2015). A finding of indirect civil contempt must be supported by clear and convincing evidence. *Id.* at 315-20. The underlying court order must be "clear and unambiguous." "Failure to comply with an order, alone, will not support a finding of contempt. Rather, to constitute contempt, a party's conduct must be willful." *Chang v. Chang*, 197 Conn. App. 733, 737 (2020).

While the inability to pay or otherwise comply, without fault on the part of the obligor, is a good defense to contempt, the burden rests upon the contemnor to establish this inability to

comply. *Afkari-Ahmadi*, 294 Conn. at 398 (2009). See also, *Marcil v. Marcil*, 4 Conn. App. 403, 405 (1985). (“It is within the sound discretion of the court to deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court’s order.”) It is well-settled that “even in the absence of a finding of contempt, a trial court has broad discretion to make whole a party who has suffered as a result of another party’s failure to comply with a court order.” *Nappo v. Nappo*, 188 Conn. App. 574, 596 (2019).

The current court orders provide that the defendant is to pay to the plaintiff \$700.00 per week in child support, \$310.00 per week in alimony, and \$90.00 per week as a property settlement regarding the plaintiff’s entitlement to a portion of his pension. The child support order entered at the time of the judgment was substantially in compliance with the Child Support Guidelines for the State of Connecticut. At the time of judgment, the defendant’s financial affidavit (March 7, 2023) showed net weekly income of \$2,848.00. His current financial affidavit (May 20, 2024) shows a net weekly income of \$2,626.00.

At the hearing of this matter, the defendant acknowledged that he had also begun to receive pension payments in April of 2023, earned during his twenty years of employment at Traveler’s Insurance Company from 2001 to 2022. The parties were married from July 1, 2003 and divorced on March 7, 2023. This pension was not disclosed on his financial affidavit filed at the time of judgment, nor is it included in his current financial affidavit. The defendant testified that he was surprised when he received, allegedly unexpectedly, notice of this pension just a month after the parties were divorced. He described his failure to disclose this

information as a mistake, testifying that he previously believed that he only held a defined contribution retirement plan from his employment at Traveler's Insurance Company. The court does not find the defendant credible in this regard. This pension provides a net monthly payment of \$337.00, or approximately \$78.00 per week. This pension is clearly a marital asset that should have been disclosed and addressed in the parties' dissolution agreement.

When this pension payment is added to the net income as shown on his current financial affidavit, the defendant's current net weekly income is \$2,704.00 which represents an approximately 5% or \$144.00-per-week net income reduction. The presumptive amount of child support determined by application of the Guidelines to the parties' current net incomes is \$663.00 per week, assuming *arguendo* that the defendant has reported his income correctly. This is \$37.00 per week less than the current order. There has been no showing by the defendant that the needs of the children, or of the plaintiff, have changed since the time of the judgment, that would warrant a reduction in the child support and alimony orders. The current orders for child support and alimony are fair and equitable to both parties. The court also notes that child support will need to be redetermined in a few months, as the parties' oldest child will graduate high school in June of 2024. This issue was not raised in this motion, and there are sufficient concerns about the accuracy of the defendant's financial circumstances that this issue shall be deferred to a hearing on an appropriately filed motion.

The defendant has been employed as a safety engineer in the insurance industry for over two decades. He was employed in this industry at the time of the divorce and earned a base

salary of \$140,000.00 through this employment. The defendant claims that his termination from employment constitutes a substantial change in circumstances that warrants a reduction in his child support and alimony obligations. The defendant was terminated on August 7, 2023, and received eight weeks of severance pay and an individual compensation plan payout totaling over \$30,000.00. He also received an unknown sum of additional funds for unused paid time off. He obtained new employment in the same industry effective February 12, 2024, with an annual salary of \$117,000.00, and a sign on bonus of \$3,000.00. During his period of unemployment, the defendant collected unemployment compensation, worked as a bartender, and continued to receive his Veteran's Affairs (VA) disability and pension payments. Due to an increase in the defendant's disability rating, his VA benefits were shifted to full disability benefits during this time, which resulted in an increased net payment to him because of reduced taxes.

The defendant was terminated from his employment for cause, and his personnel records, which were received as a full exhibit, confirm that he was terminated for performance issues, including a lack of "commitment to improve for the role," "a lack of progress in his learning and personal commitment" "failing to complete... assigned tasks" and failure to complete work according to expectations and standards met by his peers. The defendant claims that his employer's allegations are false, and that he intends to pursue a wrongful termination action against his former employer. If successful, this would provide the defendant with a potential route to recover lost pay, but this remedy is highly speculative at this time.

During the period of his unemployment, from October 18, 2023 to February 28, 2024, the defendant deposited a total of \$49,665.46 into his bank accounts, consisting of his previously-undisclosed Traveler's pension, his military pension and disability benefits, various unexplained cash deposits, and unemployment compensation. These total deposits, divided over the nineteen-week period at issue, result in a net weekly income of \$2,613.00 during this period of time, an insignificant reduction from his \$2,848.00 net weekly income at the time of judgment and his current net weekly income, now that he has returned to work, of \$2,704.00.

In November of 2023, the defendant missed his weekly alimony, child support, and property settlement payment completely for one week. He then unilaterally reduced his payments to \$550.00 per week and made those payments until February of 2024 (missing one additional week in January of 2024). When he returned to work in his current position in February of 2024, he increased his payments unilaterally to \$750.00 per week, and has continued to make payments on the basis of this unilateral reduction to the present time. The defendant offered no explanation as to his determination of this figure, other than his own assessment of reasonableness. Between November 21, 2023 and May 14, 2024, the defendant's total child support and alimony obligation to the plaintiff was \$26,260.00. His property settlement obligation, of \$90.00 per week, totaled \$2,340.00 during this same time. During this twenty-six week period, the defendant paid \$16,200.00 in payments to the plaintiff. Crediting his payments to his property settlement obligation first, the application of his remaining payments to the child support and alimony obligation, the court finds a total outstanding

arrears to the plaintiff of \$12,400.00 for unpaid child support and alimony, through May 14, 2024.

The court finds, by clear and convincing evidence, that the defendant has willfully refused to comply with a clear and unambiguous court order to pay child support and alimony to the plaintiff. Even a cursory review of the defendant's communications to the plaintiff in Our Family Wizard, both those in evidence from this hearing and those discussed in this court's previous memorandum of decision, establishes the willfulness of the defendant's actions. *See*, Memorandum of Decision, September 18, 2023, Thomas, J). The defendant is clearly seeking to use his withholding of court-ordered payments as a method of gaining leverage in this post-judgment litigation, to obtain a reduction in what he has referred to as an "insane" support obligation. *Id.* The court further finds that the defendant has not met his burden of proving a substantial change in circumstances or that there has been a change in the needs of either party, that would warrant a modification of the court's child support and alimony orders at this time. The financial support orders entered at the time of judgment shall remain unchanged.

The court also finds that the defendant was at fault in creating the circumstances resulting in his termination from employment, such that a modification of the alimony and child support orders would not be appropriate, fair, or equitable at this time. The court also finds that the defendant has not met his burden of showing that he was unable to pay the full support order during his period of lost employment, given the moneys that were deposited into his account and available to him to make payments on these obligations during his period of

unemployment. Finally, the court cannot condone the defendant's decision to engage in self-help, and unilaterally reduce his weekly payments, without first seeking a court order. *See e.g., Rocque v. Design Land Devs. of Milford, Inc.*, 82 Conn. App. 361, 366 (2004) ("an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings." (internal citations and quotations omitted). *Accord, Eldridge v. Eldridge*, 244 Conn. 523, 529 (1998) ("A good faith dispute or legitimate misunderstanding of the terms of an alimony or support obligation may prevent a finding that the payor's nonpayment was willful. This does not mean, however, that such a dispute or misunderstanding will preclude a finding of willfulness as a predicate to a judgment of contempt.")

As to the plaintiff's claims for unreimbursed extracurricular expenses, the defendant has made a number of payments towards outstanding extracurricular expense claims in Our Family Wizard shortly before the scheduled hearing of this matter. The court notes that the timing of these payments (a few days and a few hours before the scheduled hearing, respectively) is consistent with the defendant's practice of making last-minute payments towards clear and unambiguous financial obligations just before scheduled court dates. The plaintiff claims \$467.61 in outstanding unpaid extracurricular expenses, for various expenses related to the children's activities. The defendant does not dispute the legitimacy of these activities and activities, for prom, lacrosse equipment, or a graduation cap and gown. He does dispute the sufficiency of the documentation provided. The court agrees that the documentation provided for the outstanding requests is insufficient. Several of the receipts lack critical information,

such as the payee or the purpose of the payment. Some of the documentation consists of copies of signed checks that have not yet been cashed or are not attached to an invoice or bill, while others are online order confirmations that do not show that the items ordered have been charged or delivered. The court will not make findings as to the legitimacy of these expenses but will give the plaintiff the opportunity to resubmit them for reimbursement with appropriate documentation through the parties' coparenting communication application.

The plaintiff seeks an award of attorney's fees for time spent in pursuing this motion for contempt. It is well-settled that "the award of attorney's fees in contempt proceedings is within the discretion of the court." *Allen v. Allen*, 134 Conn. App. 486, 503 (2012). The plaintiff is represented by Attorney Paige Quilliam. The court has reviewed Attorney Quilliam's Affidavit of Attorney's Fees, detailing a total of 16.90 hours spent on this matter since March 5, 2024. Attorney Quilliam charges an hourly rate of \$300.00 for her work in this matter. Some of this work appears to relate to other motions and claims between the parties, including the plaintiff's response to the defendant's motion to open and modify. The court is familiar with Attorney Quilliam's work in this case and her experience and qualifications. The court finds her hourly rate of \$300.00 to be fair and reasonable. The court has reviewed the billing records appended to Attorney Quilliam's Affidavit of Attorney's fees. On the basis of those records, as well as the court's own familiarity with these contempt proceedings, the court shall order an attorney's fee award to the plaintiff of \$1,800.00, representing six hours of attorney's fees for some of the time spent in preparation and prosecution of the instant motion for contempt.

ORDERS

1. The plaintiff's instant motion for contempt is GRANTED. The defendant is held in civil contempt in accordance with this decision.

2. The defendant's motion to open and modify is DENIED.

3. The defendant shall pay a lump sum of \$3,000.00 to the plaintiff towards his child support and alimony arrearage of \$12,400.00 within thirty (30) days of the date of this order. The defendant shall pay the balance of this child support and alimony arrearage in weekly payments of \$200.00, paid together with his current weekly child support, alimony, and property settlement obligations. Such arrearage payments shall commence immediately. The defendant shall pay his weekly child support, alimony, property settlement, and arrearage payment by immediate wage withholding. The defendant may purge this finding of contempt by paying the lump sum ordered herein, and commencing the payment of his weekly child support, alimony, property settlement, and arrearage obligation by immediate wage withholding.

4. The plaintiff may resubmit the outstanding children's expenses in Our Family Wizard for reimbursement, with appropriate documentation, in accordance with the terms of the parties' judgment. The defendant shall reimburse the plaintiff for these expenses in accordance with the terms of the parties' judgment.

5. The defendant shall immediately name the plaintiff as a beneficiary on his life insurance policy in accordance with the terms of the parties' judgment. He shall do so and provide proof of such designation to the plaintiff within ten (10) days of the date of this order.

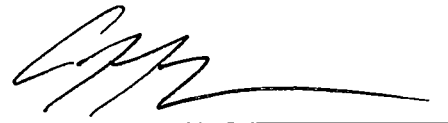
6. The defendant shall pay \$1,800.00 to the plaintiff in attorney's fees, for the preparation and prosecution of the plaintiff's motion for contempt, within forty-five (45) days of the date of this motion.

7. All other orders, not otherwise modified by this decision, shall remain in full force and effect.

8. This matter shall be set down for a compliance hearing within approximately sixty days.

9. If the defendant is found in noncompliance with these orders at the compliance hearing, the court will consider further orders as necessary to bring the defendant into compliance and make the plaintiff whole, including further attorney's fees and/or incarceration.

BY THE COURT,

A handwritten signature in black ink, appearing to be 'Thomas, J.', written over a horizontal line.

Thomas, J.