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BARBARA BAUER *v.* STEVEN BAUER  
(SC 18846)

Rogers, C. J., and Norcott, Palmer, Zarella and Harper, Js.\*

*Argued November 26, 2012—officially released March 12, 2013*

*Kenneth J. Bartschi*, with whom were *Kimberly A. Knox* and, on the brief, *Frederick F. Ward II*, for the appellant (plaintiff).

*Steven R. Dembo*, with whom was *P. Jo Anne Burgh*, for the appellee (defendant).

*Opinion*

NORCOTT, J. The principal issue in this certified appeal is whether the Appellate Court properly determined that the trial court's judgment granting a motion for clarification filed by the plaintiff, Barbara Bauer, constituted an improper modification of the judgment of dissolution. The plaintiff appeals, upon our grant of her petition for certification,<sup>1</sup> from the judgment of the Appellate Court reversing the trial court's judgment granting the motion for clarification and ordering the defendant, Steven Bauer, to divide his pension accounts equally with the plaintiff. *Bauer v. Bauer*, 130 Conn. App. 185, 186, 21 A.3d 964 (2011). The plaintiff claims that the Appellate Court improperly concluded that there was no ambiguity in the trial court's orders with respect to the award of the pension accounts that required clarification and incorrectly determined that the clarification was, in fact, an improper modification of the judgment of dissolution. We conclude that the trial court clarified rather than modified its judgment. Accordingly, we reverse the judgment of the Appellate Court.

The record reveals the following relevant facts and procedural history. On October 12, 2005, the trial court, *Alvord, J.*, rendered judgment dissolving the parties' marriage. The trial court's judgment contained the following notation: "memorandum of decision incorporated by reference." In the memorandum of decision, the court set forth the parties' assets, which included a home in Farmington, as well as savings and investments, a boat and two automobiles. After listing the value of these assets, the court indicated that "[t]he parties agree to split equally the defendant's New Britain General Hospital pension and annuity 403 (b) plans [pension accounts] . . . ." The court then noted that in making its financial orders, it had considered the relevant statutory criteria,<sup>2</sup> as well as applicable case law and its findings of fact. At the conclusion of the memorandum of decision, the court issued twelve orders pertaining to alimony, attorney's fees, health insurance, life insurance and the division of assets. These orders did not, however, refer to the pension accounts. Neither party appealed from the trial court's judgment.

On August 14, 2008, the plaintiff filed a motion for contempt, claiming, inter alia, that the defendant had failed to pay alimony in accordance with the trial court's orders, to transfer certain savings and investments to the plaintiff and "to transfer to the [plaintiff] her 50 [percent] portion of the [pension accounts]." Subsequently, on January 23, 2009, the plaintiff filed a motion for clarification asking the court to "reconfirm its previous order requiring [that] the defendant equally split his [pension accounts] with the plaintiff . . . via [a qualified domestic relations order]."<sup>3</sup>

On June 10, 2009, the trial court granted the motion for clarification and set forth its reasoning in a memorandum of decision (clarification). In the clarification, the court explained that its memorandum of decision issued in conjunction with the judgment had “set forth the parties’ agreement to split equally the . . . pension [accounts] . . . both accrued over the course of the marriage. That agreement was not repeated in the court’s subsequent listed orders. Because there is an alleged ambiguity or incompleteness in the decision of the trial court . . . [the] court will clarify that, pursuant to the parties’ stipulation: The defendant is ordered to split equally his . . . pension [accounts] . . . accrued over the course of the marriage, with the plaintiff . . . via qualified domestic relations order . . . .” (Citation omitted; internal quotation marks omitted.) The defendant then filed a motion for reargument and reconsideration, but the trial court denied the motion.

The defendant appealed from the judgment of the trial court to the Appellate Court, claiming that the trial court’s “clarification regarding the division of his pension accounts amounted to an impermissible modification of the . . . judgment.” *Bauer v. Bauer*, supra, 130 Conn. App. 186. After the defendant filed his appeal, the trial court issued an articulation indicating that it had “accepted the representation of both [trial] counsel that the . . . pension [accounts] would be divided equally, by agreement, and the trial commenced. The court did not reiterate this agreed upon division in the orders portion of the memorandum of decision.” In its decision, the Appellate Court determined that, because none of the twelve orders addressed the pension accounts, “there was no existing order to clarify or ‘reconfirm,’ as requested by the plaintiff. Thus, through the vehicle of a motion captioned ‘Motion for Clarification,’ the plaintiff, in effect, was asking the court to issue an order regarding a marital asset that had not been made in its original judgment.” *Bauer v. Bauer*, supra, 190. The Appellate Court acknowledged that the trial court “may have intended, at the time of its judgment dissolving the parties’ marriage, that the parties would split the . . . pension [accounts] . . . equally”; *id.*; but concluded that, because the court did not issue an order to that effect, there was “no ambiguity in the judgment to be resolved by way of clarification.” *Id.*, 191. Accordingly, the Appellate Court concluded that the trial court’s clarification constituted an improper modification of the judgment and reversed the trial court’s judgment granting the motion for clarification. *Id.* The Appellate Court also noted that “it is not at all clear from the record that the parties had, in fact, reached . . . an agreement” to divide the pension accounts equally. *Id.*, 189, n.3. The plaintiff’s appeal followed. See footnote 1 of this opinion.

In her appeal to this court, the plaintiff claims that

the Appellate Court elevated form over substance and improperly engaged in fact-finding. According to the plaintiff, the trial court's factual finding that the parties agreed to divide the pension accounts equally is inconsistent with the lack of a formal order to that effect and creates an ambiguity with respect to the division of the pension accounts. The plaintiff further argues that the trial court's clarification harmonized the trial court's orders and finding of fact and, as a result, is not manifestly unreasonable.

The defendant argues, to the contrary, that the Appellate Court properly concluded that there is no ambiguity to resolve because the trial court "did not enter an order dividing [the pension accounts]." The defendant further argues that the trial court's clarification, by converting a factual finding into an order, materially altered the judgment and added a thirteenth order that did not exist previously. Moreover, the defendant submits that there was no agreement to divide the pension accounts equally and that the trial court's factual finding to that effect is clearly erroneous. We agree with the plaintiff, and conclude that the trial court's clarification did not alter the substantive terms of the judgment and, therefore, did not constitute an improper modification of the judgment.

"It is well established that [t]he court's judgment in an action for dissolution of a marriage is final and binding [on] the parties, where no appeal is taken therefrom, unless and to the extent that statutes, the common law or rules of [practice] permit the setting aside or modification of that judgment. Under Practice Book [§ 17-4], a civil judgment may be opened or set aside . . . [when] a motion seeking to do so is filed within four months from the date of its rendition. . . . Absent waiver, consent or other submission to jurisdiction, however, a court is without jurisdiction to modify or correct a judgment, in other than clerical respects, after the expiration of [that four month period] . . . .

"Even beyond the four month time frame set forth in Practice Book § 17-4,<sup>4</sup> however, courts have continuing jurisdiction to fashion a remedy appropriate to the vindication of a prior . . . judgment . . . pursuant to [their] inherent powers . . . . When an ambiguity in the language of a prior judgment has arisen as a result of postjudgment events, therefore, a trial court may, at any time, exercise its continuing jurisdiction to effectuate its prior [judgment] . . . by interpreting [the] ambiguous judgment and entering orders to effectuate the judgment as interpreted . . . . In cases in which execution of the original judgment occurs over a period of years, a motion for clarification is an appropriate procedural vehicle to ensure that the original judgment is properly effectuated." (Citations omitted; internal quotation marks omitted.) *Mickey v. Mickey*, 292 Conn. 597, 603–604, 974 A.2d 641 (2009).

Although a trial court may interpret an ambiguous judgment, this court has emphasized that a motion for clarification “may not . . . be used to modify or to alter the substantive terms of a prior judgment; see *In re Haley B.*, 262 Conn. 406, 413, 815 A.2d 113 (2003); see also *AvalonBay Communities, Inc. v. Plan & Zoning Commission*, [260 Conn. 232, 250, 796 A.2d 1164 (2002)]; and we look to the substance of the relief sought by the motion rather than the form to determine whether a motion is properly characterized as one seeking a clarification or a modification.” (Internal quotation marks omitted.) *Mickey v. Mickey*, supra, 292 Conn. 605.

In order to determine whether the trial court properly clarified ambiguity in the judgment or impermissibly modified or altered the substantive terms of the judgment, we must first construe the trial court’s judgment. It is well established that the construction of a judgment presents a question of law over which we exercise plenary review. See, e.g., *State v. Denya*, 294 Conn. 516, 529, 986 A.2d 260 (2010). In construing a trial court’s judgment, “[t]he determinative factor is the intention of the court as gathered from all parts of the judgment. . . . The interpretation of a judgment may involve the circumstances surrounding the making of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole.” (Internal quotation marks omitted.) *Chapman Lumber, Inc. v. Tager*, 288 Conn. 69, 91–92, 952 A.2d 1 (2008). In addition, as we recognized in *Denya*, “because the trial judge who issues the order that is the subject of subsequent clarification is familiar with the entire record and, of course, with the order itself, that judge is in the best position to clarify any ambiguity in the order. For that reason, substantial deference is accorded to a court’s interpretation of its own order. . . . Accordingly, we will not disturb a trial court’s clarification of an ambiguity in its own order unless the court’s interpretation of that order is manifestly unreasonable.” (Citations omitted; internal quotation marks omitted.) *State v. Denya*, supra, 531.

In the present case, the trial court’s judgment contained a notation that expressly incorporated the memorandum of decision that was issued in conjunction with the judgment. The notation, which read “memorandum of decision incorporated by reference,” was not limited to the orders set forth in the memorandum of decision. Although the memorandum of decision contained the factual finding that the parties had agreed to split the pension accounts, the orders were silent with respect to the pension accounts. Clearly, the factual finding indicating that the parties had agreed to split the pension accounts equally directly contradicts the lack of a formal order to that effect. As a result, it is unclear whether the judgment awards one half of the pension

accounts to the plaintiff, as indicated in the trial court's factual findings, or permits the defendant to keep all of the pension accounts, as indicated by the lack of a formal order.<sup>5</sup> Given this discrepancy, we conclude that the judgment is ambiguous.

We further conclude that a motion for clarification was the proper method for resolving the ambiguity because the motion did not seek to change the terms or substance of the judgment, but merely sought to resolve the ambiguity in the judgment by reconciling the discrepancy between the court's factual findings and its orders. See *Mickey v. Mickey*, supra, 292 Conn. 606 (motion for clarification proper when defendant did not ask trial court to revisit original judgment). The plaintiff sought to clarify that the pension accounts would be split equally by the parties rather than awarded in their entirety to the defendant—she did not seek to change the percentage of the amount that would be awarded to her. Cf. *In re Haley B.*, supra, 262 Conn. 411–12 (ruling that changed respondent's right to visitation from once per week to once per month constituted alteration or modification of terms of judgment rather than clarification).

Although the defendant claims that the trial court's clarification created a thirteenth order that “enriched the plaintiff to the detriment of the defendant by awarding [the plaintiff] half of the [pension accounts],” this is not a case in which the trial court was completely silent with respect to the award of the pension accounts in the first instance. Rather, the trial court's memorandum of decision expressly stated that the parties had agreed to divide the pension accounts equally and the clarification merely gave effect to that statement.

We find instructive this court's decision in *Normand Josef Enterprises, Inc. v. Connecticut National Bank*, 230 Conn. 486, 488 n.1, 646 A.2d 1289 (1994). In that case, the trial court's judgment did not contain a formal order with respect to count four, alleging misrepresentation, of a four count complaint, but the memorandum of decision indicated at its conclusion that “[j]udgment shall enter for the plaintiff as against the defendant on counts one, two and three of the complaint only . . . .” (Emphasis in original; internal quotation marks omitted.) *Id.* The memorandum of decision also noted in the discussion concerning count three that the defendant had come “‘close to a misrepresentation.’” *Id.* This court concluded that “a close reading of the memorandum of decision reveals that the trial court considered and implicitly disposed of the fourth count in the [defendant's] favor. . . . Although it is preferable for a trial court to make a formal ruling on each count, we will not elevate form over substance when it is apparent from the memorandum of decision that the trial court did not find that a misrepresentation had been made and that [the plaintiff] did not prevail on the fourth

count.” Id.

Similarly, in the present case, although the orders in isolation do not include a formal ruling concerning the pension accounts, we decline to elevate form over substance when the trial court’s memorandum of decision expressly found that the pension accounts would be shared equally.<sup>6</sup> Our conclusion gains further support from the fact that the defendant cannot advance his claim that the plaintiff has been enriched to the defendant’s detriment without viewing the orders in isolation and completely disregarding both the trial court’s factual finding and the notation in the judgment incorporating the memorandum of decision. Such an interpretation is inconsistent with our well established precedent requiring that we construe the trial court’s judgment as a whole. *Chapman Lumber, Inc. v. Tager*, supra, 288 Conn. 91–92.

The trial court, which was in the best position to resolve the discrepancy between the factual findings and the orders, clarified that the defendant was, in fact, required to split his pension accounts equally with the plaintiff. Not only was this interpretation reasonable, but any other interpretation would have rendered the trial court’s factual finding superfluous and inconsistent with its orders. Moreover, the clarification merely reiterated the factual finding as originally stated and, thus, did not change or modify the judgment. Because the trial court’s clarification was not manifestly unreasonable, we conclude that the Appellate Court improperly reversed the trial court’s judgment on the motion for clarification.

In reaching this conclusion, we disagree with the defendant’s claim at oral argument that this court cannot determine whether the Appellate Court properly concluded that the trial court’s clarification constituted an impermissible modification of the judgment without considering whether the agreement dividing the pension accounts was valid.<sup>7</sup> If the defendant believed that the factual finding was incorrect, the time to challenge the alleged inaccuracy was immediately after the trial court rendered its judgment of dissolution. See *Mickey v. Mickey*, supra, 292 Conn. 604 (court lacks jurisdiction to modify or correct judgment, other than in clerical respects, after expiration of four month period provided by Practice Book § 17-4). The record indicates, however, that although the trial court’s memorandum of decision put both parties on notice of the trial court’s finding that the parties had agreed to divide the pension accounts equally, neither party appealed from the judgment or took any other action to correct the alleged error. See, e.g., Practice Book § 11-12 (a) (“[a] party who wishes to reargue a decision or order rendered by the court shall, within twenty days from the issuance of notice of the rendition of the decision or order, file a motion to reargue”); *Intercity Development, LLC v.*

*Andrade*, 286 Conn. 177, 189, 942 A.2d 1028 (2008) (after trial court issued memorandum of decision, defendant could have filed motion to reargue concerning alleged error in calculation of mechanic's lien); *Opoku v. Grant*, 63 Conn. App. 686, 692–93, 778 A.2d 981 (2001) (purpose of reargument is to demonstrate to court that controlling decision or principle of law has been overlooked or that there has been misapprehension of facts; reargument also may be used to address alleged inconsistencies in trial court's memorandum of decision); see also *Kaczynski v. Kaczynski*, 294 Conn. 121, 131, 981 A.2d 1068 (2009) (after trial court renders judgment, party who believes trial court used standard of review that is less stringent than required has burden of seeking articulation if decision is unclear or reargument if impropriety is apparent in order to give court opportunity to clarify standard used or to correct impropriety).

In the present case, the defendant challenged the accuracy of the trial court's factual finding for the first time by filing a motion for reargument or reconsideration of the trial court's clarification. The defendant contends that he could not have appealed from the trial court's judgment of dissolution because he was not aggrieved by the trial court's factual finding in the absence of a corresponding order.<sup>8</sup> He further contends that a factual finding, unlike an order, imposes no obligation on a party. These arguments seem to contradict the defendant's present claim that the trial court's validation of its factual finding enriches the plaintiff by one half of the amount of the pension accounts to the detriment of the defendant. The defendant maintains: "Had the court found that he was a pilot instead of an emergency room physician, the finding would have been just as incorrect, but unless the court ordered him to find employment flying airplanes, he could not have appealed because he was not aggrieved by the finding alone." Unlike the somewhat innocuous error in the defendant's example, however, the trial court's factual finding in the present case clearly stated that the defendant had agreed to provide one half of the pension accounts to the plaintiff and, therefore, this factual finding inherently imposed an obligation. Accordingly, we conclude that the defendant, having chosen not to challenge the factual finding when the judgment was rendered, is precluded from challenging that finding for the first time in the present appeal. *Intercity Development, LLC v. Andrade*, supra, 286 Conn. 189.

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.

\* The listing of justices reflects their seniority status on this court as of the date of oral argument.

<sup>1</sup> We granted the plaintiff's petition for certification to appeal limited to the following question: "Did the Appellate Court properly conclude that the trial court's clarification regarding the division of the defendant's pension accounts amounted to an impermissible modification of the . . . judg-

ment?" *Bauer v. Bauer*, 302 Conn. 926, 28 A.3d 336 (2011).

<sup>2</sup> The court considered, inter alia, General Statutes §§ 46b-62, 46b-81 and 46b-82, which pertain to the issuance of orders concerning attorney's fees, assignment of property and transfer of title to real property, and alimony and life insurance policies, respectively.

<sup>3</sup> The defendant objected to the motion for clarification and sought its dismissal on the ground that the court lacked subject matter and statutory jurisdiction because the motion was an improper attempt to modify the financial orders after judgment had been rendered. The trial court, *Frazzini, J.*, denied the defendant's motion to dismiss on March 26, 2009, and the defendant challenged the denial of the motion to dismiss in his appeal to the Appellate Court. That court did not address the claim that the trial court improperly denied the motion to dismiss; *Bauer v. Bauer*, supra, 130 Conn. App. 187 n.1; and the claim is not before this court in the present certified appeal. Given our conclusion in the present appeal that the granting of the motion was not an improper modification of the judgment, it is not necessary to remand the matter to the Appellate Court for consideration of this claim.

<sup>4</sup> Practice Book § 17-4 provides in relevant part: "(a) Unless otherwise provided by law and except in such cases in which the court has continuing jurisdiction, any civil judgment or decree rendered in the superior court may not be opened or set aside unless a motion to open or set aside is filed within four months succeeding the date on which notice was sent. The parties may waive the provisions of this subsection or otherwise submit to the jurisdiction of the court. . . ."

<sup>5</sup> The defendant contends that it is impossible to ascertain whether the trial court's failure to include an order concerning the pension accounts was intentional or inadvertent and that this court would have to engage in impermissible speculation and fact-finding to make such a determination. The defendant offered no convincing explanation in his brief or during oral argument before this court as to why such a determination is necessary or relevant. To the extent that we understand this claim, we reject it. It is not necessary to know why the trial court failed to issue an order concerning the pension accounts in order to determine whether the trial court's clarification constituted an improper modification of the judgment.

<sup>6</sup> We disagree with the defendant's attempt to distinguish *Normand Josef Enterprises, Inc.*, on the ground that the court's intention in that case, unlike the present case, "was clearly set forth in the judgment itself." As the opinion in *Normand Josef Enterprises, Inc.*, plainly states, this court considered both the memorandum of decision and the formal orders in concluding that a final judgment had been rendered with respect to count four. *Normand Josef Enterprises, Inc. v. Connecticut National Bank*, supra, 230 Conn. 488 n.1. Moreover, the defendant offers no authority to support his suggestion that the reasoning in *Normand Josef Enterprises, Inc.*, is inapplicable here because the question in that case was simply the existence of a final judgment.

<sup>7</sup> After the trial court granted the motion for clarification, it also granted the plaintiff's motion for rectification to include in the court record the parties' proposed orders. On appeal, the defendant claimed that the trial court improperly had granted the motion for rectification, but the Appellate Court did not reach the claim. Because we conclude that the trial court did not improperly modify the judgment and reject the defendant's claim that we must revisit the trial court's factual finding concerning the agreement, it is not necessary to remand the defendant's claim concerning the motion for rectification to the Appellate Court for further consideration.

<sup>8</sup> In his brief, the defendant discusses at length the plaintiff's failure to file a motion for reargument, to appeal or to take any other action to correct the trial court's orders. The defendant fails to acknowledge, however, that the same avenues were available to both parties.

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