LAUREN DOWLING *v.* LUKE SZYMCZAK
(SC 18922)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and McDonald, Js.

Argued March 11—officially released July 23, 2013

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

Campbell D. Barrett, with whom was *Jon T. Kukucka*, for the appellee-appellant (plaintiff).

Opinion

McDONALD, J. Connecticut's child support guidelines (guidelines); see Regs., Conn. State Agencies § 46b-215a-1 et seq.; generally reflect the principle that "the proportion of household income spent on children declines as household income increases." Child Support and Arrearage Guidelines (2005), preamble, § (e) (4) (A), p. iv. This principle is reflected in the guidelines' schedule of basic child support obligations (schedule), which supplies presumptive levels of support on the basis of the parents' combined net weekly income, but only up to $4000 of such income. In *Maturo* v. *Maturo*, 296 Conn. 80, 95, 995 A.2d 1 (2010), and *Misthopoulos* v. *Misthopoulos*, 297 Conn. 358, 368, 999 A.2d 721 (2010), this court recognized that, even when the combined net weekly income of the parents exceeds that amount, child support awards should follow the principle reflected in the guidelines.[1] The present case requires us to address whether that principle is contravened as a matter of law by an order of child support that is calculated on the same percentage basis as that assigned to a combined net weekly income of $4000, even when the parents' combined net weekly income is several times that amount.

The defendant, Luke Szymczak, appeals from the judgment of the trial court affirming in part and modifying in part the family support magistrate's decision, claiming that: the magistrate's child support order, insofar as it was affirmed by the trial court, (1) violates the guidelines' principle that high income parents will dedicate a smaller proportion of their income to child related spending, (2) fails to make specific findings justifying an upward deviation from the presumptive child support obligation and (3) is not based on the needs of the child; and the trial court's modification of the magistrate's decision ordering payment of retroactive child support was improper because the actual cost of supporting the child for the relevant period of time was significantly less than even the modified award. The plaintiff, Lauren Dowling, cross appeals, claiming that the trial court abused its discretion by denying her motion for appellate attorney's fees. We affirm the trial court's judgment.

The issues in this appeal arise in the context of the following undisputed facts and procedural history. The plaintiff and the defendant, unmarried domestic partners, became parents to a son on September 26, 2007. Shortly thereafter, the parties terminated their relationship, and the plaintiff, who had been living in the defendant's Greenwich home, moved with their son into a cottage located on her parents' property in Old Lyme. The defendant thereafter made irregular voluntary support payments to the plaintiff that amounted to approximately $1000 a month. In February, 2009, the Commissioner of Social Services, on behalf of the state

and the plaintiff, filed a Title IV-D support petition against the defendant, claiming that his child was receiving child support services from the state and seeking orders for the support and maintenance of the child. On March 6, 2009, the family support magistrate, *Christopher F. Oliveira*, issued a temporary child support order requiring the defendant to pay the plaintiff $435 per week and to reimburse her for 82 percent of unreimbursed or uninsured medical expenses and work related child care.

Following a five day trial, the family support magistrate, *Richard G. Adams* (magistrate), issued a decision ordering the defendant to pay $1440 in weekly child support as well as the child's health care costs, and holding the plaintiff responsible for any child care costs necessary for her to maintain employment. In his memorandum of decision, the magistrate determined the parties' combined gross income to be in excess of $1 million and their combined net weekly income to be $14,154, approximately $750,000 annually—86 percent of which was attributable to the defendant's income from salary and other forms of compensation and 14 percent of which was attributable to the plaintiff's earning capacity.[2] The parties agreed that it was appropriate to rely on the plaintiff's earning capacity rather than her actual income because she had chosen to work in her family's business at an annual salary of $25,000, well below what her experience and education reasonably would have allowed her to earn.[3]

In determining the appropriate method for assessing child support, the magistrate rejected the defendant's argument that the mathematical formula for the decreasing percentage of income principle reflected in the schedule should simply be extended to combined net weekly incomes of more than $4000. In doing so, the magistrate reasoned that the commission for child support guidelines (commission) had declined to provide presumptive support obligations in such cases and that the defendant's approach was unsupported by data regarding actual spending practices of parents with high discretionary incomes. The magistrate determined that "[t]wo explicit rules fall from the *Maturo* analysis: the court's award of a child support order, in the absence of a deviation, cannot fall below the dollar amount of the order indicated at the top of the table for the noncustodial parent in the schedule of basic obligations, nor exceed the percentage of combined net income at that level." (Emphasis omitted.) The magistrate noted that, beyond those rules, the trial court retained discretion—albeit not unfettered—to set the award in light of both the particular circumstances of each case and the general fact that children in high income families are accustomed to an affluent lifestyle that should be maintained to the extent reasonably possible.

In applying these principles to determine the proper amount of support, the magistrate noted: "The guidelines schedule stops at $4000 of combined [weekly] net income. Under *Maturo* and *Misthopoulos*, the minimum weekly combined child support obligation [for one child] at that income is $473 per week and the maximum proportion of total net income is 11.83 percent. [That percentage] of the parties' $14,154 combined total net income yields a total child support obligation of $1674 per week or $87,059 per year . . . ." The magistrate concluded that, under the circumstances, this obligation was "not self-evidently excessive or unreasonable," even though it was approximately three and one-half times the $473 minimum. In so concluding, the magistrate noted the circumstances making this award appropriate in the present case and the need to set an award that would accommodate the child's future needs. The magistrate additionally noted that his order would require the plaintiff to bear the cost of work related child care, which he valued at "several hundred dollars" a week, thereby effectively decreasing the percentage of the defendant's net income devoted to child support to approximately 9 percent, "well below the 11.83 percent maximum." Thus, the magistrate concluded, he had observed this court's "admonition in *Maturo* that, 'in most cases' in which combined net incomes exceed the maximum amount on the schedule, the presumptive current support amount should reflect a percentage below the rate for the highest amount on the schedule." Accordingly, the magistrate ordered the defendant to pay $1440 a week to the plaintiff in child support, based on the defendant's 86 percent proportionate share of the parties' combined net weekly income. The magistrate made his order retroactive to the date of the parties' separation, with credit for any amount of support previously paid, and required the defendant to pay an additional $285 weekly in arrearage for an unspecified period.

The defendant thereafter appealed from the magistrate's decision to the Superior Court pursuant to General Statutes § 46b-231 (n), claiming, inter alia, that: the order contravened the principle that as income level rises, the proportion of income dedicated to child related spending decreases; the allocation of work related child care expenses to the plaintiff was not a proper application of the criteria for deviating from the support guidelines; and the order failed to conform to the actual needs of the child. Additionally, the defendant challenged the arrearage from the magistrate's retroactive application of the order. In response, the plaintiff filed a motion seeking an award of attorney's fees for her defense against the defendant's appeal.

The trial court, *Boland, J.*, affirmed the magistrate's decision, with one modification to the amount of the arrearage. Specifically, the court held that "[u]nless

deviation findings are made, [the magistrate or trial court's] discretion is normally confined to a range between a presumed minimum ($473, if one child) and a presumed maximum (11.83 percent of the net income available to the parents), which are the dollar and percentage expressions of presumed support for families netting $4000 per week." Within that range, the magistrate or trial court "possesses the discretion to locate that exact number by a case-by-case examination of the [factors] listed in General Statutes § 46b-84 (d)."[4] The trial court concluded that the magistrate's support order did not deviate from the guidelines, and, therefore, was proper.[5] With respect to the arrearage, however, the court concluded that modification of the order was appropriate because the magistrate had ordered payment of support to include a period of time during which the plaintiff conceded either that she had not incurred any child care expenses or that the defendant already had reimbursed her for such expenses. Accordingly, the trial court reduced the arrearage added to the prospective child support payments by $200 per week to account for the relevant period of time. Finally, on the matter of the plaintiff's attorney's fees, the court concluded that an award of fees would be inequitable in light of the fact that the plaintiff had chosen to forgo working at her full earning capacity in order to work in her family's business at a fraction of that capacity. The defendant appealed and the plaintiff cross appealed from that judgment to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2. We affirm the judgment.

I

We begin with the question of whether the trial court correctly determined that the magistrate properly ordered the defendant to pay child support in an amount equivalent to his proportionate share of 11.83 percent of the parties' combined net weekly income of $14,154, the same presumptive percentage under the schedule for a combined net weekly income of $4000. The defendant contends that the order: violates the principle that, as income level increases, the proportion of income dedicated to child related spending decreases, deviates from the presumptive award by setting the initial child support obligation at 11.83 percent of net combined weekly income without first making specific findings justifying such deviation, and is unsupported by evidence regarding the needs of the child. We disagree.

In domestic relations cases, our standard of review is well settled. "[T]his court will not disturb trial court orders unless the trial court has abused its legal discretion or its findings have no reasonable basis in the facts. . . . [T]he foundation for this standard is that the trial court is in a clearly advantageous position to assess the personal factors significant to a domestic relations

case . . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action." (Citations omitted; internal quotation marks omitted.) *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 366–67. "The question of whether, and to what extent, the child support guidelines apply, however, is a question of law over which this court . . . exercise[s] plenary review." Id., 367.

In a trilogy of recent cases, this court has already discussed the guidelines and accompanying schedule in detail. See *Maturo* v. *Maturo*, supra, 296 Conn. 80; *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 358; *Tuckman* v. *Tuckman*, 308 Conn. 194, 61 A.3d 449 (2013). Accordingly, we will not till this legal landscape any more than is necessary for the resolution of the present case. As we previously indicated in this opinion, the schedule sets forth a presumptive percentage and resultant amount corresponding to specific levels of combined net weekly income; the schedule begins at $50 and continues in progressively higher $10 increments, terminating at $4000. See Regs., Conn. State Agencies § 46b-215a-2b (f). This court has recognized that the guidelines nonetheless apply to combined net weekly income in excess of that maximum amount. See *Maturo* v. *Maturo*, supra, 94–95 ("[the guidelines] provide that *all* child support awards must be made in accordance with the principles established therein to ensure that such awards promote 'equity,' 'uniformity' and 'consistency' for children 'at *all income levels*' " [emphasis in original]); see also *Misthopoulos* v. *Misthopoulos*, supra, 367 (relying on *Maturo* for this principle); *Tuckman* v. *Tuckman*, supra, 205–206 (same). Indeed, the regulations direct that, "[w]hen the parents' combined net weekly income exceeds $4,000, child support awards shall be determined on a case-by-case basis, and the current support prescribed at the $4,000 net weekly income level shall be the minimum presumptive amount." Regs., Conn. State Agencies § 46b-215a-2b (a) (2).

While the regulations clearly demarcate the presumptive *minimum* amount of the award in high income cases, they do not address the *maximum* permissible amount that may be assigned under a proper exercise of the court's discretion. In order to provide some guidance to the trial courts on this matter without unduly encroaching on the purposeful decision of the legislative branch not to prescribe an amount or method for calculating that maximum amount, this court has remained mindful that "the guidelines . . . indicate that such awards should follow the principle expressly acknowledged in the preamble [to the guidelines] and reflected in the schedule that the child support obligation as a percentage of the combined net weekly income should decline as the income level rises." (Internal quotation marks omitted.) *Misthopoulos* v. *Misthopoulos*,

supra, 297 Conn. 368. We therefore have determined that "child support payments . . . should *presumptively* not exceed the [maximum] percent [set forth in the schedule] when the combined net weekly income of the family exceeds $4000, and, in most cases, should reflect less than that amount. See *Maturo* v. *Maturo*, supra, [296 Conn.] 96." (Emphasis added.) *Misthopoulos* v. *Misthopoulos*, supra, 369.

Either the presumptive ceiling of income percentage or presumptive floor of dollar amount on any given child support obligation, however, may be rebutted by application of the deviation criteria enumerated in the guidelines and by the statutory factors set forth in § 46b-84 (d). See *Maturo* v. *Maturo*, supra, 296 Conn. 106. In order to justify deviation from this range, the court must first "make a finding on the record as to why the guidelines were inequitable or inappropriate . . . ." *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 370; see also General Statutes § 46b-215b (a). Thus, this court unambiguously has stated that, "when a family's combined net weekly income exceeds $4000, the court *should treat the percentage set forth in the schedule at the highest income level as the presumptive ceiling on the child support obligation*, subject to rebuttal by application of the deviation criteria enumerated in the guidelines, as well as the statutory factors described in § 46b-84 (d)." (Emphasis added.) *Maturo* v. *Maturo*, supra, 106. In other words, as long as the child support award is derived from a total support obligation within this range—between the presumptive minimum dollar amount and the presumptive maximum percentage of net income—a finding in support of a deviation is not necessary.

Accordingly, in *Maturo* and *Misthopoulos*, this court has set forth the governing legal principles for determining presumptive child support obligations in exceptionally high income cases. See *Maturo* v. *Maturo*, supra, 296 Conn. 80; *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 358. Although we acknowledge the magistrate's concern that this court has developed "no objective standard" for support orders in such cases, we conclude that to do so would be an inappropriate usurpation of legislative power. See *Battersby* v. *Battersby*, 218 Conn. 467, 471, 590 A.2d 427 (1991) ("[t]he task of promulgating provisions to cover [high income] situation[s] lies with the legislature or its commission, [and] not with the court"). As we previously have observed, "the commission extended the applicable range of the schedule in 2005 to include families with a combined net weekly income of up to $4000, an increase from the combined net weekly income limit of $2500 contained in the 1999 schedule . . . by taking advantage of more recent data on child-rearing costs that included higher income families." *Maturo* v. *Maturo*, supra, 296 Conn. 93. It may be that the commission, which updates the guidelines every four years "to ensure the appropriateness of crite-

ria for the establishment of child support awards"; General Statutes § 46b-215a (a); see also *Maturo* v. *Maturo*, supra, 90; will account for the exceptionally affluent families in this state in future revisions to the guidelines. Until that day, however, the uppermost multiplier will provide the presumptive ceiling that will guide the trial courts in determining an appropriate child support award "on a case-by-case basis"; Regs., Conn. State Agencies § 46b-215a-2b (a) (2); without the need to resort to deviation criteria. We underscore, however, that, in exercising discretion in any given case, the magistrate or trial court should consider evidence submitted by the parties regarding actual past and projected child support expenditures to determine the appropriate award, with due regard for the principle that such expenditures *generally* decline as income rises.

In the present case, however, the magistrate applied precisely the standard articulated in *Maturo* and its progeny. First, the magistrate noted the "essential role for a trial court's discretion and analysis in [high income] cases" due to the court's ability to form impressions about the parties and their circumstances, which consequently "help[s] inform a better decision regarding support of their offspring." Second, the magistrate concluded that there were no factors present that would justify upward deviation from the presumptive child support obligation under the guidelines. Next, the magistrate calculated a total child support obligation by multiplying the parties' combined net weekly income of $14,154 by 11.83 percent, which produced a result that, though three and one-half times the minimum weekly combined child support obligation of $473, he concluded "[was] not self-evidently excessive or unreasonable."[6] The magistrate supported this conclusion with specific findings, and the defendant offered no evidence as to either the parties' actual expenditures or typical expenditures of parents at the parties' combined income level in connection with the support and development of their child to provide a basis on which the magistrate could calculate a smaller support obligation. Finally, the magistrate ordered the defendant to pay $1440 per week in child support based on his 86 percent proportionate share of the parties' combined net income. We conclude, as the trial court did, that the magistrate's application of the law was legally correct and that, in setting the child support order, the magistrate did not abuse his discretion.

Nevertheless, the defendant argues that "[t]here is no indication within the guidelines or the preamble that the steady diminution in the percentage of its net income spent by a family on minor children would suddenly stall or reverse above the $4000 net income level." We agree with the defendant on this point, which is precisely why we have held that the uppermost multiplier provided by the schedule establishes a "presump-

tive ceiling." *Maturo* v. *Maturo*, supra, 296 Conn. 106. But while the guidelines do not indicate that the percentage of income dedicated to child related expenditures will presumptively remain static at income levels exceeding those provided by the schedule, neither do they offer any indication that the percentage will decline at any particular rate in exceptionally high income cases. The legislature and the commission established to oversee the guidelines are the appropriate bodies from which particular standards must originate. See *Battersby* v. *Battersby*, supra, 218 Conn. 471; see also *Maturo* v. *Maturo*, supra, 90 (observing that legislature "has thrown its full support behind the guidelines"). Therefore, we cannot agree with the defendant that, under the guidelines, the magistrate was required to use a figure less than the presumptive ceiling of 11.83 percent either as a matter of law or under the facts of the present case.

We also disagree with the defendant's claim that the magistrate deviated from the guidelines by "justify[ing]" the use of the 11.83 percent figure with his order requiring the plaintiff to be responsible for all work related child care costs. We are mindful that, in his order, the magistrate stated that "the impact of the order is leavened considerably by the court's decision . . . to allow the cost of work related child care to rest with the [plaintiff], as she suggested, reducing the weekly dollar burden of child support to the [defendant] by several hundred dollars per week and effectively offsetting the percentage of the [defendant's] net income devoted to current support to around 9 percent, well below the 11.83 percent maximum." This statement, however, was preceded by the magistrate's definitive conclusion that 11.83 percent of the parties' net income was not an excessive or unreasonable total support obligation under the circumstances even though the dollar amount would be three to four times the $473 floor under the guidelines. Therefore, the magistrate did not consider this consequence to be a deviation from the guidelines. Rather, his decision was an attempt to find a "logical resolution" to the persistent inability of the parties to come to an agreement on child care expenses, with the byproduct being a lesser burden on the defendant than otherwise could have resulted. We reiterate that it is because the magistrate or trial court is in the best position to evaluate the parties' circumstances and to craft an appropriate order that we apply a deferential standard of review. See *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 366–67. In the present case, we have no reason to question the magistrate's view that a child support order allocating full responsibility to the plaintiff for work related child care costs would minimize conflicts between the parties, a result certainly in their child's best interest. Although it was unnecessary for the magistrate to have considered whether the reallocation of child care expenses resulted in a "reduced per-

centage" in the defendant's obligation when it was within the magistrate's discretion to order child support using the presumptive maximum percentage of income, the acknowledgement of this extraneous fact gives rise to neither a deviation from the guidelines nor an abuse of discretion.

Finally, the defendant contends that the magistrate improperly failed to base the child support order on the needs of the child. Specifically, the defendant claims that "there is no evidence . . . that either parent will expose [the child] to an ostentatious lifestyle" and, therefore, the order was based on "unsubstantiated assumptions" about how much the parents would dedicate towards their child's upbringing. We disagree. The magistrate made reasonable inferences about the child's educational and extracurricular prospects based on the parents' established income levels and educational backgrounds. In particular, the magistrate noted: "It is likely, given the educational level of his parents, that [the child] will attend private schools and, if he proves to be a good student, he will be groomed to attend a major university and perhaps graduate school. He will probably travel more than the average child, [and] he will have opportunities to pursue activities and interests beyond the means of most children. . . . [He] will likely have every advantage he can use from apparel to gifts to hobbies and sports." Like the trial court, we conclude that these inferences, made to account for the child's future support needs, were reasonable[7] and well within the magistrate's discretion. Under Connecticut's "[i]ncome [s]hares [m]odel" for child support, "the child should receive the same proportion of parental income as he or she would have received if the parents lived together." Child Support and Arrearage Guidelines (2005), preamble, § (d), p. ii. Therefore, "the determination of a parent's child support obligation must account for all of the income that would have been available to support the children had the family remained together." *Jenkins* v. *Jenkins*, 243 Conn. 584, 594, 704 A.2d 231 (1998). The magistrate's order, which he justified in part by noting the plaintiff's potential major responsibility, as the custodial parent, for the cost of any private schooling—a luxury it was reasonable to conclude would have been afforded the child had his parents continued to cohabitate—was consistent with this court's prior holding in *Maturo*, that "trial courts remain free to exercise their discretion in determining the appropriate child support award in light of the particular circumstances of each case." *Maturo* v. *Maturo*, supra, 296 Conn. 108. Therefore, we conclude that the trial court properly affirmed the magistrate's decision with respect to the prospective nature of a portion of the award of child support.

II

We next address the matter of the magistrate's retro-

active application of the child support order, resulting in an arrearage owed by the defendant, which was subsequently modified downward by $200 per week by the trial court to account for day care expenses during a certain period in which the plaintiff either incurred no such costs or was reimbursed for such costs by the defendant. The defendant claims that retroactive application of the order will result in a "windfall" to the plaintiff because the amount of the arrearage as modified exceeds the plaintiff's actual expenditures related to the care of their child during the period of time between the parties' separation and the magistrate's order. We disagree.

We review the propriety of an order awarding child support retroactively under an abuse of discretion standard. See *Colbert* v. *Carr*, 140 Conn. App. 229, 239, 57 A.3d 878 (2013). Whether retroactive payments must be predicated on actual costs incurred by the custodial parent is a question of law over which we exercise plenary review. Cf. *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 367 ("[t]he question of whether, and to what extent, the child support guidelines apply . . . is a question of law over which this court should exercise plenary review").

As we discussed in part I of this opinion, the calculation of child support is based on the income shares model and the parties' combined net income rather than on the actual costs associated with raising a child. Similarly, General Statutes § 46b-215 (a) (7) (B)[8] provides that "support due for periods of time prior to the action shall be based upon the obligor's *ability to pay* during such prior periods . . . ." (Emphasis added.) Therefore, it would have been improper for the magistrate to calculate an arrearage based only on the plaintiff's expenditures during the relevant period of time. Far from being "speculati[ve]," as the defendant contends, the magistrate's order for retroactivity was based on the sound application of the law. Cf. *Brent* v. *Lebowitz*, 67 Conn. App. 527, 532, 533, 787 A.2d 621 (2002) (concluding when trial court "did not follow the procedures mandated by § 46b-215b and the guidelines" that judgment must be reversed and case remanded for "determination of . . . child support arrearage in accordance with the child support guidelines"). To rule otherwise would incentivize the withholding of voluntary child support in the hope of compelling the custodial parent to reduce spending pretrial and thereby reduce any child support ordered by the court retroactively, contrary to the public policies embodied in the child support scheme. See, e.g., Child Support and Arrearage Guidelines (2005), preamble, § (d), p. ii ("the child should receive the same proportion of parental income as he or she would have received if the parents lived together"). Accordingly, we conclude that the trial court properly affirmed in part and modified in part the magistrate's retroactive application of the child sup-

port order.

III

Finally, we consider whether the trial court properly denied the plaintiff's motion for attorney's fees. The plaintiff claims that requiring the defendant to pay her appellate attorney's fees is necessary to preserve the magistrate's child support order. In response, the defendant contends that the trial court properly declined to award fees because: (1) there is no evidence that the plaintiff lacked sufficient resources to finance her legal representation; and (2) failure to award attorney's fees does not undermine the magistrate's order. We agree with the defendant.

We review a decision granting or denying attorney's fees for an abuse of discretion. *Schoonmaker* v. *Lawrence Brunoli, Inc.*, 265 Conn. 210, 252, 828 A.2d 64 (2003). See *Grimm* v. *Grimm*, 276 Conn. 377, 397, 886 A.2d 391 (2005) ("Whether to allow counsel fees . . . and if so in what amount, calls for the exercise of judicial discretion. . . . An abuse of discretion . . . will be found only if [an appellate court] determines that the trial court could not reasonably have concluded as it did." [Citation omitted; internal quotation marks omitted.]). General Statutes § 46b-62 governs the award of attorney's fees in child support proceedings and provides that "the court may order . . . either parent to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82." These criteria include, inter alia, the parties' occupations, earnings, vocational skills and employability. General Statutes § 46b-82 (a). A court will award attorney's fees in order to prevent a party from being deprived of his or her rights due to financial paucity. See *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 386. If both parties are able to afford their own attorney's fees, however, a court generally will not award them unless "failure to make an award would undermine [the court's] prior financial orders . . . ." (Internal quotation marks omitted.) Id.

In support of her request for attorney's fees in the present case, the plaintiff pointed to the large disparity between the parties' actual incomes and the fact that her estimated fees to defend the appeal would be equivalent to twelve weeks of child support. After citing the relevant § 46b-82 (a) factors,[9] the trial court found that the plaintiff had chosen to work in her family's business at a minimal salary in lieu of alternative employment with pay commensurate with her skills and education; see footnote 3 of this opinion; while the defendant had worked at "full capacity," thereby enabling him to achieve a greater degree of financial liquidity than the plaintiff. On the basis of those findings, the court concluded that "an award of fees to [the plaintiff] would be inequitable."

We conclude that, because both the plaintiff's earnings and employability are proper factors for the trial court to consider under § 46b-82 (a), it was not improper for the court to consider the impact of the parties' employment choices. Moreover, the trial court pointed to the testimony before the magistrate demonstrating that the plaintiff had been the recipient of substantial in-kind and monetary gifts from her parents.[10] Although the magistrate did not count these gifts in determining support obligations because he had used the plaintiff's earning capacity rather than her actual income in making that determination; see footnote 2 of this opinion; the plaintiff has offered no authority to suggest that such a consideration would be improper when determining whether the moving party has "sufficient liquid assets with which to pay her own attorney's fees." *Bornemann* v. *Bornemann*, 245 Conn. 508, 544, 752 A.2d 978 (1998). While "ample liquid funds [are certainly] not an absolute litmus test for an award of counsel fees"; (internal quotation marks omitted) *Maguire* v. *Maguire*, 222 Conn. 32, 44, 608 A.2d 79 (1992); the trial court reasonably could have concluded that the plaintiff has sufficient funds to pay her attorney's fees without any risk of undermining the efficacy of the magistrate's child support order. In light of the record, therefore, the plaintiff has not demonstrated how "failure to award attorney's fees would have undermined [the magistrate's] other financial orders." *Bornemann* v. *Bornemann*, supra, 544. Accordingly, we conclude that the trial court did not abuse its discretion in declining to award the plaintiff attorney's fees.

The judgment is affirmed.

In this opinion the other justices concurred.

[1] We note that, although *Maturo* involved a plurality opinion, concurring opinion and dissenting opinion, our subsequent unanimous opinion in *Misthopoulos* effectively adopted the reasoning of *Maturo*'s plurality opinion with respect to the issue in this case.

[2] On appeal to the trial court, the defendant challenged the amount of income that the magistrate had ascribed to him, as well as the magistrate's failure to ascribe value to monetary and in-kind gifts conferred on the plaintiff by her parents, the latter justified by the magistrate in light of his decision to rely on the plaintiff's earning capacity rather than her actual income. The trial court rejected these claims, and the defendant has not renewed them on appeal to this court. Therefore, we treat the magistrate's findings on these matters as undisputed.

[3] The plaintiff is a graduate of Choate Rosemary Hall and Princeton University's Woodrow Wilson School of Public and International Affairs. She has a law degree and a masters degree in business administration from Harvard University. Her employment history included a position at which she earned an annual salary exceeding $100,000. At the time of trial, the plaintiff was employed at her family's car dealership, with the expectation that she would one day run her own dealership within the family enterprise.

[4] General Statutes § 46b-84 (d) provides: "In determining whether a child is in need of maintenance and, if in need, the respective abilities of the parents to provide such maintenance and the amount thereof, the court shall consider the age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child."

[5] The trial court observed that, even if the magistrate's order had deviated

from the guidelines, such deviation would have been appropriate under the umbrella of "[o]ther equitable factors." Regs., Conn. State Agencies § 46b-215a-3 (b) (6) (D). Because we agree with the court's first point, that the order *does not* deviate from the guidelines, we find it unnecessary to consider this second point.

[6] We note that any reliance by the defendant on *Maturo* and *Misthopoulos*, in which we deemed the orders inconsistent with the guidelines, as providing analogous circumstances to the present case is misplaced. In those cases, the trial court ordered child support that included *20 percent* of the payees' net bonuses and future tax refunds, well in excess of the maximum percentage of total net parental income prescribed by the guidelines. See *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 363, 369 (supplemental child support order in amount of 20 percent of net cash bonuses and refunds improper because it exceeded 17.16 percent maximum prescribed in guidelines for three children); *Maturo* v. *Maturo*, supra, 296 Conn. 97 ("an open-ended child support award of 20 percent, rather than 15.89 percent or less [for two children], of the defendant's variable bonus violates the guideline principles"). Conversely, the magistrate in the present case ordered child support using the maximum percentage provided for total support for a single child, 11.83 percent.

[7] The trial court observed that the magistrate "devote[d] six pages to the findings made as to the criteria of . . . § 46b-84 (d), as applied to both parents and child. [The memorandum] emphasize[d] the high income and earning capacity of the parents, their educational achievements . . . and their current stations . . . . [T]he magistrate [also] consider[ed] the educational status of the child, both present and expected . . . ." With respect to the trial court's conclusion that the magistrate reasonably inferred that the parties' child likely would attend private school, we likewise conclude that this inference was reasonable in light of the parties' financial means and the plaintiff's status as a private preparatory school alumna; see footnote 3 of this opinion; not simply because both parents received postgraduate degrees from prestigious private universities.

[8] General Statutes § 46b-215 (a) (7) provides in relevant part: "(A) The court or family support magistrate may also determine, order and enforce payment of any support due because of neglect or refusal to furnish support for periods prior to the action. In the case of a child born out of wedlock whose parents have not intermarried, a parent's liability for such support shall be limited to the three years next preceding the filing of a petition or written agreement to support pursuant to this section.

"(B) In the determination of support due based on neglect or refusal to furnish support prior to the action, the support due for periods of time prior to the action shall be based upon the obligor's ability to pay during such prior periods, as determined in accordance with the child support guidelines established pursuant to section 46b-215a. . . ."

[9] We note that "[t]he court is not obligated to make express findings on each of [the] statutory criteria [in § 46b-82 (a)]." (Internal quotation marks omitted.) *Misthopoulos* v. *Misthopoulos*, supra, 297 Conn. 385, quoting *Grimm* v. *Grimm*, supra, 276 Conn. 397.

[10] The plaintiff's father testified that he and his wife "didn't have to worry about [their daughter's] income. She always has money. She has what she wants." Although the plaintiff's actual gross annual income was established to be $25,000, the plaintiff testified that she had a line of credit at her bank on which she drew on at least three occasions in early 2009 in the amounts of $18,750, $17,900, and $17,750.