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IN RE CHRISTINA C.*
(AC 45864)

Suarez, Seeley and Bishop, Js.

Syllabus

The petitioner, the Commissioner of Children and Families, appealed to this court from the judgment of the trial court denying a petition to terminate the parental rights of the father with respect to his minor child, C, and granting a motion filed by the respondent father to transfer legal guardianship of C from the petitioner to his mother, D. C, who had previously been adjudicated neglected and placed in the petitioner's custody, had been residing with the same foster family since her discharge from the hospital after her birth almost three years earlier. D, who lived in New York, had never been C's foster parent or her temporary custodian. Following a consolidated trial on the petition to terminate parental rights and the motion to transfer guardianship, the trial court concluded that the petitioner had proven by clear and convincing evidence that statutory (§ 17a-112) grounds existed to terminate the father's parental rights. In the dispositional phase of the termination trial, the court made written findings with respect to each of the seven factors set forth in the applicable statute (§ 17a-112 (k)) but did not make any findings concerning C's best interests or issue any orders before it addressed the motion to transfer guardianship and rendered its judgment. On the petitioner's motion to reargue, the trial court issued a corrected memorandum of decision in which it detailed the results of an investigation that had been conducted by a New York children's agency to assess D as a possible placement resource for C. The court found that the evidence was clear and convincing that D was a suitable and worthy person to be awarded permanent legal guardianship of C and that legal guardianship vested in D was in C's best interests. *Held:*

1. The trial court applied an incorrect legal standard in granting the respondent father's motion to transfer guardianship from the petitioner to D: because it was undisputed that D was not C's foster parent or temporary custodian, pursuant to the rule of practice (§ 35a-12A (d)) governing motions to transfer guardianship, the respondent father, as the moving party, had the burden to demonstrate both that D was a suitable and worthy person to become C's guardian and that transferring guardianship to D was in C's best interests, and a careful review of the court's memorandum of decision in its entirety revealed that the court did not hold the father to his burden of proof, the decision having been devoid of a correct statement of the law, let alone a conclusion that the father had satisfied his burden of proof; moreover, the trial court's statement that it had not been shown that placement with D would be detrimental to C, in the absence of a countervailing analysis, led this court to conclude that the court improperly placed the burden of proof on the petitioner and C, both of whom opposed the father's motion, to demonstrate that transferring guardianship to D would be detrimental to C; accordingly, because the trial court applied an incorrect legal standard, the appropriate remedy was to reverse the judgment of the trial court granting the motion to transfer guardianship and remand the case for a new hearing.
2. The trial court, having found that multiple grounds existed for terminating the respondent father's parental rights with respect to C, erred in denying the petition to terminate the parental rights of the father without considering whether that ruling was in C's best interests: although the trial court, in the dispositional portion of its decision, made several subordinate findings concerning the father, all of which strongly suggested that the court would likely conclude that the termination of his parental rights was in C's best interests, the court did not thereafter in the best interests portion of its decision set forth a finding concerning the dispositive issue of whether terminating the father's parental rights was in C's best interests, and, instead, concluded that terminating the mother's parental rights with respect to C was in C's best interests, adoption of C was not appropriate as D was a suitable and worthy

person, and that legal guardianship of C, vested in D, was in C's best interests; moreover, although the court appeared to have denied the termination petition as to the father solely because it concluded that D should become C's legal guardian, there was no basis in law for the court to have conflated the issues of whether legal guardianship should be vested in D and whether the petition to terminate the father's parental rights should be granted; accordingly, this court reversed the judgment of the trial court denying the termination petition with respect to the father and remanded the case to the trial court for a new dispositional hearing at which its sole focus was to be on whether it was in C's best interests to terminate the father's parental rights with respect to her.

Argued March 8—officially released August 16, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Waterbury, Juvenile Matters, where the respondent father filed a motion to transfer legal guardianship of the minor child to the paternal grandmother; thereafter, the case was tried to the court, *Hon. John Turner*, judge trial referee; judgment terminating the respondent mother's parental rights, denying the petition as to the respondent father, and transferring permanent legal guardianship of the minor child to the paternal grandmother, from which the petitioner appealed to this court. *Reversed in part; further proceedings.*

Evan O'Roark, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellant (petitioner).

Stein M. Helmrich, for the appellee (respondent father).

James P. Sexton, assigned counsel, for the minor child.

Opinion

SUAREZ, J. The petitioner, the Commissioner of Children and Families, appeals from the judgment of the trial court (1) granting the motion of the respondent father, Christopher C.,¹ to transfer legal guardianship of his biological daughter, C, from the petitioner to his mother, D, and (2) denying the petition to terminate the parental rights of the respondent with respect to C.² The petitioner claims that, in granting the motion to transfer guardianship, the court erred as a matter of law by assuming that transferring guardianship was in C's best interests, thereby shifting the burden of proof to the petitioner to demonstrate that granting the motion would be detrimental to C. The petitioner also claims that, having found that multiple grounds existed for terminating the respondent's parental rights with respect to C, the court thereafter erred in denying the petition to terminate his parental rights without considering whether that ruling was in C's best interests. We agree with both of the petitioner's claims and therefore reverse in part the judgment of the trial court.

Following a consolidated hearing on the petitioner's petition to terminate the parental rights of the respondent,³ as well as the respondent's motion to transfer legal guardianship of C from the petitioner to D, the court, *Hon. John Turner*, judge trial referee, set forth the following relevant findings and procedural history in its memorandum of decision, dated July 27, 2022: "C is [T's] first born and only child. She has no prior child protective services history. [The Department of Children and Families (department)] became involved with the family [in September], 2019, upon C's birth at the Waterbury Hospital. Although [the respondent] was with [T] at the hospital, he left prior to C's birth to meet friends. The hospital reported [that T] had given birth to a baby girl . . . who tested positive for opiates and cocaine at birth.

"[T] had a prior history of [intravenous] drug use. There were track marks 'all over her body.' She tested positive for heroin and cocaine at delivery, was experiencing withdrawals, and tested positive for hepatitis C. She admitted using heroin the day before C's birth. She had no prenatal care, no baby supplies, was homeless, and had no income. She further stated that she did not know the first thing about parenting a child.

"On September 10, 2019, [T] told [the department] that she was an addict; she had been using six to eight bags of heroin intravenously every day, she had been using for twelve years; she had a criminal history, was on probation, and . . . she engaged in prostitution and had no [other] income

"[The respondent] told [the department] on September 10, 2019, [that] he had been diagnosed with post-traumatic [stress] disorder (PTSD). He was not receiv-

ing treatment for his mental health. He had a lengthy criminal history, including periods of incarceration. He was on probation and under supervision. He was homeless and living in a local hotel with [T]. They had no income and no supplies for C. He admitted that he had a history of smoking marijuana and that he had recently violated his probation. On September 12, 2019, his probation officer informed [the department] that [the respondent] had persistently tested positive for marijuana and had tested positive for cocaine.

“On September 13, 2019, [the petitioner] filed for an ex parte order of temporary custody (OTC). [The petitioner] contemporaneously filed a neglect petition on behalf of C. [The court, *Grogins, J.*] found [that the department] had made reasonable efforts to eliminate or prevent C’s removal. The OTC for C was granted ex parte and temporary custody of her was vested in [the petitioner]. Preliminary specific steps for [T] and [the respondent] were issued on September 13, 2019, and served upon them on September 17, 2019. Neither [T] nor [the respondent] appeared for the OTC preliminary hearing on September 30, 2019. Each of them was defaulted and the OTC was sustained.

“[T] and [the respondent] appeared on October 23, 2019. They were appointed counsel. Paternity of C was established by the court on November 19, 2019, based on an affidavit and affirmation of paternity that had been duly executed by [T] and [the respondent]. On November 19, 2019, [T] entered a [plea of nolo contendere] and [the respondent] was granted permission to stand silent. The court, [*Hon. Wilson J. Trombley*, judge trial referee], adjudicated C neglected and committed her to the care and custody of [the petitioner]. Final specific steps were approved, ordered, and issued to [T] and [the respondent].

“On November 20, 2020, the court approved a permanency plan of [termination of parental rights] and adoption for C, along with a concurrent plan of reunification. The court further found that [the department] had made reasonable efforts to effectuate the permanency plan. On May 12, 2021, [the petitioner] filed a [termination of parental rights] petition on behalf of C to terminate [T’s] and [the respondent’s] parental rights. On September 28, 2021, the court again approved a permanency plan for C of [termination of parental rights] and adoption with a concurrent plan [of] reunification with [T]. The court found [that the department] had made reasonable efforts to achieve the permanency plan. On December 15, 2021, the court granted [the petitioner’s] motion to amend its pending petition to include: ‘Reasonable efforts to reunify are not required for [T and the respondent] because the court had approved a permanency plan other than reunification in accordance with [General Statutes § 17a-111b].’ ”⁴

After setting forth specific findings related to T,

which are not germane to the claims before us, the court made the following specific findings related to the respondent: “[The respondent] was born in July, 1983. He was raised in New York, New York, by his mother and extended maternal family members. He has a general education diploma. He has been employed as an auto mechanic and at several factories. For several years prior to C’s birth, he was unemployed. He has been diagnosed with PTSD. He received individual therapy sessions in 2008 for PTSD, reportedly as a result of being hit by a bus and having been attacked by thirty-three people while incarcerated.

“[The respondent] has a total of eight children. Besides C, six of his other children are not in his care. Three of them reside in New York, two of them reside in New Jersey, and one child resides in Connecticut. All of his other six children reside with their mothers or maternal relatives. He does not provide any care or financial support for any of his children. He has a prior child protective services history. His name appears in two child protective services cases. His prior history with [the department] involved another child . . . who entered [the department’s] care via an OTC on October 3, 2013. [The child] was committed on February 26, 2014. Thereafter, [the respondent] failed to address his needs surrounding illegal substance use, mental health, housing, and incarceration. His parental rights [with respect to the child] were terminated on January 6, 2016, pursuant to a petition filed at the Superior Court for Juvenile Matters.

“[The respondent] has a criminal history in New York, Florida, and Connecticut. His criminal history in Connecticut includes convictions for sale of a hallucinogen, two criminal possession of a firearm/defensive weapon convictions, illegal discharge of a firearm, disorderly conduct and interfering, possession with intent to sell narcotics, and violation of probation. He is currently serving a five year sentence after being convicted on November 5, 2019, of possession with intent to sell narcotics.” (Footnote omitted.)

The court made specific findings with respect to C, as follows: “C was born [in September], 2019. She is almost three years old. At birth she tested positive for opiates. On September 18, 2019, she was discharged from the hospital into [the petitioner’s] care. She resides in a two parent, [department] licensed, nonrelative foster home. She has resided there since her release from the hospital after her birth. There is another foster child and two dogs in the home. This is the only home she has ever known. She refers to her foster parents as ‘mama and dada.’

“In October, 2019, she began Birth to Three services. She made significant progress in her development and was successfully discharged on April 28, 2020. Her foster mother is a pediatric occupational therapist, who

provides her with ongoing developmental support. C is developmentally on target and medically and dentally up to date.”

The court then made the following additional findings concerning compliance with the specific steps: “Preliminary specific steps were issued to [T] and [the respondent] on September 13, 2019. Final specific steps were provided to them on November 19, 2019, to facilitate their reunification with C.

* * *

“[The respondent] complied with his specific steps in that his whereabouts have been known to [the department] since his incarceration on September 20, 2019. He has made himself available to [the department] via phone calls. He has participated in administrative case review meetings and scheduled court hearings. He completed a Tier 2 substance abuse group and began the Fatherhood Program. He submitted to random drug testing in May, 2022.⁵ He has regularly and consistently visited C. He has not cancelled any visits.

“He did not comply with his specific steps in that he continued to get involved with the criminal justice system. He received two disciplinary reports while incarcerated. In December, 2019, he received a disciplinary report and pleaded guilty to being disruptive and not following the rules. In November, 2020, he received a disciplinary report and pleaded guilty to receiving Suboxone through the mail. On October 18, 2021, he was denied parole due to ‘inadequate institutional program participation and evidence of offender change’ and ‘poor institutional adjustment.’” (Footnote in original.)

The court stated that it had “considered the evidence related to the circumstances and events prior to May 12, 2021, the date the [termination of parental rights] petitions were filed, insofar as the allegation that the child was found in a prior proceeding to have been neglected, abused, or uncared for and that [T and the respondent] have failed to achieve the degree of personal rehabilitation such as would encourage the belief that within a reasonable time, considering the age and needs of the child, either of them could assume a responsible position in the life of the child. Regarding the allegation of failure to achieve rehabilitation, the court has also considered the evidence and testimony related to circumstances through the conclusion of the trial, for the purpose of assessing the degree of rehabilitation, if any, that [T] or [the respondent] has achieved.

“Upon review . . . the court concludes by clear and convincing evidence presented that the statutory grounds alleged for [the] termination of the parental rights of [T] and [the respondent] exist.”

In the adjudicative phase of the termination of parental rights proceeding, the court found that the depart-

ment had made reasonable efforts to reunify T and the respondent with C, that T and the respondent were unwilling or unable to benefit from those reunification efforts, and that such efforts were no longer appropriate.

With respect to the statutory grounds for termination codified in General Statutes § 17a-112 (j) (3) (B) (i)⁶ and (E),⁷ the court made the following additional findings: “[The respondent’s] parental rights to another child . . . were terminated on January 6, 2016, pursuant to a petition filed at the Superior Court for Juvenile Matters. C was adjudicated neglected and committed to the care and custody of [the petitioner] on November 19, 2019. Preliminary specific steps were issued to [the respondent] on September 13, 2019. Final specific steps were provided to [the respondent] on November 19, 2019, to facilitate his reunification with C. His presenting problems included criminal activity and incarceration, unresolved substance abuse issues, mental health, transience, intimate partner violence, [and an] inability to provide a stable, safe, and nurturing environment for C.

“[The respondent] has an extensive history of criminal behavior and incarcerations. He was incarcerated on September 20, 2019, and convicted on November 5, 2019, of possession with intent to sell narcotics. He was given a five year sentence. In May, 2022, he was released on placement to a halfway house out of state. He remains on parole to another state or jurisdiction.

“The conditions of his release to a halfway house require him to engage in domestic violence and mental health services and to have no contact with [T]. After his release to a halfway house, he was referred to the Community Renewal Team . . . for services. The services have not begun. His maximum release date is December 4, 2024. While incarcerated, he completed a Tier 2 substance abuse group and began the Fatherhood Program. Since his release from incarceration, he has continued to visit C. Although she remains hesitant around him, he has been consistent and has not cancelled any visits.

“C is thirty-four months old. She has continuously been in [the petitioner’s] care since September 13, 2019. She needs permanency in the sense that she needs to know who the responsible adults in her life are and who is consistently caring for her, available for her, and meets her basic social, emotional, and physical needs. She is fully dependent on a stable caregiver to meet all her needs.

“There is no indication whether or when [the respondent] will ever be able to provide a safe, stable, and nurturing home for C. It is uncertain when or whether he will be released from prison, parole to a halfway house in another state under the terms of the Interstate

Compact for Adult Offender Supervision, or to a full parole in the state of Connecticut, and establish himself to assume a responsible position in C's life. She needs stability and a permanency plan with a clear path forward.

“The court cannot find reason to be encouraged that within a reasonable time, considering C's age and needs, [the respondent] will be able to assume a responsible position in her life. The level of rehabilitation he has achieved falls short of that which would reasonably encourage a belief that at some future date he can assume a responsible position in his child's life. The court does find [that] there is clear and convincing evidence to believe that he will not be able to assume a responsible position in C's life within a reasonable period of time. The evidence is clear and convincing that [the respondent's] parental rights to another child were previously terminated pursuant to a petition filed by the [petitioner]. C is a child, under the age of seven who is neglected, abused or uncared for. [The respondent] has failed, or is unable, or is unwilling, to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of C, he could assume a responsible position in her life.

“The court finds by clear and convincing evidence that [the petitioner] has met [her] burden of proving by clear and convincing evidence that C was found in a prior proceeding to have been neglected and that [the respondent] has failed or is unable to achieve the degree of personal rehabilitation that would encourage the belief that within a reasonable period, considering the age and needs of C, he could assume a reasonable position in her life.

“The court finds by clear and convincing evidence that C is a child, under the age of seven, who is neglected, abused or uncared for. [The respondent] has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, he could assume a responsible position in the life of the child.

“[The petitioner] has met [her] burden of proving by clear and convincing evidence that [the respondent's] parental rights to another child . . . were terminated on January 6, 2016, pursuant to a petition filed at the Superior Court for Juvenile Matters by the [petitioner].” (Footnote omitted.)

With respect to the statutory ground for termination codified in § 17a-112 (j) (3) (C),⁸ the court made the following findings: “C was born [in September], 2019. [The respondent] was incarcerated on September 20, 2019. At that time, C was just days old. He has been incarcerated since then. His contact with C has

occurred while he has been incarcerated. He has been minimally involved in her life since her birth.

“As a result of his criminality (arrests, convictions, incarceration) [the respondent] has deprived C of the care, guidance, or control necessary for her physical, educational, moral, or emotional well-being. He has been unable to be a consistent figure in her life. He has not presented himself to care for C. He has not paid any child support for her.

“[The petitioner] has proven [the ground for termination set forth in § 17a-112 (j) (3) (C)] by clear and convincing evidence that C has been denied, by reason of an act or acts alleged as to [the respondent] of commission/omission the care, guidance, or control necessary for C’s physical, educational, moral, or emotional well-being.”

With respect to the statutory ground for termination codified in § 17a-112 (j) (3) (D)⁹, the court made the following findings: “It would seem from the plain meaning of the statutory language for this ground that [the respondent] has not met the day-to-day parenting capability that the statute appears to require. . . .

“[The respondent] has not established much of a relationship with C because he has been incarcerated for most of her life. Before he was incarcerated, he had spent limited time with her. He has had [a] limited opportunity to form a bonding and nurturing relationship with her, or to develop an ongoing parent-child relationship with her, such as ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral, and educational needs of the child. He has had minimal involvement in her life. His involvement in her life has been the [department] arranged visits with her. He has not supported her emotionally, financially, or consistently cared for her physically. Although he has consistently visited C, she remains hesitant around him. She does not have a bond with [the respondent]. She does not recognize him as a reliable and supportive caretaker. To allow further time for establishment or reestablishment of a parent-child relationship is detrimental to the best interests of this child.

“[In September], 2022, C will be three years old. [The respondent] has not developed, nor been able to develop, an ongoing parent-child relationship with C, such as ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral, and educational needs of the child, during the nearly three years he has been imprisoned. Although he has been released to a halfway house, his maximum release date is December 4, 2024. The uncertainty renders him, at present, unable to assume a responsible [position] in C’s life within a reasonable period of time.

“This court finds by clear and convincing evidence

that there is no ongoing parent-child relationship between [the respondent] and C. To permit additional time for him to develop a parent-child relationship would not be in C's best interest. She is thriving in a safe, stable, nurturing preadoptive home. It would be detrimental to her best interest to allow further time for such a relationship to be established and developed. The court finds [that the petitioner] has proven [this ground] by clear and convincing evidence as to [the respondent]."

Having found that the petitioner had proven by clear and convincing evidence that there were grounds to terminate the respondent's parental rights, the court then turned to the dispositional phase of the proceeding and made written findings with respect to each of the seven factors set forth in § 17a-112 (k).¹⁰ With respect to the timeliness, nature and extent of services offered to the respondent, the court found: "[The department] offered [the respondent] referral to substance abuse and mental health services prior to his incarceration. [The department] encouraged him to engage in services at the prison where he was being housed and recommended that he take part in counseling at the correctional facility where he was imprisoned. He reported nothing was up and running due to COVID-19. While incarcerated, he did complete a Tier 2 substance abuse group and began the Fatherhood Program."

With respect the reasonable efforts made at reunification, the court also found that, "[o]n November 20, 2020, and September 28, 2021, the court found that [the department] set reasonable and realistic expectations to reunify . . . [the respondent] with C, and made reasonable efforts to achieve the permanency plan On April 17, 2020, [the respondent] presented his mother, [D], as a placement resource for C."

With respect to the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, the court found that "[f]inal specific steps for [T and the respondent] were approved by the court on November 19, 2019, to address their presenting problems and to facilitate reunification with C. The department fulfilled its obligations under the specific steps and other court orders. Notwithstanding the specific steps ordered and issued by the court, there has been minimal sustained cooperation and progress made by [T] or [the respondent] with the recommended services."

With respect to the feelings and emotional ties of C, the court stated: "C was removed and placed in [the department's] care on September 13, 2019, through a ninety-six hour hold. Her current nonrelative foster parents have been her main caregivers since then, and often advocate for her when engaging with her providers. C is very bonded with her foster family. She looks to them for guidance and care. She is comfortable, content, and

well-adjusted to their home. She looks to them for comfort, support, and to meet her physical, emotional, medical, and educational needs. C is solely dependent on her caregivers for stability, security, love, and to have her basic physical needs met to thrive and grow. Her nonrelative foster parents have expressed a desire to adopt her should she become available for adoption. C's paternal grandmother has consistently visited [with] her virtually and/or in person once or two times a month. There was insufficient evidence presented to find that C has formed an attachment or bond to her paternal grandmother."

The court also found that "[the department] has been involved with this family since [September], 2019. Despite [the department] offering services to [T] and [the respondent] that have included case management, transportation, safety planning, permanency team meetings, supervised visits, referrals for mental health counseling, referrals to inpatient and outpatient substance abuse treatment services, and parenting education services, neither [T] nor [the respondent] has adjusted their life circumstances in order to be able to parent C. Neither [T] nor [the respondent] has achieved a degree of stability to provide C with a safe and stable environment to grow and thrive. . . .

"Neither [T] nor [the respondent] has been prevented by [the department] from maintaining or establishing a meaningful relationship with C by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person, or by the economic circumstances of the parent."

Before making any findings concerning C's best interests or issuing any orders, the court addressed the respondent's motion to transfer guardianship of C to the respondent's mother, D, who resides in New York.¹¹ By way of procedural history, we observe that, therein, the respondent alleged that, subsequent to the petitioner's filing of the neglect petition, D "came forward as a resource for [C]. As a result of her inquiry, the petitioner requested that an Interstate Compact Study be completed with the assistance of the New York City Administration for Children's Services. . . .

"On September 20, 2021, [the] New York City Administration for Children's Services issued [its] final report approving [D] and her spouse as a placement for [C]."

The respondent argued that it was "in the best interests of [C] to have [D] become her legal guardian as this placement would allow [C] to remain with her biological family and is the least restrictive alternative placement." The attorney for the minor child objected to the respondent's motion on the ground that C had been in her current placement with a foster family since birth and that D's involvement in C's life had been minimal. Thus, the attorney for the minor child argued that a

transfer of guardianship to D was not in C's best interests. The petitioner also objected to the motion on the ground that, "[f]or her entire young life, [C] has been in the care of her current preadoptive foster parents. She is thriving in that home. . . . Transfer of guardianship does not afford [C] permanency nor is it consistent with her best interests."

In its memorandum of decision issued on July 27, 2022, the court, in relevant part, terminated the parental rights of T with respect to C, denied the petition to terminate the parental rights of the respondent with respect to C, and "transfer[red] . . . permanent legal guardianship [of C] to . . . [D]." On July 29, 2022, the petitioner, pursuant to Practice Book § 11-11, filed a "Motion to Reargue and Reconsider." The petitioner raised several grounds in support of the motion. With respect to the court's decision denying the petition for termination of parental rights as to the respondent, the petitioner argued that the decision was inconsistent with the court's findings in the dispositional phases of the proceeding. The petitioner argued that "[t]he court's findings of fact strongly support granting termination of parental rights of both parents." With respect to the court's decision to transfer permanent legal guardianship of C to D, the petitioner argued that the ruling was improper because "[n]either the respondent father nor any other party filed a motion for permanent transfer of guardianship [of C]. Thus, a motion for permanent transfer of guardianship was not before the court." The petitioner argued that the ruling violated principles of due process and fundamental fairness, it was made in the absence of notice required by General Statutes § 46b-129 (j) (6) (B), it was made in the absence of necessary findings required by § 46b-129 (j) (6) (B), and it violated the Interstate Compact on the Placement of Children in that approval under the compact had expired on June 30, 2022. Moreover, the petitioner argued that the court had applied an incorrect legal standard as reflected in the portion of its decision in which it stated that "it has not been shown that placement with [D] would be detrimental to [C]."

On August 22, 2022, the court held a remote hearing to address the petitioner's motion and the respondent's objection thereto. On August 29, 2022, the court issued a memorandum of decision with respect to the motion in which it granted relief by way of correcting only the portions of its original decision in which it addressed the "Motion to Transfer Legal Guardianship" as well as its "best interest conclusion." In its corrected decision, the court also corrected its final orders.¹²

With respect to the merits of the respondent's motion to transfer guardianship, the court stated in its corrected decision: "On April 17, 2020, [the respondent] identified his mother [D] as a placement resource for C. She resides in New York with her husband, [E],

and her thirty-two year old daughter, [Z]. Upon being contacted by [the department, D] reported [that] she needed time to consider being C's caretaker and to discuss the matter with her husband and daughter.

"C was seven months old when [D] notified [the department] on May 7, 2020, [that] she was willing to care for C. On September 15, 2020, [the respondent] again asked [the department] to 'look into' his mother as a placement resource for C. On September 28, 2020, he again notified [the department] that his mother was willing to be a resource, but he had not heard anything back, and he would like for [his mother] to be considered as a resource.

"On October 7, 2020, [the department] began monthly virtual visits between C and [D]. [The department] offered [D] more frequent visits, however, [D] chose to begin visiting C once per month. On November 20, 2020, [the department] agreed to continue assessing [D] as a possible placement resource for C by initiating an Interstate Compact and facilitating virtual visits between [D] and C. The Interstate Compact Packet . . . was submitted to the New York Administration for Children Services . . . by [the department] on January 29, 2021.

"[D], [E] and [Z] participated in and fully cooperated with the requirements for the [Interstate Compact Packet]. They provided their fingerprints and submitted to a physical examination. Medicals for the three of them were completed in May, 2021. [The New York Administration for Children Services] completed [various background] checks on them between April 26, 2021, and September 8, 2021. They completed Reasonable/Prudent Parenting Training in June and July, 2021. On September 17, 2021, [D] and [E] accepted and signed the policy on discipline guidelines. [The New York Administration for Children Services] issued its final assessment and determination report on September 20, 2021, approving [D] and [E] as a placement for C.

"[The department] and [D] agreed in March, 2021, to increase virtual visits with C to twice a month. On July 12, 2021, [the department] offered [D] two in person visits per month. [D] requested that one of the visits remain virtual and that one visit be in person because she had to travel by train from New York to Connecticut to visit.

"[D] participated in her first in person visit with C on September 22, 2021. She also participated in an [administrative case review] meeting on September 28, 2021. On October 20, 2021, she participated in a second visit. On October 18, 2021, she agreed to visit C every Thursday beginning November 4, 2021. [D] attended all of her in person visits with C and paid for all of her travel expenses to visit C. A fourth in person visit was held on November 12, 2021. [D] attended the in person

visit with [E] and her adult daughter.

“On November 15, 2021, [the department] decided not to support C being placed with [D] and to support C remaining in her foster placement. [The department] rescheduled the November 18 visit to November 22. The November 22 visit was cancelled due to C being sick.

“On December 1, 2021, [the department] notified [D] of its decision to support C remaining in her current foster placement and reduced [D’s] visit to one per month. [D] continued to participate in the one hour monthly visits and attended all [of] the scheduled visits. C was unable to fully complete any of the one hour visits. [D] agreed to terminate the visits early stating she does not want to distress C and would prefer to follow her lead. C has slowly but steadily demonstrated improved comfort with [D]. During each visit, C is lasting longer in duration and demonstrating increased interaction with [D]. C now freely and cheerfully holds her hand while walking around with her.

“[D] is fifty-eight years of age. She and [E] have been a couple for the past twelve years. They have been married since 2016. Each member of the household is in good physical and mental health. She has lived in New York since 1977. References were submitted to [the New York Administration for Children’s Services] attesting to each of their moral character, mature judgment, ability to manage resources, and capacity to develop a meaningful relationship with children. Neither [D] nor [E] have any other children. [D] and [E] are both retired. Before retiring, she worked thirty-one years for the [United States] Postal Service. [E] was employed by the University of New York City as a college professor. He is currently employed part-time as an adjunct lecturer. He does not work during the summer months. Their home in New York is located in a gated community. They also own a vacation home in Puerto Rico, and a vacation apartment in Santo Domingo. [Z] is employed full-time as a certified public accountant [D] and [E] have a combined monthly income of more than \$6394 per month. [Z] contributes to the household’s expenses. [D] has the wherewithal and is willing to adequately provide for C’s financial needs and general welfare.

“C’s foster parents have provided her with constant attention, care, and love. They have demonstrated their commitment to her and an ability to meet all of her needs. Their home is the only home that C has ever known. The preponderance of [the] evidence presented showed that [D] diligently pursued custody of C, that [D], [E], and [Z] remained consistent in this desire, and have the ability to meet all of her needs. [D] is willing to allow C to continue to have a relationship with her foster family and facilitate it for as long as necessary to make a transition easier for C. This court cannot conclude that it would be in C’s long-term best interests

to be deprived of her biological relatives ([D], [E], and [Z]) when it has not been shown that placement with her paternal grandmother would be detrimental to her. As set forth in section VII [of the court's decision, entitled "Best Interest Conclusion"] the court finds that vesting legal guardianship of C in [D] is in C's best interests.

"The final report and assessment of [D] and her household by [the New York Administration for Children's Services] and the evidence at trial is clear and convincing that [D] is a worthy, suitable, and appropriate person to be granted permanent custody and guardianship of C. The court finds [D] to be a suitable and appropriate person to be awarded permanent guardianship of C." (Footnotes omitted.)

In its corrected decision, the court then set forth what it titled its "Best Interest Conclusion" as follows: "The court has considered C's best interests, including her health, safety and need for permanency. . . .

"Neither [T] nor [the respondent] has made sufficient progress in their life circumstances for either of them to reunify with C. [T] has remained transient. She has not achieved a significant period of sobriety, nor has she maintained consistent contact with her daughter. [The respondent] has continued needs in the areas of mental health, domestic violence, housing, and employment. He has only recently been released from prison on placement to a halfway house out of state. He remains on parole to another state or jurisdiction. He is currently residing in a halfway house and unable to provide care for C. His criminal history and continued needs in the areas of mental health, domestic violence, housing, and employment, leads the court to conclude that he cannot assume a responsible position in C's life within a reasonable time.

"It is uncertain when or whether [the respondent] will ever be able to provide a safe, stable, and nurturing home for C. It is uncertain whether he will remain released from prison, on parole to a halfway house in another state under the terms of the Interstate Compact on Adult Offender Supervision, or granted a full parole in the state of Connecticut, and establish himself to assume a responsible position in C's life. She needs stability, and a permanency plan with a clear path forward.

"The court cannot find reason to be encouraged that within a reasonable time, considering C's age and needs, [the respondent] will be able to assume a responsible [position] in her life. She needs permanency in the sense that she needs to know who the responsible adults in her life are and who is consistently caring for her, available for her, and meets her basic social, emotional, and physical needs. The court is mindful that C has continuously been in [the petitioner's] care for thirty-

four months, since [September], 2019, and is very comfortable and making progress in her preadoptive home.

“Based upon all the foregoing, the court finds by clear and convincing evidence that termination of the parental rights of [T] is in the best interests of C. Having found by clear and convincing evidence that statutory grounds for termination of the parental rights of [the respondent] exist, the court finds that adoption of C is not appropriate as there is a proposed permanent relative legal guardian The proposed permanent legal guardian, [D], is a suitable and worthy person, able and willing to assume the rights and responsibilities for C. [D] is committed to remaining [the permanent legal guardian] for C until she attains the age of majority.

“The court further finds by clear and convincing evidence that permanent legal guardianship of C, vested in her paternal grandmother, is in [C’s] best interests. This finding is made after considering the child’s age, sense of time, need for a secure and permanent environment and the totality of this child’s circumstances.” (Citation omitted.)

The court ordered that T’s parental rights with respect to C be terminated but that the respondent’s parental rights with respect to C were “not terminated.” The court approved the motion to transfer legal guardianship of C to D. The court stated in its order that “[t]he immediate transfer of legal guardianship of C to [D] is not ordered. Subsequent to the conclusion of the trial, the court was informed that the Interstate Compact Study issued by the state of New York for [D] expired on June 30, 2022, without a request for a further extension. Therefore, the [petitioner] is ordered to initiate and diligently pursue a new Interstate Compact Study by the state of New York for [D]. An updated status report on the progress of the Interstate Compact shall be filed with the court and all counsel of record every thirty . . . days.

“The transfer of legal guardianship to [D] shall occur after C has been placed with [D] for a period of six . . . months.

“The [petitioner] shall prepare a permanency plan for C with a permanency plan goal of transferring legal guardianship to [D] by August 31, 2023, and after C has been transitioned from the foster parents and placed with [D] for six months.

“Pursuant to [§ 17a-112 (o)], [the petitioner] shall report and present to the court, within thirty days of this corrected memorandum of decision and orders, a case plan for C, to transfer legal guardianship of C to [D], and shall timely present such further reports to the court as required by law.” This appeal followed.

the motion for transfer of guardianship, the court erred as a matter of law by assuming that transferring guardianship was in C's best interests, thereby shifting the burden of proof to the petitioner to demonstrate that granting the motion would be detrimental to C. The petitioner argues that the court abused its discretion because it applied an incorrect legal standard when adjudicating the motion to transfer guardianship. The claim, thus, raises a question of law that is subject to plenary review on appeal. See *In re Deboras S.*, 220 Conn. App. 1, 43, 296 A.3d 842 (2023) ("whether the [trial] court applied the correct legal standard is a question of law subject to plenary review" (internal quotation marks omitted)). We agree with the petitioner that the court applied an incorrect legal standard in granting the motion for transfer of guardianship.

"[A] motion . . . seeking to transfer guardianship of a child or youth from the petitioner to an individual other than the parent or former guardian, should be adjudicated by the court pursuant to subsection (j) of § 46b-129." *In re Avirex R.*, 151 Conn. App. 820, 832–33, 96 A.3d 662 (2014). A motion to transfer guardianship is dispositional in nature; see Practice Book § 35a-12A (a); and "does not require the court to review the underlying cause for commitment, which has already been judicially determined during an earlier phase of the proceeding." *In re Avirex R.*, supra, 835. Section 46b-129 (j) (2) provides in relevant part: "Upon finding and adjudging that any child or youth is uncared for, neglected or abused the court may . . . (B) vest such child's or youth's legal guardianship in any private or public agency that is permitted by law to care for neglected, uncared for or abused children or youths or with any other person or persons found to be suitable and worthy of such responsibility by the court, including, but not limited to, any relative of such child or youth by blood or marriage"

Practice Book § 35a-12A provides guidance with respect to how a trial court should adjudicate motions to transfer guardianship. A motion for transfer of guardianship that seeks to vest guardianship of a child or youth in a relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, is governed by § 35a-12A (b).¹³ See also General Statutes § 46b-129 (j) (3). A motion for transfer of guardianship that would require the removal of a child or youth from any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, is governed by § 35a-12A (c).¹⁴ Practice Book § 35a-12A (d) provides: "In all other cases, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interests of the child."

It is not disputed that D is not C's foster parent or temporary custodian. While in the petitioner's custody, C has been residing with a foster family for almost her entire life. In light of the authority previously cited, the respondent's burden to prevail on his motion to transfer guardianship from the petitioner to D was to demonstrate both that D was a suitable and worthy person to become C's guardian and that transferring guardianship to D was in C's best interests. The respondent was not entitled to the presumption that D satisfied either prong of this analysis.

In evaluating a trial court's decision, it is appropriate to consider the decision as a whole and not to focus on statements in artificial isolation. A careful review of the court's memorandum of decision in its entirety, including the corrected portion of its original decision, however, leads us to the conclusion that the court did not hold the respondent to his burden of proof. The court's decision is devoid of a correct statement of the law with respect to the respondent's burden of proof, let alone a conclusion that the respondent had satisfied his burden of proof. In its decision, the court stated: "This court cannot conclude that it would be in C's long-term best interests to be deprived of her biological relatives ([D], [E], and [Z]) when it has not been shown that placement with her paternal grandmother would be detrimental to her." In the absence of a countervailing analysis, this statement leads us to conclude that the court improperly placed the burden of proof on the petitioner and C, both of whom opposed the respondent's motion, to demonstrate that transferring guardianship to D would be detrimental to C.

Having determined that the court applied an incorrect legal standard, we must consider the proper remedy. Our Supreme Court has stated that, "[w]hen an incorrect legal standard is applied, the appropriate remedy is to reverse the judgment of the trial court and to remand the case for further proceedings." *Nationwide Mutual Ins. Co. v. Pasiak*, 346 Conn. 216, 227, 288 A.3d 615 (2023). We are persuaded that the court's error requires a new hearing with respect to the motion to transfer guardianship.¹⁵

II

Next, we consider the petitioner's claim with respect to the portion of the judgment denying the petition¹⁶ to terminate the respondent's parental rights with respect to C.¹⁷ The petitioner argues that, having found that multiple grounds existed for terminating the respondent's parental rights with respect to C, the court thereafter erred in denying the petition to terminate his parental rights without considering whether that ruling was in C's best interests, instead focusing on the fact that D was a resource to care for C. We agree with the petitioner.

“Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. . . . Subdivision (3) of § 17a-112 (j) carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . Because a respondent’s fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun. . . .

“If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence.” (Citation omitted; internal quotation marks omitted.) *In re Autumn O.*, 218 Conn. App. 424, 430–31, 292 A.3d 66, cert. denied, 346 Conn. 1025, 294 A.3d 1026 (2023). “[Section] 17a-112 (k) requires the court in the dispositional phase to make written findings regarding seven statutory factors, including ‘[t]he timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent’ and whether the department ‘has made reasonable efforts to reunite the family’ General Statutes § 17a-112 (k) (1) and (2). The factors, however, serve simply as guidelines to assist the court in its determination of the child’s best interest, and each factor need not be proven by clear and convincing evidence.” (Footnote omitted.) *In re Victoria B.*, 79 Conn. App. 245, 258–59, 829 A.2d 855 (2003).

“In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of the child. . . . It is well settled that we will overturn the trial court’s decision that the termination of parental rights is in the best interest of the [child] only if the court’s findings are clearly erroneous. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the [respondent’s] parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make writ-

ten findings regarding seven statutory factors delineated in [§ 17a-112 (k)]. . . . The seven factors serve simply as guidelines for the court and are not statutory prerequisites that need to be proven before termination can be ordered. . . . There is no requirement that each factor be proven by clear and convincing evidence. . . .

“[T]he fact that the legislature [has interpolated] objective guidelines into the open-ended fact-oriented statutes which govern [parental termination] disputes . . . should not be construed as a predetermined weighing of evidence . . . by the legislature. [If] . . . the record reveals that the trial court’s ultimate conclusions [regarding termination of parental rights] are supported by clear and convincing evidence, we will not reach an opposite conclusion on the basis of any one segment of the many factors considered in a termination proceeding Indeed . . . [t]he balancing of interests in a case involving termination of parental rights is a delicate task and, when supporting evidence is not lacking, the trial court’s ultimate determination as to a child’s best interest is entitled to the utmost deference. . . . [A] trial court’s determination of the best interests of a child will not be overturned on the basis of one factor if that determination is otherwise factually supported and legally sound. . . .

“A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made.” (Citations omitted; internal quotation marks omitted.) *In re Aubrey K.*, 216 Conn. App. 632, 654–55, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023). “[A] judicial termination of parental rights may not be premised on a determination that it would be in the child’s best interests to terminate the parent’s rights in order to substitute another, more suitable set of adoptive parents. Our statutes and [case law] make it crystal clear that the determination of the child’s best interests comes into play only after statutory grounds for termination of parental rights have been established by clear and convincing evidence. . . . The court, however, is statutorily required to determine whether the parent has achieved such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child” (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *In re Corey C.*, 198 Conn. App. 41, 80–81, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.2d 217 (2020).

In the present case, the petitioner does not claim that the court’s best interests determination with respect to the respondent was clearly erroneous. Rather, the petitioner argues that the court, relying on its decision to award legal guardianship of C to D, improperly failed

to make such a determination at all. Because the claim focuses not on the outcome of a proper analysis, but on the propriety of the court's legal analysis of the petition to terminate the respondent's parental rights, we construe it to raise an issue of law that is subject to our plenary review. See, e.g., *In re James O.*, 160 Conn. App. 506, 515, 127 A.3d 375 (2015) (claim that court considered improper factors and thus did not engage in proper analysis of termination of parental rights petition warrants plenary review), *aff'd*, 322 Conn. 636, 142 A.3d 1147 (2016).

Our careful examination of the trial court's memorandum of decision reflects that, in the adjudicative phase of the termination of parental rights proceeding, the court unambiguously found "that the statutory grounds alleged for termination of the parental rights of [T] and [the respondent] exist." In the dispositional phase of the proceeding, the court correctly stated that it had to determine "whether termination of [T's] and [the respondent's] parental rights [was] in the best interests of C." The court made findings pursuant to the seven factors enumerated in § 17a-112 (k). Before addressing the issue of whether it was in C's best interests to terminate the respondent's parental rights, however, the court then analyzed and ruled on the respondent's motion to transfer legal guardianship of C to D. After concluding that it was in C's best interests to grant the motion, the court finally set forth what it entitled its "Best Interest Conclusion."

Although, in the dispositional portion of its decision, the court made several subordinate findings concerning the respondent, all of which strongly suggested that the court would likely conclude that the termination of his parental rights is in C's best interests, it is significant that the court did not thereafter in the best interests portion of its decision set forth a finding concerning the dispositive issue of whether terminating *his* parental rights with respect to C was in C's best interests. Instead, the court concluded that terminating T's parental rights with respect to C was in C's best interests and that, "[h]aving found by clear and convincing evidence that statutory grounds for termination of the parental rights of [the respondent] exist, the court finds that adoption of C is not appropriate as . . . [D] is a suitable and worthy person" and "that legal guardianship of C, vested in [D], is in C's best interests."

The petitioner argues, and we agree, that the court appears to have denied the termination petition as to the respondent solely because it concluded that D should become C's legal guardian. There was no basis in law for the court to have conflated the issues of whether legal guardianship should be vested in D and whether the petition to terminate the respondent's parental rights should be granted. Stated otherwise, the court's conclusion that it was in C's best interests for a biologi-

cal relative, D, to become C's legal guardian was immaterial to the court's evaluation of whether, in the dispositional phase of the proceedings, it was in C's best interests to terminate the respondent's parental rights.

For the foregoing reasons, we conclude that the court misapplied the law in adjudicating the petition with respect to the respondent's parental rights with regard to C. The proper remedy is for this court to reverse the judgment of the trial court denying the termination petition with respect to the respondent and to remand the case to the trial court for a new dispositional hearing at which it solely focuses on whether it is in C's best interests to terminate the respondent's parental rights with respect to her.¹⁸ In reaching this conclusion, we are mindful of the factual nature of the court's inquiry as to whether termination of the respondent's parental rights is in C's best interests. Although the court made several findings concerning the respondent pursuant to § 17a-112 (k), which are strongly suggestive that termination of the respondent's parental rights would be in C's best interests, it did not state an ultimate finding with respect to what was in C's best interests as far as the respondent's parental rights are concerned. Similarly, although the court's factual findings are strongly suggestive of termination, we cannot speculate as to what ultimate finding the court might have reached on the basis of these findings. "[The] seven factors serve simply as guidelines to the court and are not statutory prerequisites that need to be proven before termination can be ordered We have held . . . that the petitioner is not required to prove each of the seven factors by clear and convincing evidence. . . . Where . . . the record reveals that the trial court's ultimate conclusions [regarding termination of parental rights] are supported by clear and convincing evidence, we will not reach an opposite conclusion on the basis of any one segment of the many factors considered in a termination proceeding" (Citation omitted; emphasis omitted; internal quotation marks omitted.) *In re Nioshka A. N.*, 161 Conn. App. 627, 635–36, 128 A.3d 619, cert. denied, 320 Conn. 912, 128 A.3d 955 (2015).

As this court has observed, "[a]t a dispositional hearing under . . . § 17a-112 (d), the emphasis appropriately shifts from the conduct of the parents to the best interests of the children. . . . *Our review is limited to determining whether the trial court's judgment was clearly erroneous or contrary to law.* . . . This court does not retry the case or evaluate the credibility of the witnesses. . . . Rather, we must defer to the [trier of fact's] assessment of the credibility of the witnesses based on its firsthand observation of their conduct, demeanor and attitude. . . . In a case that is tried to the court . . . the judge is the sole arbiter of the credibility of witnesses, and the weight to be given to their specific testimony." (Citations omitted; emphasis added; internal quotation marks omitted.) *In re Felicia*

B., 56 Conn. App. 525, 526, 743 A.2d 1160, cert. denied, 252 Conn. 951, 748 A.2d 298 (2000).

The judgment granting the respondent father's motion to transfer guardianship is reversed and the case is remanded for a new hearing on that motion; the judgment denying the petition to terminate the respondent father's parental rights is reversed only with respect to the dispositional determination regarding the respondent father and the case is remanded for a new dispositional hearing for a determination of whether the termination of the respondent father's parental rights with respect to C is in her best interests; the judgment on the petition to terminate the respondent parents' parental rights is affirmed in all other respects.

In this opinion the other judges concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the court.

** August 16, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

¹ In the underlying proceedings, the court also granted the petitioner's motion to terminate the parental rights of C's biological mother, T, with respect to C. T has not appealed from the judgment and has not participated in this appeal. Our references in this opinion to the respondent are to Christopher C. Our resolution of the claims in this appeal do not affect the judgment rendered against T.

² Pursuant to Practice Book § 79a-6 (c), the attorney for the minor child has filed a letter with the Office of the Appellate Clerk adopting the position of the petitioner.

³ With respect to the respondent, the petitioner alleged in the termination petition filed on May 12, 2021, that (1) C had been found in a prior proceeding to have been neglected, abused, or uncared for and the respondent had failed to achieve the degree of personal rehabilitation that would encourage the belief that within a reasonable time, considering the age and needs of C, he could assume a responsible position in her life; (2) C had been denied by acts of commission or omission of the respondent the care, guidance, or control necessary for her physical, educational, moral or emotional well-being; (3) an ongoing parent-child relationship did not exist between the respondent and C; and (4) the respondent, the father of a child who was under the age of seven and who was neglected, abused, or uncared for, had failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of C, he could assume a responsible position in her life and his parental rights as to another child were previously terminated pursuant to a petition filed by the petitioner. See General Statutes § 17a-112 (j) (3) (B) (i), (C), (D), and (E).

On December 2, 2021, the petitioner amended the termination petition to allege that reasonable efforts to reunify were not required for the respondent and T because the court, on November 20, 2020, and September 28, 2021, had approved a permanency plan other than reunification in accordance with General Statutes § 17a-111b.

⁴ The court previously had approved the permanency plans on November 20, 2020, and September 28, 2021.

⁵ "The results were unknown when the trial concluded."

⁶ General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could

assume a responsible position in the life of the child”

⁷ General Statutes § 17a-112 (j) provides in relevant part: “The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (E) the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent’s parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families”

⁸ General Statutes § 17a-112 (j) provides in relevant part: “The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (C) the child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child’s physical, educational, moral or emotional well-being, except that nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights”

⁹ General Statutes § 17a-112 (j) provides in relevant part: “The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child”

¹⁰ General Statutes § 17a-112 (k) provides: “Except in the case where termination of parental rights is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption and Safe Families Act of 1997, as amended from time to time; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child’s parents, any guardian of such child’s person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent’s circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.”

¹¹ The motion was filed on January 3, 2022. On the same date, the respondent also filed a motion to consolidate the motion to transfer guardianship with the petition for termination of parental rights. As discussed earlier in this opinion, the court held a consolidated hearing on the petition and the motion to transfer guardianship.

¹² The court, however, did not correct the remainder of its original decision and did not alter any of its other findings with respect to the termination of parental rights proceeding.

¹³ Practice Book § 35a-12A (b) provides: “In cases in which a motion for transfer of guardianship seeks to vest guardianship of a child or youth in

any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interests of the child. In such cases, there shall be a rebuttable presumption that the award of legal guardianship to that relative shall be in the best interests of the child or youth and that such relative is a suitable and worthy person to assume legal guardianship. The presumption may be rebutted by a preponderance of the evidence that an award of legal guardianship to such relative would not be in the child's or youth's best interests and such relative is not a suitable and worthy person."

¹⁴ Practice Book § 35a-12A (c) provides: "In cases in which a motion for transfer of guardianship, if granted, would require the removal of a child or youth from any relative who is the licensed foster parent for such child or youth, or who is, pursuant to an order of the court, the temporary custodian of the child or youth at the time of the motion, the moving party has the initial burden of proof that an award of legal guardianship to, or an adoption by, such relative would not be in the child's or youth's best interest and that such relative is not a suitable and worthy person. If this burden is met, the moving party then has the burden of proof that the movant's proposed guardian is suitable and worthy and that transfer of guardianship to that proposed guardian is in the best interests of the child."

¹⁵ The petitioner also argues that the court (1) erred as a matter of law by prospectively ordering the transfer of guardianship, reflecting that it had speculated about C's best interests in the future and (2) found, contrary to its findings concerning the strong bond that C has with her foster family, that D was suitable and worthy to assume guardianship over C and that transferring guardianship was in C's best interests. In light of our conclusion that a new trial is required because the court did not apply the correct burden of proof in ruling on the respondent's motion to transfer guardianship, we do not reach these additional arguments. Although this court may consider additional claims that, despite not being dispositive of the appeal, are sufficiently likely to arise on remand; *Murchison v. Waterbury*, 218 Conn. App. 396, 412, 291 A.3d 1073 (2023); we are not persuaded that these additional arguments fall into that category. Addressing these claims would require this court to speculate that, applying the correct burden of proof, the trial court will reach the same factual and legal conclusions that it did in rendering its prior judgment on the motion to transfer guardianship.

¹⁶ As stated in our recitation of the procedural history, the court did not explicitly "deny" the petition with respect to the respondent but stated in its orders that "[t]he parental rights of [the respondent] are not terminated." We interpret this order to be the equivalent of a denial of the petition with respect to the respondent.

¹⁷ The petitioner argues that, if we conclude that reversible error exists with respect to the motion to transfer guardianship, we should summarily reverse the court's denial of the petition with respect to the respondent's parental rights. In this regard, the petitioner argues that the two decisions, which were addressed in the same memorandum of decision, are inextricably linked to an improper evaluation of C's best interests. We disagree with the petitioner's view. We have concluded in part I of this opinion that the court committed reversible error in granting the motion to transfer guardianship because it did not apply the proper burden of proof. We did not reach the petitioner's alternative claims of error with respect to the court's evaluation of C's best interests in its adjudication of the motion. See footnote 15 of this opinion.

¹⁸ As we stated previously in this opinion, in the adjudicative phase of the termination of parental rights hearing, the trial court found by clear and convincing evidence that multiple statutory grounds for termination of the respondent's parental rights with respect to C had been proven by clear and convincing evidence. In this appeal, there is no claim that the court erred with respect to its adjudicative findings, nor does our resolution of the claims raised in this appeal call into question the propriety of those adjudicative findings. Accordingly, although we conclude that the trial court committed legal error in the dispositional phase of the hearing, and a new dispositional hearing is necessary, we need not and do not set aside the findings made in the adjudicative phase of the hearing. See, e.g., *In re Juvenile Appeal (83-BC)*, 189 Conn. 66, 81, 454 A.2d 1262 (1983) (judgment terminating respondent's parental rights is "set aside except for the adjudication of the existence of the [statutory] ground for termination" and is remanded for new dispositional hearing).

