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ZARELLA, J., dissenting. In the present action, the petitioner, the commissioner of children and families, sought to terminate the respondent's parental rights pursuant to General Statutes § 17a-112 (j), which provides in relevant part: "The Superior Court, upon notice and hearing as provided in [General Statutes §§] 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (2) termination is in the best interest of the child, and (3) . . . (B) . . . (ii) . . . the parent . . . 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" The parties, the majority and I agree that this statute places the burden of proof on the *petitioner* to show by clear and convincing evidence that the parent has failed to reach the requisite level of personal rehabilitation; in other words, the burden of proof is not on the *parent* to establish progress in his or her personal rehabilitation. I depart from the majority, however, with respect to whether the trial court held the parties to this statutory allocation. I am not sufficiently convinced that the trial court did in fact protect the constitutional rights of the respondent. I therefore respectfully dissent and would reverse the judgment of the Appellate Court and direct it to remand the case to the trial court for a new trial.

Because the issue on appeal requires us to review the construction of the trial court's judgment, our review is plenary. See, e.g., *Sosin v. Sosin*, 300 Conn. 205, 217, 14 A.3d 307 (2011) ("[t]he interpretation of a trial court's judgment presents a question of law over which our review is plenary"). "As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *Id.*, 217–18. Additionally, "[a]n articulation is appropriate [when] the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis [on] which the trial court rendered its decision, thereby sharpening the issues on appeal. . . . An articulation, however, is not an opportunity for a trial court to substitute a new decision [or] to change the reasoning or basis of a prior decision." (Citations omitted; internal quotation marks omitted.) *Miller v. Kirshner*, 225 Conn. 185, 208, 621 A.2d 1326

(1993).

Upon consideration of the trial court record, the majority concludes that the trial court's decision, read as a whole and considered together with the subsequent articulations, indicates that the trial court properly required the petitioner to prove by clear and convincing evidence that the respondent was unable to achieve personal rehabilitation. In that connection, the majority observes that, to the extent that the trial court's decision contained any ambiguity, "[w]e read an ambiguous trial court record so as to support, rather than [to] contradict, its judgment." (Internal quotation marks omitted.) *Matza v. Matza*, 226 Conn. 166, 187, 627 A.2d 414 (1993). This principle, although appropriate when we are required to extrapolate facts from a sparse record, should not be applied when we must determine whether a trial court properly stated and applied the correct burden of proof. The majority's application of this principle fails to provide convincing assurance that the petitioner met the stringent standard of proving its case by clear and convincing evidence. Effectively, the majority dismisses any ambiguity in the trial court's reasoning by assuming that the constitutional right of the respondent was not violated. Thus, I wholly disagree with the majority's reliance on this principle in the present case.

I further disagree with the majority because I believe that (1) a parent's constitutional and statutory right to family integrity counsels in favor of strictly construing a trial court's adherence to the procedural protections that were put in place to guarantee that fundamental right, (2) the court's memorandum of decision contains statements unambiguously shifting the burden of proof to the respondent, and (3) the subsequent articulations could not correct the court's initial misallocation of the burden of proof. For similar reasons, I also agree with the well reasoned opinion of the dissenting judge of the Appellate Court in the present case. See *In re Jason R.*, 129 Conn. App. 746, 774, 23 A.3d 18 (2011) (*Robinson, J.*, dissenting).

Before proceeding to the specific issue raised in this appeal, I first note that, in *State v. Rose*, 305 Conn. 594, 596, 46 A.3d 146 (2012), we upheld the reversal of the conviction of a defendant who had been compelled to stand trial in prison attire. We did not uphold the reversal of the defendant's conviction on the basis that this constituted structural error, nor did we engage in a harmless error analysis. See *id.*, 606. Instead, we elected to uphold the reversal of his conviction in the exercise of our supervisory authority because "[c]ompelling a defendant to stand trial before a jury in identifiable prison clothing undermines the integrity of the defendant's trial and *diminishes the perceived fairness of the judicial system as a whole.*" (Emphasis added.) *Id.*, 608. We therefore upheld the reversal of the conviction even though the error was clearly harmless in that case.

See *id.*, 628–29 (*Zarella, J.*, dissenting).

In the present case, however, the majority expresses no similar concern regarding the perceived fairness of the judicial system, even though it cannot be said with great certainty that a parent’s constitutional right has been adequately safeguarded. In contrast to the extensive record in *Rose* that supported a determination of harmless error, in the present case, the trial court announced the incorrect burden of persuasion on three occasions in an admittedly very close case.¹ The majority nevertheless is satisfied that the trial court applied the proper burden. The disparity between the approaches in *Rose* and the present case is stark. Apparently, the need to ensure the integrity “of the judicial system as a whole”; *id.*, 608; does not extend to afford a parent a new trial when the trial error is serious and repetitive. As I explain more fully in this opinion, I cannot say with any degree of confidence that the trial court applied the correct standard. In light of this uncertainty and the need to safeguard a parent’s constitutional rights, I disagree with the majority’s decision to affirm the judgment of the Appellate Court, which affirmed the trial court’s decision.

Both the United States Supreme Court and this court recognize that a parent’s interest in making “decisions concerning the care, custody, and control of [his or her] children”; (internal quotation marks omitted) *Fish v. Fish*, 285 Conn. 24, 41, 939 A.2d 1040 (2008); is a fundamental right protected by the fourteenth amendment to the United States constitution. See *In re Devon B.*, 264 Conn. 572, 584, 825 A.2d 127 (2003); see also *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). This right encompasses “the most essential and basic aspect of familial privacy—the right of the family to remain together without the coercive interference of the awesome power of the state.” (Internal quotation marks omitted.) *Lehrer v. Davis*, 214 Conn. 232, 237, 571 A.2d 691 (1990). Accordingly, although the state may engage in the “ultimate interference . . . in the parent-child relationship” in certain circumstances; (internal quotation marks omitted) *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648, 671, 420 A.2d 875 (1979); by seeking to sever the relationship between parent and child, it is necessary to require “an appropriately demanding standard of proof so as to guarantee fundamentally fair procedures.” (Emphasis altered; internal quotation marks omitted.) *Lehrer v. Davis*, *supra*, 238.

The “appropriately demanding standard of proof”; *id.*; governing termination proceedings is well established. To ensure that fundamental rights are protected, the burden of proof is always on the party seeking to interfere with that right; therefore, “the burden of proof is *always* on the state when it seeks to remove children from the home.” (Emphasis added.) *In re Juvenile*

Appeal (83-CD), 189 Conn. 276, 295, 455 A.2d 1313 (1983). Furthermore, when the United States Supreme Court addressed the issue of what standard of proof the due process clause requires when a state seeks to terminate parental rights, it determined that a higher burden of proof is necessary “to impress the [fact finder] with the importance of the decision and thereby perhaps to reduce the chances that inappropriate terminations will be ordered.” (Internal quotation marks omitted.) *Santosky v. Kramer*, supra, 455 U.S. 764–65. The court thereupon concluded that, although the precise burden was a matter of state law, the due process clause requires a minimum standard of “clear and convincing” evidence. *Id.*, 769. Accordingly, in Connecticut, § 17a-112 (j) requires the petitioner to carry the burden of proof by clear and convincing evidence in termination proceedings.

This court has “a constitutional duty to ensure that, when [a parent’s fundamental right to raise his or her children] has been curtailed, all relevant legal standards have been fully satisfied” *In re Joseph W.*, 305 Conn. 633, 649, 46 A.3d 59 (2012). Because of this duty, and because a parent’s desire to maintain family unity “is an interest far more precious than any property right”; *Santosky v. Kramer*, supra, 455 U.S. 758–59; I believe that this court must construe a decision terminating parental rights strictly and, consequently, that we should not countenance any ambiguity in the standard applied.²

Moreover, in my opinion, the trial court’s memorandum of decision contains three statements that unequivocally impose a burden on the respondent to prove elements related to the termination of her parental rights. Specifically, the trial court stated: “As of the date of trial [*the respondent*] had not made significant progress to persuade the court *by clear and convincing evidence* that she had met the objectives identified by [the court-appointed psychologist] as important for reunification.” (Emphasis added.) Subsequently in the decision, the court again emphasized that “[*the respondent*] needs to establish” these objectives. (Emphasis added.) Finally, the court found that “[*the respondent*] has not established to the court’s satisfaction that she is prepared educationally or emotionally to assume the primary care role of caring for her children.” (Emphasis added.)

The first and second statements refer to goals that the court-appointed psychologist identified to assist the respondent in maintaining a relationship with her children. The respondent’s apparent inability to meet these objectives appears to have served as an integral factor in the court’s analysis of the best interest of the children and the respondent’s personal rehabilitation. The third statement, in turn, comprised one of the trial court’s required findings, leading to its ultimate decision to

terminate the respondent's parental rights. Each of these three statements therefore relates to an element that was necessary to justify the termination of the respondent's parental rights under § 17a-112 (j) and each unambiguously places the onus on the respondent to produce evidence in her favor.³ Thus, these statements contradict the text of § 17a-112 (j), which requires the petitioner to prove each statutory element "by clear and convincing evidence"

Admittedly, the trial court purports to apply the proper burden of proof by quoting the statutory requirements on the first page of its decision and by paraphrasing these requirements in its final orders. In particular, at the beginning of the memorandum of decision, the court, drawing from the text of § 17a-112 (j), stated that "[i]n order to prevail on its allegations with respect to termination of [a] parent's rights, the [petitioner] must prove by clear and convincing evidence" that the respondent 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 children, [the respondent] could assume a responsible position in the life of the children." (Internal quotation marks omitted.) At the end of its decision, the court stated: "With respect to [the respondent] the court finds that [the petitioner] has proven by clear and convincing evidence that . . . [the respondent] 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 children, she could assume a responsible position in [the] children's lives." Because the import of the foregoing quoted statements from the trial court's decision is apparently clear and because we must give effect to that which is clearly expressed in a court's decision; see, e.g., *Sosin v. Sosin*, supra, 300 Conn. 217; I believe that mere boilerplate language reciting the proper burden of proof cannot trump unambiguous language to the contrary in the court's discussion of the facts of the particular case and its application of the law to those facts.⁴

Finally, the trial court's attempts to revise its original decision in subsequent articulations were unavailing. In the trial court's first articulation, the court stated that it "agree[d] that the language, '[a]s of the date of trial [the respondent] had not made significant progress to persuade the court by clear and convincing evidence that she had met the objectives identified by [the court-ordered psychologist] as important for reunification' suggests a shifting of the burden of proof to [the respondent]." The court proceeded to explain that, in making this statement, its "intention was to conclude that [the respondent] had an obligation, to meet the requirements of [the objectives] in order to be reunited with her two [children]" but ultimately concluded that "[the petitioner] had proved by clear and convincing evidence that, over the period of commitment, [the respondent]

had not addressed successfully her mental health issues, her substance abuse issues, her housing needs, and her ability to set limits on [the] children's behavior." In other words, the trial court stated that it considered the respondent's compliance with the objectives as key to its decision whether she should retain her parental rights. Regardless of whether the respondent's compliance with the objectives was essential to a determination of the level of personal rehabilitation achieved, this explanation fails to justify or disavow the language that, according to the court itself, appeared to shift the burden of proof to the respondent. In short, the burden of proving that the respondent did not satisfy the objectives remained at all times with the petitioner, and neither the language of the memorandum of decision nor the articulation expressly adheres to this structure.

Similarly, in the trial court's second articulation, the court again conceded that language in its memorandum of decision seemed to misallocate the burden of proof but stated that "the decision read in its entirety clearly articulates that the court's conclusion that [the petitioner] provided [the respondent] with the opportunity and services necessary to address the issues [on] which the original commitment was based, and [the respondent] failed to . . . rehabilitate to a degree that reunification was appropriate. The court's decision, taken as a whole, finds that [the petitioner] made reasonable efforts to reunite [the respondent] and the children and that termination of her parental rights was in [the] children's best interest." A recitation of the proper allocation of the burden of proof is notably absent from this articulation.

In fact, I believe that the trial court was unable to explain how its statement that "[the respondent] had not made significant progress to persuade the court by clear and convincing evidence that she had met the objectives" tracked the proper burden of proof. In my opinion, the initial statement unambiguously shifted the burden of proof to the respondent, and, consequently, it was not susceptible to clarification. See, e.g., *Miller v. Kirshner*, supra, 225 Conn. 208 ("[a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification" [internal quotation marks omitted]). Furthermore, I believe that the trial court misconceived the purpose of an articulation, which is to clarify and explain the basis for its prior decision; it is not an opportunity to shift the underlying reasoning.

Because "[a] parent's interest in the accuracy and justice of the decision to terminate his or her parental status is . . . a commanding one"; (internal quotation marks omitted) *Santosky v. Kramer*, supra, 455 U.S. 759; this court should not countenance a judgment that treads, even ever so imperceptibly, on the fundamental right of family integrity. I believe that the failure to

adhere strictly to the proper allocation of the burden of proof constituted an impermissible encroachment on a parent's constitutional right to maintain family integrity and that the trial court was without power to remedy this error in its subsequent articulations. Thus, I disagree with the majority's conclusion that the trial court applied the "appropriately demanding standard of proof so as to guarantee fundamentally fair *procedures*"; (emphasis in original; internal quotation marks omitted) *Lehrer v. Davis*, supra, 214 Conn. 238; and, accordingly, I respectfully dissent.

¹ The trial court noted that the respondent "worked to be reunited with her two boys beginning the day that [the department] invoked the [ninety-six] hour hold. . . . [S]he actively participated in most of the required services in a constructive way. She cooperated with her psychological evaluation and testing; she acknowledged her weaknesses; and she has demonstrated that she is willing to continue to work with [the department of children and families] toward reunification." The trial court was "persuaded" that the respondent "ha[d] made significant efforts to prepare herself to parent"

² The majority notes that this court will presume that a trial court used the correct standard of proof in a civil matter when the trial court has failed to state what standard it has applied. I disagree that this presumption is applicable in the present case, in which the issue concerns which of two cited standards was applied. Rather, the presumption adheres only when the trial court is silent with respect to the applicable standard. See, e.g., *Kaczynski v. Kaczynski*, 294 Conn. 121, 131, 981 A.2d 1068 (2009).

³ Furthermore, not only does the first statement improperly shift the burden of proof to the respondent to show that she has met the psychologist's objectives, but it also imposes a heightened standard of "clear and convincing" evidence.

⁴ For the same reason, other statements to which the majority refers fail to support its conclusion that the trial court's decision, as a whole, applied the statutorily required burden of proof. Specifically, the majority quotes the following four statements from the trial court's memorandum of decision: (1) "In summary, [the department of children and families (department)] has made reasonable efforts to reunite [the respondent] and [the] children including engagement of rehabilitation services that enhanced [the respondent's] care giving skills. The record and exhibits also establish that [the respondent] continued to use marijuana through 2009 and into 2010. That fact continues to generate concern that [the respondent's] cognitive deficits and continued self-medication raise serious doubts about her ability to care for [the children]." (2) "The [petitioner] offered testimony from [department] social workers . . . [and] a [department] case aide [among others] [The respondent] offered no rebuttal to the court at trial." (3) "[T]hroughout the period of commitment up to the date that [the department] filed the pending permanency plan with the court for approval, [the respondent] had not made sufficient progress with her court-ordered specific steps to be reunited with [the] children." (4) "In light of all the evidence, the court has concluded that after [the] children had been in [the department's] custody and their foster home from January 28, 2008, to the hearing in early March, 2010, [the respondent] cannot meet the difficult challenges quickly enough. "It is unclear to me why the majority believes that these statements offer any evidence of the burden of proof applied by the trial court. In contrast to the three statements I rely on, these other statements do not use language suggesting that a particular party needed to establish certain elements. At most, these statements represent objective findings of fact.
