IN RE ERIC M.*
(AC 45693)

Bright, C. J., and Moll and Cradle, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court terminating his parental rights with respect to his minor child, E. Several years before E was born, the father was convicted of, inter alia, risk of injury to a minor and sexual assault in the third degree and was incarcerated. After the father's release from incarceration, one of the conditions of his probation was that he could have no contact with minors under the age of seventeen. He violated his probation twice, and the second violation stemmed from his having contact with E when he was a newborn, which violated the condition that he have no contact with a minor under the age of seventeen. While the father was again incarcerated, E was removed from his mother's care, committed to the care of the petitioner, the Commissioner of Children and Families, and placed with a family member. After his release from incarceration, the father again began serving a period of probation, with the additional condition that he have no unsupervised contact with E unless approved by his probation officer. Although the father generally complied with the terms of his probation, he failed to comply with the specific steps recommended by the Department of Children and Families and ordered by the court. After a trial, the court terminated the father's parental rights on the grounds that there was no ongoing parent-child relationship pursuant to statute (§ 17a-112 (j) (3) (D)) and that he failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i). On the father's appeal to this court, *held:*

1. The respondent father could not prevail on his claim that the trial court improperly determined that the interference exception to the lack of an ongoing parent-child relationship ground for termination did not apply to the circumstances of the present case: contrary to the father's claim, the conditions of his probation and any visitation decisions made by his probation officer were not attributable to the petitioner, and, assuming arguendo that the enforcement of the father's conditions of probation could be attributed to the petitioner, the interference exception would nevertheless not apply because the father was responsible for the lack of a parental relationship by failing to make any effort to

* 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.

establish a relationship with E either during his period of incarceration or after he was released, whether by asking his probation officer, the department, or the court for permission to visit with E or by seeking modification of the conditions of his probation; moreover, given that the initial lack of a parent-child relationship occurred because the father violated his probation by visiting E, which preceded any involvement by the petitioner, there was no basis on which to attribute any responsibility for the initial lack of a parental relationship to the petitioner.

2. The trial court found, by clear and convincing evidence, that the respondent father had failed to rehabilitate sufficiently to assume a responsible position in E's life within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i): the father had not engaged in individual therapy in almost three years, had refused the department's attempts to get him to reengage in treatment, had not participated in intimate partner violence treatment, and had made no effort to seek the permission of the department, his probation officer, or the court to visit E and build a relationship with him, and, accordingly, construing the evidence in a manner most favorable to sustaining the judgment, this court concluded that the trial court reasonably determined, upon the facts found and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its conclusion that the respondent failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i); moreover, the father's reliance on his progress in sex offender treatment to the exclusion of all other evidence of his rehabilitative efforts was misplaced because he provided no authority to support his argument that his compliance with the conditions of his probation obviated the need for him to engage in the services ordered and required for reunification with E, and, given the limited evidence in the record regarding the father's progress in his sex offender treatment and his probation officer's testimony about the father's heightened risk assessment, this court was not persuaded that the trial court's finding that he was doing well in that treatment undermined its conclusion that he had failed to rehabilitate; furthermore, contrary to the father's claim, the court correctly stated the law regarding the legal standard with regard to failure to rehabilitate and applied it to the facts found, and there was no indication that the court applied an incorrect legal standard or improperly focused on the reunification aspect of § 17a-112 (j) (3) (B) (i).

Argued January 10—officially released February 27, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with

** February 27, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

respect to their minor child, brought to the Superior Court in the judicial district of Middlesex, Juvenile Matters at Middletown, where the respondent mother consented to the termination of her parental rights; thereafter, the matter was tried to the court, *Bhatt, J.*; judgment terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

Matthew C. Eagan, assigned counsel, for the appellant (respondent father).

Sara Nadim, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant attorney general, for the appellee (petitioner).

Opinion

BRIGHT, C. J. The respondent father, Eric S., appeals from the judgment of the trial court rendered for the petitioner, the Commissioner of Children and Families, terminating his parental rights to his minor son, Eric M. (Eric),[1] on the grounds that he failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i) and that there is no ongoing parent-child relationship pursuant to § 17a-112 (j) (3) (D).[2] On appeal, the respondent claims

[1] The court also terminated the parental rights of the respondent mother, Melanie M. (mother), who consented to termination and is not participating in this appeal. Because the mother is not participating in this appeal, all references in this opinion to the respondent are to the respondent father.

[2] 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 (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been

that the court improperly (1) determined that the interference exception did not apply to preclude the petitioner from relying on the no ongoing parent-child relationship ground for termination and (2) found that the respondent had not rehabilitated such that he could assume a responsible position in the life of the child. We affirm the judgment of the trial court.

The following facts, as found by the trial court by clear and convincing evidence, and procedural history are relevant to this appeal. "Eric is four and one-half years old. He was removed from his mother's care because of her significant mental health struggles and her continued inability to care for him and keep him safe. Since being removed from [his] mother's care, he has resided with [his] mother's uncle's ex-wife, where he is well taken care of. He receives services for a speech delay but is making good progress. He is currently in preschool and attends full-time. He is happy in his foster home with his foster mother, who meets all of his physical and emotional needs. The foster mother also maintains contact with Eric's maternal and paternal grandparents as well as [his] mother. Eric does not have any memories of [the respondent], nor any pictures of him. He does not ask about [the respondent]. . . .

"[The respondent] is thirty-four years old. He is employed at Subway and resides with his parents. [He]

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 . . . (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 . . . ."

was convicted in August, 2011, of various charges including risk of injury to a minor in violation of General Statutes § 53-21 (a) (2) and sexual assault in the third degree in violation of General Statutes § 53a-72a. He was sentenced to ten years of incarceration, execution suspended after three years, followed by ten years of probation. One of the conditions of his probation was [that he] have no contact with minors under the age of seventeen. He subsequently violated his probation in 2014 and again in 2018. The 2018 violation stemmed from his having a child—Eric—which violated the condition [that he have] no contact with a minor under [the age of] seventeen.

"As a result of that 2018 violation of probation, he was sentenced to eighty-one months in jail, suspended after fifteen months, followed by sixty-four months of probation. The original conditions of probation were reimposed with the exception that unsupervised contact with his newborn child—Eric—would be at the discretion of [his] probation officer. This probation is scheduled to expire in February, 2025."

On September 9, 2019, while the respondent was incarcerated, the petitioner filed a neglect petition and obtained an order of temporary custody for Eric. The court sustained the order of temporary custody on September 12, 2019, and ordered preliminary specific steps for the respondent. On October 10, 2019, Eric was adjudicated neglected and committed to the petitioner's care. On the same date, the court ordered final specific steps for the respondent, which included, among other things, that the respondent take part in counseling and make progress toward parenting and individual goals.

On October 11, 2019, the respondent was released from incarceration and began serving his period of probation with the additional condition that he have no

unsupervised contact with Eric unless approved by his probation officer.

"When Eric came into [the petitioner's] care, the presenting issues for [the respondent] were coping skills, emotional regulation, and intimate partner violence [IPV] based on reports by [Eric's] mother. For purposes of reunification, through the court-ordered specific steps, [the Department of Children and Families (department)] required [the respondent] to focus on these areas through individual therapy and IPV treatment.

"[The respondent] participated in individual therapy at Turning Leaves from June, 2019, through December, 2019. While in therapy, he worked on anger management, coping skills, and emotional regulation. [The department] had concerns about [the respondent] undergoing therapy at Turning Leaves [because Eric's] mother was also receiving therapy at Turning Leaves. [The department] requested that [the respondent] seek therapy elsewhere but he did not do so. [The respondent] stopped attending therapy at Turning Leaves in December, 2019, against clinical advice. His attendance there was inconsistent, but his therapist rated his progress as satisfactory. However, since December, 2019, [the respondent] has not engaged in any individual therapy, despite being referred by [the department]. [The respondent] instead states that he will find himself a program if he needs it.

"[The respondent] was referred to Radiance Innovative Program for IPV treatment. [The respondent] declined to engage in IPV treatment, stating that he was a 'grown man' and would not let [the department] 'treat him like a kid.' Thus, [the respondent] has not engaged in IPV treatment."

On January 31, 2021, the petitioner filed a petition to terminate the respondent's parental rights on the grounds that he failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B)

(i) and that there was no ongoing parent-child relationship between the respondent and Eric pursuant to § 17a-112 (j) (3) (D). The respondent contested the petition, and the court held a trial on May 17, 2022. At trial, the petitioner presented several documentary exhibits, as well as testimony from Craig Jones, the respondent's supervising probation officer, and Vivian Dike, a social worker with the department. The respondent chose not to testify and presented no other evidence.

"[Jones] testified at the [termination of parental rights] trial that [the respondent's] probation—and the condition allowing [Jones] to permit visits with Eric—expired in February, 2022. Thus, according to [Jones], he currently does not have the discretion to permit visits because [the respondent] would be governed by the original condition of probation that he have no contact with minors under [the age of] seventeen.

"The parties expressed significant confusion as to the duration of [the respondent's] probation, when it ends and what his current conditions are. However, the exhibits establish that the probation condition—and the probation it is a condition of—will remain in effect for five years and four months from the date of imposition on or about October, 2018. Thus, it appears that, presently, [Jones] has the discretion to permit [the respondent] to visit Eric. [Jones] has not done so, citing [the respondent's] criminal history. [Jones] testified that it was his understanding that he did not have the discretion to approve any visits but also that [the respondent] has not asked [him] for permission to see Eric since his 2018 [violation of probation]. [The respondent] has made no attempt to seek to clarify or modify the conditions of his probation so that he may have contact—supervised or otherwise—with Eric. Thus, even construing the confusion in the light most favorable to [the respondent]—i.e., [the respondent] is not

categorically prohibited from visiting Eric, [Jones] mistakenly believes that [the respondent] is categorically prohibited from visiting Eric, and [the respondent] shares that mistaken belief—[the respondent] has not attempted to seek clarification or modification of the probation condition that he believes categorically bars him from visiting his biological child. [The respondent] has not asked probation, [the department], or the criminal court for permission to see Eric.

"[Jones] could not recall whether he discussed his decision not to permit contact between [the respondent] and Eric with [Dike]. [Dike] testified that [the department] would also not be in support of [the respondent] visiting Eric, due to [the respondent's] criminal history and his noncompliance with individual therapy and anger management. [The respondent] is undergoing sexual offender treatment pursuant to the conditions of his probation and is doing well in that treatment. Despite [the respondent] signing a release for [the department] to obtain information about his progress in that sex offender treatment, [the department] has been unable to obtain any information. . . .

"[The respondent] has not visited Eric since he was released from incarceration in 2019. He has not asked his probation officer, [the department] or the court for permission to visit Eric. [He] has sent gifts to Eric through the foster mother, but the foster mother has not told Eric that the gifts are from [the respondent]. It is unclear why this decision was made or who made it."

During closing arguments, the court asked counsel for the respondent if he was relying on the interference exception, which precludes a petitioner from relying on the "no ongoing parent-child relationship" ground for termination "when the petitioner has engaged in conduct that inevitably has led to the lack of an ongoing

parent-child relationship between the respondent parent and the child." (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 327–28, 222 A.3d 83 (2019). Counsel for the respondent answered in the affirmative and argued: "My client's been prevented from having a relationship with his child due to the conditions imposed on him through probation. And even if the court were to find that he were to be allowed access with agreement through probation, the department has indicated that it would not have allowed access. So, he has been prevented from—from maintaining or developing a relationship with his child by action of others. And I would rely on [the interference] exception."

On June 7, 2022, the court issued a memorandum of decision terminating the respondent's parental rights and appointing the petitioner as statutory parent for Eric. In the adjudicatory phase,[3] the court found, "by clear and convincing evidence, that [the department] has made reasonable efforts to locate [the respondent] and to reunify him with Eric. . . . [The department] has had contact with him throughout the pendency of this case and has made efforts to provide him with individual counseling and IPV treatment. The court further [found], also by clear and convincing evidence, that [the respondent] is unable or unwilling to reunify with Eric and, further, that reasonable efforts are not

[3] "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under § 17a-112, 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. . . . 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 Shane M.*, 318 Conn. 569, 582 n.12, 122 A.3d 1247 (2015).

required because the court approved a permanency plan other than reunification."

As to the grounds for termination, the court found that the petitioner had proven, by clear and convincing evidence, that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i) and that there was no ongoing parent-child relationship between the respondent and Eric pursuant to § 17a-112 (j) (3) (D). In so finding, the court rejected the respondent's invocation of the interference exception. Finally, in the dispositional phase, the court considered the seven factors set forth in § 17a-112 (k)[4] before finding that it was in Eric's best

[4] 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."

In the present case, the respondent does not challenge the court's best interest findings in the dispositional phase.

interest to terminate the respondent's parental rights. This appeal followed. Additional facts will be set forth as necessary.

I

The respondent first claims that the court improperly determined that the interference exception did not apply in the present case to preclude the petitioner from relying on the no ongoing parent-child relationship ground for termination pursuant to § 17a-112 (j) (3) (D). We are not persuaded.

We begin by setting forth the applicable standard of review. "The applicability of the interference exception under the facts of this case presents a question of law over which we exercise plenary review." *In re November H.*, 202 Conn. App. 106, 132, 243 A.3d 839 (2020). "[T]o the extent that we are required to review the court's subordinate factual findings, we apply the clearly erroneous standard of review. . . . A [subordinate factual] 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. . . . [G]reat weight is given to the judgment of the trial court because of [the trial court's] opportunity to observe the parties and the evidence. . . . [An appellate court does] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . [Rather] every reasonable presumption is made in favor of the trial court's ruling." (Citation omitted; internal quotation marks omitted.) *In re Delilah G.*, 214 Conn. App. 604, 616, 280 A.3d 1168, cert. denied, 345 Conn. 911, 282 A.3d 1277 (2022).

We now turn to the relevant case law regarding the interference exception to the no ongoing parent-child relationship ground for termination. In *In re Jacob W.*, 330 Conn. 744, 758–63, 200 A.3d 1091 (2019), our

Supreme Court discussed the evolution of the interference exception and set forth the following analytical framework to apply when a petitioner seeks to terminate parental rights based on no ongoing parent-child relationship: "[T]he inquiry is a two step process. In the first step, a petitioner must prove the lack of an ongoing parent-child relationship by clear and convincing evidence. In other words, the petitioner must prove by clear and convincing evidence that the child has no present memories or feelings for the natural parent that are positive in nature. If the petitioner is unable to prove a lack of an ongoing parent-child relationship by clear and convincing evidence, the petition must be denied, and there is no need to proceed to the second step of the inquiry. If, and only if, the petitioner has proven a lack of an ongoing parent-child relationship does the inquiry proceed to the second step, whereby the petitioner must prove by clear and convincing evidence that to allow further time for the establishment or reestablishment of the relationship would be contrary to the best interests of the child. Only then may the court proceed to the disposition phase.

"There are two exceptions to the general rule that the existence of an ongoing parent-child relationship is determined by looking to the present feelings and memories of the child toward the respondent parent. The first exception . . . applies when the child is an infant, and that exception changes the focus of the first step of the inquiry. . . . [W]hen a child is virtually a newborn infant whose present feelings can hardly be discerned with any reasonable degree of confidence, it makes no sense to inquire as to the infant's feelings, and the proper inquiry focuses on whether the parent has positive feelings toward the child. . . . Under those circumstances, it is appropriate to consider the conduct of a respondent parent.

"The second exception . . . applies when the petitioner has engaged in conduct that inevitably has led to the lack of an ongoing parent-child relationship between the respondent parent and the child. This exception precludes the petitioner from relying on the lack of an ongoing parent-child relationship as a basis for termination. Under these circumstances, even if neither the respondent parent nor the child has present positive feelings for the other, and, even if the child lacks any present memories of the respondent parent, the petitioner is precluded from relying on [the lack of an ongoing parent-child relationship] as a basis for termination." (Citation omitted; internal quotation marks omitted.) Id., 762–64.

"Further clarification of the interference exception was provided in *In re Tresin J.*, supra, 334 Conn. 331–33. The court in that case opined that the interference exception is akin to the equitable doctrine of clean hands . . . . It also made clear that the interference exception is triggered only by the conduct of the petitioner rather than that of a third party or some other external factor that occasioned the separation. . . . Then, the court explained that [t]he interference exception . . . applies when the actions of the petitioner rendered inevitable the initial lack of a relationship . . . .

"Our cases involving the interference exception demonstrate that the exception does not apply if the actions of the petitioner do not inevitably lead to the lack of a relationship between the respondent and the child. Compare [id., 332 n.12] (interference exception was inapplicable where actions of petitioner did not render inevitable lack of relationship between incarcerated respondent father and child because lack of relationship occurred several years before alleged interference by petitioner), and *In re November H.*, supra, 202 Conn. App. 134 (same), and *In re Alexander C.*, 67 Conn. App.

417, 424–25, 787 A.2d 608 (2001) (interference exception was inapplicable because, although child was placed in foster care within days of birth, incarcerated respondent father, rather than petitioner, created circumstances that caused and perpetuated lack of ongoing parent-child relationship and because respondent made no attempt to modify protective order barring contact with child, which did not require extraordinary and heroic efforts by respondent), aff'd, 262 Conn. 308, 813 A.2d 87 (2003), with *In re Valerie D.*, 223 Conn. 492, 531–35, 613 A.2d 748 (1992) (interference exception was applicable where department took temporary custody of child essentially upon birth and termination hearing took place only few months later because finding of lack of ongoing parent-child relationship was inevitable in absence of extraordinary and heroic efforts by incarcerated respondent mother), and *In re Carla C.*, [167 Conn. App. 248, 276, 143 A.3d 677 (2016)] (interference exception was applicable because, short of extraordinary and heroic efforts by incarcerated respondent father, who had filed numerous contempt motions in attempt to enforce visits with child, petitioner mother was able to completely deny father access to child by obtaining order from prison precluding him from initiating communication with her and child, discarding letters he sent to child and filing motion to suspend child's visitation with father). Consequently, the respondent has the burden of proving that the *petitioner's* interference and conduct *caused* her initial lack of relationship with her child." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Delilah G.*, supra, 214 Conn. App. 634–36; see also *In re Tresin J.*, supra, 334 Conn. 332 n.12 (emphasizing that interference exception "applies when the actions of the petitioner rendered inevitable the *initial* lack of a relationship" (emphasis in original)).

In the present case, the court determined that the petitioner had proven by clear and convincing evidence

both prongs of the lack of an ongoing parent-child relationship ground for termination and that neither recognized exception to that ground applied to the facts involved here. The court explained that "Eric, nearly five years old, is not virtually an infant. Additionally, the petitioner has not interfered with [the respondent's] ability to develop a relationship with Eric. Rather, it is [the respondent's] conduct that has created that interference. His criminal conviction and the resultant conditions of his probation have interfered with his ability to develop a relationship with Eric. It is important to note that the evidence before this court establishes that [the respondent] has not asked [the department], his probation officer or the criminal court for their permission to visit Eric. Thus, the court finds by clear and convincing evidence that [the petitioner] has proven this ground for termination . . . . Eric has no memories of [the respondent] . . . . There is no ongoing parent-child relationship. . . .

"The court also finds by clear and convincing evidence that to allow further time for [the respondent] to establish a parent-child relationship would be detrimental to Eric's best interest, in light of the fact[s] that [the respondent] has no relationship with Eric, that Eric is well taken care of in his foster home, that Eric has a strong bond with his foster mother with whom he has resided for almost three years and [to] who[m] he looks . . . for all his needs and comfort. Even construing the ambiguity in his probation conditions in favor of [the respondent]—that is, whether he is permitted to have contact with Eric at the discretion of his probation officer or, as the probation officer believes, not at all—the evidence is clear that [the respondent] has made no effort to visit Eric and has not asked [the department], his probation officer or the criminal court for permission to visit Eric. It appears that [the respondent] will be on probation for at least another year, thus

further hindering his ability to develop a relationship with Eric."

On appeal, the respondent does not challenge the court's findings that no ongoing parent-child relationship exists and that allowance of further time for the establishment of the relationship would be contrary to the child's best interests. Instead, he claims that the court incorrectly determined that the interference exception did not apply to the facts of this case.[5] More specifically, the respondent claims that the court improperly concluded that his "criminal conviction and [the] terms of [his] probation were grounds for determining [that] the interference exception did not apply to this case" and that he "perpetuated the lack of an ongoing parent-child relationship." He argues that "the state, through conditions of probation and the department's determination that it would not support modification of those terms, excluded the respondent from [Eric's] life. . . . The respondent's options were to visit his son despite the terms of probation that prohibited him from doing so, thereby risking additional incarceration and probation, or not visiting his son at all, thereby demonstrating that he had no ongoing parent-child relationship. Placing the respondent in such a position is interference."

The petitioner responds that the "court properly found no interference by any party, including . . . the petitioner in this case. . . . The interference exception focuses solely on the actions of the party petitioning to terminate parental rights, which in this case was the [petitioner]. . . . The actions of the probation officer are irrelevant to the trial court's interference analysis. The existence of probation in [the respondent's] life was a result of his own criminal actions and not that of any third party." (Citation omitted.) We agree with

[5] The respondent does not challenge the court's determination that the virtual infancy exception did not apply in the present case.

the petitioner and conclude that the court properly determined that the interference exception did not apply in the present circumstances.

As an initial matter, we disagree with the respondent's assertion that the conditions of his probation and any visitation decisions made by his probation officer are attributable to the petitioner because "[a]ll of it is state action." Leaving aside the different purposes served by the department and the Office of Adult Probation, we simply reject the premise that a lawfully imposed condition of probation triggers the interference exception. In *In re Jacob W.*, supra, 330 Conn. 766–67, our Supreme Court recognized that, "[b]ecause protective orders are commonly issued in cases of sexual assault, applying [the interference exception in such cases] would yield the bizarre result that a noncustodial parent who has been convicted of a sexual assault that results in a protective order that has the direct or practical effect of preventing the parent from maintaining a relationship with his or her child would nonetheless automatically be immune from termination on the basis of no ongoing parent-child relationship." The respondent in the present case urges this court to embrace such a "bizarre result" and conclude that the interference exception was triggered by enforcement of the lawfully imposed conditions of the respondent's probation. We decline to do so.

Moreover, given that the initial lack of a parent-child relationship occurred because the respondent violated his probation by visiting Eric in 2018, which preceded any involvement by the petitioner, there is no basis on which to attribute any responsibility for the initial lack of a parental relationship to the petitioner. See *In re Tresin J.*, supra, 334 Conn. 332 n.12 (concluding that interference exception did not apply when department became involved with respondent and family several years after initial lack of relationship because "it was

not the department's opposition to visitation on the recommendation of [the child's] clinicians, who deemed it potentially disruptive to the progress that he was making with his foster mother, which resulted in the separation that led to the lack of a parent-child relationship").

In addition, assuming arguendo that the enforcement of the respondent's conditions of probation could be attributed to the petitioner, which it cannot, we nevertheless conclude that the court properly determined that the interference exception did not apply because the respondent was responsible for the lack of a parental relationship by failing to make any effort to establish a relationship with Eric either during his period of incarceration or after he was released. See *In re Carla C.*, supra, 167 Conn. App. 272–73 ("parent's perpetuation of the lack of a relationship by failing to use available resources to seek visitation or otherwise maintain contact with the child may establish the lack of an ongoing parent-child relationship"); see also *In re Alexander C.*, supra, 67 Conn. App. 424–25 (concluding that "the respondent, rather than the [petitioner], created the circumstances that caused and perpetuated the lack of an ongoing relationship between the respondent and [the child]" because, although respondent was prohibited from contacting minor child pursuant to protective order, he made no attempt to modify it). In particular, the respondent neither asked his probation officer for permission to visit with Eric nor sought to modify this condition of probation.

The respondent argues that he should not be faulted for not undertaking such actions given the circumstances confronting him. In his principal brief to this court, the respondent acknowledges that "our case law demands that the respondent show interest in his son and use what means are available to him to effectuate visitation" but claims that, "[i]n this case, the record

demonstrates that any attempt by the respondent to modify the terms of his probation would have been futile." He first points to the confusion regarding the conditions of his probation and claims that "[Jones] was asserting that he no longer had discretion to permit the visits. This assertion was incorrect but the respondent should not be faulted for reasonably relying on the statements of the man charged with overseeing his probation." We are not persuaded.

Jones testified that he thought that he, in his role as the respondent's probation officer, lost the ability to consent to visitations in February, 2022. Even assuming that this belief was communicated to the respondent, that does not explain why the respondent did not request visitations between his release from incarceration in 2019 and February, 2022. Thus, the respondent's reliance on Jones' incorrect assertion does not explain his inaction for more than two years after being released from incarceration.

The respondent also argues that the court improperly faulted him for failing to seek to modify the terms of his probation after he was released from incarceration in 2019 because his "probation was reviewed on August 20, 2021, during the pendency of the termination process. After the review, the terms of his probation were continued. Thus, although the respondent could, theoretically, have filed a motion to modify the terms of his probation, such a filing, which requires good cause shown, would arguably have been frivolous given that his probation had been continued." We are not persuaded for a number of reasons.

First, the fact that the respondent's probation was reviewed and continued in August, 2021, does not mean that the conditions of his probation could not have been modified at that time or any other time. In fact, the August, 2021 review presented the respondent with an

opportunity to request a modification of the visitation condition. Yet, he failed to take advantage of that opportunity. Second, the court faulted the respondent for failing to seek to modify the conditions of his probation *after* February, 2022, when Jones believed he lost the discretion to allow visitation. That purported change in the conditions of his probation in February, 2022, would not have been reviewed in August, 2021, and, thus, could have supported a motion to modify. Finally, the respondent's reliance on the August, 2021 review does not explain why the respondent did not seek a modification of his conditions of probation before then if he thought that those conditions were interfering with his ability to visit with Eric. Accordingly, the respondent's explanation for his inaction does not undermine the court's reasoning. See *In re Carla C.*, supra, 167 Conn. App. 279 ("where there is a protective order in place, the burden is on the respondent to seek modification of the protective order or face a finding of no ongoing parent-child relationship").

In further support of his claim that any efforts he could have undertaken to see Eric would have been futile, the respondent highlights the fact that both Jones and Dike testified that they would not have approved his requests for visits with Eric. Importantly, however, neither Jones nor Dike testified that they had communicated to the respondent their position regarding visitation with Eric, and, because the respondent did not testify, there is no evidence in the record indicating that the respondent knew his requests would be denied. Therefore, we are not persuaded by the respondent's post hoc justification for his inaction.

Consequently, we conclude that the court properly determined that the interference exception did not apply in the present case. The petitioner did not engage in conduct that inevitably led to the respondent's lack

of a parent-child relationship with Eric, and the respondent perpetuated the lack of such a relationship by failing to make any effort to develop or maintain a relationship with Eric.

II

The respondent also claims that the court improperly found that he had failed to rehabilitate sufficiently to assume a responsible position in Eric's life within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i). We disagree.

We begin by setting forth the relevant legal principles and the applicable standard of review. "The trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely when [he] will be able to assume a responsible position in [his] child's life. Nor does it require [him] to prove that [he] will be able to assume full responsibility for [his] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he] has achieved, if any, 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. . . . Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [his] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue. . . .

"[The] completion or noncompletion [of the specific steps], however, does not guarantee any outcome. . . .

Accordingly, successful completion of expressly articulated expectations is not sufficient to defeat a department claim that the parent has not achieved sufficient rehabilitation. . . . Whereas, during the adjudicatory phase of a termination proceeding, the court is generally limited to considering events that precede the date of the filing of the petition or the latest amendment to the petition, also known as the adjudicatory date, it may rely on events occurring after the [adjudicatory] date . . . when considering the issue of whether the degree of rehabilitation is sufficient to foresee that the parent may resume a useful role in the child's life within a reasonable time. . . .

"A conclusion of failure to rehabilitate is drawn from *both* the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . . We will not disturb the court's subordinate factual findings unless they are clearly erroneous." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Brian P.*, 195 Conn. App. 558, 568–69, 226 A.3d 159, cert. denied, 335 Conn. 907, 226 A.3d 151 (2020); see also *In re Ryder M.*, 211 Conn. App. 793, 814, 274 A.3d 218 ("court's determination that the respondent failed to rehabilitate sufficiently is subject to the evidentiary sufficiency standard of review, and we will not disturb the court's subordinate findings vis-à-vis that

determination unless they are clearly erroneous"), cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).[6]

In the present case, the court found, by clear and convincing evidence, that the respondent had failed to achieve a sufficient degree of personal rehabilitation. The court explained: "Eric was adjudicated neglected on October 10, 2019. . . . [The respondent] has failed to achieve sufficient personal rehabilitation. [He] has not engaged in individual therapy since December, 2019, and has refused [the department's] attempts to get him to reengage in treatment. [The respondent] has also not participated in IPV treatment. [He] is also prohibited from seeing Eric by virtue of the conditions of his probation and has made no effort to seek the permission of [the department], his probation officer, or the criminal court to visit Eric and build a relationship with him." For those reasons, the court had "no confidence that within a reasonable time, considering the age and needs of Eric, who has been in [the petitioner's] care for almost three years, [the respondent] could assume a responsible position in his life. [The respondent] may not be able to see or visit Eric for another year or more, depending on when his probation expires."

On appeal, the respondent attempts to minimize the court's findings that he refused to engage in individual therapy and IPV treatment and failed to make any effort to build a relationship with Eric since the adjudication date, but he does not claim that those findings are clearly erroneous. Instead, despite arguing that sufficiency of the evidence is not the proper standard of review, the respondent argues that not participating in

[6] Although the respondent claims that evidentiary sufficiency is an improper standard of review in child protection cases, he also concedes that, as an intermediary court of appeals, this court is bound by our Supreme Court's decision in *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015), in which the court held that "the appropriate standard of review is one of evidentiary sufficiency . . . ."

such therapy and treatment was not a sufficient reason for the court to find that the respondent had failed to rehabilitate. He explains that he ceased engaging in individual therapy at Turning Leaves at the behest of the department and that "there is scant evidence in the record regarding the reasons IPV counseling was necessary for the respondent to successfully rehabilitate in terms of his ability to care for [Eric]."[7] The evidence in the record belies both assertions.

The court found that since the respondent stopped attending therapy at Turning Leaves in December, 2019, he "ha[d] not engaged in any individual therapy, despite being referred by [the department]. [The respondent] instead state[d] that he will find himself a program if he needs it." At trial, Dike testified that the department "advised [the respondent] to engage in a different treatment, as at the time, [Eric's mother] was also involved in the same treatment and she was already, you know, reporting some controlling behaviors with their relationship. [The respondent] declined and he also declined the IPV [counseling] and he said that [the department] cannot control him, that he's not a kid." Dike further testified that she continued to offer the respondent individual therapy during the years following his discharge from Turning Leaves, but the respondent refused to attend and "said that he was gonna find something on his own, that he didn't need [the department's] help." The respondent, however, never provided the department with any documentation showing that he had complied with individual therapy. Accordingly, the evidence established that, although the department requested that the respondent cease treatment at Turning Leaves, it also referred him for

[7] The respondent also renews his argument that any actions he could have taken to visit Eric would have been futile. For the reasons stated in part I of this opinion, we reject the respondent's futility argument.

individual therapy at a different facility, which he failed to attend.

As to the court's finding that the respondent failed to engage in IPV treatment, although he asserts that there is "scant evidence in the record" regarding his need to engage in IPV treatment, he does not dispute that the department referred him for IPV treatment and that he failed to engage in that service. In addition, the evidence in the record regarding his need for IPV treatment was more than "scant." At trial, Dike testified that her referral for IPV treatment was based on reports from Eric's mother about the respondent's troubling behavior. In the social study in support of the petition for termination, which was admitted into evidence at trial, Dike wrote that "[t]he behaviors include: yelling and screaming at [the] mother, checking her phone often and asking who mother calls, calling her when she is not in the house and asking her where she was and who she was with, and breaking mirrors with his hands when he was angry. Due to these concerns, [the respondent] was recommended . . . to engage in the IPV/anger management program with Radiance Services, but he declined attending."

Accordingly, construing the evidence in a manner most favorable to sustaining the judgment, we conclude that the court reasonably determined, upon the facts found and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its conclusion that the respondent failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i). See, e.g., *In re Shane M.*, 318 Conn. 569, 589, 122 A.3d 1247 (2015) ("the respondent's failure to acknowledge the underlying personal issues that form the basis for the department's concerns indicates a failure to achieve a sufficient degree of personal rehabilitation" (internal quotation marks omitted)).

The respondent nevertheless argues that the court's findings are insufficient to support its conclusion because he "has complied with [the] terms of [his] probation, including sex offender therapy and any other requests from the Office of Adult Probation, which would have included additional mental health treatment if it were deemed necessary." Therefore, according to the respondent, he "engaged in the process of rehabilitation through probation, and, thus, the evidence was insufficient to show by a clear and convincing standard that he had failed to rehabilitate such that he could, as soon as the restrictions of probation were removed, assume care and custody of his son." We are not persuaded.

Essentially, the respondent argues that his compliance with the conditions of his probation obviated the need for him to engage in the services ordered and required for reunification with Eric. He provides, and our research has revealed, no authority to support his argument. Reason alone, however, suggests that the respondent's successful completion of sex offender treatment would not address the IPV and anger management issues that the respondent refused to address through the department's recommended treatment and services.

Moreover, the respondent's reliance on his progress in sex offender treatment to the exclusion of all other evidence of his rehabilitative efforts is misplaced. The respondent concedes that, in connection with his sex offender treatment and the assessment of his risk of reoffending, he "was moved from moderate risk to high risk at one point during his probationary period" but points to the court's finding that "[he] is undergoing sexual offender treatment pursuant to the conditions of his probation and is doing well in that treatment." Immediately following that statement, however, the court stated: "Despite [the respondent] signing a release

for [the department] to obtain information about his progress in that sex offender treatment, [the department] has been unable to obtain any information." In addition, Jones testified at trial regarding the reasons for his determination that visitation with Eric would be inappropriate. He explained that he "used [the respondent's] compliance with [sex offender] treatment, [compliance] with other conditions, to make a—a general picture of whether or not we're gonna allow the—the contact." When asked to be more specific, Jones explained: "Well, he was placed in a higher risk group. He was in a Meriden group, which is a moderate risk level, and moved down to a New Haven group, which was a high-risk group. Therefore, I didn't feel at the time minor contact was warranted [given] his—you know, his risk level was heightened, and he needed to go to a higher level group." In response to the court's further questioning on this point, Jones testified that "it was based on the risk level increasing, it was based on the history of noncompliance with conditions . . . ."[8] Given the limited evidence in the record regarding the respondent's progress in his sex offender treatment and Jones' testimony about the respondent's heightened risk assessment, we are not persuaded that the court's finding that he was "doing well in that treatment" undermines its conclusion that he had failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i).

Finally, the respondent claims that the court applied an incorrect legal standard in finding that he failed to rehabilitate sufficiently. Specifically, the respondent

[8] We note that Jones also stated that, "I'm not sure if I'm supposed to bring this in, but, you know, [the respondent] did fail a polygraph." Counsel for the respondent objected to this testimony, and the court stated that it would "disregard that portion of [his] response." Accordingly, we do not consider the respondent's polygraph tests in reviewing the court's conclusion that the respondent failed to rehabilitate.

claims that, "[b]ecause the trial court interpreted [§ 17a-112 (j) (3) (B) (i)] to mean the respondent had to be in a position to assume full parental care and custody of the child, rather than simply assume a responsible position in the child's life . . . its conclusion that the respondent had failed to rehabilitate is incorrect." Again, we are not persuaded.

"Whether the trial court applied the proper legal standard is subject to plenary review on appeal." *Hartford* v. *CBV Parking Hartford, LLC*, 330 Conn. 200, 214, 192 A.3d 406 (2018).

In its memorandum of decision, the court quoted from our Supreme Court's decision in *In re Shane M.*, supra, 318 Conn. 585–86, explaining that § 17a-112 (j) (3) (B) (i) "does not require [a parent] to prove precisely when [he] will be able to assume a responsible position in [his] child's life. *Nor does it require* [*him*] *to prove that* [*he*] *will be able to assume full responsibility for* [*his*] *child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation* [*he*] *has achieved, if any, 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.*" (Emphasis added; internal quotation marks omitted.)

Despite this correct statement of the law, the respondent argues that the court "did not properly consider the meaning of the 'responsible position in the life of the child' language, which suggests that the respondent need prove only that he would be able to assume some position in the child's life—not necessarily that of full-time parent. Because the trial court's focus was on the reunification aspect of the statute—the portion that insists the parent must be able to resume parenting—its decision should be reversed . . . ."

Simply put, there is no indication in the court's memorandum of decision that it applied an incorrect legal standard or improperly focused on the reunification aspect of the statute. The court correctly set forth the legal standard identified by the respondent and applied it to the facts found. The court specifically stated that it "has no confidence that within a reasonable time, considering the age and needs of Eric, who has been in [the petitioner's] care for almost three years, [the respondent] could assume *a responsible position in his life*." (Emphasis added.) Thus, "in the absence of a contrary indication, we must presume that the court applied the correct legal standard." *State* v. *Petersen*, 196 Conn. App. 646, 668, 230 A.3d 696, cert. denied, 335 Conn. 921, 232 A.3d 1104 (2020).

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE ISABELLA Q.*
(AC 45551)

Prescott, Moll and Cradle, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court terminating his parental rights with respect to his minor child. He claimed that the trial court improperly concluded that, pursuant to statute (§ 17a-112 (j) (1)), he was unable or unwilling to benefit from

* 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.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

reunification services, he failed to rehabilitate in accordance with § 17a-112 (j) (3) (B), and that termination of his parental rights was in the child's best interest. *Held*:

1. Because the respondent father challenged only one of the two separate and independent bases for upholding the trial court's determination that the requirements of § 17a-112 (j) (1) had been satisfied, as he failed to challenge on appeal the court's finding that the Department of Children and Families had made reasonable efforts to reunify him with the minor child, this court did not need to determine whether the trial court implicitly determined that the father was unwilling or unable to benefit from the department's reunification efforts because there was no practical relief that this court could provide and, accordingly, the father's claim was moot.
2. Contrary to the respondent father's claim, the trial court correctly concluded that the father failed to achieve the requisite degree of personal rehabilitation required by § 17a-112 (j) (3) (B) (i) that would encourage the belief that, within a reasonable time, considering the minor child's age and needs, he could assume a responsible position in her life: the court found that the father failed to comply with specific steps to address his mental health and behavioral concerns, including his history of depression and bipolar disorder, his criminal record related to substance abuse, and the multiple past protective orders issued against him to protect the child and her biological mother due to instances of intimate partner violence; moreover, the court concluded that the father's engagement with some services and occasional visitation with the child was inconsistent and insufficient, as he had not visited with her in more than two years, and the father's relationship with his sons, the child's half brothers, did not establish that, considering the age and needs of the child, he could within a reasonable time assume a responsible position in her life; accordingly, the evidence sufficiently supported the court's conclusion that there was clear and convincing evidence that the father failed to achieve a sufficient degree of rehabilitation.
3. The respondent father's claim that the trial court improperly concluded that the termination of his parental rights was in the minor child's best interest was unavailing: the court's judgment was well supported by its written findings on each of the seven factors set forth in § 17a-112 (k), as well as the child's needs, including her need for stability and permanency, that court having found that the child had been in the department's care for approximately three and one-half years in a relative foster home, she had a strong attachment to her foster parents, with whom she wanted to remain and who expressed a willingness to adopt her, and the father had not demonstrated the ability to stabilize his mental health needs and to provide the child with a safe, stable home environment.

Argued January 9—officially released February 27, 2023**

** February 27, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

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, and tried to the court, *Hon. John Turner*, judge trial referee; judgment terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

David B. Rozwaski, assigned counsel, for the appellant (respondent father).

Evan O'Roark, assistant attorney general, with whom were *Tess Shaw*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (petitioner).

Hilliary Lukos, assigned counsel, for the minor child.

Opinion

PRESCOTT, J. The respondent father, Michael Q., appeals from the judgment of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating his parental rights with respect to his daughter, Isabella Q.[1] On appeal, the respondent claims that the court improperly concluded that the petitioner established by clear and convincing evidence that (1) pursuant to General Statutes § 17a-112 (j) (1), the respondent was unable or unwilling to benefit from reunification services, (2) the respondent failed to rehabilitate in accordance with § 17a-112 (j) (3) (B) (i), and (3) termination of the respondent's parental rights was in Isabella's best interests pursuant to § 17a-112 (j) (2). We affirm the judgment of the trial court.

[1] In the same proceeding, the court also terminated the parental rights of Isabella's mother, Theresa B. Because she has not appealed from that judgment, we refer to Michael Q. as the respondent and to Theresa B. by name throughout this opinion.

The trial court found the following facts. Isabella was born in December, 2010, to her mother, Theresa B., and the respondent. The respondent also has two sons, Isabella's half brothers, who reside in Massachusetts with their mother. In September, 2019, the respondent moved from Connecticut to Massachusetts and currently resides there.

The Department of Children and Families (department) has been involved with Isabella since 2014, when she was first adjudicated neglected. On May 9, 2018, Isabella was again adjudicated neglected and placed under an order of protective supervision until November 9, 2018. Before that order of protective supervision expired, Theresa requested that Isabella be removed from her care. An ex parte motion for an order of temporary custody was granted on August 29, 2018. On September 7, 2018, the court modified the May 9, 2018 disposition from protective supervision to commitment of Isabella to the custody of the petitioner. The department placed Isabella in relative foster care with her maternal great aunt and uncle, and she has lived with them for approximately three and one-half years.

Specific steps were issued to the respondent on May 9, 2018, and final specific steps were issued on September 7, 2018. The final specific steps outlined the actions the respondent should take to facilitate his reunification with Isabella and aimed to address the department's concerns regarding his substance abuse, mental illness, and history of intimate partner violence. In particular, the respondent had unaddressed issues related to marijuana and cocaine abuse, as evidenced by his criminal record, a history of depression and bipolar disorder, and a history of protective orders, some of which required him to have no contact with Theresa and Isabella.

On July 30, 2019, the petitioner filed a petition to terminate the parental rights of the respondent and

Theresa, predicated on their failure to achieve a sufficient degree of personal rehabilitation in accordance with § 17a-112 (j) (3) (B) (i). The respondent was duly served a copy of the petition and ordered to appear on August 21, 2019, for a hearing on the matter. At the hearing, he entered a pro forma denial of the allegations in the petition.

The case was continued several times, and the trial on the petition did not commence until August 9, 2021.[2] The trial continued over six nonconsecutive dates and ultimately concluded on January 26, 2022.[3] The petitioner presented testimony from the department social workers who had worked on Isabella's case, her licensed professional counselor, and her foster mother. The respondent testified on his own behalf and called no other witnesses.

The court issued its memorandum of decision on April 6, 2022, granting the petition to terminate parental rights.[4] First, the court found, pursuant to § 17a-112 (j) (1), that the department had made reasonable reunification efforts. The court then concluded, pursuant to § 17a-112 (j) (3) (B) (i), that Isabella had been adjudicated neglected in a prior proceeding and, despite being provided specific steps and extensive services, the respondent had failed to achieve a sufficient degree of personal rehabilitation that would encourage the belief that within a reasonable time, considering the age and

[2] Prior to the commencement of trial, the respondent filed a motion to revoke the commitment of Isabella pursuant to General Statutes § 46b-129. The motion to revoke was consolidated with the trial on the termination of parental rights. On the third day of trial, however, the respondent withdrew his motion to revoke.

[3] The trial took place on August 9, August 11, September 21, September 29 and November 18, 2021, and on January 26, 2022.

[4] Isabella's attorney supported the termination of parental rights. Additionally, on appeal, her attorney adopted the petitioner's brief and supports the affirmance of the trial court's decision.

needs of the child, he could assume a responsible position in Isabella's life.

The court found that the respondent had complied with certain specific steps but had failed to comply with others. The court found him to be noncompliant with the specific steps in the following ways: "He has failed to make progress toward identified goals. . . . He failed to engage in individual counseling to work on his coping, anger management, and parenting skills. He failed to comply with [the department's] requests to submit to a substance abuse screen, and to keep [the department] updated regarding his household makeup. He has not inquired about, requested to participate [in], or attend[ed] [Isabella's] appointments with her medical, dental, or educational providers. He did not visit [Isabella] as often as [the department] permitted. . . . He received therapy and medication management for a brief time in 2018 . . . [but] was unsuccessfully discharged on March 1, 2019. . . . In January, 2021, he reported to [the department] that he had not re-engaged in therapy, and moreover he didn't need it. He has not reengaged in counseling or medication management. . . .

"[He] has a history of [intimate partner violence]. He is not engaged in any mental health treatment, medication management, or domestic violence service[s]. . . . He has presented with loud, 'in your face,' aggressive, erratic, and hostile behaviors in public places. He has directed it toward [department] staff and foster parents, while invading their personal space, and overtalking them. On more than five occasions he has been verbally aggressive, while raging in and out of rooms yelling at [department] social workers. These behaviors were exhibited during visits with [Isabella] and in her presence. . . .

"In September, 2018, [the department] offered [him] weekly visits with [Isabella] supervised by [a visitation

provider]. In January, 2019, [the visitation provider] refused to supervise any more visits due to his reported hostile and threatening behavior towards its staff workers. He was discharged unsuccessfully from [that provider] on January 19, 2019. . . . In March, 2020, due to [COVID-19 pandemic] regulations, [the department] offered [him] in person visits with [Isabella] for one hour at its office. He declined to participate. From April, 2020, through July, 2020, he travelled to Connecticut [from Massachusetts] seven times to purchase marijuana at the dispensary in [Milford].[5] The [department] office where he was offered visitation with [Isabella] was about a five minute drive from the dispensary. He never accepted, scheduled, or requested a visit with [Isabella] during the time he came to Connecticut to buy marijuana.

"[The respondent] was offered weekly telephone calls with [Isabella] throughout the pandemic. The phone calls were placed at the scheduled times requested by him. He often did not answer the phone. Following some calls between [Isabella] and [the respondent], she was so emotionally distressed a clinical intervention was needed. [Her] therapist described her as being scared and upset after talking with him. Her therapist recommended that [Isabella] be the one to choose if she wants to talk with [him]. Some weeks, after reporting his behavior with her on the phone, she chose not to call him.

"During a call on December 6, 2020, [Isabella] felt that [the respondent] talked and interacted with her in an aggressive manner and was very upset. After that, weekly phone calls have been made only when [she] wants to talk with him. Since then, he has never answered. [The respondent] has not spoken with [Isabella] since December 6, 2020. His last in person visit with her was in March, 2020.

[5] The respondent has a medical marijuana certificate.

"When travel restrictions were lifted, [the respondent] was offered in person visits with [Isabella] at the [department] office. He declined. [She] has said she is scared, 'afraid of daddy,' and [does not] want to visit him. She got scared whenever he mentioned [she would] come to live with him. [His] relationship with [her] is strained." (Footnote added.)

The court concluded that, on the basis of its findings, the petitioner had met her burden to prove by clear and convincing evidence the asserted statutory ground for termination, namely, that the respondent failed to achieve a sufficient degree of personal rehabilitation as set forth in § 17a-112 (j) (3) (B) (i). The court then proceeded to the dispositional phase of the proceeding to determine whether termination of parental rights was in Isabella's best interests.

The court first made written findings regarding each of the seven factors set forth in § 17a-112 (k) and considered Isabella's best interests, including her sustained growth, development, well-being, and continuity and stability in her environment.[6] The court made the following findings pertaining to whether termination of

[6] 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 respondent's parental rights was in Isabella's best interests: "[Isabella] has been in the [department's] care since August 29, 2018. . . . [The respondent] has been allotted ample time to rehabilitate but has not made minimum effort[s] to change his circumstances for reunification to occur. . . . The [d]epartment set reasonable and realistic expectations [and] provided . . . final specific steps on September 7, 2018 . . . . Despite these steps [he was] unwilling or unable to avail [himself] of the services offered . . . .

"[Isabella] is placed with her great aunt and uncle . . . . She receives individual attention and a significant amount of support from her foster parents. . . . She loves her foster parents, feels safe living with them, [and] has a strong and healthy attachment and bond with them. She wants to remain with them. . . . [Isabella] 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 foster parents have expressed their desire to adopt her should she become legally free for adoption." On the basis of the foregoing, the court concluded that termination of the respondent's parental rights was in Isabella's best interests. This appeal followed.

I

The respondent first claims that the court improperly determined that he was unable or unwilling to benefit

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."

from reunification services. In response, the petitioner argues that the respondent's claim is moot because he challenges only one of the two separate and independent bases on which the court may conclude that the petitioner satisfied the reasonable efforts prong as set forth in § 17a-112 (j) (1). We agree that his claim is moot because there is no practical relief that this court can afford him with respect to this claim.

The legal principles that govern our review are well established. "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) that the determination of the controversy will result in practical relief to the complainant. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the [appealing party] in any way." (Emphasis omitted; internal quotation marks omitted.) *In re Phoenix A.*, 202 Conn. App. 827, 838–39, 246 A.3d 1096, cert. denied, 336 Conn. 932, 248 A.3d 1 (2021).

"[Section] 17a-112 (j) (1) requires the department to prove by clear and convincing evidence that it has made reasonable efforts to locate the parent and to reunify the child with the parent, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts . . . .

"Because the two clauses are separated by the word unless, this statute plainly is written in the conjunctive. Accordingly, the department must prove either that it has made reasonable efforts to reunify or, alternatively, that the parent is unwilling or unable to benefit from reunification efforts. Section 17a-112 (j) clearly provides that the department is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis omitted; internal quotation marks omitted.) *In re Jorden R.*, 293 Conn. 539, 552–53, 979 A.2d 469 (2009).

In the present case, the court found that the department had made reasonable efforts to reunify the respondent with Isabella. It, however, did not explicitly find that the respondent was unwilling or unable to benefit from the reunification efforts. The respondent has not challenged the court's explicit determination that the department made reasonable efforts to reunify him with Isabella. Rather, he solely challenges the court's purported implicit finding that he was unwilling or unable to benefit from reunification efforts. We need not determine whether an "unwilling or unable" determination was implicit in the court's decision because we conclude that his claim regarding this implicit finding is moot. The court's determination that the department made reasonable efforts was enough for the court to conclude that the petitioner satisfied § 17a-112 (j) (1). Because the respondent challenges only one of the two separate and independent bases set forth in § 17a-112 (j) (1), there is no practical relief that this court can provide. See, e.g., *In re Jorden R.*, supra, 293 Conn. 555; *In re Miracle C.*, 201 Conn. App. 598, 605, 243 A.3d 347 (2020).

II

The respondent next claims that the court improperly concluded, in the adjudicatory phase, that he failed to

achieve the requisite degree of personal rehabilitation required by § 17a-112 (j) (3) (B) (i). We disagree.

The following legal principles are relevant to the respondent's claim. "A hearing on a termination of parental rights petition consists of two phases, adjudication and disposition. . . . In the adjudicatory phase, the court must determine whether the [petitioner] has proven, by clear and convincing evidence, a proper ground for termination of parental rights. . . .

"Failure of a parent to achieve sufficient personal rehabilitation is one of six statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. . . . That ground exists when a parent of a child whom the court has found to be neglected fails to achieve such a degree of rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, the parent could assume a responsible position in the life of that child. . . .

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B)] refers to the restoration of a parent to his or her former constructive and useful role as a parent. . . . The statute does not require [a parent] to prove precisely when [he] will be able to assume a responsible position in [his] child's life. Nor does it require [him] to prove that [he] will be able to assume full responsibility for [his] child, unaided by available support systems. . . . Rather, [§ 17a-112] requires the trial court to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further, that such rehabilitation must be foreseeable within a reasonable time. . . . [The statute] requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he] has achieved, if any, 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. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue. . . .

"A conclusion of failure to rehabilitate is drawn from both the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Citations omitted; internal quotation marks omitted.) *In re Leilah W.*, 166 Conn. App. 48, 66–68, 141 A.3d 1000 (2016).

The respondent challenges neither the court's determination that Isabella was found to be neglected in a prior proceeding nor the other factual findings of the court. Rather, the respondent claims that the cumulative effect of the evidence was insufficient to satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). We disagree.

The court found that the respondent had a history of depression and bipolar disorder, a criminal record related to marijuana and cocaine abuse, and multiple past protective orders against him protecting Theresa and Isabella due to instances of intimate partner violence. The court also determined that the respondent had failed to comply with important specific steps to address these mental and behavioral concerns. See *In re Amias I.*, 343 Conn. 816, 822 n.6, 276 A.3d 955 (2022)

("[s]pecific steps provide notice and guidance to a parent as to what should be done to facilitate reunification and prevent termination of rights" (internal quotation marks omitted)).

Specifically, the court found that the respondent failed to submit to a substance abuse screen, update the department regarding his household makeup, and engage in the parenting of Isabella. He further failed to follow up with counseling appointments and expressed an unwillingness to engage in such services. Instead, he continued to exhibit aggressive and hostile behaviors toward department social workers. This inappropriate behavior occurred during visits with Isabella and she reported that she was afraid of him. The court also found that, although the respondent attended some visits with Isabella, he has refused to participate in in person visits with her since March, 2020. In addition, he was offered weekly telephone calls but often would not answer when Isabella called and he has not spoken with her at all since December 6, 2020.

On appeal, the respondent argues that, because he visited Isabella on certain occasions, either completed services or is willing to engage in services, and maintains a healthy relationship with his sons, Isabella's half brothers, the court improperly concluded that he failed to rehabilitate. We are not persuaded.

Despite noting the respondent's engagement with some services and occasional visitation prior to March, 2020, the court nonetheless concluded that this engagement was inconsistent and insufficient. See, e.g., *In re Ryder M.*, 211 Conn. App. 793, 816–17, 274 A.3d 218 (court's determination that respondent failed to rehabilitate was proper notwithstanding some evidence of respondent's progress), cert. denied, 343 Conn. 931, 276 A.3d 433 (2022). Furthermore, the respondent's relationship with his sons does not establish that, considering the age and needs of Isabella, he could, within a

reasonable time, assume a responsible position in her life. Accordingly, viewing the evidence in the manner most favorable to sustaining the judgment, the evidence sufficiently supported the court's conclusion that there was clear and convincing evidence that the respondent failed to achieve a sufficient degree of rehabilitation, as set forth in § 17a-112 (j) (3) (B) (i).

III

The respondent's final claim is that the court improperly concluded, in the dispositional phase of the proceeding, that the termination of his parental rights was in Isabella's best interest pursuant to § 17a-112 (j) (2). We disagree.

"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. . . .

"It is axiomatic that a trial court's factual findings are accorded great deference. Accordingly, an appellate tribunal will not disturb a trial court's finding that termination of parental rights is in a child's best interest unless that finding is clearly erroneous. . . . 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. . . . [E]very reasonable presumption is made in favor of the trial court's ruling. Additionally, in reviewing the court's findings under the dispositional phase of the proceedings, it is appropriate to read the trial court's opinion as a whole, including its findings in the adjudicatory phase.

"In deciding whether termination of parental rights is in the best interest of the child, the [trial] court shall consider and make written findings concerning the

seven factors listed in § 17a-112 (k), although these 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. . . .

"In addition to considering the seven factors listed in § 17a-112 (k), [t]he best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [his or her] environment. . . . Furthermore, in the dispositional stage, it is appropriate to consider the importance of permanency in children's lives." (Citations omitted; footnote omitted; internal quotation marks omitted.) *In re Elijah G.-R.*, 167 Conn. App. 1, 29–31, 142 A.3d 482 (2016). "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."[7] (Internal quotation marks omitted.) *In re Ryder M.*, supra, 211 Conn. App. 817.

The court's judgment terminating the respondent's parental rights is well supported by its written findings on each of the factors set forth in § 17a-112 (k) in addition to Isabella's needs, including her need for stability and permanency. The court found that Isabella has been in the department's care since August, 2018, and has been living with her great aunt and uncle for three and one-half years. She has a need for permanency and has developed a strong attachment to her foster parents.

[7] We note that this court has previously declined to extend the evidentiary sufficiency standard of review to the court's consideration of the best interests of the child and our Supreme Court has yet to address this issue. See *In re Ja'La L.*, 201 Conn. App. 586, 595 n.12, 243 A.3d 358 (2020), cert. denied, 336 Conn. 909, 244 A.3d 148 (2021); see also, e.g., *In re Phoenix A.*, supra, 202 Conn. App. 851.

She wants to remain with them, and they have expressed a willingness to adopt her should that become an option.

Despite the department providing the respondent with final specific steps to take toward reunification, he failed to make significant progress. Specifically, the respondent did not achieve mental health stability, address his history with domestic violence, and visit Isabella as often as permitted or at all since March, 2020. On the basis of these findings, the court concluded that "he has not demonstrated the ability to stabilize his mental health needs and to provide [Isabella] with a safe, stable, and nurturing home environment." Premised on its findings, the court subsequently concluded that the petitioner demonstrated by clear and convincing evidence that the termination of the respondent's parental rights was in Isabella's best interests.

On appeal, the respondent first argues that termination was not in Isabella's best interests because Isabella's therapist testified that, although Isabella does not currently wish to have contact with the respondent, her therapist believes that Isabella will eventually want to have a relationship with him.[8] Isabella's potential and future desire for a relationship with the respondent, however, does not detract from Isabella's need for permanency and stability, which the court concluded was best served by termination of parental rights. See, e.g., *In re Davonta V.*, 285 Conn. 483, 494–97, 940 A.2d 733 (2008). Finally, the respondent further argues that he provided Isabella with visitation with her half brothers. This argument fails to demonstrate that, given all of

[8] The respondent also argues that the court should have considered a permanent transfer of guardianship. The respondent acknowledges that a motion for a permanent transfer of guardianship or an argument for such a disposition was not raised in the trial court. Because this claim was not brought before the trial court, we do not consider it on appeal. See *In re Leilah W.*, supra, 166 Conn. App. 59; see also Practice Book § 60-5.

Isabella's needs, including her growth, development, and well-being, the court's finding was clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE NEVAEH G.-M. ET AL.*
(AC 45686)

Prescott, Suarez and Seeley, Js.

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to her minor children, N, M, and J. S, the father of N and M, and R, the father of J, both consented to the termination of their respective parental rights. The mother's long history of involvement with the Department of Children and Families began in 2012, following an incident of domestic violence between the mother and S that threatened N's well-being. A safety plan requiring the mother to prioritize N's safety was put into place. In 2016, following a physical altercation between the mother, S and certain other individuals that occurred in the presence of N and M, the mother ended her relationship with S and, shortly thereafter, began a relationship with R. That same year, the mother and R had a violent altercation in her home while N and M were present. In response, a safety plan was put into place and a restraining order was issued against R, which prohibited R from being in the children's presence and from entering the mother's home. In 2017, N and M were adjudicated neglected as a result of violations of the safety plan and restraining order but were permitted to remain in the mother's custody with protective supervision. The department closed their case file after the mother completed

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* 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.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

the domestic violence programs and mental health counseling that were required of her and convinced the department that she had ended her relationship with R. After J was born, it became clear that the mother was violating the safety plan then in effect by allowing R to be in the presence of the children, and, in 2019, all three children were adjudicated neglected. They were removed from the mother's home and were committed to the care and custody of the petitioner, the Commissioner of Children and Families. After the mother completed additional domestic violence counseling and programs, the children were returned to her under an order of six months of protective supervision, and the department closed its case file following the termination of this period. In 2020, hostilities between S and R increased, resulting in multiple incidents that required police intervention. These culminated with R's stepfather firing shots at S while the mother was dropping off J at R's for visitation. N and M were in a nearby vehicle at the time. Thereafter, the department removed the children from the mother's care. The trial court granted an order of temporary custody, and the petitioner filed neglect petitions on behalf of the three children. Approximately one year later, the petitioner filed petitions to terminate the parental rights of the mother, S and R. The trial court conducted a consolidated trial on the outstanding neglect petitions and the petitions for termination of parental rights. At its conclusion, the trial court adjudicated the children neglected, rendered judgments terminating the respondents' parental rights, and denied a motion filed by the mother seeking posttermination visitation rights. On the mother's appeal to this court, *held*:

1. The respondent mother could not prevail on her claim that the evidence was insufficient to support the trial court's judgments terminating her parental rights on the statutory ground of failure to rehabilitate (§ 17a-112 (j) (3) (B) (i)):

   a. The mother's claims that the trial court improperly determined that the termination of her parental rights was in the best interests of the children, improperly approved the permanency plan, and improperly denied her request for posttermination visitation were inadequately briefed and deemed abandoned, as she failed to provide any analysis in support of such claims.

   b. The cumulative evidence was sufficient to justify the trial court's conclusions that the mother had failed to benefit from the extensive services provided to her by the department and that she had not adequately rehabilitated to the point that she could assume a responsible parenting role for her children, either presently or at some reasonable future date: the overwhelming evidence before the court established that the mother was either incapable of complying with the safety plans and the protective orders related thereto or chose to ignore them; moreover, the mother repeatedly misled the department regarding her continued relationship with R and failed to take reasonable steps to minimize the risk of her children being exposed to additional acts of domestic violence;

furthermore, although the mother had the ability and the motivation to complete the domestic violence programs required by the department, once the services ended she reverted back to the same behaviors that led to the department's involvement, and she chose to ignore the department's repeated warnings and recommendations; additionally, although the trial court was not legally required to consider any postadjudicatory date evidence, the mother's assertion that the court failed to do so was belied by the record.

c. The mother's assertion that the trial court relied on multiple clearly erroneous factual findings in determining that she had failed to rehabilitate was unavailing because the trial court's conclusions and the relevant underlying findings of fact rested on specific evidence, the mother's arguments to the contrary were unpersuasive, and this court was not otherwise left with a definite and firm conviction that a mistake had been made: when examining the mother's testimony as a whole, this court could not conclude that the trial court's finding that the mother testified that she had done "nothing wrong" with respect to the shooting incident was clearly erroneous, because, although those exact words were not in the transcript of her testimony, it could reasonably be inferred from her testimony that she failed to grasp that, although she was aware of S's and R's animosity toward one another, she chose to place her children in a situation that she should have anticipated could result in exposing them to additional violence; moreover, contrary to the mother's claims, there was an abundance of evidence in the record relating to her mental health issues in addition to the opinion of the court-appointed psychological evaluator, and the trial court's decision to terminate the mother's parental rights was not made on the basis of her mental health; furthermore, the existence of evidence that would support findings contrary to the trial court's determinations did not render the court's findings erroneous.

2. The mother's claims regarding the trial court's orders with respect to pretrial discovery and the admission of certain evidence at trial failed because, even if established, such errors were harmless: the claimed evidentiary errors had little bearing on the crux of the trial court's analysis, as there was nothing in that court's decision regarding the mother's failure to rehabilitate that would lead this court to conclude that its decision would have been different in the absence of the admission of the testimony of and the report prepared by the court-appointed psychological evaluator, and the mother failed to demonstrate that the results of her mental health evaluation or any particular mental health diagnosis played a material role in the trial court's decision to terminate her parental rights.

Argued January 3—officially released March 2, 2023**

** March 2, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights as to their respective minor children, brought to the Superior Court in the judicial district of Middlesex, Child Protection Session at Middletown, where the respondent fathers consented to the termination of their respective parental rights; thereafter, the matter was tried to the court, *Hon. Barbara M. Quinn*, judge trial referee; judgments terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed*.

Robert M. Fitzgerald, for the appellant (respondent mother).

Carolyn Signorelli, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Michael Skold*, deputy solicitor general, for the appellee (petitioner).

Joshua Michtom, assistant public defender, with whom, on the brief, was *Heather Kaufmann*, for the minor children.

Opinion

PRESCOTT, J. The respondent Kimberly G. appeals from the judgments of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, adjudicating the respondent's three children—Nevaeh G.-M., Melinda G.-M., and Jackson A.-R.—neglected and uncared for and terminating her parental rights as to all three children.[1] On appeal, the respondent claims that (1) there was insufficient evidence to support the court's determination that the

[1] Shawn M. is the father of Nevaeh and Melinda and Jose R. is the father of Jackson. Both fathers consented to the termination of their parental rights and have not participated in the present appeal. Accordingly, all references to the respondent in this opinion are to Kimberly G.

petitioner had proven by clear and convincing evidence that the respondent had failed to rehabilitate in accordance with General Statutes § 17a-112 (j) (3) (B) (i),[2] and (2) the court improperly (a) failed to order a court-appointed psychological evaluator to disclose to the respondent certain testing materials on which the evaluator had based her opinion, (b) refused the respondent's request for a *Porter* hearing[3] regarding the evaluator's testing methods, and (c) admitted the evaluator's written report over a hearsay objection.[4] We conclude that the evidence was sufficient to support the court's judgments terminating the parental rights of the respondent on the statutory ground of failure to rehabilitate and that the claimed evidentiary errors, even if established, were harmless. Accordingly, we affirm the judgments of the court.[5]

[2] The respondent also claims on appeal that there was insufficient evidence to support the court's adjudication of neglect. The petitioner does not directly respond to this claim in her appellate brief. Because the court's judgments on the petitions for termination of parental rights, however, were founded on prior neglect adjudications of the children, not the court's contemporaneous neglect adjudications, it is unnecessary to address this additional claim. The court's dispositions terminating the respondent's parental rights are the dispositive judgments on appeal. See also footnote 10 of this opinion.

[3] See *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998).

[4] For the sake of clarity, we have combined for discussion a number of the respondent's claims of error and address them in a different order than how they were briefed by her. Further, as set forth in more detail later in this opinion, we also decline to address a number of the respondent's claims due to inadequate briefing. See part I of this opinion.

[5] The petitioner filed a motion to strike portions of the respondent's appendix filed with her appellate reply brief and any references to those materials contained in the reply brief. According to the petitioner's motion, the appendix "improperly incorporates new evidence and documents from outside the trial record to support arguments that [the respondent] failed to raise before the trial court." The respondent filed an opposition that, in essence, admits the materials at issue were not part of the underlying record, but asks this court to suspend our rules of practice or to take judicial notice of the materials. We conclude that no action is necessary on the petitioner's motion because we have not relied on the disputed materials in resolving the issues on appeal, and, to the extent that the reply brief or appendix

The following facts, which either were found by the trial court or are undisputed in the record, and procedural history are relevant to our review. The respondent is in her mid-thirties. She has three children, Nevaeh, Melinda and Jackson. At the time of trial, they were, respectively, nine, six, and three years old. The respondent is a high school graduate who performed well academically and has been consistently employed as an adult. She currently works at a fast-food restaurant where she has managerial responsibilities. The respondent and Shawn M., who is the father of Nevaeh and Melinda, met during high school. They have had an on-and-off relationship and lived together from 2011 to 2016, after which time their intimate relationship ended. The respondent thereafter began a relationship with Jose R., who is the father of Jackson.

The respondent has had ongoing problems with intimate partner violence since her teenage years. She had an abusive relationship at nineteen during which her boyfriend ran over her with a car, causing her to develop post-traumatic stress disorder. She suffers from anxiety, panic attacks, rheumatoid arthritis and pain in her back. She receives treatment for high blood pressure and has been diagnosed with a major depressive disorder for which she receives counseling and medication.

As found by the court, the respondent's history of incidents of intimate partner violence is well-documented, "extensive and appalling," and contributive to "the ongoing trauma [that her] children suffered from their parents' behavior." The incident that first resulted in contact between the respondent, her family, and the Department of Children and Families (department) occurred on December 19, 2012. At that time, Nevaeh was only four months old. The police were called to the

contains "improper matter"; see Practice Book § 60-2 (3); the panel has not considered it.

respondent's home and, on arrival, observed a shattered plexiglass window on the screen door as well as remnants of a drinking glass that had been smashed on the floor. Nevaeh's crib was nearby and contained pieces of glass inside. The respondent told the police that she and her boyfriend, Shawn, had an argument. He went outside with a bag of his clothes as though he were leaving. He also took the respondent's cell phone. He refused to return her phone when she asked for it, and, in response, the respondent grabbed his bag of clothes and told him she was keeping them until he returned her phone. This angered Shawn, who walked to the edge of the street and threw the respondent's phone to the ground, smashing it into multiple pieces. The respondent threw his clothes onto the front lawn. Shawn then tried to go back inside the home, which the respondent attempted to prevent him from doing because she believed that he would "smash things." At this point, he pushed her down onto the concrete steps outside, causing an abrasion on her knee. The argument escalated further, and Shawn smashed a drinking glass onto the floor, shards from which flew into the crib. Fortunately, although the possibility of significant injury existed, Nevaeh was not hurt. Shawn fled the scene but later was found by the police and arrested.

He was charged and later convicted of risk of injury to a child. The department did not remove Nevaeh from the home at that time but put a safety plan in place that required the respondent to put Nevaeh's safety needs first.

The department became involved with the family a second time in January, 2016, because of a physical altercation between the respondent, Shawn, and two other men who were at the respondent's home. Nevaeh was four years old at the time and observed the incident. Melinda, who was an infant, was also nearby. Shawn was convicted and incarcerated as a result of the fight,

which also precipitated the end of the respondent's relationship with him.

The respondent soon began an intimate relationship with Jose, who was only seventeen when the relationship began. Jose had an explosive temper and often lashed out at the respondent physically. In December, 2016, the respondent and Jose got into an argument regarding old love letters written to the respondent by Shawn. During the argument, Jose pushed the respondent, and she slammed the basement door in his face. He then pushed her against a wall and began choking her. The respondent put Jose into a headlock, threw him to the ground, and tried to get away up the stairs. Jose grabbed her and dragged her down the stairs. She escaped and ran upstairs to protect her two daughters, who were in their rooms. When she threatened to call the police, Jose grabbed her two phones and smashed them. She grabbed the children and ran outside, where she encountered her mother. She told her mother that she needed help. Jose then appeared with a bat and used it to break all the windows of her car. When the police arrived, they took photographs documenting the fight and the respondent's injuries, which included a laceration to her neck. As found by the court, "[t]he level of violence . . . demonstrated by [Jose and the respondent] was considerable and shocking."

As a result of the December, 2016 incident, the respondent obtained a restraining order against Jose and entered into another safety plan with the department, together which required her to comply with the protective order, prohibited Jose from having contact with the children, and required her to call the police if Jose showed up at the respondent's home. She eventually convinced the department that she had ended her relationship with Jose, and the department closed its case. Despite her assertions to the department, however, the respondent, as the court explained, "did not

end her relationship with Jose but continued it, in violation of the restraining order which was then . . . in effect. She continued her relationship with him, even when she denied her connection to him to [the department]."

The department received another referral regarding the respondent and her children in April, 2017. A community provider reported that Jose was alone with Nevaeh and Melinda and that an odor of marijuana was emanating from the house.

Later, in June, 2017, the police were again called to the respondent's home because Jose and another male were observed fighting outside. As described by the court, "[d]uring the course of the dispute, apparently Jose took out a knife and slashed the car tires of his assailant and cut his own hand in the process. [The respondent] decided to take her two children to a domestic violence center. . . . [S]he was shortly asked to leave because she had another man pick her and the children up from the shelter, a violation of their rules. About six weeks later, [the respondent] secured a . . . [new] restraining order [that] prohibited Jose from going into her home and also [protected] the children. Despite seeking court assistance, she was seen by [department] workers shortly after the hearing sitting in a car with Jose."

In October, 2017, the petitioner filed the first neglect petitions on behalf of Nevaeh and Melinda because the respondent continued to allow Jose to come to her home while the children were present, which was in violation of the safety plan and the restraining order and subjected the children to the significant possibility of witnessing further incidents of intimate partner violence. In January, 2018, following a hearing, both girls were adjudicated neglected, but they were permitted to stay in the respondent's home with six months of

protective supervision. The respondent was ordered to attend programs for domestic violence as well as mental health counseling. Because the respondent seemed, at the time, to comply with the department's requirements, the protective supervision and the department's involvement with the family ended in May, 2018.

The respondent nevertheless had not ended her relationship with Jose, and, on August 23, 2018, the department received information that the respondent had given birth to Jackson. Upon investigation, the department learned that the respondent had hidden her ongoing relationship with Jose from the department. Nevaeh reported to the department that, in fact, Jose was living in the respondent's home. As the court found: "Jose's explosive anger and physical aggression continued unabated [and] again became apparent in the hospital after Jackson's birth. While [the department] was investigating the situation in the hospital, Jose became very hostile toward the [department] worker and blocked the [worker] from leaving the room. Hospital staff had to be called to defuse the tense situation." Jose refused to comply with the department's recommendations that he receive mental health treatment and receive domestic violence counseling. The department decided to leave the children in the respondent's care because she agreed to a new safety plan with the department that required her to prevent Jose from having physical contact with any of the children, including Jackson.

In September, 2018, the petitioner filed neglect petitions on behalf of all three children. In December, 2018, the department conducted a home visit during which Jose was found hiding in the basement under a cot. Jose had agreed to the safety plan in place and knew that he was not supposed to be present in the home with the children. Despite these clear violations of the then current safety plan, the department continued to

permit the children to stay in the home with the respondent.

In February, 2019, however, the department received a referral indicating that Jose had dropped Melinda off at school and that she had reported that her "daddy" had pushed her mother and that her mother was hurt. The department discovered the respondent at a local hospital. The respondent claimed that she fell on ice when putting her children on the bus. The petitioner then sought an order of temporary custody. The children were removed from the respondent's care and placed in a foster home. The children subsequently were adjudicated neglected following a trial and were committed to the care and custody of the petitioner. Thereafter, the respondent complied with the specific steps issued to her, including making progress in domestic violence counseling and other programs, and the children eventually were returned home under an order of six months of protective supervision. That order of protective supervision expired in March, 2020, at which time the department again closed its case file, although it also sent notice to the respondent indicating that it continued to recommend that Jose not have physical access to the children because he had not completed any of the services the department had offered to him.

Despite the respondent's appearance of compliance, any behavioral changes were not permanent, and, as found by the court, she continued to behave in ways that "consistently put her children at risk . . . ." Both Jose and Shawn continued to meet with the respondent in the children's presence. As the court stated, the two men exhibited a "growing combativeness and animosity toward each other" that often "flared into outright hostility and fights." The police were called on several occasions. The court stated that the worst of the incidents of escalating violence between the two fathers "took place . . . in early May, 2020, when Shawn

reported to the police that five individuals had jumped out of a Honda and began to fight with him. The hood of his sweatshirt was pulled over his head and he was hit and kicked by them. . . . [The respondent] was aware of this incident and . . . knew how upset Shawn was and that he wanted to get revenge as a result. Her own mother also had witnessed the incident and the violence against him."

The escalating and violent behavior between Jose and Shawn reached a culminating point on May 15, 2020. As found by the court, on that day, "Jose's stepfather apparently fired [gun]shots in the direction where Shawn was located and his car was parked during the time that [the respondent] had brought Jackson to Jose's apartment for visitation. Shawn was wearing a bulletproof vest and apparently seeking revenge for his treatment by Jose. Two of Shawn's friends were with him. Initially, it was thought that it was Shawn who fired the shots while the two girls, Nevaeh and Melinda, were sitting with their maternal grandmother in a car on the other side of the apartment complex from where the shots were fired. Both their grandmother and [the respondent] told [the girls] it was Shawn. When they returned sometime later, they found that their home had been burglarized. Again, the adults assumed that the violation of their home had been carried out by Shawn since he sometimes walked by their home or was seen outside. It is not clear if the children were ever told the facts ultimately determined by the police on this confused scene as it was sometime into their investigation that they established the actual perpetrator. What is apparent, the court finds, is that neither [the respondent] nor her mother were able to put the children's needs ahead of their own. Their reports to Nevaeh and Melinda that their own father had engaged in this threatening behavior could only have upset the

two girls about what took place during the time they perceived themselves to be at risk."[6]

As a result of the shooting incident, the department removed the children from the respondent's care for the second time and sought an order of temporary custody, which was granted. Thereafter, on May 22, 2020, the petitioner filed neglect petitions on behalf of all three children—this was the third such petition for Nevaeh and Melinda and the second for Jackson. The neglect petitions alleged that the children were being denied proper care and attention—physically, educationally, and emotionally—by the respondent and that the children were being permitted to live under conditions and circumstances injurious to their well-being. See General Statutes § 46b-120 (4) and (6). On June 3, 2020, the court granted a motion filed by the attorney for the minor children for a court-ordered psychological evaluation of the children and the respondent, which had been agreed to by all parties.

[6] The court made the following additional findings related to the May 15, 2020 shooting incident: "[The department] had recommended that [the respondent's] mother supervise the visitation exchanges between Jackson and Jose, so that no further domestic violence would occur between Jose and [the respondent] while the children were present. While it is correct to say that, specifically with respect to the shooting, [the respondent] had done no wrong, the consequences of that shooting and her failure to properly implement the supervised visitation exchanges through her mother, certainly again exposed her children to domestic violence and its trauma, especially because they had already witnessed so much in person. Knowing how upset and angry Shawn was about the beating he had taken from Jose and his posse, [the respondent's] several rounds of lengthy domestic violence services and counseling should have taught her to consider how volatile the situation might be. Yes, she did not know Shawn would be there, yes, she had nothing to do with the shooting, but only a little forethought would have prevented her children's presence on the scene that day. [The respondent's] and her mother's general insensitivity to the emotions of the two girls during this event and the fact that the two girls had for some time more than a year been calling Jose their father must have made the emotional events of this day particularly difficult. During the course of the trial, when [the respondent] was asked why she could not have allowed her mother to take Jackson into the apartment to visit with his father, as [the department] had directed,

On August 10, 2021, the petitioner filed petitions to terminate the respondent's parental rights with respect to all three children as well as the parental rights of their respective fathers, Jose and Shawn. As to the respondent, the termination petitions alleged in relevant part, pursuant to § 17a-112 (j) (3) (B) (i), that the three children previously had been adjudicated neglected and that the respondent had failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable period of time, given the needs of the children, she could assume a responsible position in the lives of the children.

The court conducted a consolidated trial on the outstanding neglect petitions and the petitions for termination of parental rights.[7] With respect to the respondent, the court found that the allegations in the neglect petitions were proven by a preponderance of the evidence. The court also found that the allegations of the termination petitions were proven by clear and convincing evidence in accordance with § 17a-112 (j) in that (1) the department had made reasonable efforts to reunify the family, (2) the children had been adjudicated neglected in a prior proceeding and the respondent had failed to rehabilitate, meaning she had failed "to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of [her children], [she] could assume

she had no real explanation except to claim that it was more convenient since they were all going to a big box store after the visitation exchange."

[7] The court stated in its memorandum of decision that, "[b]ecause there are petitions for neglect as well as termination petitions in this case, the court must first determine if the children have been neglected as of the date the petitions were filed." Having found the children neglected and uncared for, the court then indicated that it would defer disposition on the neglect petitions "until decisions are made on the termination petitions." Because the court granted the termination petitions, it made no independent disposition regarding the neglect petitions. See footnote 2 of this opinion.

a responsible position in [their lives]," and (3) termination of parental rights was in the best interests of all three children.

Regarding the respondent's failure to rehabilitate, the court considered the respondent's engagement and progress with the specific steps that had been ordered, which, as noted by the court, "are important measures of rehabilitation and address clearly the issue of whether a parent has rehabilitated adequately from the circumstances which existed at the time of removal . . . ." The court made the following findings: "[S]pecific steps were ordered for [the respondent] on May 22, 2020. . . . There were two main areas of concern: [the respondent's] mental health issues and the intimate partner violence, which had occurred numerous times. In addition to the ordinary requirements of most specific steps, including keeping all appointments set by [the department] and permitting visits by [the department] as well as by the children's court-appointed attorney, [the respondent] was directed to engage in services for parenting and individual counseling, and there were certain service providers listed for her. The goals [that] she was to achieve were also specifically set forth." (Footnote omitted.) Specifically, she was ordered to do the following: "Demonstrate a willingness and ability to protect [your] children from abusive or unsafe environment[s]. Demonstrate an understanding of domestic violence and how it impacts your children and your ability to provide care for [your] children. Demonstrate an ability to provide [your] children with [a] safe and stable environment free of violence. Articulate responsibility for your parenting choices, how they have impacted your child[ren] and demonstrate [an] ability to consistently use good decision making and judgment in regard to parenting your child[ren]."

The court found on the basis of "[t]he clear and convincing evidence as set forth in the exhibits and in

the testimony at trial, including the testimony of [the respondent] herself," that "there were established patterns of disregard for the children's well-being and that the adults in their lives had been unable to put the needs and safety of the children first. The children were aware and present for many of the conflicts between the parents. Despite the cautions that [the respondent] had been given and her completion of two rounds of intensive domestic violence programs as well as two rounds of intensive family preservation services at the time of the filing of the petitions, she failed to recognize how her relationship with Jose had created an unstable and unsafe environment for her children."

Additionally, the court found that "many services that [the respondent] has received . . . were carefully tailored to the issues in her life and to assist her to rehabilitate so that she could care for her children in the reasonably foreseeable future. After each and every service that she had received, [the respondent] was able to speak about and demonstrate an understanding of intimate partner violence and how it affected her and the children. But being able to say the words . . . was not enough. It is palpably obvious from the clear and convincing evidence that [the respondent] was unable to make the personal changes in her life to keep her children safe." (Footnote omitted.)

In reaching its conclusion that the respondent had failed to rehabilitate and was not reasonably likely to do so in the future, the court also discussed in part the psychological evaluation of the respondent and the children and the opinion of the court-appointed psychological evaluator, Jessica Biren Caverly, whose report was admitted into evidence along with her testimony at trial. The court indicated that the purpose for ordering the evaluation, which took place in November, 2020, had been "to assist the court in evaluating what further steps should be taken to assist [the respondent] in her

recovery and whether or not the children were in a position to be returned to their mother and reunified with her." Biren Caverly's assessment and recommendation to the court at the time of the evaluation in 2020 was that the respondent should "receive ongoing and intensive treatment for her mental health, continue to engage in psychiatric services, continue to discuss domestic violence in individual therapy, and that she should receive parenting education if there was to be reunification with the children. [Biren Caverly] also raised the concern of whether [the respondent] was being authentic in her reports of understanding how domestic violence could impact her children and whether or not she was capable of making changes in her life." Biren Caverly told the court in 2020 that she could not recommend that the children be reunified with the respondent because of "her past history and her inability to keep her children safe." In particular, Biren Caverly was concerned about the respondent's "lack of candor and reports as to her own situation and the fact that she had failed to provide for her children." She gave the court recommendations regarding the children's placement in different foster homes and visitation with the respondent.[8] At trial, Biren Caverly's testimony was consistent with her 2020 report and opined that "[s]he remained very concerned about [the respondent's] performances as a parent . . . [and] did not believe that reunification with [the respondent] was in the best interests of these three children at the time of her testimony in 2022."

In terminating the respondent's parental rights, the court made all of the requisite findings regarding the

[8] Biren Caverly opined in her report and during her trial testimony that the respondent and her children "did not exhibit a close affectionate relationship, but that it was more transactional in nature. . . . It was also very apparent to the evaluator that Nevaeh had taken on a parental role with respect to her two younger siblings and that this was not psychologically good for her."

seven factors delineated in § 17a-112 (k). The court found, inter alia, that the department had been able to locate all the parents and provide services to them; the department had made reasonable efforts to reunite the respondent with her children in this case; and the respondent had received services, including the department's "case management services, parenting training, visitation, therapy, intimate partner violence services, intensive family preservation services and weekly supervised visitation with all the children." The court concluded that the services the department provided were reasonable and well tailored to assist the respondent but that the respondent "has not been able to sufficiently adjust her circumstances to have her children in her care safely."

Finally, the court considered whether it was in the best interests of the children to terminate the respondent's parental rights. After considering "all the different and individualized factors that might affect a specific child's welfare," the court reached the conclusion that terminating the parents' parental rights was in the best interests of all three children. The court approved the permanency plan for termination and adoption and denied a motion filed by the respondent seeking posttermination visitation rights. This appeal followed.[9] Additional facts and procedural history will be set forth as necessary.

I

Before analyzing the respondent's claims on appeal, we first note that the respondent has raised a number of claims in her appellate brief that we do not address because they either are inadequately briefed, are germane only to a claim that is otherwise inadequately

[9] The attorney for the minor children filed a statement in accordance with Practice Book § 67-13, adopting the brief filed by the petitioner and asking the court to affirm the judgments of the court.

briefed or are not sufficiently articulated to warrant review. As appellate courts repeatedly have cautioned, "[m]ultiplying assignments of error will dilute and weaken a good case and will not save a bad one. . . . The effect of adding weak arguments will be to dilute the force of the stronger ones." (Internal quotation marks omitted.) *Kammili* v. *Kammili*, 197 Conn. App. 656, 657–58 n.1, 232 A.3d 102 (quoting *State* v. *Pelletier*, 209 Conn. 564, 567, 552 A.2d 805 (1989)), cert. denied, 335 Conn. 947, 238 A.3d 18 (2020); see also *LeBlanc* v. *New England Raceway, LLC*, 116 Conn. App. 267, 280 n.4, 976 A.2d 750 (2009) ("a multiplicity of issues can foreclose the appellant's opportunity to provide a fully reasoned discussion of the pivotal issues on appeal"). This case presents a good example of the pitfalls that can ensue from attempting to raise too many claims. In the present appeal, we decline to address three of the respondent's claims because they are inadequately briefed. Specifically, the respondent claims that the court improperly (1) determined that the termination of her parental rights was in the best interests of the children, (2) approved the permanency plan, and (3) denied a request for posttermination visitation. As to these three claims, the respondent devotes, at best, no more than a few sentences and provides no legal analysis. "[W]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *In re James O.*, 160 Conn. App. 506, 527, 127 A.3d 375 (2015), aff'd, 322 Conn. 636, 142 A.3d 1147 (2016).

The respondent raises an additional claim asserting that the court improperly refused to allow her to introduce certain therapy records of Nevaeh on the ground that they were confidential and privileged. We do not

review this claim other than to note that the respondent has failed adequately to explain, beyond mere assertion, how this evidence is germane to anything other than the court's best interests determination, which, as we already have explained, we decline to review because the respondent has abandoned any claim related to the court's best interests determination by virtue of an inadequate brief. Although we acknowledge that a respondent's rehabilitation efforts need to be assessed in light of the particular needs of a child, the respondent has failed adequately to explain or analyze how Nevaeh's therapy records relate to the court's determination in this case that the respondent has not achieved a sufficient degree of rehabilitation. Accordingly, we do not address the respondent's claim regarding whether the court improperly failed to admit Nevaeh's therapy records. We turn then to the relevant law and the remainder of the respondent's claims.

II

The general legal principles applicable to proceedings to terminate parental rights, including our standard of review, are well settled. "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." (Internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 806–807, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

Section 17a-112 (j) 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 (1) the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of [General Statutes §] 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to [§] 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (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 [General Statutes §] 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 . . . ."[10]

[10] Section 17a-112 (*l*) expressly authorizes the filing of coterminous petitions for neglect pursuant to § 46b-129 and for the termination of parental rights. General Statutes § 17a-112 (*l*) provides in relevant part: "Any petition brought by the Commissioner of Children and Families to the Superior Court, pursuant to subsection (a) of section 46b-129, *may be accompanied by* . . . a petition for termination of parental rights filed in accordance with this section with respect to such child. . . . The Superior Court, after hearing, in accordance with the provisions of subsection (i) or (j) of this

"Although the trial court's subordinate factual findings are reviewable only for clear error, the court's ultimate conclusion that a ground for termination of parental rights has been proven presents a question of evidentiary sufficiency. . . . That conclusion is drawn from both the court's factual findings and its weighing of the facts in considering whether the statutory ground has been satisfied. . . . On review, we must determine whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Citations omitted; internal quotation marks omitted.) *In re Egypt E.*, 327 Conn. 506, 525–26, 175 A.3d 21, cert. denied sub nom. *Morsey E.* v. *Commissioner, Dept. of Children & Families*, U.S. , 139 S. Ct. 88, 202 L. Ed. 2d 27 (2018). Furthermore, in assessing evidentiary sufficiency, a reviewing court considers all of the evidence

section, may, *in lieu of granting the petition filed pursuant to section 46b-129*, grant the petition for termination of parental rights as provided in section 45a-717." (Emphasis added.) If the ground for termination alleged in the petition is that set forth in § 17a-112 (j) (3) (B) (i), however, "the requirement that the adjudication of neglect occur 'in a prior proceeding' indicates that the termination proceeding may not be combined with the neglect proceeding and that separate judgments on each petition are necessary." *In re David W.*, 52 Conn. App. 576, 584, 727 A.2d 264 (1999), rev'd on other grounds, 254 Conn. 676, 759 A.2d 89 (2000).

In the present case, the petitions to terminate parental rights did not *accompany* the latest neglect petitions but were filed more than one year after the neglect petitions were filed. Thus, they were not coterminous petitions under the statute. The petitions, nonetheless, were tried together, and the court, although adjudicating the children neglected, deferred a disposition of the neglect petitions and proceeded to adjudication of the petitions for termination of parental rights, with the apparent understanding that, if it granted the termination petitions and terminated the respondent's parental rights, any further disposition with respect to the contemporaneously adjudicated neglect petitions would be unnecessary. See footnote 2 of this opinion.

that was before the trier, including any evidence the admissibility of which is challenged on appeal. See *In re Alizabeth L.-T.*, 213 Conn. App. 541, 604 n.26, 278 A.3d 547 (2022).

III

The respondent claims that there was insufficient evidence to support the court's determination that she had failed to rehabilitate in accordance with § 17a-112 (j) (3) (B) (i), meaning that she had failed to achieve a level of rehabilitation necessary to encourage a belief that now or within a reasonable time she could assume a responsible position in her children's lives. In making this claim, the respondent also challenges some of the court's subordinate factual findings as clearly erroneous. The petitioner contends, to the contrary, that the evidence presented at trial was more than sufficient to support the court's determination under the clear and convincing standard and that the court's relevant findings of fact were not clearly erroneous. On the basis of our review of the evidentiary record and the findings of the court, we conclude that the cumulative evidence was sufficient to justify the court's conclusion that the respondent had failed to benefit from the extensive services provided to her by the department over the years and that she had not adequately rehabilitated to the point that she could assume a responsible parenting role for her children, either presently or at some reasonable future date.

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [her] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the [children] at issue." (Internal quotation marks omitted.) *In re*

Brian P., 195 Conn. App. 558, 568, 226 A.3d 159, cert. denied, 335 Conn. 907, 226 A.3d 151 (2020).

Thus, "[t]he trial court is required . . . to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life. . . . In addition, [i]n determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment, regardless of whether those factors were included in specific expectations ordered by the court or imposed by the department." (Citations omitted; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 585–86, 122 A.3d 1247 (2015). "[The] completion or noncompletion [of the specific steps], however, does not guarantee any outcome. . . . Accordingly, successful completion of expressly articulated expectations is not sufficient to defeat a department claim that the parent has not achieved sufficient rehabilitation." (Citation omitted; internal quotation marks omitted.) Id., 587.

During the adjudicatory phase of a termination proceeding, a court generally is limited to considering only evidence that occurred before the date of the filing of the petition or the latest amendment to the petition, often referred to as "the adjudicatory date." *In re Brian P.*, supra, 195 Conn. App. 569. Nevertheless, "it *may*

rely on events occurring after the [adjudicatory] date . . . [in] considering the issue of whether the degree of rehabilitation is sufficient to foresee that the parent may resume a useful role in the child's life within a reasonable time." (Emphasis added; internal quotation marks omitted.) Id.

In the present case, as found by the court and as evidenced in the record, between 2012 and 2020, the respondent had been the victim of multiple incidents of serious intimate partner violence involving the fathers of her children. As a result of these various incidents, several different safety plans and protective orders were put in place. A common purpose underlying these plans and orders was to assist the respondent in protecting her children from the dangers of being exposed to incidents of domestic violence and the potential resulting psychological and physical harm.

The overwhelming evidence before the court, however, established that the respondent either was incapable of complying with the safety plans and related protective orders or, worse, chose to ignore them. Moreover, the respondent repeatedly misled the department and others about her continued relationship with Jose. Most significantly, despite her awareness of the potential physical and psychological harm to the children that might result from their presence during an incident of intimate partner violence, she repeatedly failed to take reasonable steps to minimize the risk of her children being exposed to additional acts of domestic violence.

The department, on multiple occasions, provided the respondent with services intended to address the harms, both personal and to her children, stemming from repeated exposure to intimate partner violence. Although the respondent completed the required programs and convinced the department and the court, on

more than one occasion, that she had gained some understanding of the issues involved, the record demonstrates that, once the services ended, she promptly reverted to the exact same behaviors that led to her involvement with the department. Not only did her behavior result in multiple neglect adjudications of her children, but she was provided explicit warnings by the department that further incidents likely would result in the permanent removal of her children. In other words, although the record shows that the respondent had the ability and the apparent motivation to complete the programs offered to her, she has been unable to demonstrate that she truly benefitted from them or learned how to put the safety of her children first with respect to her intimate relationships. She was involved in numerous and serious incidents of intimate partner violence throughout the course of her children's lives, and her inability to protect her children from exposure to such violence, despite repeated opportunities to do so, supports the court's finding that she is unlikely to change her behavior such that she could, within a reasonable time, assume a responsible position in her children's lives.

The respondent, as evidenced by her actions, chose to disregard the department's repeated warnings and recommendations, including the department's recommendation that someone other than herself should facilitate future visitations between Jackson and Jose. Instead, the respondent chose to be present during the exchanges with Jose, which put her children into the situation that resulted in the very dangerous shooting incident that led to their final removal. Furthermore, although the respondent made repeated representations to the department that she no longer had any relationship with Jose, she acknowledged to the police following the shooting incident that Jose was her boyfriend, that she frequently visited his house with the

children, and that Nevaeh and Melinda referred to Jose as "daddy," even though he is not their father.

The foregoing evidence alone was legally sufficient to support the court's conclusions that the respondent actively "hid her continued intimate connection to Jose from [the department]" and is "unable to benefit from the many comprehensive services provided to help her address her propensity to remain in toxic and violent relationships" or to "change and gain the knowledge [needed] to protect" her children. As our Supreme Court has stated, a "failure to acknowledge the underlying personal issues that form the basis for the department's concerns indicates a failure to achieve a sufficient degree of personal rehabilitation." (Internal quotation marks omitted.) *In re Shane M.*, supra, 318 Conn. 589.

The respondent argues on appeal that the court reached its conclusion regarding the respondent's failure to rehabilitate without considering any postadjudicatory date evidence. Although there is no legal requirement that the court consider such evidence, the respondent's assertion that the court failed to do so in the present case is belied by the record. "[T]he relevant date for considering whether [a respondent] failed to rehabilitate is the date on which the termination of parental rights petition was filed . . . . Although a court *may* rely on events occurring after the date of the filing of the petition to terminate parental rights when considering the issue of whether the degree of rehabilitation is sufficient to foresee that the parent may resume a useful role in the child's life within a reasonable time . . . *it is not required to do so*." (Citations omitted; emphasis altered; internal quotation marks omitted.) *In re Karter F.*, 207 Conn. App. 1, 22, 262 A.3d 195, cert. denied, 339 Conn. 912, 261 A.3d 745 (2021).

Here, although the court was not obligated to consider postadjudicatory date evidence of the respondent's ability to rehabilitate—particularly in light of the preadjudicatory date evidence that tended to show that she had failed to rehabilitate despite the significant efforts of the department—the court nonetheless did so. In particular, as noted by the petitioner, the court considered the respondent's trial testimony, including her argument that, postfiling, she had completed the court-ordered specific steps and otherwise tried to improve her life to better look after her children. The fact that the court did not rely on or discuss in detail the respondent's testimony does not mean the court did not consider it in reaching its decision. Similarly, there is nothing in the record to suggest that the court ignored the trial testimony of the social worker, Amy Gauthier, who also opined on the respondent's postfiling efforts to rehabilitate. Although the court acknowledged this postadjudicatory date evidence, it was not bound to credit it or to find it dispositive of the respondent's rehabilitation, particularly in light of the other evidence presented. It was the assessment of the court that the respondent had failed to rehabilitate "*despite* her completion of the services required to be addressed in her specific steps." (Emphasis added.) It is axiomatic that it is not the function of this court to reweigh the evidence presented or to pass upon the credibility of witnesses, and we decline the respondent's implicit invitation to do so in this case, particularly in the context of this claim. See *In re Aubrey K.*, 216 Conn. App. 632, 658, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023); *In re Lillyanne D.*, 215 Conn. App. 61, 98, 281 A.3d 521, cert. denied, 345 Conn. 913, 283 A.3d 981 (2022).

Next, the respondent argues that the court made its decision to terminate her parental rights on the ground that she failed to rehabilitate on the basis of a number of

clearly erroneous factual findings. "Our law concerning the application of the clear error doctrine is well established. A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Internal quotation marks omitted.) *In re Severina D.*, 137 Conn. App. 283, 292, 48 A.3d 86 (2012).[11]

Relevant to the court's determination that the respondent had failed to rehabilitate, the respondent contends that the court relied on a number of clearly erroneous factual findings. We are not convinced.

First, the respondent points to the court's language in the opening paragraph of its memorandum of decision stating that the respondent had failed to take full responsibility for her actions in the eyes of the court and directs our attention to a specific finding by the court that the respondent had testified regarding the

[11] To the extent that the respondent advocates for adopting the standard for reviewing factual findings of the court advanced by the concurring justice in *In re Melody L.*, 290 Conn. 131, 176–77, 962 A.2d 81 (2009) (*Schaller*, *J.*, concurring), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014), suggesting that reviewing courts should undertake a scrupulous examination of the record to ensure that findings are supported by substantial evidence, that standard was rejected by the majority; see id., 162–63; and, "[a]s an intermediate appellate court, we are bound by Supreme Court precedent and are unable to modify it . . . ." (Internal quotation marks omitted.) *State* v. *Madera*, 160 Conn. App. 851, 861–62, 125 A.3d 1071 (2015).

May 15, 2020 shooting event, " 'But I did nothing wrong.' " We agree with the respondent that the court's statement that she testified, " 'But I did nothing wrong,' " could be viewed as a misstatement by the court because we cannot find that quote anywhere in the respondent's testimony. The flaw in the respondent's argument, however, is that it is also reasonable to interpret the court's statement as the court having paraphrased what it viewed to be the respondent's position generally. Certainly, examining the respondent's testimony as a whole, we cannot conclude that the thrust of the court's finding was clearly erroneous. It can reasonably be inferred from the respondent's testimony that she failed to grasp that, although she did not shoot a gun that day or become involved directly in a domestic dispute with one of the children's fathers, she was aware of the fathers' animosity toward one another and yet chose to place her children into a situation that she should have anticipated, and was warned, could result in exposing them to additional violence, domestic or otherwise. There is certainly evidence in the record from which the court could have drawn the conclusion that the respondent failed fully to grasp or admit the significance of her own role in the harm to her children from repeated exposures to intimate partner violence. Although the respondent in her testimony did acknowledge mistakes she made in the past and that she has worked to improve herself, the existence of evidence that contradicts the finding of the court does not compel a conclusion that the court's finding is clearly erroneous, provided the record also contains evidence that supports the court's finding or from which that finding reasonably may be inferred. See *In re Severina D.*, supra, 137 Conn. App. 292.

The respondent next takes issue with the court's statement, again found in the court's introductory paragraph of its decision, that the respondent had "unresolved . . . mental health difficulties." The respondent

argues that the "only evidence in the record about her mental health problems were the opinions of . . . Biren Caverly . . . ." (Citations omitted.) This is not accurate as there was an abundance of other evidence documenting the respondent's various mental health issues, including her own testimony in which she acknowledged her diagnoses of post-traumatic stress disorder, anxiety and depression. Moreover, as we discuss in part IV of this opinion, the court's decision to terminate the respondent's parental rights was not made on the basis of her mental health, and the court's singular reference to whether those issues remained unresolved certainly was not clearly erroneous.

Finally, the respondent challenges the court's findings that the respondent had "been unable to benefit from the many comprehensive services provided" and had a "propensity for inappropriate and violent intimate relationships . . . ." In support of her argument, the respondent does not claim that there was no evidence in the record to support the court's finding, which she credibly could not do given the evidence before the court. For example, the respondent had been provided services with respect to both the present proceedings as well as the prior neglect proceedings. She nevertheless continued to expose her children to the threat of intimate partner violence. Moreover, she had multiple relationships involving intimate partner violence. The respondent directs our attention to other evidence that she claims would support contrary findings. The existence of such evidence does not render the court's findings clearly erroneous. Having reviewed the evidentiary record before the court, as set forth previously in this opinion, we conclude that there was evidence in the record to support the challenged findings and we are not otherwise left with a definite and firm conviction that a mistake has been made.

In sum, we conclude that the court's conclusions regarding the respondent's failure to rehabilitate and the relevant underlying findings of fact do not rest on speculation but on sufficient evidence. We find unpersuasive all of the respondent's arguments to the contrary.

IV

The respondent raises a number of additional claims regarding the court's orders with respect to pretrial discovery and the admission of certain evidence at trial. Specifically, the respondent claims that the court improperly (1) failed to order Biren Caverly to disclose to the respondent the testing materials on which the court-appointed psychological evaluator based her opinion, (2) refused the respondent's request for a *Porter* hearing regarding Biren Caverly's testing methods, and (3) admitted Biren Caverly's written report over a hearsay objection. The petitioner argues that, even if the respondent could prevail on these evidentiary claims, none of which the petitioner concedes amounted to error, the evidence at issue was not germane to the court's analysis regarding the termination petitions and, therefore, any errors were harmless. Although we have significant concerns regarding the propriety of the trial court's rulings relating to discovery, we agree with the petitioner that the claimed errors have little bearing on the crux of the court's analysis, and, thus, even if established, the claimed errors would be harmless. Accordingly, we conclude that these additional claims of the respondent also fail.

"To evaluate the respondent's evidentiary challenges to the court's rulings, we begin with the applicable standard of review common to them. . . . [I]t is well settled that even if [an evidentiary error is proven], the [party challenging the ruling] must also establish that the ruling was harmful and *likely to affect the result of*

the trial. . . . In order to prevail on her claims, the respondent must show that the court abused its discretion . . . and that any improper admission caused her *substantial prejudice or injustice*." (Citation omitted; emphasis added; internal quotation marks omitted.) *In re Tayler F.*, 111 Conn. App. 28, 35–36, 958 A.2d 170 (2008), aff'd, 296 Conn. 524, 995 A.2d 611 (2010). Stated differently, in order to demonstrate that she was harmed and, thus, entitled to a reversal of the court's decision, the respondent must establish that, but for the evidentiary errors, the outcome of the trial likely would have been different. See, e.g., *In re Lillyanne D.*, supra, 215 Conn. App. 73; *In re Alizabeth L.-T.*, supra, 213 Conn. App. 602.

The respondent's various evidentiary claims all center around the expert report and trial testimony of Biren Caverly, the court-appointed psychological evaluator. We note that a respondent in a child protection matter generally is entitled to discovery pursuant to Practice Book § 34a-20. Under subsection (b) of § 34a-20, a respondent is entitled to the disclosure of the basis of an expert's opinion. Further, to the extent that an expert opinion may be based on scientific methods, the respondent is entitled to request and, under certain circumstances, may be entitled to a hearing in accordance with *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998). Finally, reports from doctors and social workers routinely are admitted into evidence in child protection matters. The rules of evidence, of course, apply and caution must be taken to avoid admitting inadmissible hearsay. Nevertheless, even if we agreed with the respondent that the court committed the evidentiary errors she asserts, the respondent has failed to meet her additional burden of demonstrating that these errors were harmful. This is largely due to the fact that we are unpersuaded that the evidence at issue

played any significant role in the court's ultimate decision to terminate the respondent's parental rights.

Central to our evaluation of the potential harm of the claimed evidentiary errors is a careful consideration of the rationale underlying the court's ruling. The court's analysis of the respondent's failure to rehabilitate does not rely on any particular mental health diagnosis or the respondent's overall mental health issues. We reject the respondent's characterization of the court's decision and disagree that the court relied on unresolved mental health difficulties as a basis for its decision to terminate the respondent's parental rights. Although the court makes a singular, passing reference to the respondent's mental health difficulties in the opening paragraph of its decision, the court is nonetheless also quite explicit that, "[*a*]*t the heart of this case* is the [respondent's] inability to protect her three children from the intimate partner violence between herself and the fathers of these children. . . . The pernicious impact of repeated incidents of domestic violence and the trauma it has inflicted on her children are events for which she cannot acknowledge any responsibility, despite receiving counseling, domestic violence services, and intensive family preservation services several times." (Emphasis added.) There is simply nothing in the court's decision regarding the respondent's failure to rehabilitate from which we can conclude that the court's decision would have been different in the absence of the admission of Biren Caverly's report and her expert testimony about the respondent's mental health difficulties.

The court's consideration of whether the petitioner had proven the statutory grounds for termination of the respondent's parental rights focused on the choices and actions of the respondent without any references to facts relating to her mental health diagnosis that were admitted, only in part, through the testimony and report

of Biren Caverly.[12] We are cognizant that the failure of the court to order the disclosure of the testing materials potentially limited the respondent's opportunity to discredit the results and to effectively cross-examine Biren Caverly at trial. Nevertheless, reading the court's decision and its analysis as a whole, we do not conclude that this detriment alone amounted to harmful error.

The respondent has the burden of demonstrating harm, but she has failed to persuade us how the evidentiary errors she asserts had any significant bearing on the court's central rationale for concluding that the respondent had failed to rehabilitate or to demonstrate how the alleged errors could have impacted, in any significant way, the trial court's decision and, thus, the outcome of the trial. This is particularly true given the court's clear analysis regarding the defendant's failure to rehabilitate that focused on the respondent's behavior and her decision to prioritize her adult relationships over the needs and well-being of her children. Simply put, the results of her mental health evaluation or any particular mental health diagnosis did not play a material role in the court's determination to terminate her parental rights.

Because the respondent has failed to demonstrate how she was harmed by any of the challenged discovery and evidentiary rulings, the respondent is not entitled to a new trial. Accordingly, her evidentiary claims fail.

The judgments are affirmed.

In this opinion the other judges concurred.

[12] As we have previously discussed, evidence of the respondent's mental health problems was introduced through other sources unrelated to Biren Caverly's testimony and reports, including social studies admitted into evidence and the respondent's own trial testimony. To the extent that the court discussed Biren Caverly's mental health opinion and testimony, as Biren Caverly herself testified, her opinions regarding the respondent and her children were made on the basis of several different components of her evaluation, and she explained that she put "the least onus on the testing . . . [and] the heaviest onus on the interviews with the parties . . . ."