IN RE KYLIE P.*
(AC 45434)

Moll, Clark and DiPentima, Js.

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child, K. The mother came to the United States from Jamaica on a tourist visa and, two months later, gave birth to K in Hartford. The mother

* 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.

returned to Jamaica with K but later sent K to live with relatives in Connecticut when she was unable to care for K. The Department of Children and Families became involved with K when one of the relatives physically abused K, and the mother, at that time living in Nevada, remained unable to care for K or to identify another caretaker to the department. Thereafter, the court adjudicated K neglected following a petition filed by the petitioner, the Commissioner of Children and Families, and ordered final steps for the mother. The mother returned to Connecticut, where she was unable to obtain a job or housing due to her lack of citizenship or documentation as her tourist visa had expired but she did attend in-person visits and maintain telephone or virtual contact with K as well as attend counseling. Subsequently, the mother moved to Mississippi, and she continued to have regular video or telephone contact with K for approximately two years, although she declined to continue therapy. While in Mississippi, the mother gave birth to another child, D. The department, on learning of D's birth, verified D's well-being through contact with the child protective services agency in Mississippi. Thereafter, the department filed a petition for termination of the mother's parental rights as to K. The department subsequently learned that the mother had moved to Nevada with D, where she received counseling and assistance with immigration though a homeless shelter and, ultimately, obtained employment and her own apartment. The trial court found that the mother had failed to rehabilitate sufficiently to satisfy the requirements of the applicable statute (§ 17a-112 (j) (3) (B) (1)). On appeal, the mother claimed, inter alia, that the trial court violated her rights to due process by ordering K's attorney to call an additional witness at trial after the close of evidence and it was precluded from finding that she failed to rehabilitate because the department interfered with her parent-child relationship by threatening to remove D if she returned to Connecticut. *Held*:

1. Contrary to the respondent mother's claim, the evidence before the trial court was sufficient to support its factual finding, by clear and convincing evidence, that the department made reasonable efforts to reunify the mother with K: the evidence before the court included the department's referral of the mother to mental health services, the commencement of supervised, in-person visitation with K in Connecticut, referrals of the mother to agencies to assist her with housing, immigration and employment issues, the department's continual efforts to contact the mother after she had left the state, its offers to pay for mental health treatment outside of Connecticut, and encouragement to communicate with K's therapist; moreover, although some of the department's efforts to assist the mother with housing and employment were unsuccessful due to the mother's immigration status, the department was persistent in making referrals for the mother to assistive services and made reasonable efforts under the circumstances of this case; furthermore, it was reasonable,

under the circumstances, for the department to defer providing psychoeducation services to the mother until she addressed her own mental health issues, and, when the department arranged for K's therapist to provide such services to the mother, she specifically declined.

2. This court declined to address the respondent mother's unpreserved claim that the trial court erred in finding that the department was not required to make reasonable efforts to reunify her with K pursuant to statute (§ 17a-111b (a) (2)), which she claimed was unconstitutional as applied in this case, as this court concluded that the trial court properly found that the department had made reasonable efforts to reunify the mother with K, and Connecticut courts follow the basic judicial duty to eschew unnecessary determinations of constitutional questions.

3. The respondent mother could not prevail on her claim that the evidence was insufficient to support the trial court's finding that she had failed to reach the requisite degree of rehabilitation to assume a responsible position in K's life:

a. Although the court made findings that the mother had successfully addressed housing, employment, and mental health issues regarding her ability to care for K, additional evidence, including testimony from K's therapist about the mother's limited involvement and participation in K's treatment and her shortcomings in addressing K's attachment issues, supported the court's subordinate findings.

b. The mother's claim that the trial court was precluded from finding that she had failed to achieve the requisite degree of personal rehabilitation because the department's conduct in threatening to remove D if she returned to Connecticut amounted to improper interference with her ability to maintain a relationship with K was unavailing: even assuming, arguendo, that the exception preventing a petitioning party from terminating parental rights on the basis of no ongoing parent-child relationship when the petitioning party engaged in conduct that caused the lack of relationship applied in failure to rehabilitate cases, the exception was inapplicable under the facts of this case because the department social worker's statements were not threats but simply honest responses to the respondent's queries, as the information known to the department at the time suggested legitimate child-protection issues, and, although at one time a department employee told the mother that the removal of D was a realistic possibility, the department later determined that D was safe in her care and indicated that it would not attempt to remove him; moreover, the mother's lack of in-person visits and inability to meet K's particularized needs were exhibited well before the department indicated to the mother that it would possibly remove D from her care if she returned to Connecticut.

4. The respondent mother could not prevail on her unpreserved claim that the trial court violated her rights to due process in asking K's attorney to call a witness at trial after she and the petitioner had rested their cases: the mother's counsel engaged in conduct clearly demonstrating

agreement and assent to the court's conduct, as counsel did not object when the court requested K's attorney seek a witness to provide additional testimony, and counsel not only declined the court's invitation to withdraw its request but he actively participated in setting the parameters for the inquiry, thoroughly cross-examined the witness and made the strategic decision to call the witness as his own, thus, the mother waived her due process claim pursuant to *State* v. *Golding* (213 Conn. 233).

Argued January 5—officially released March 6, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Hartford, Juvenile Matters, where the matter was tried to the court, *Hon. Stephen F. Frazzini*, judge trial referee; judgment terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

Benjamin M. Wattenmaker, assigned counsel, for the appellant (respondent mother).

Evan O'Roark, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan* and *Rosemarie Weber*, assistant attorneys general, for the appellee (petitioner).

Opinion

CLARK, J. The respondent mother, Isheika P., appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her minor child, Kylie P. (Kylie).[1] On appeal, the

** March 6, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The operative termination of parental rights petition also named as respondents putative father Orlando F. and putative father John Doe. The court terminated the parental rights of both putative fathers. Because neither putative father is involved in this appeal, any references in this opinion to the respondent are to the respondent mother only.

We also note that counsel for the minor child filed a statement adopting the brief of the petitioner in this appeal pursuant to Practice Book §§ 67-13 and 79a-6 (c).

respondent claims that the trial court (1) violated her "right to a fair trial by an impartial tribunal . . . as guaranteed by the due process clause to the United States constitution" when it purportedly ordered Kylie's attorney to call an additional witness at trial after the close of evidence, (2) was precluded from finding that she failed to rehabilitate because the Department of Children and Families (department) improperly interfered with her parent-child relationship by threatening to remove her youngest child if she returned to Connecticut, (3) erred in concluding that the department made reasonable efforts to reunify her with Kylie, (4) erred in concluding that the department was not required to make reasonable efforts pursuant to General Statutes § 17a-111b (a) (2) because it already had approved a permanency plan for termination of parental rights, and (5) erred in finding that she failed to rehabilitate because there was insufficient evidence on which to make that finding. We affirm the judgment of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to this appeal. The respondent was born and raised in Jamaica. In 2015, she came to the United States while pregnant with Kylie, her fourth child, who was born in 2016 in Hartford.[2] Two months later, the respondent returned to Jamaica with Kylie.

In May, 2017, the respondent sent Kylie back to Connecticut to live with the respondent's second cousin, Lennox P. (Lennox), and his wife, Karla Y.-P. (Karla), because the respondent was unable to care for Kylie at that time. Kylie remained in the care of Lennox and Karla for approximately ten months.

In early 2018, Kylie came to the department's attention as a result of an application for temporary custody

[2] The respondent has three older children, who are currently in the care of their fathers or paternal relatives in Jamaica.

filed in Probate Court by Lennox and Karla, which stated that the respondent was living in Jamaica and unable to care for Kylie. The Probate Court asked the department to assess the application. While the department was conducting its assessment of the matter, Lennox's daughter, Shanice M. (Shanice), reported to the department that her stepmother, Karla, was physically abusing Kylie and provided photographs and specific examples of abuse, including an allegation that Karla slammed Kylie's head while the two of them were in the bathroom together, leaving a bruise above Kylie's eye.

The department was able to contact the respondent to inform her of Kylie's injuries. It learned that the respondent had moved from Jamaica to Nevada in June, 2017. During the respondent's communications with the department, she explained that she was not in a position to care for her daughter and was unable to identify another caretaker for her at that time.

Department social workers met with Karla, who denied the allegations. The department social workers concluded that the bruising they saw on Kylie's face and the injuries shown in the photographs that Shanice provided were not consistent with the account provided by Karla. On February 2, 2018, the department invoked a ninety-six hour hold on Kylie, removing her from the custody of the respondent and from the care of Lennox and Karla.

On February 7, 2018, the petitioner filed an application for an ex parte order of temporary custody, which the court granted, and a neglect petition. The court sustained the order of temporary custody following a preliminary hearing on the ex parte order.[3] On May

[3] The court found that it was not entirely clear how much contact the respondent had with Kylie between the time Kylie returned to the United States and the order of temporary custody. Although the respondent told the department in 2018 that she had gone straight from Jamaica to Nevada, the respondent testified that, before going to Nevada, she first spent a few weeks in Connecticut and that, after moving to Nevada, her cousin Lennox

10, 2018, the court adjudicated Kylie as neglected and ordered specific final steps for the respondent.

Arriving back in Connecticut, the respondent stayed with relatives or lived in motels and hotels while she tried to find a job and cope with the distress she was experiencing about the abuse of Kylie and her inability to provide a home for her daughter. The department offered her regular supervised in-person visits and permitted the foster parent to allow additional telephone or virtual contact. Although Kylie did not initially recognize the respondent, the department continued to offer the respondent regular in-person visits, and a relationship began to develop between them, although slowly and sometimes painfully. For example, during the initial visits, Kylie would gravitate toward the case aide rather than the respondent. Although the respondent missed almost one half of her scheduled visits, and the department believed that she spent too much of her visitation time on her phone or introducing Kylie to her relatives and siblings, their relationship began to improve.

At some point, the respondent told the case aide that she knew she needed to have her own housing in order to get Kylie back but that it was hard for her to get her own place because she did not have a job or citizenship. As will be discussed in greater detail in part I of this opinion, the department assisted the respondent in addressing the barriers to her reunification with Kylie.

In September, 2018, the respondent moved to Mississippi. She told the department that she was going there for a short time to work as a maid and planned to return to Connecticut. However, she stayed in Mississippi, not informing the department that she actually had lived there for several months. The respondent's move to

let her have weekly video chats with Kylie. Kylie, who was quite young during this time, did not recognize the respondent early in 2018 after going into the petitioner's custody.

Mississippi ended her in-person supervised visits with Kylie, but she continued to have regular video or telephone contact with her daughter facilitated by the foster parents until sometime in 2020. Although the department encouraged her to engage in therapy in Mississippi like that she had been receiving in Connecticut and even agreed to pay for the therapy, the respondent declined to do so. Contact with the respondent became sporadic between December, 2018, and March, 2019, as the respondent would not answer or respond to the department's telephone calls.

Beginning on March 26, 2019, the respondent called the department and spoke by telephone with department staff four times over the following three weeks. In one of those calls, the respondent informed department staff that she had neither employment nor any funds to return to Connecticut and was still unable to care for Kylie. She had no more telephone contact with the department until October, 2019.

In October, 2019, the respondent and a department social worker connected by telephone. During that call, the social worker heard a baby in the background and asked her if she was babysitting someone's child. She informed the social worker that she had given birth to a baby boy, Davonte, three months earlier. At that time, the department had very little information about the respondent's situation. The social worker informed the respondent that he would need to contact the local child protective agency in Mississippi to have someone verify Davonte's well-being. A week later, Mississippi child protection services informed the department that it had made contact with the respondent and the newborn child and that it had no concerns with respect to Davonte's safety and well-being.

On December 10, 2019, the petitioner filed a petition for termination of parental rights alleging failure to

rehabilitate as to the respondent and abandonment and no ongoing parent-child relationship as to the putative father, Orlando F. An initial hearing on the termination petition was held on January 30, 2020, which the respondent attended in person. The respondent disclosed that, at some point in late 2019, she had left Mississippi and begun staying with relatives in Massachusetts. She told the department that she left Mississippi because of an incident between her and Davonte's father, but she was guarded in her statements to the department.

On February 11, 2020, the department learned that the respondent had moved to Nevada. She informed them that she was going to start college at the end of March and rejected any referrals for parenting services, mental health treatment, or legal aid. She emphasized that she did not want any help from the department and said that she was considering entering a shelter in Reno for herself and her son. The department experienced the same difficulty in maintaining contact with the respondent that it had in 2019, with the respondent not answering or responding to telephone calls and communicating only by text message. At some point, the department learned that the respondent was living in a homeless shelter where she received the types of services that the department had previously implored her to seek: counseling from a licensed professional, case management services to help her adjust to living safely with her son in Nevada, and immigration counseling.[4] By the end of 2020, the respondent was employed,

[4] The court found that, while the respondent was living in Connecticut, "[the department] had encouraged her to seek housing at a shelter, which [the department] told her could provide possible access to employment assistance and more permanent housing—and testimony from Kara Capone, the chief executive officer of Mercy Housing Advocates, an umbrella organization for two shelters in the Hartford area—later confirmed that residing in a Connecticut shelter can [be] a gateway here to housing, even for undocumented residents; but [the respondent] at the time had declined, saying that she would not be able to comply with shelter rules."

was residing in her own apartment in Nevada, and had her son in child care while she was working.

On December 29, 2020, the respondent filed a motion to revoke commitment of Kylie. She also filed a motion for posttermination visitation in May, 2021. On June 3, 2021, the petitioner filed a motion to review permanency plan. A hearing on those motions was consolidated with a trial on the termination petition, which took place over ten nonconsecutive days between May 25 and August 15, 2021.

On February 15, 2022, the court, *Hon. Stephen F. Frazzini*, judge trial referee, issued an eighty-nine page memorandum of decision terminating the respondent's parental rights and appointing the petitioner as Kylie's statutory parent. The court found, by clear and convincing evidence, that Kylie had been adjudicated neglected on May 10, 2018, and that the respondent had failed to rehabilitate sufficiently to satisfy the requirements of General Statutes § 17a-112 (j) (3) (B) (i). The court also found that the department had made reasonable efforts to locate the respondent and to reunify her with Kylie and also that the respondent was unwilling or unable to benefit from reunification services. Last, the court found that termination of the respondent's parental rights was in Kylie's best interests. The court denied the respondent's motion for revocation but granted her motion for posttermination visitation. This appeal followed. Additional facts with be set forth as necessary.

I

The respondent claims on appeal that the court erred in concluding that the department made reasonable efforts to reunify her with Kylie.[5] Specifically, she argues that the department identified several barriers

[5] For purposes of judicial economy, we address the respondent's claims in a different order from that in her principal appellate brief.

to reunifying her with her daughter, including her (1) immigration status, (2) housing and employment, (3) mental health, and (4) parenting skills and relationship with Kylie. In the respondent's view, the department referred her to only a handful of services, such as in-person visitation and individual counseling. The respondent therefore contends that the evidence is insufficient to establish that the department made reasonable efforts to assist her in addressing her immigration status, housing and employment, or her parenting skills and relationship with Kylie. We are not persuaded.

Before addressing the respondent's claim, we pause to identify the pertinent legal principles and standard of review. "Section 17a-112 (j) (1) requires that before terminating parental rights, the court must find by clear and convincing evidence that the department 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 provided such finding is not required if the court has determined at a hearing . . . that such efforts are not appropriate . . . . Thus, the department may meet its burden concerning reunification in one of three ways: (1) by showing that it made such efforts, (2) by showing that the parent was unable or unwilling to benefit from reunification efforts or (3) by a previous judicial determination that such efforts were not appropriate." (Internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 808, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022). "[I]n determining whether the department has made reasonable efforts to reunify a parent and a child . . . the court is required in the adjudicatory phase to make its assessment on the basis of events preceding the date on which the termination petition was filed. . . . This court has consistently held that the court, [w]hen making its reasonable efforts determination . . . is limited

to considering only those facts preceding the filing of the termination petition or the most recent amendment to the petition . . . .'' (Emphasis omitted; internal quotation marks omitted.) *In re Cameron W.*, 194 Conn. App. 633, 660, 221 A.3d 885 (2019), cert. denied, 334 Conn. 918, 222 A.3d 103 (2020).

''The reasonableness of the department's efforts must be assessed in the context of each case. The word reasonable is the linchpin on which the department's efforts in a particular set of circumstances are to be adjudged, using the clear and convincing standard of proof. Neither the word reasonable nor the word efforts is, however, defined by our legislature or by the federal act from which the requirement was drawn. . . . [R]easonable efforts means doing everything reasonable, not everything possible. . . . [R]easonableness is an objective standard . . . and whether reasonable efforts have been proven depends on the careful consideration of the circumstances of each individual case.'' (Internal quotation marks omitted.) *In re Gabriella A.*, 154 Conn. App. 177, 182–83, 104 A.3d 805 (2014), aff'd, 319 Conn. 775, 127 A.3d 948 (2015).

Our review of the court's reasonable efforts determination is subject to the evidentiary sufficiency standard of review; see *In re Corey C.*, 198 Conn. App. 41, 59, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020); 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].'' (Internal quotation marks omitted.) *In re Harmony Q.*, 171 Conn. App. 568, 575, 157 A.3d 137, cert. denied, 325 Conn. 915, 159 A.3d 232 (2017). In so doing, ''we construe the evidence in a manner most favorable to sustaining the judgment of the trial court'' and ''will not disturb the court's subordinate factual findings unless they are clearly erroneous.''

(Internal quotation marks omitted.) *In re Leilah W.*, 166 Conn. App. 48, 68, 141 A.3d 1000 (2016).

In the case at hand, the court found that the department identified several barriers to reunifying Kylie with the respondent, including the respondent's immigration status, which made it difficult for her to obtain employment, funds to support herself, or suitable housing; her own mental health; her parenting skills; and her relationship with Kylie. The court then set out in its memorandum of decision a lengthy account of the various reunification efforts made by the department. After describing the efforts and the events that transpired, the court concluded that "[t]he evidence proved clearly and convincingly that [the department] made reasonable reunification efforts with regard to the barriers preventing reunification . . . ." In summation, the court explained that "[t]he department initially referred [the respondent] to individual counseling. After her relocation to Mississippi ended her therapy with Jennifer Daigle, [a licensed clinical social worker] in Connecticut, [the department] continued to encourage the [respondent] to engage with mental health providers, and even agreed to pay for counseling. It encouraged her to seek immigration services for her undocumented status that was a formidable barrier to obtaining employment, and it provided and fostered in-person and virtual visitation with Kylie so that she could maintain a relationship with the child. But the evidence shows that Kylie's own mental health issues necessitate her parent knowing how to respond to those issues. Very early in this case, [Kylie's multidisciplinary evaluation] identified psychoeducation for the [respondent] as one way to meet that need. The reports of the [respondent's] depression and its interference with her visitations warranted [the department's] belief in 2019 that she needed to address her own issues first before beginning psy-

choeducation services. With regard to the [respondent's] difficulty finding suitable housing, the department's obligation to make reasonable efforts at reunification does not require it to provide a parent with housing, but the department should refer the parent to any resources that could assist the parent in obtaining housing, and [the department] did that here. When the housing referrals to Chrysalis Center and Liberty Garden Apartments were unsuccessful because of the [respondent's] undocumented status, the department encouraged her to seek housing from a homeless shelter, which the evidence shows could have offered a possible pathway to housing and housing subsidies for her."

Although the respondent claims that the "department only referred [her] to a handful of services, such as in-person visitation and individual counseling," and, that "the evidence is insufficient to establish that [the department] made reasonable efforts to assist [the respondent] in addressing her immigration status, housing and employment, or her parenting skills and relationship with Kylie," the record belies this assertion. The evidence in this case shows that, whether the respondent was in Connecticut, Mississippi, or Nevada, and regardless of her varying degrees of cooperation, the department made reasonable efforts to reunify the respondent with Kylie.

To illustrate the extent of the department's involvement, we recite some of its efforts and the evidence that supports a finding of those efforts. The evidence shows that, at some point in early 2018, the respondent told the department that she had entered the country on a visitor's visa that was first issued to her in 2015. The respondent's testimony confirmed that she overstayed her visa and that she no longer had legal status in the United States, which made it difficult for her to receive certain governmental financial assistance, made her ineligible for certain housing and other programs,

and limited her employment prospects and ability to support herself and Kylie. Testimony by Monica Gould, a social work supervisor with the department, confirms that, while the respondent was in Connecticut, the department referred her to Community Health Services for mental health services, where she began therapy with Daigle, a licensed clinical social worker. She was diagnosed with depression and prescribed medication, which she did not take because she found it unhelpful. Additionally, in order to help reestablish her relationship with Kylie, both documentary and testimonial evidence show that the department commenced supervised in-person visitation, which incorporated the Therapeutic Family Time parent coaching model. Although the respondent attended many of the visitation sessions, she also missed many of them for various reasons, including leaving the state to visit family in Nevada or going out of touch where the department could not reach her.

The evidence confirms that, in March, 2018, the department referred the respondent to an agency called the Chrysalis Center for help with her housing, immigration, and employment issues. Despite the department's efforts, it later learned that the respondent was ineligible for services there because she did not have a Social Security number. In April, 2018, the department contacted Liberty Gardens Apartments, a state affiliated housing program, but was informed that the respondent's undocumented status and lack of Social Security number precluded her from participating in that program as well. Colleen Drummond, a social work supervisor for the department, testified that the respondent was then provided with information regarding the 2-1-1 Connecticut information line,[6] which could assist the respondent with housing and employment services in

[6] 2-1-1 is a free, confidential information and referral service that connects people to essential health and human services.

the community. It was also recommended that she seek shelter housing, as doing so could have been a route to more permanent housing and a state funded housing subsidy despite her undocumented status. The respondent was not willing to stay in a shelter.

There is no question that the respondent's immigration status created a barrier to her ability to obtain housing and employment. Drummond further testified that, to assist with her immigration status, the department provided the respondent with forms to apply for a tax identification number, which would function like a Social Security number and assist in employment and housing. The department followed up with Catholic Charities regarding a tax identification number and its ability to assist the respondent with her immigration issues. The department also remained in contact with the respondent's child protection attorney, who was assisting her in applying for a work visa. Indeed, on multiple occasions, department social workers connected with the respondent's attorney about how to address her immigration issues. They repeatedly encouraged the respondent to follow up with her attorney on her immigration concerns.

Drummond testified that she personally contacted the department's director of multicultural affairs, inquiring about services for the respondent and how the respondent could change her visa to a working visa or obtain citizenship. The director reported that, if she had overstayed her visa, there was not much recourse unless she returned to her country of origin and applied for a work visa. He reported that she needed an employer in the United States to sponsor her.

The department also encouraged the respondent to participate in a general equivalency diploma program at the Urban League, which the department believed might offer her the possibility of obtaining an education

visa. She did enroll in that program in May, 2018, but dropped out soon afterward, telling the department that she could not concentrate.

The department's efforts did not end there. Even after the respondent moved to Mississippi, where she provided little information to the department regarding her circumstances and refused its referrals, the department continued to reach out by telephone and text messaging to discuss services. Department social workers urged the respondent to continue her mental health treatment while she resided in Mississippi and even told her that the department would pay for mental health treatment there. The department encouraged the respondent to seek immigration services, providing her information for the immigration office in Mississippi. The department also provided and fostered in-person and virtual visitation with Kylie so that the respondent could maintain a relationship with the child.

When the respondent resided in Nevada, the department again encouraged her to seek mental health services. Although the respondent generally refused services, the department encouraged her to communicate with Kylie's therapist, who could have provided the psychoeducation previously recommended to the respondent to assist Kylie with her individualized health needs. Communications with the respondent, however, were sporadic until the spring of 2020, at which time the respondent informed the department in a text message that she had not spoken to Kylie for a while. The department thereafter took over supervised visits between Kylie and the respondent due to communication issues between the respondent and Kylie's foster parents. Subsequently, the department coordinated with the respondent's shelter in Nevada regarding services, reached out to Catholic Charities regarding the respondent's immigration status, and coordinated with the respondent's mental health provider.

On appeal, the respondent focuses on a few alleged shortcomings in the department's reunification efforts. Her primary argument is that the department failed to provide adequate services to assist with her immigration status. In particular, she argues that the department's own policy manual states that "the Social Worker *shall* assist undocumented adult clients with issues related to their immigration status. 'Assist' means, for example, to help fill out forms and provide a referral to an immigration attorney." (Emphasis in original.) She argues that the department did not make a referral for her to meet with an immigration attorney, nor did it help her fill out immigration forms, and for this reason alone, the department failed to make reasonable efforts to reunify her with Kylie.

The respondent's argument is unavailing for a number of reasons. First, the respondent fails to point to any authority to support her contention that the department was required by law to provide her with immigration counsel or to help her fill out particular paperwork in order to satisfy the reasonable efforts requirement. See *In re Gabriella A.*, supra, 154 Conn. App. 186 n.9 ("[t]he respondent has failed to cite legal authority for the proposition that the department's many responsibilities include providing assistance as to immigration issues"); see also *In re Oreoluwa O.*, 321 Conn. 523, 562, 139 A.3d 674 (2016) (*Espinosa, J.*, dissenting) ("I agree with the Appellate Court, which properly concluded that the department was not required to provide the respondent with immigration counsel in order to satisfy the 'reasonable efforts requirement' ").[7] Second, the department's internal policy does not mandate, as the respondent contends, that the department make a referral to an

[7] The majority opinion in *In re Oreoluwa O.*, supra, 321 Conn. 523, did not address the question of whether the department was required to provide the respondent with immigration counsel in order to satisfy its statutory obligation.

immigration attorney or fill out particular immigration forms in every instance. By its clear language, the policy provision simply provides *examples* to department social workers on possible ways to *assist* undocumented adult clients. Assistance, of course, will vary depending on the particular circumstances of a case. Third, our inquiry is not whether the department followed its own internal policy but whether the department satisfied its statutory obligation to make reasonable efforts to reunify the respondent with Kylie under the particular circumstances of this case.

As previously set forth, the evidence before the trial court was sufficient to support its factual finding, by clear and convincing evidence, that the department made reasonable efforts to reunify the respondent with Kylie. To the extent the department was even required to provide immigration assistance to the respondent, it is clear that its efforts were reasonable. The department assisted the respondent by, among other things, consulting with her child protection attorney, who was assisting the respondent with obtaining a work visa. The department also made various referrals to organizations that could assist with immigration and housing issues, and it provided the respondent with forms to apply for a tax identification number, which would function like a Social Security number to assist her in obtaining employment and housing. The fact that some of the department's efforts were unfruitful does not necessarily render them unreasonable.

The respondent next argues that the department "failed to provide services that were designed to provide assistance with housing or employment." This argument is also belied by the record. The department made numerous referrals to services for housing and employment. Although some of these efforts were unsuccessful because of the respondent's immigration status, the department was persistent in its efforts to assist the

respondent on this front. While trying to help get the respondent's immigration situation in order, the respondent was referred to the 2-1-1 information line and a shelter placement, which could have been the means for establishing more permanent housing and employment. Indeed, testimony in the record confirmed that the undocumented immigration status and lack of a Social Security number typically would not impact the ability of a shelter resident or homeless person to access permanent supportive housing, which is affordable housing coupled with support services provided through case management. The respondent, however, refused the services because she was not willing to stay in a shelter.[8]

The respondent also claims that the department did not even attempt to use special "WRAP funds"[9] to pay for her housing. But nothing in the record even indicates that this type of funding was available to the respondent for housing. To the contrary, the petitioner introduced evidence that such funding was not available for the respondent's housing. The department's efforts were

[8] We note that, although the respondent faults the department for encouraging her to obtain shelter placement while she was in Connecticut, shelter housing is precisely what led to her obtaining stable housing, immigration assistance, and mental health services after she moved to Nevada. The record reveals that, in mid-2020, after moving to Nevada, the respondent moved into a shelter with Davonte. The respondent worked closely with a case manager while at the shelter, who ultimately helped her find day care for her son and stable housing and also made referrals for parenting classes, immigration assistance, and mental health treatment. This further supports the conclusion that the respondent's efforts were reasonable.

[9] The respondent introduced evidence of the department's "Immigration Practice Guide," which provided, among other things, "Specific Information Regarding Use of DCF's Wraparound Funds." The guide provides: "Given that clients who are undocumented immigrants do not qualify for most public services, they may be eligible, on a case-by-case basis, for services financed by DCF's WRAP funding. Please know that, at this time, the purpose for which WRAP funding are used are left to the discretion of each Area Office. Therefore, please consult with your supervisor about appropriate use and availability of funding."

reasonable under the particular circumstances of this case.

Last, the respondent argues that the department failed to make reasonable efforts to assist her in repairing her relationship with Kylie and improving her parenting skills. She argues that, although the department provided her with supervised in-person visitation, 'it failed to take additional steps recommended by psychiatric experts,'' namely, the provision of psychoeducation around child development. We are not persuaded.

The trial court found that, on February 27, 2018, the department took Kylie to Community Human Resources, Inc., for a multidisciplinary evaluation (MDE) to understand and address her various needs. In light of the MDE, the court found that Kylie's own mental health issues necessitated that the respondent know how to respond to those issues. To that end, Kylie's MDE made numerous recommendations involving the respondent, including, inter alia, that the respondent engage with Kylie in trauma focused work and engage in her own individual psychotherapy so that she would be in a position to meet Kylie's needs. The court found that the department deferred providing psychoeducation services to the respondent because of reports of the respondent's depression and its effect on her visitation with Kylie. It determined that the respondent first needed to address her own mental health issues before beginning psychoeducation services. The court found this deferral reasonable and further found that ''[w]hether [the department] would have concluded that the [respondent's] progress in therapy and her [improvement] warranted the beginning of the psychoeducation recommended by the MDE will never be known, however, because of the [respondent's] limited contact with the department from the fall of 2018 until the end of 2019.'' The court additionally found that, when the department arranged for Kylie's therapist to

provide psychoeducation to the respondent, the respondent specifically declined further discussions with the therapist.

In short, the evidence supports the court's finding that it was reasonable, under the circumstances, for the department to defer the provision of these services in 2018, and further supports the other factual findings set forth by the court in support of its determination that the department had made reasonable efforts to reunify the respondent with Kylie. Accordingly, we find no merit in the respondent's claim.[10]

II

The respondent next claims that the trial court erroneously found that the department was not required to make reasonable efforts pursuant to § 17a-111b (a) (2) because it already had approved a permanency plan for the termination of her parental rights. The respondent claims that § 17a-111b (a) (2) "is unconstitutional as applied in this case because it relieves [the petitioner] of the obligation to prove that it made reasonable efforts to reunify under § 17a-112 (j) (1) if the trial court has already approved a permanency plan other than reunification by a preponderance of the evidence." The respondent claims that this court may address her new argument under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).[11]

[10] The respondent also claims that the court improperly determined that she was unable or unwilling to benefit from reunification efforts under § 17a-112 (j) (1). Because we have concluded that the court properly found, on the basis of clear and convincing evidence, that the department made reasonable efforts to reunify the respondent and Kylie, we need not reach the respondent's claim regarding the court's finding that she was unable or unwilling to benefit from reunification efforts. See *In re Ryder M.*, supra, 211 Conn. App. 808 n.7.

[11] The *Golding* doctrine provides that "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation

Because we conclude in part I of this opinion that the court properly found, on the basis of clear and convincing evidence, that the department did in fact make reasonable efforts to reunify the respondent and Kylie, we need not address the respondent's claim. As a jurisprudential matter, Connecticut courts "follow the recognized policy of self-restraint and the basic judicial duty to eschew unnecessary determinations of constitutional questions." (Internal quotation marks omitted.) *In re Brayden E.-H.*, 309 Conn. 642, 656, 72 A.3d 1083 (2013). Addressing the respondent's claim would be contrary to that policy and this court's basic judicial duty. We decline to do so.

III

The respondent next claims that the trial court erred in finding that she failed to rehabilitate because the evidence is insufficient to support that conclusion. We disagree.

We begin by setting forth the established principles of law and the standard of review. "Section 17a-112 (j) (3) (B) requires the court to find by clear and convincing evidence that . . . the parent of [the] child has been provided specific steps to take to facilitate the return of the child to the parent . . . 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

of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40, as modified by *In re Yasiel R.*, supra, 317 Conn. 781.

. . . .” (Internal quotation marks omitted.) *In re Karter F.*, 207 Conn. App. 1, 20–21, 262 A.3d 195, cert. denied, 339 Conn. 912, 261 A.3d 745 (2021).

“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 [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. . . . 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 [the parent] 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.” (Internal quotation marks omitted.) *In re Lillyanne D.*, 215 Conn. App. 61, 87, 281 A.3d 521, cert. denied, 345 Conn. 913, 283 A.3d 981 (2022).

The court’s determination that a parent has failed to rehabilitate is subject to the evidentiary sufficiency standard of review. See *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015). We look to see “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.” (Internal quotation marks omitted.) Id. The court’s subordinate factual findings are reviewed for clear error. See id., 587.

We turn now to the court's findings. As to Kylie's particularized needs, the court found that, "[d]uring Kylie's short life, she has lived with her mother, with her mother's second cousin and his wife, and in three foster homes. In two of those homes, she was physically mistreated. When she was less than eighteen months old, her mother sent her to live with the cousin and his wife, and she was physically abused in that home. After Kylie was placed into [the department's] care, she quickly bonded with her first foster family and within weeks was calling them 'mommy and daddy.' But they did not protect her from other foster children, who caused more injuries—[though] much less severe—to Kylie. Then, after approximately six months with the first foster family, she was placed with the family she calls 'Gigi' and 'Papa,' and afterward, in March, 2021, with their grown daughter, whom Kylie calls 'Auntie Neesha.'

"[The department's] earliest visits to the first foster home found her happy and comfortable there, but there were already signs that she had been affected by the turmoil of her early life. A status report submitted by the department after two months stated that 'Kylie has displayed behaviors which include screaming and hitting. Kylie demonstrates anxiety around new people. She will scream, cry, and pull away from new individuals.' . . . The neglect social study filed shortly afterward similarly said that 'Kylie presents as clingy and frightened with a serious demeanor. Kylie becomes extremely anxious when introduced to new people. Kylie is also frightened of cords and cries and screams at night, when it is bedtime.' . . .

"After she was placed with Gigi and Papa, Kylie initially appeared to thrive, and a social work supervisor wrote in the running narrative in October, 2018, that the foster parents, [the respondent], and the department all had no concerns about her behaviors. . . . Early in

the following year, however, she began having problems in her foster home and at the daycare, and there were more comments about her 'flat affect.' The foster parents took Kylie in March, 2019, to licensed professional counselor Laurie Landry, who worked with her and her foster family. . . . Landry testified that, in 2019, she helped address Kylie's issues by providing psychoeducation to the foster parent, and with that help the problems soon subsided. But the evidence shows that, after that, Kylie periodically again exhibited behavioral problems. By early 2021, the foster family had taken her back to Landry, who has been seeing Kylie and one of the foster family adults weekly ever since.

"Landry's testimony at trial was helpful, credible, and persuasive in explaining Kylie's behavior[s] and their likely origins. She explained many of Kylie's symptoms in terms of the child's sense of safety. She said that she was not able to identify the specific source of Kylie's behaviors but that they were sometimes typical symptoms of past trauma. She also testified that the various disruptions in where Kylie was living would be traumatic to any child; 'when kids are removed and placed in different places that's a traumatic event' and that 'a break in attachment from a caregiver is a trauma.' . . . Landry has diagnosed Kylie as having anxiety, based on her symptoms, and reactive attachment disorder, based primarily on Kylie's 'history of broken attachments.' . . .

"Landry described her therapy with Kylie now as primarily 'symptom management.' Kylie's behaviors have improved since she resumed therapy, but Landry testified credibly that providing permanency to Kylie is the only way for her trauma to begin to be healed. She also testified that, despite the improvements, 'there's a lot of work that still needs to be done with Kylie.' " (Citations omitted; footnote omitted.) The court found that, "[b]ecause of her recurring behavioral problems

that are symptoms of underlying anxiety and other mental health problems, [Kylie] needs continuing therapy to help her heal from the traumas she has experienced, as well as a parent or caregiver who will understand that these issues require professional help and who will work closely and collaboratively with those professionals."

The court went on to find that, "[a]s of the adjudicatory date, clear and convincing evidence offered at trial established that [the respondent] was not ready then or within a reasonable time thereafter to assume a responsible position in Kylie's life, in view of that child's age and needs. As of the date that the petition was amended and a new adjudicatory date created . . . [the respondent] remained without her own place to live, income, or means to support or house her daughter, and she still had her own mental health issues affecting her well-being. She had left the Mississippi home where she had lived with her infant son's father but had not yet told [the department] about that departure. [The respondent] explained at trial that she then lived temporarily with relatives in Massachusetts but that she did not attempt to reunify with Kylie at that time because 'Massachusetts is not a place where . . . immigrants can get job.' . . . Sometime between November and February, she then relocated to Nevada, where she stayed for a few months with a friend, where she had to share a bed with her infant son and the friend. At that point, reunification was not feasible and she was not ready to assume a responsible position then in Kylie's life or in the reasonable future." (Citation omitted.)

The court, however, did find that a substantial change had occurred in many aspects of the respondent's situation between the adjudicatory date and the time of trial. It therefore exercised its discretion and considered developments after the adjudicatory date. It stated: "As

of the time of trial, ending in August, 2021, the [respondent] had successfully attended and been discharged from mental health counseling, attended many hours of parenting education, found suitable housing, and obtained employment with which she can support herself and both children. Her immigration status has not changed but also has not prevented her from finding a job in Nevada and does not present itself as a child protection issue. This drastic turnaround in the [respondent's] situation resulted primarily from her willingness to do what [the department] had encouraged her but she had previously been [unwilling] to do: entering a shelter that could provide a segue to housing, employment and other services."

Although the court found that there was "no reason to believe that [the respondent] cannot today meet all the basic material needs of a six year old child or Kylie's need to have a safe and stable home," it found that "Kylie has special and individualized needs" beginning "with helping her recover from the traumas and abuse that she has endured." The court found that Kylie needs "a parent or caregiver who will understand that [her] behaviors, anxiety, and traumas are sufficiently severe" to require professional help but that the respondent's "actions do not show any genuine recognition of Kylie's needs or, just as importantly, any willingness to work with a therapist treating Kylie." The court stated that "[t]he statutory standard for rehabilitation is that the parent is ready to assume a responsible position in the life of a particular child, or will be in a reasonable time, both assessed in terms of the age and needs of the particular child. All the evidence overwhelmingly demonstrates, however, that the present is not such a time; nor is there a reasonable time in the future when that is foreseeable."

A

Turning to the respondent's claim, she argues that evidence in this case demonstrates that she has rehabilitated. In support of her argument, she identifies certain favorable findings made by the court about her progress. For example, she identifies the court's finding that, "as of the time of trial, the [respondent] had successfully attended and been discharged from mental health counseling, attended many hours of parenting education, found suitable housing and obtained employment with which she can support herself and her children. Her immigration status has not changed but also has not prevented her from finding a job in Nevada and does not present itself as a child protection issue." The respondent also relies on the finding that she had "addressed successfully the housing, employment, and her own mental health issues that were legitimate concerns in 2018 regarding her ability to care for Kylie."

But what the respondent fails to recognize is that "[o]ur focus in conducting a review for evidentiary sufficiency is not on the question of whether there exists support for a different finding—the proper inquiry is whether there is enough evidence in the record to support the finding that the trial court made." (Emphasis omitted.) *In re Jayce O.*, 323 Conn. 690, 716, 150 A.3d 640 (2016). The respondent's arguments ignore the great deal of evidence in the record that supports the court's finding that she had failed to rehabilitate to a level required under the statute, including, inter alia, testimony from Landry, Kylie's therapist, about the respondent's limited involvement and participation in Kylie's treatment. The respondent is essentially inviting this court to reweigh the evidence that was presented to the trial court so that we might reach a conclusion that differs from the one reached by the trial court. We decline her invitation. See *Pennymac Corp.* v. *Tarzia*,

215 Conn. App. 190, 206, 281 A.3d 469 (2022) (declining to reweigh evidence on appeal).

In advancing her argument, the respondent also takes issue with a few of the trial court's subordinate factual findings, including the finding that Kylie has specialized and individualized needs, such as recovering from trauma and abuse; that Kylie's attachment with the respondent was an issue; and that the respondent does not show recognition of Kylie's needs. Her argument, however, simply highlights favorable evidence in challenging each finding while disregarding the unfavorable evidence. Our review confirms that there is evidence in the record to support the court's subordinate findings, and we are not left with a definite and firm conviction that a mistake has been committed. Landry's testimony, among other evidence, elucidated Kylie's particularized and individualized needs, including the respondent's shortcomings in addressing Kylie's attachment issues.[12] These findings were also supported by the testimony of department staff who described in detail various visits between the respondent and Kylie and how there seemed to be a disconnect, as the respondent would become preoccupied with other distractions that prevented her from recognizing Kylie's interests and needs.

Construing the evidence in the manner most favorable to sustaining the court's judgment, as we must, we

[12] For example, the following colloquy took place between the assistant attorney general and Landry:

"[Assistant Attorney General]: And you know that Kylie maintains video contact with her mother. As it relates to the issues of attachment, is video contact with her mother sufficient as it relates to issues of attachment for Kylie?

"[Landry]: I don't think so, no.

"[Assistant Attorney General]: Okay.

"[Landry]: I think it certainly maybe quells Kylie's fears about her mom, making sure that her mom is okay and still out there—you know, and—and still engaged in her—her life in—in that way. But in terms of a—a—securing a firm, secure attachment, I—it's really difficult to do any relationship, really, by video. No."

conclude that the evidence was sufficient to justify the court's ultimate conclusion that the respondent failed to reach the requisite degree of rehabilitation to assume a responsible position in Kylie's life.

B

This brings us to the respondent's related claim. She contends that the court was precluded from finding that she failed to rehabilitate because "[the department] threatened to remove [her] youngest child from her custody if she ever returned to Connecticut, and thus effectively prevented her from returning to Connecticut for in-person visits with Kylie." She argues that the department's conduct amounted to improper interference with her ability to maintain a relationship with Kylie and that this court should apply the interference exception that applies in cases in which the alleged statutory ground for termination is the lack of an ongoing parent-child relationship even though in this case the court terminated her parental rights in this case because she failed to rehabilitate. For the reasons that follow, the respondent's claim fails.

In recent years, our Supreme Court has clarified the proper legal test to apply when a petitioner seeks to terminate a parent's rights on the basis of no ongoing parent-child relationship. See *In re Tresin J.*, 334 Conn. 314, 323, 222 A.3d 83 (2019); *In re Jacob W.*, 330 Conn. 744, 764, 200 A.3d 1091 (2019). In order to terminate parental rights on that basis, a petitioner must first "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." *In re Jacob W.*, supra, 762–63.

The court also has clarified the test's two attendant exceptions. The first exception, which is not at issue in the present case, applies when the child in question is an infant. Id., 763. Instead of looking to the present feelings and memories of the infant child, whose present feelings can hardly be discerned with any reasonable degree of confidence, courts are instead required at the first step to focus on whether the parent has positive feelings toward the child. Id.

The second exception, which is relevant to the respondent's claim in this case, "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." Id. In such instances, the "exception precludes the petitioner from relying on the lack of an ongoing parent-child relationship as a basis for termination." Id.

The applicability of the so-called 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).

The respondent does not point to a single Connecticut case that has held that the interference exception applies to a case where the statutory ground for termination is failure to rehabilitate. Nor has she articulated

why the rationale for the so-called interference exception, which is aimed at preventing a petitioning party from terminating a parent's rights on the basis of no ongoing relationship when the petitioning party engaged in conduct that caused the lack of relationship, should apply in failure to rehabilitate cases, where the focus is on whether the parent is in a position to responsibly care for the child within a reasonable time considering the age and needs of the child. It is unnecessary to resolve this question today, however, because, even assuming arguendo that the interference exception applies, as a matter of law, to the failure to rehabilitate ground for termination, we conclude that the exception is otherwise inapplicable under the facts of this case. See id. (even if interference exception applied to failure to rehabilitate ground, exception was inapplicable to facts of case).

In support of her argument that the department "threatened" to remove her newborn child if she returned to Connecticut and, thus, interfered with her ability to rehabilitate with Kylie, the respondent points to testimony from several witnesses at trial. The first exchange she identifies is between the respondent's counsel and Heather Czerwinski, a social worker with the department, about a telephone call that the respondent had with Czerwinski while the respondent was living in Mississippi:

"Q. I think [the respondent] expressed to you—and I think you testified to this on direct examination—that [the respondent] was—she expressed to you that she was afraid to come to Connecticut because she thought the department might remove her son from her care. Do you remember that?

"A. Yes, I do remember that.

"Q. And you let her know that that was a realistic probability, correct?

"A. I—I did say that—that there—that there was a realistic probability, yes."

The next identified exchange was between the respondent's counsel and Landry:

"Q. [A]re you aware that, in November of 2019, [the respondent] expressed that she was afraid to come back to Connecticut as she was afraid the department would remove her son and that Miss Czerwinski, the current social worker on the case, told her that this was a realistic concern and that she was probably right? Were you aware of that?

"A. No.

"Q. Sorry?

"A. No.

"Q. Okay. And would that have possibly given [the respondent] pause, in your estimation as a family therapist and a counselor and a mental health clinician, in wanting to return to the state to see her daughter because of the fear of potentially losing another child to the—to the department . . . system?

* * *

"A. So, can you ask the question again?

"Q. Sure. I said it is it reasonable—

"A. Okay.

"Q. Sure. After [the respondent] learned that information, would that have, perhaps, provided plausible explanation as to [the respondent's] hesitancy or reluctance or mistrust in to return to Connecticut to bring her son and to see Kylie in person?

"A. So, would I think it's reasonable that fear would be a barrier to her visiting?

"Q. Yes.

"A. Yeah."

The respondent also highlighted an exchange between the respondent's counsel and Gould, a social work supervisor with the department:

"Q. [Y]ou knew [the respondent] was concerned about immigration authorities, right?

"A. Yes.

"Q. You knew that you—actually, your team called Mississippi [Child Protective Services] and sent them to [the respondent's] doorstep, yes?

"A. Yes.

"Q. Your team contacted Nevada [Child Protective Services] and had them contact the [respondent], yes?

"A. Yes.

"Q. Your team told [the respondent] that it was a realistic possibility that the department would remove Davonte from her care should she return to Connecticut, yes?

"A. Yes.

"Q. So it's reasonable for [the respondent] to have a—some caution in dealing with the department in relation to fearing for the consequences of deportation or removal of her child, correct?

"A. Yes, cautious—"

The respondent's claim that the department interfered with her ability to rehabilitate is misplaced. As an initial matter, we must address the respondent's allegation that the department "threatened" to take her newborn child away if she were to return to Connecticut. The evidence shows that Czerwinski's statements

were not threats; they were simply honest responses to the respondent's queries. Indeed, the trial court found that Czerwinski's responses to the respondent's questions about her potential return to Connecticut were "probably . . . truthful and pragmatic," as the information known to the department at the time suggested legitimate child protection issues. In fact, when Czerwinski made this statement, "[the respondent] was unemployed, relying for housing and other necessities on an unidentified father of her newborn, refusing to participate in mental health services but had been teary to the point of being inaudible in a recent conversation . . . ."

More importantly, the focus of the interference exception is not the intent of the conduct at issue but whether "the actions of the petitioner rendered inevitable the *initial* lack of a relationship." (Emphasis in original; internal quotation marks omitted.) *In re Tresin J.*, supra, 334 Conn. 332 n.12. Although the court did not make a finding that there was no ongoing parent-child relationship because, as explained, this is a failure to rehabilitate case, it did find that one of the numerous reasons that the respondent failed to rehabilitate was because the virtual contact the respondent had with Kylie was insufficient to address Kylie's attachment issues. The respondent's lack of in-person visits (and her inability to meet Kylie's particularized needs), however, were exhibited well before Czerwinski's statement to the respondent. It is undisputed that the department became involved in early 2018, after Kylie was left in the care of her relatives, at which time the respondent had limited contact with Kylie. Additionally, after returning to Connecticut, it was the respondent who made the decision to move to Mississippi, effectively terminating the regular in-person visits that she had with Kylie.

But even if the respondent's limited in-person visits and contact with Kylie did not exist prior to Czerwinski's statements, we still would not conclude that the department's statements rendered *inevitable* the respondent's inability to maintain sufficient interactions with Kylie in order to meet her needs. Although it is understandable that the respondent, who had one child removed by the department, was cautious in her interactions with the department and may have feared that the same could happen to Davonte, the department did not prevent the respondent from eventually returning to Connecticut, satisfying the specific steps identified for her, and availing herself of the services recommended by the department. Of particular significance, the record shows that in or around January, 2020, a social worker with the department connected with the respondent by telephone, indicating that the department had spoken with the Mississippi child protection agency, which determined Davonte was safe in her care, and that the department would not attempt to remove Davonte if she returned to Connecticut. Thus, as of January, 2020, less than two months after the conversation the respondent claims constituted interference, the department had made clear to her that she was free to return to Connecticut and resume regular in-person visitation with Kylie.

Accordingly, even assuming arguendo that the interference exception is applicable in failure to rehabilitate cases, it has no application under the particular facts of this case for the reasons explicated. See id.[13]

[13] We also note that truthful answers provided by the department in response to a respondent's queries are not the type of "interference" that we historically have found improper. See, e.g., *In re Carla C.*, 167 Conn. App. 248, 250, 255, 143 A.3d 677 (2016) (interference exception was applicable when petitioner mother, who was custodial parent, obtained order from prison in which respondent father was incarcerated barring him from all oral or written communication with her and child, discarded cards and letters that he sent to child, and filed motion to suspend child's visitation with father on ground that it was "unworkable").

IV

The respondent's last claim targets the court's decision to ask Kylie's attorney to call a witness after the petitioner and the respondent had rested their cases. She contends that the court's conduct violated her "right to a fair trial by an impartial tribunal . . . as guaranteed by the due process clause to the United States constitution." The defendant requests review of her unpreserved claim pursuant to *State* v. *Golding*, supra, 213 Conn. 239–40. See footnote 11 of this opinion. We conclude that, although the record is adequate to review the claim presented and the claim is of constitutional magnitude, the respondent cannot prevail under the third prong of *Golding* because she affirmatively waived this claim.

We begin by setting forth additional facts and procedural history relevant to the respondent's claim. At the termination of parental rights trial, the respondent testified that, when she was in Connecticut, she went to Mercy House shelter for housing, but stated that Mercy House required a letter from the department in order for her to obtain housing there. She testified that the department did not provide her with such a letter, despite several requests.

The department offered rebuttal evidence to the contrary. It recalled social worker Czerwinski, who testified that, based on her experience with Mercy House, she has never been required to provide a letter in order for a client to obtain housing. The respondent's counsel objected numerous times throughout the testimony, stating that Czerwinski lacked the qualifications and personal knowledge to testify regarding Mercy House's policies. The respondent's counsel stated: "Unless Mercy [House] is here as a witness declaring what their qualifications are or not that would be the party appropriate to put on rebuttal evidence." He subsequently

stated that "[r]ebuttal would have to come from Mercy House themselves, not from this witness," and that "[i]t would have to be the same time period, back in 2018."

After testimony concluded regarding Mercy House, the court addressed the parties, indicating that it was "bothered by the lack of detail about Mercy [House]," and that it would "like to ask counsel for the minor child to investigate this issue and to either offer testimony or if the parties could offer stipulation about whether anyone presently has knowledge . . . at Mercy—Mercy [House] currently has knowledge about what their policies on this question would have been back in the relevant time period." The court then stated that it was looking for a witness who can say what the policy was at that time or, if no one knows, a stipulation that no one can provide such information.

The respondent's attorney then began to speak. The court, however, interrupted counsel to inform him that the court would withdraw the request if the respondent's counsel wanted it to. In particular, the court stated: "So I just said to [the respondent's attorney], if he doesn't want me to make this—direct this to the counsel for the child, I'll withdraw that request." The respondent's attorney then stated that it was "fine . . . for the minor child's counsel to undertake that endeavor" but requested "that . . . the contact be similar to the status—the respondent's status at the time, which is not having a Social Security number and being undocumented and not having health insurance."

After a brief colloquy between the parties and the court, the court requested Kylie's attorney to ask for the time frame of when the previous social worker was on the case; whether there were any circumstances at that time where Mercy House would ask an applicant for housing for documentation from the department that there was an active case; and ask what Mercy

House would tell an individual who did not have legal immigration status, was undocumented, and did not have a Social Security number.

The assistant attorney general, on behalf of the petitioner, objected to the court's inquiry on the basis of facts not in evidence. The court nevertheless proceeded with its request to have Kylie's attorney obtain information from Mercy House. The respondent's counsel then asked the court to include some additional questions, including asking whether anyone can come into the shelter or whether an identification or a birth certificate is required. The court indicated that, if such a person exists at Mercy House, then the respondent's counsel would have plenty of chances to ask those questions of the witness. The court explained to the respondent's counsel: "I'm not gonna make your case for you. I'm just concerned about my obligation to review the reasonableness of [the department's] reunification efforts. And this is a piece of information that came up late and I want it . . . tracked down."

In compliance with the court's request, Kylie's attorney called Kara Capone, chief executive officer of Community Housing Advocates, an organization that oversees Mercy House. Capone testified, among other things, that there was no method for the department to refer someone to Mercy House and no requirement that the department provide a letter. She also testified that the lack of a Social Security number would not impact an individual's ability to access supportive housing. A person's immigration status may impact the availability of certain subsidies, but if someone is undocumented, the shelter may use state provided subsidies.

During cross-examination by the respondent's counsel, the petitioner's attorney objected several times on the basis that the questioning by the respondent's counsel went beyond the scope of the direct examination.

After those objections were sustained, the respondent's counsel then stated that he would call the witness as his own. He then called Capone on direct examination and questioned her about supportive housing and family reunification vouchers.

On appeal, the respondent argues that her right to a fair trial was violated because the trial court crossed the line between impartiality and advocacy when it directed Kylie's counsel to call an additional witness in order to obtain additional testimony on a material element of the department's petition to terminate her parental rights. The petitioner, on the other hand, argues that the respondent expressly waived her constitutional claim. She argues that, "[u]nlike the department, which did object, [the respondent's] counsel failed to object when the trial court made the request" and actually approved of the court's conduct by aligning with the court and participating in the substance of the court's request. We agree with the petitioner.

"[A] constitutional claim that has been waived does not satisfy the third prong of the *Golding* test because, in such circumstances, we simply cannot conclude that injustice [has been] done to either party . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Grasso*, 189 Conn. App. 186, 226, 207 A.3d 33, cert. denied, 331 Conn. 928, 207 A.3d 519 (2019). "[W]aiver is an intentional relinquishment or abandonment of a known right or privilege. . . . It involves the idea of assent, and assent is an act of understanding. . . . The rule is applicable that no one shall be permitted to deny that he intended the natural consequences of his acts and conduct. . . . In order to waive a claim of law . . . [i]t is enough if he knows of the existence of the claim and of its reasonably possible efficacy. . . . Connecticut courts have consistently held that when a party fails to raise in the trial court the constitutional claim presented on appeal and affirmatively acquiesces to the

trial court's order, that party waives any such claim [under *Golding*]." (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 809, 155 A.3d 209 (2017).

For many rights, "waiver may be effected by action of counsel"; (internal quotation marks omitted) *Mozell* v. *Commissioner of Correction*, 291 Conn. 62, 71, 967 A.2d 41 (2009); especially "decisions pertaining to the conduct of the trial . . . ." (Internal quotation marks omitted.) *State* v. *Kitchens*, 299 Conn. 447, 468, 10 A.3d 942 (2011). In those instances, "the defendant is deemed bound by the acts of his lawyer-agent . . . ."[14] (Internal quotation marks omitted.) Id. "[D]ecisions by counsel are generally given effect as to what arguments to pursue . . . what evidentiary objections to raise . . . and what agreements to conclude regarding the admission of evidence . . . ." (Internal quotation marks omitted.) Id. Applying plenary review in determining whether an individual waived a constitutional claim, we closely examine "the record and the particular facts and circumstances of [the] case." (Internal quotation marks omitted.) *State* v. *Paige*, 304 Conn. 426, 436, 40 A.3d 279 (2012).

In the present case, the respondent never objected when the court indicated that it wanted Kylie's attorney to investigate to see if there was a person at Mercy House who could testify about its policies and whether a letter was required from the department in order for the respondent to receive housing services. In fact, when the court indicated that it would withdraw its request if the respondent wished, the respondent's attorney made a strategic decision at that time to decline the court's invitation to withdraw its request

[14] "The fundamental rights that a defendant personally must waive typically are identified as the rights to plead guilty, waive a jury, testify on his or her own behalf, and take an appeal." *State* v. *Gore*, 288 Conn. 770, 779 n.9, 955 A.2d 1 (2008).

and actively participated in setting the parameters for the inquiry. Nor did the respondent's counsel object when Kylie's attorney called Capone from Mercy House to testify. Instead, he thoroughly cross-examined Capone and made a strategic decision to call Capone as the respondent's own witness.

On the basis of our review of the record, we conclude that the respondent, through counsel, engaged in conduct clearly demonstrating her agreement and assent to the court's conduct, thereby waiving her due process claim. See *State* v. *Fabricatore*, 281 Conn. 469, 481–82, 915 A.2d 872 (2007) (defendant waived claim that trial court improperly included duty to retreat exception by failing to object to state's original request to charge, failing to object to instruction as given, expressing satisfaction with instruction, failing to object at trial when state referred to duty to retreat in closing argument, and referring to duty to retreat in his own closing argument). Accordingly, the respondent cannot satisfy the third prong of *Golding*.

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE ANTHONY S.*
(AC 45549)

Alvord, Moll and Cradle, Js.

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child, A. The mother was incarcerated following an incident in 2016,

* 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.

during which A was exposed to an unsafe environment. As a result, the Department of Children and Families placed A in a department licensed home with a maternal cousin and her family. The trial court granted an order of temporary custody filed by the petitioner, the Commissioner of Children and Families, and, thereafter, A was adjudicated neglected and committed to the custody and care of the petitioner. The trial court ordered specific steps for the mother to take to facilitate her reunification with A. In 2019, the trial court approved a permanency plan with a recommendation of termination of the mother's parental rights, and the petitioner filed a petition for the termination of the mother's parental rights. A's father had died prior to the filing of the petition for termination. *Held*:

1. The trial court properly determined by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent mother with A: the record contained ample evidence to support the trial court's conclusion, including that the department had referred the mother to multiple providers of substance abuse and mental health treatment, even after she informed the department that she would not participate in the dialectical behavior therapy that was recommended to her following a court-order psychiatric evaluation, provided her on two occasions with a security deposit and the first month's rent for an apartment to help her obtain and secure housing after she had been evicted for nonpayment of rent, provided her with transportation and/or bus passes so that she could travel to her appointments and her visits with A, and provided her with supervised visitation with A in a myriad of formats and arrangements despite frequent disruptions during those visits due to her inappropriate and aggressive behavior.
2. The trial court properly determined that the respondent mother had failed to achieve the requisite degree of personal rehabilitation, as required by statute (§ 17a-112 (j) (3) (B) (i)), to reasonably encourage a belief that she could, within a reasonable time, assume a responsible position in A's life: in its decision, the trial court detailed each of the specific steps that the mother had failed to follow and the corresponding facts that supported its determination that the petitioner had proven by clear and convincing evidence that the mother had failed to rehabilitate, namely, her failure to fully comply with the specific steps, her inappropriate behavior during her visitations with A, and her failure to engage in appropriate mental health treatment to develop an understanding of A's needs, in particular, the impact of an unsafe environment on his mental health.
3. The trial court's determination that termination of the respondent mother's parental rights was in A's best interest was factually supported and legally sound: the trial court made findings relating to each of the seven factors set forth in § 17a-112 (k) before making its determination on the basis of the totality of the circumstances; moreover, in its decision, the trial court emphasized that A had been living in his foster care

placement for five years, he was thriving there, and he was very attached to his foster family, it explicitly stated that it balanced A's need for stability and permanency against the potential benefit of maintaining a connection with the mother, and it noted that A's counsel and guardian ad litem both recommended termination of the mother's rights; furthermore, although there was some evidence that the mother and A loved each other, such evidence was insufficient for this court to conclude that the trial court improperly determined that it was in A's best interest to terminate the mother's parental rights.

Argued January 12—officially released March 9, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondent mother's parental rights with respect to her minor child, brought to the Superior Court in the judicial district of Waterbury, Juvenile Matters, and tried to the court, *Hon. William T. Cremins*, judge trial referee; judgment terminating the respondent mother's parental rights, from which she appealed to this court. *Affirmed.*

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

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

Opinion

ALVORD, J. The respondent mother, Agnes W., appeals from the judgment of the trial court terminating her parental rights with respect to her minor child, Anthony S.[1] On appeal, the respondent claims that the

** March 9, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] Lewis S., Anthony's father, died on October 5, 2017, prior to the filing of the operative petition for termination of parental rights. We hereinafter refer to the respondent mother as the respondent and to Lewis S. by name.

trial court improperly determined that (1) the Department of Children and Families (department) made reasonable efforts toward reunification between the respondent and Anthony, (2) the respondent had failed to rehabilitate to such a degree as to reasonably encourage a belief that she could assume a responsible position in the life of her child, and (3) the termination of the respondent's parental rights was in the best interest of Anthony.[2] We affirm the judgment of the trial court.

The following facts, which the court found by clear and convincing evidence, and procedural history, are relevant to this appeal. On November 8, 2016, the department invoked a ninety-six hour administrative hold on behalf of Anthony "due to the [respondent] being incarcerated and exposing [Anthony] to an unsafe environment."[3] That same day, Anthony was placed in a department licensed relative home with a maternal cousin and her husband.

On November 10, 2016, the petitioner, the Commissioner of Children and Families, sought an order of temporary custody, which the court granted, and filed a neglect petition on behalf of Anthony because the respondent remained incarcerated. On November 18,

[2] Pursuant to Practice Book §§ 67-13 and 79a-6 (c), the attorney for the minor child filed a statement adopting the brief filed by the petitioner, the Commissioner of Children and Families.

[3] The record reflects that the department received a call from the Bridgeport Police Department indicating that the police were called to the respondent's home on a neighbor's report of a domestic dispute between the respondent and her partner at the time, Johnny K. Upon obtaining a search warrant, the police found "a large amount of [c]ocaine . . . in the bedroom area . . . [and] drug paraphernalia was found in the kitchen, such as material to 'cut' the cocaine and a scale . . . ." The police observed the respondent to have "a small laceration on her forearm and swelling on the left side of her face" and that Anthony, age six, was in the home with another child. The respondent and Johnny were "arrested on charges of [p]ossession with [i]ntent to [s]ell, [p]ossession [w]ithin 1500 [f]eet of a [s]chool, [d]isorderly [c]onduct, and [r]isk of [i]njury to a [m]inor . . . [and Johnny] was also arrested for [a]ssault 3."

2016, the court sustained the order of temporary custody.

On January 30, 2017, Anthony was adjudicated neglected and committed to the care and custody of the petitioner. He continued to reside in the relative foster care placement. The court ordered specific steps for the respondent to take to facilitate her reunification with Anthony. The steps required her, inter alia, to keep all appointments set by or with the department; to cooperate with visits by the child's court-appointed attorney and/or guardian ad litem; to take part in counseling services referred to her by the department; to accept and engage in-home support services referred to her by the department; to refrain from using illegal drugs or abusing alcohol or medicine; to cooperate with service providers' recommendations for parenting, individual, and family counseling, in-home support services and/or substance abuse assessment or treatment; to enhance her parenting skills and ensure the safety of her home environment; to address her mental health issues and understand the impact of an unsafe home environment on Anthony; to cooperate with court-ordered evaluations or testing; to obtain and/or maintain adequate housing and a legal income; and to visit with Anthony as often as the department permits.[4]

[4] The respondent's complete specific steps were (1) to keep all appointments set by or with the department and to cooperate with the department's home visits, announced or unannounced, and visits by Anthony's court-appointed attorney and/or guardian ad litem; (2) to let the department and her and Anthony's attorneys know her and Anthony's whereabouts at all times; (3) to take part in counseling and make progress toward the identified treatment goals, specifically, to "[e]nhance parenting skills and ensure [the] safety of [the] home environment; address mental health issues [and] understand [the] impact of [an] unsafe home environment [on] children"; (4) to accept the in-home support services referred by the department and cooperate with them; (5) to submit to a substance abuse evaluation and follow the recommendations about treatment, including inpatient treatment if necessary, aftercare and relapse prevention; (6) to submit to random drug testing, the time and method of testing to be determined by the department; (7) not to use illegal drugs or abuse alcohol or medicine; (8) to cooperate with service providers recommended for parenting, individual, and family

On July 25, 2019, the court approved a permanency plan with a recommendation of termination of the respondent's parental rights and adoption. On August 14, 2019, the petitioner filed a petition for the termination of the respondent's parental rights as to Anthony.[5]

The termination of parental rights trial was held on June 21, August 13, September 2, September 10, and October 26, 2021. During the trial, the petitioner presented testimony from Jennifer Bushnell, a department social worker assigned to the case from April, 2018, to June, 2019; Kevin Paquette, a permanency clinician at Klingberg Family Centers (Klingberg), a child welfare agency; Stacey Shanahan, a department social worker assigned to the case in June, 2019; Ralph Balducci, a psychologist who testified as an expert in the area of children and families and conducted a court-ordered evaluation of the respondent and Anthony in 2018; Melissa Silagy, Anthony's therapist since June, 2017; and Emilia Anello, Anthony's guardian ad litem since

counseling, in-home support services and/or substance abuse assessment and/or treatment, including a "[p]arenting program, to be referred/individual therapy/substance abuse treatment, Southwest Community Health Center [and] AIC program-Community Solutions"; (9) to cooperate with court-ordered evaluations or testing; (10) to sign releases allowing the department to talk to service providers to check on attendance, cooperation, and progress toward identified goals and for use in future proceedings with the court; (11) to sign releases allowing Anthony's attorney and guardian ad litem to review his medical, psychological, psychiatric and/or educational records; (12) to get or maintain adequate housing and a legal source of income; (13) to immediately inform the department of any changes in the makeup of the household to make sure that the change does not hurt the health and safety of the child; (14) to have no further involvement with the criminal justice system and to follow conditions of probation or parole; (15) to cooperate with Anthony's therapy; (16) to visit Anthony as often as the department permits; (17) to notify the department in writing of the name, address, family relationship, and birthdate of any person(s) whom the department should investigate and consider as a placement resource for Anthony; and (18) to tell the department the names and addresses of Anthony's grandparents.

[5] The petitioner had previously filed a petition for termination of parental rights as to Anthony on August 24, 2018, which was withdrawn on May 14, 2019.

the fall of 2018. The respondent testified and presented testimony from her former partner, Leodardo Serrano, who previously had lived with the respondent and Anthony, and the respondent's stepfather, Mario Perez Cruz (Perez).

On April 8, 2022, the court issued a memorandum of decision in which it terminated the respondent's parental rights.[6] After setting forth the legal principles governing a termination of parental rights proceeding,[7] the court stated that it "has carefully considered the petitions, all the evidence and testimony presented, and the arguments of counsel, according to the standards required by law. The court has observed all the witnesses and determined the validity and credibility of their testimonies."

[6] In its memorandum of decision, the court also denied two of the respondent's motions: (1) a motion to revoke commitment of Anthony filed on July 29, 2020, to which the petitioner filed an objection on November 9, 2020, and (2) a motion for posttermination visitation filed on August 18, 2021, to which the petitioner and counsel for Anthony filed separate objections on September 1, 2021.

On her appeal form, the respondent purports to appeal from the court's denial of her motions. The respondent, however, has not briefed any specific claims of error with respect to these rulings and, thus, has abandoned those aspects of her appeal. See *Casiraghi* v. *Casiraghi*, 200 Conn. App. 771, 772 n.1, 241 A.3d 717 (2020). "It is necessary to this court's review of a party's claims on appeal that [her] brief contain, inter alia, argument and analysis regarding the alleged errors of the trial court, with appropriate references to the facts bearing on the issues raised." *Zappola* v. *Zappola*, 159 Conn. App. 84, 86, 122 A.3d 267 (2015).

[7] "Proceedings to terminate parental rights are governed by [General Statutes] § 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, 582–83 n.12, 122 A.3d 1247 (2015).

Relevant to the adjudicatory phase of the termination proceeding, the court found "by clear and convincing evidence that the department has made reasonable efforts to reunify the child with the respondent." Additionally, the court found that the respondent had failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (ii). In support of its determination, the court stated that, at the time of the adjudication of neglect on January 30, 2017, the respondent's "presenting problems were [her] unaddressed mental health, substance abuse, domestic violence, criminal activity, and parenting concerns." Moreover, the court recognized that, on January 30, 2017, the court ordered the respondent to comply with specific steps to facilitate the return of Anthony to her care. The court proceeded to set forth each specific step with which the respondent had failed to comply and provided factual support for each enumeration. The court concluded that the respondent "is unable to safely care for her child despite services offered, due to her mental health issues and unpredictable and explosive behaviors. [The respondent] will not be able to assume a responsible position in the life of the child within a reasonable period of time."

In support of its decision, the court also made the following relevant findings regarding the respondent, Anthony, and their history of visitation. The court found that the respondent "has a history of domestic violence with her ex-husband, Johnny K." The court noted that "Anthony continues to present as anxious and fearful when discussing the events that took place while he was residing with [the respondent] and her ex-husband." See footnote 3 of this opinion. Additionally, the court found that the respondent "has not been consistent with attending individual therapy." The court also noted that the respondent provided proof to the department of her medical marijuana card; however, it "expired

on June 8, 2019, and she is still testing positive for [tetrahydrocannabinol (THC)]." The court stated that the respondent's "last positive urine drug [THC] screen was on August 2, 2019."

The court stated that the respondent "report[s] that she is able to effectively parent Anthony" and she "denies utilizing physical discipline . . . ." The court noted that "it has been reported by Anthony's therapist that Anthony has disclosed to her that [the respondent] has hit him. Anthony compiled a list of questions to process with [the respondent including] . . . 'Why do you hit me?' " The court further noted that the respondent "has knowledge of Anthony's questions and continues to deny that she has used physical discipline."

The court found that Anthony was eleven years old at the time of trial. The court noted that, since November 8, 2016, Anthony has been residing in a department licensed relative foster home with a maternal cousin, her husband, and her two daughters. The court found that "Anthony has adjusted well since the placement" and that he "has his own bedroom . . . that he loves . . . ." Additionally, the court found that "Anthony enjoys playing outdoors, playing video games, building Lego sets and building his own Lego creations. Anthony also enjoys going to school and is involved in soccer, which he reported that he enjoys playing." Moreover, the court stated that, on "June 27, 2017, Anthony participated in an intake for individual therapy services with . . . Silagy, a clinician . . . [whom] [h]e continues to meet with . . . on a weekly basis."[8]

[8] The court noted that, "[a]ccording to Silagy, Anthony is diagnosed with post-traumatic stress disorder . . . child physical abuse, confirmed, other specified disruptive, impulse control, and conduct disorder (to include inappropriate sexualized behaviors) as well as parent-child relational problems."

Additionally, the court stated that "[s]ome of Anthony's long-term goals are to recall the traumatic event without becoming overwhelmed with negative emotions; interact normally with friends and family without irrational fears or intrusive thoughts that control behavior; return to pre-trauma level of functioning without avoiding people, places, thoughts, or feelings associated

In regard to visitation, the court found that the respondent "is sometimes inconsistent with being present for her supervised visits." Additionally, the court found that, when the respondent and Anthony engaged in visitation, the visits occasionally "had to end prematurely due to [the respondent's] inappropriate, aggressive, and argumentative behaviors. For example, during a supervised visit on March 14, 2019, Anthony was sitting on [the respondent's] lap looking at pictures on her cell phone. When Anthony returned to his foster home that evening, he reported to his foster mother that he was scrolling through pictures on [the respondent's] phone and saw nude photos of her 'bathing suit area,' 'front area,' 'butt and breasts.' Anthony said he kept scrolling, and that there were 'so many of them.' Anthony indicated that [the respondent] did not stop him from looking at the photos. This [interaction] resulted in a report to the department's Careline.[9]

"Also on May 24, 2019 . . . the visitation room that [was] usually reserved was full and occupied, so [the respondent] was told that the visit would need to be in a different room. [The respondent] then walked up to the doors of the visitation rooms, while occupied, and was pulling the visitation charts off the doors and was reading them. Bushnell asked her to stop, as that information is confidential. [The respondent] then yelled at Bushnell in the waiting room in front of Anthony, other clients, and social workers, 'You thought I was going to give up on my son!' She then started yelling inside the visitation room, 'You told me I can't

with the traumatic event; display a full range of emotions without experiencing loss of control; and develop and implement effective coping skills that allow for carrying out normal responsibilities and participating in relationships and social activities."

[9] "Careline is a department telephone service that mandatory reporters and others may call to report suspected child abuse or neglect." *In re Katherine H.*, 183 Conn. App. 320, 322 n.4, 192 A.3d 537, cert. denied, 330 Conn. 906, 192 A.3d 426 (2018).

have my visit at Chuck E. Cheese. The judge knows.' [The respondent] then commented on how Bushnell and Shanahan were late to the supervised visit. Bushnell informed her that she is always given her time, and it is always made up if needed to equal one hour. [The respondent] then said, 'No you don't. It is only an hour.' At this point, she was yelling and standing up at the table while Anthony was sitting at the table looking down at the floor. Bushnell asked her to stop yelling, as it appear[ed] as though it was making her son uncomfortable. [The respondent] then said, 'You don't know my son!' Bushnell asked [the respondent] to focus on her visit and indicated that her behaviors were inappropriate. [The respondent] then yelled, 'How am I being inappropriate?' [The respondent] then said, 'What about his report card?' Bushnell gave [her] the report card. [The respondent] said, 'Wow you actually did your job for once' and 'You are a drug addict, and everybody knows about you, girl.' At this point in time, the supervised visit had to end.

"After the visit ended, Bushnell and Shanahan spoke to Anthony about the visit and the reason it ended. Anthony pointed on his emotions chart that he felt 'hurt.' Anthony pointed to 'hot and cold, stomachache, sweating, and fast heart rate' on his physical feelings chart. Anthony then said that he did not feel safe and doesn't like when [the respondent] yells." (Footnote added.)

In the dispositional phase; see footnote 7 of this opinion; the court considered the seven statutory factors of § 17a-112 (k)[10] before finding that, "in considering the

[10] General Statutes § 17a-112 (k) provides: "Except in the case where termination of parental rights is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption and Safe

child's sense of time, need for a secure and permanent environment, need to avoid future placements, and the totality of circumstances, the court concludes that termination of the parental rights of the respondent . . . is in the best interests of the minor child." This appeal followed. Additional facts and procedural history will be set forth as necessary.

Before turning to the respondent's claims, we set forth the following relevant legal principles. "Proceedings to terminate parental rights are governed by § 17a-112. . . . 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 Tresin J.*, 334 Conn. 314, 322–23, 222 A.3d 83 (2019). Section 17a-112 (j) provides in relevant part that "[t]he 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

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."

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 neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the commissioner for at least fifteen months 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 . . . .''

I

The respondent first claims that the court improperly determined that the department made reasonable efforts to reunify her with Anthony. We disagree.

The following legal principles and standard of review are relevant to our resolution of this claim. ''Section 17a-112 (j) (1) requires that before terminating parental rights, the court must find by clear and convincing evidence that the department 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 provided such finding is not required if

the court has determined at a hearing . . . that such efforts are not appropriate . . . . Thus, the department may meet its burden concerning reunification in one of three ways: (1) by showing that it made such efforts, (2) by showing that the parent was unable or unwilling to benefit from reunification efforts or (3) by a previous judicial determination that such efforts were not appropriate. . . . [I]n determining whether the department has made reasonable efforts to reunify a parent and a child . . . the court is required in the adjudicatory phase to make its assessment on the basis of events preceding the date on which the termination petition was filed. . . . This court has consistently held that the court, [w]hen making its reasonable efforts determination . . . is limited to considering only those facts preceding the filing of the termination petition or the most recent amendment to the petition . . . .

"Our review of the court's reasonable efforts determination is subject to the evidentiary sufficiency standard of review. . . . Under this standard, the inquiry 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. . . . The court's subordinate findings made in support of its reasonable efforts determination are reviewed for clear error." (Citations omitted; internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 808–809, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

The court properly determined by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent with Anthony. In support of its determination, the court stated that the

department engaged in "reasonable and active efforts," which included "providing case management and support services" to the respondent; referring the respondent "to Southwest Community Health Services to be evaluated for and to receive substance abuse and mental health treatment," "Therapeutic Family Time . . . services via the Community Mental Health Affiliates," and to "dialectical behavior therapy . . . providers in Waterbury, Hartford, and Southington"; offering a "Permanency Placement Service Program through Klingberg"; and providing the respondent with "weekly supervised visits with her son," offering "supervised visits in a clinical setting," and providing "thirty-one day bus passes" to her.

On appeal, the respondent argues that the court improperly found that appropriate services had been offered to her to assist in reunification. Specifically, the respondent argues that "the court pointed to the respondent's mental health issues and behavior. However, this does not take into consideration the impact on the respondent and the child of their separation and the ensuing stress, anxiety and anger that it caused."[11] The petitioner responds that "[t]he record is full of evidence showing the department's consistent and targeted efforts to help [the respondent] overcome the impediments to reunification, including her untreated mental health issues, substance abuse, refusal to

[11] Additionally, as part of the respondent's argument that the department failed to offer appropriate services to her, she asserts that "[t]he [department] never made a referral for a neutral family therapist." The respondent's argument falters on the fact that she has failed to direct us to any evidence that tends to support her claim; rather, she merely asserts that the child's therapist was "not 'a neutral party.' " We are unpersuaded by the respondent's argument because, "[e]ven if the evidence had established that additional family therapy might have been beneficial, such evidence does not render the trial court's finding clearly erroneous." *In re Melody L.*, 290 Conn. 131, 147, 962 A.2d 81 (2009), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014).

acknowledge the full extent of Anthony's trauma, and history of unstable housing." We agree with the petitioner.

"[O]ur courts have consistently held that [t]he word reasonable is the linchpin on which the department's efforts in a particular set of circumstances are to be adjudged, using the clear and convincing standard of proof. Neither the word reasonable nor the word efforts is, however, defined by our legislature or by the federal act from which the requirement was drawn. . . . [R]easonableness is an objective standard . . . and whether reasonable efforts have been proven depends on the careful consideration of the circumstances of each individual case. . . . [R]easonable efforts means doing everything reasonable, not everything possible." (Citations omitted; internal quotation marks omitted.) *In re Unique R.*, 170 Conn. App. 833, 855, 156 A.3d 1 (2017).

The record contains ample evidence to support the court's determination that the department engaged in reasonable efforts to reunify the respondent with Anthony. To assist the respondent in obtaining substance abuse and mental health treatment, the department referred her to the Southwest Community Health Center, Tides of Mind Counseling (Tides of Mind), the Institute of Living, and St. Vincent's Behavioral Health. Pursuant to a recommendation from Dr. Balducci, who conducted a court-ordered psychiatric evaluation of the respondent, the department made several referrals for the respondent to participate in dialectical behavior therapy[12] (DBT). The court found that, "[o]n August 29,

[12] "Dialectical [b]ehavior [t]herapy is an evidence-based psychotherapy to treat borderline personality disorder and is useful in treating patients seeking change in behavioral patterns such as substance abuse and domestic or non-domestic violence against others. It is a process in which the therapist helps the patient find and employ strategies and ultimately synthesize them to accomplish consistently the defined ultimate goal and is used to treat borderline personality disorders and addictive personality disorders. To be successful, it demands honesty both from the patient and the clinician." (Internal quotation marks omitted.) *In re Aubrey K.*, 216 Conn. App. 632, 661 n.14, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023).

2018, Bushnell made a referral to Tides of Mind for DBT . . . . On October 26, 2018, [the respondent] still had not participated in her intake with Tides of Mind due to cancelling and rescheduling multiple appointments and going to the wrong address." The court further found that Tides of Mind ceased activity on the respondent's referral because she "miss[ed] so many scheduled intake appointments and [was] difficult to get ahold of . . . ." The court noted that, thereafter, Bushnell "called the Institute of Living DBT program in Hartford, [a] DBT private practice provider . . . in Southington . . . Apple Valley Behavioral Health in Plantsville, and [also] Wilcox Wellness in Southington to inquire about their DBT programs." The court stated that the respondent subsequently informed Bushnell and Paquette that "she was not going to participate in DBT anywhere." The court further found that, despite the respondent's expressed refusal to engage in DBT services, the department "re-referred [her] to DBT provider, St. Vincent's Behavioral Health . . . ." Additionally, the court found that the department assisted the respondent in obtaining stable and secure housing by providing her with a security deposit and first month's rent for two successive apartments and notifying her of Section 8 rental assistance program openings. The court stated that the respondent, however, was evicted from two apartments for nonpayment of rent during the department's involvement. Additionally, the court found that the department assisted the respondent's travel to her appointments and to visits with Anthony by providing her with transportation or bus passes.

Moreover, the record supports the court's finding that the department actively sought reunification between the respondent and Anthony by providing supervised visitation in a myriad of formats and arrangements despite frequent disruptions due to the respondent's behavioral outbursts. In April, 2018, the department

provided the respondent with weekly supervised visitation with Anthony in the community. However, in June, 2018, the department moved the supervised visits to the department's offices where security was available due to concerns that the respondent was "argumentative" with the supervisor and had made the supervisor "uncomfortable." Then, due to several incidents where the respondent "was raising her voice, [and] was causing a scene in the waiting room" at the department's offices, the department sought to conduct supervised visitation between the respondent and Anthony in yet another format, with therapeutic providers. The department utilized a variety of providers, including Anthony's therapist, Silagy,[13] Therapeutic Family Time, and Klingberg.

[13] In support of her claim that the court improperly determined that the department had made reasonable efforts toward reunification, the respondent argues that "[t]he [department] did not offer appropriate services to [her] and, if anything, contributed to the deterioration of the parent-child relationship by allowing the child's therapist to exert inappropriate control of the visitation between the respondent and her child." The respondent furthers asserts that "the child's therapist actively undermined the relationship between the respondent and her son," "[t]he involvement of the child's therapist to supervise visits and/or to provide family therapy was entirely inappropriate," and "[t]he child's therapist took a difficult situation regarding the increasing strain and anxiety of the relationship during visits between the respondent and her child and made it worse."

In response, the petitioner asserts that the respondent "glosses over the dispositive fact that Ms. Silagy only supervised her visits with Anthony for one month out of the six years [that] Anthony has been in the department's care. So any concerns about Ms. Silagy's supervision would not be a basis for reversing the trial court's finding that the department's reunification efforts on the whole were reasonable." Additionally, the petitioner notes that, "[a]s soon as [the respondent] expressed concerns about Ms. Silagy, the department secured a new provider, Klingberg, to supervise the visits." We agree with the petitioner's response.

"[O]ur courts are instructed to look to the totality of the facts and circumstances presented in each individual case in deciding whether reasonable efforts have been made." (Internal quotation marks omitted.) *In re Ryder M.*, supra, 211 Conn. App. 811. The totality of the circumstances reveals that the department made extensive efforts to support visitation between the respondent and Anthony prior to its decision to utilize Silagy as a therapeutic services provider, the department utilized her therapeutic services for a very short period of time, and, following cessation of her services,

After the respondent was "unsuccessfully discharged" from Klingberg's therapeutic reunification program in the spring of 2019, the department resumed supervised visits between the respondent and Anthony at the department's offices.

On the basis of the evidence in the record and the reasonable inferences drawn therefrom, the court reasonably could have concluded that the evidence was sufficient to justify its determination that the department had made reasonable efforts to reunify the respondent and Anthony.

II

The respondent next claims that the court improperly determined that she had failed to rehabilitate to such a degree as to reasonably encourage a belief that she could, within a reasonable time, assume a responsible position in Anthony's life. We disagree.

We begin by setting forth the following relevant legal principles and 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 [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

the department continued to make reasonable efforts toward reunification between the respondent and Anthony by making alternative arrangements for therapeutic services. Accordingly, we cannot conclude that the department's use of Anthony's therapist as a visitation supervisor rendered the entirety of the petitioner's efforts inappropriate.

encourage a belief that at some future date [she] can assume a responsible position in [her] child's life." (Citations omitted; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 585–86, 122 A.3d 1247 (2015). "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. . . .

"[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. . . . A factual finding is clearly erroneous when it is not supported by any evidence in the record or when there is evidence to support it, but the reviewing court is left with the definite and firm conviction that a mistake has been made." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re G. H.*, 216 Conn. App. 671, 684–85, 286 A.3d 944 (2022).

The respondent argues, inter alia, that "the trial court erred in finding that [she] had failed to rehabilitate" because the "testimony presented clearly demonstrates that the respondent has been engaged in services, and is willing to reengage in services so that she can provide for her son."[14] Additionally, she argues that, other than the child's therapist, "everyone involved with the respondent and the child . . . noted the respondent's issues and at times her difficulties in interactions with others, but they all agreed that the respondent and child each loved each other and cared for each other, and that the child wanted to still have continuing contact with the respondent." We disagree.

[14] As set forth in her principal appellate brief, the majority of the respondent's arguments in support of her failure to rehabilitate claim simply restate her arguments in support of her reasonable efforts claim. For example, as a general proposition, the respondent maintains that "there is insufficient evidence to support the court's finding that the respondent has failed to rehabilitate herself, especially when considering the limitation of services, as well as interference by the child's therapist in the reunification process." We have already concluded that the court properly found that the department made reasonable efforts to reunify Anthony with the respondent; see part I of this opinion; accordingly, we decline to address the respondent's arguments premised on the department's efforts. Additionally, for the same reasons, we reject the respondent's arguments premised on the alleged "interference" of the child's therapist. See footnote 13 of this opinion.

In its memorandum of decision, the court detailed each of the specific steps that the respondent had failed to follow and the corresponding facts supporting its determination that the respondent had failed to rehabilitate. Specifically, the court noted that the respondent (a) has not kept all appointments set by or with the department; (b) has been inconsistent at times with therapy and the counseling services referred by the department; (c) has failed to accept and cooperate with in-home services referred to by the department, specifically participation in DBT; (d) has continued to test positive for marijuana, despite having an expired medical marijuana card; (e) has failed to cooperate with service providers for parenting, individual, and family counseling, to enhance her parenting skills, to ensure the safety of her home environment, and to understand the impact of an unsafe home environment on the child; (f) has not cooperated with all court-ordered testing evaluations, specifically a competency evaluation; (g) has failed to obtain or maintain adequate housing and a legal income; and (h) is "sometimes inconsistent with being present for her supervised visits . . . [which] have also had to end prematurely due to [her] inappropriate, aggressive, and argumentative behaviors." Thereafter, the court concluded that the respondent "is unable to safely care for her child despite services offered, due to her mental health issues and unpredictable and explosive behaviors. [The respondent] will not be able to assume a responsible position in the life of the child within a reasonable period of time."

Construing the record before us in the manner most favorable to sustaining the judgment of the trial court, as we are obligated to do; see *In re G. H.*, supra, 216 Conn. App. 685; we conclude that the record contains sufficient evidence to support the court's conclusion that the petitioner had proven by clear and convincing evidence that the respondent had failed to rehabilitate

considering the age and needs of Anthony. Although "[a] finding of rehabilitation is not based on a mechanistic tabulation of whether a parent has undertaken specific steps ordered"; (internal quotation marks omitted) *In re Yolanda V.*, 195 Conn. App. 334, 347 n.12, 224 A.3d 182 (2020); the court appropriately emphasized the respondent's lack of consistent engagement in individual counseling, reluctance to participate in DBT as recommended by the court-appointed psychologist, and "inappropriate, aggressive, and argumentative behaviors" during visitations in finding that the respondent has failed to gain the insight and ability to care for Anthony. See id. The court noted that Anthony is diagnosed with "post-traumatic stress disorder . . . impulse control, and conduct disorder . . . as well as parent-child relational problem[s]." The court found that five years after Anthony was removed from the respondent's care, he "continues to present as anxious and fearful when discussing the events that took place while he was residing with [the respondent] and her ex-husband." Moreover, the court found that, on at least one occasion when the respondent acted in an "inappropriate, aggressive, and argumentative" manner during supervised visitation with Anthony, he reported that "he did not feel safe and doesn't like when [the respondent] yells." Accordingly, it was imperative that the respondent engage in appropriate mental health treatment to develop an understanding of Anthony's needs, particularly the impact of an unsafe home environment on his mental health. See *In re Ryder M.*, supra, 211 Conn. App. 814 ("[i]n assessing rehabilitation, the critical issue is . . . whether [the parent] has gained the ability to care for the particular needs of the child at issue" (internal quotation marks omitted)). The court properly concluded that the respondent had failed to do so.

The evidence in the record does not support the respondent's assertion that she "has been engaged in

services, and is willing to reengage in services so that she can provide for her son." Dr. Balducci testified that, on the basis of the reports and documents he received as part of his court-ordered evaluation of the respondent in June, 2018, he recommended that the respondent engage in DBT to learn "strategies for distress tolerance, interpersonal effectiveness, emotional regulation and mindfulness." Despite the court finding that the department referred the respondent to numerous mental health and DBT providers, the respondent "did not accept DBT . . . ." Additionally, the court found that the respondent "is inconsistent at times with therapy," both in attendance and engagement. The court found that the respondent's therapist, Jessica Davis, reported that the respondent's "therapy sessions with her have been 'bashing' sessions for months, in which she will arrive to vent and express displeasure about [the department], the court, Anthony's foster mother, and her sister . . . [and the respondent] claimed she was given the wrong information about DBT and was being 'set up' and sent to the wrong place." Furthermore, the record reflects that, "[t]o the department's knowledge, [the respondent] was not engaged in any mental health services from January, 2020, until March, 2021." Thereafter, the record reflects that the respondent engaged in some individual counseling with a provider at Tides of Mind and attended a DBT group therapy session that "was a bad fit for [the respondent], [as] she was overwhelmed and 'was triggered.' " The respondent testified that she "was receiving therapy but [is] not having any contact with her [therapist] right now . . . because she lied to me" and that she has subsequently been discharged from Tides of Mind because she stopped attending. Despite the fact that the respondent acknowledges in her brief that "there is clearly a need for [her] to be able to engage in appropriate individual counseling and in DBT therapy," she has failed to

engage in the requisite treatment to address her mental health issues for the past five years that Anthony has been in the department's care. See *In re Shane M.*, supra, 318 Conn. 589 ("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)).

Moreover, the respondent's behavior during visitations with Anthony further supports the court's determination that she failed to "[gain] the insight and ability to care for . . . her child given the age and needs of the child within a reasonable time." *In re Victor D.*, 161 Conn. App. 604, 617, 128 A.3d 608 (2015). As set forth previously, the court found that "[s]upervised visits have . . . had to end prematurely due to [the respondent's] inappropriate, aggressive, and argumentative behaviors," including showing Anthony nude photos of herself and yelling "in the waiting room in front of Anthony, other clients, and social workers . . . ." The court found that, following the visit during which the respondent was yelling at the department social workers, "Anthony . . . said that he did not feel safe and doesn't like when [the respondent] yells." Additionally, Paquette testified that, while he was conducting supervised visitation between the respondent and Anthony, "there were times when [the respondent] would say things and accuse her son of being a liar and during the . . . visits . . . [Paquette] was concerned that that [behavior] was harming her relationship with her son." By way of example, Paquette testified that the respondent often called Anthony a liar when they discussed "an incident that [Anthony] described that happened in the home where he thought [the respondent] was in serious physical jeopardy of being harmed by her husband so he called the police," the incident that led to Anthony's removal from the respondent's care.

See footnote 3 of this opinion. Thereafter, Paquette testified that he did not recommend reunification because the respondent "struggled with being able to really understand her son's experience and to validate his experience in what he had been through." See *In re G. H.*, supra, 216 Conn. App. 688 ("[i]t is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony" (internal quotation marks omitted)).

On the basis of the foregoing evidence, including the respondent's reluctance to address her mental health issues, her failure to fully comply with the specific steps ordered by the court, and her inappropriate behaviors during visits with Anthony, we conclude that the court properly determined that the respondent had failed to achieve the requisite degree of personal rehabilitation as required by § 17a-112 (j) (3) (B). See *In re A'vion A.*, 217 Conn. App. 330, 353, 288 A.3d 231 (2023).

III

Last, the respondent claims that the court improperly determined that termination of her parental rights was in the best interest of Anthony. We disagree.

We first set forth the relevant principles and the standard of review. "In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of the child. . . . It is well settled that we will overturn the trial court's decision that the termination of parental rights is in the best interest of the [child] only if the court's findings are clearly erroneous. . . . The best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [his] environment. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether

it is established by clear and convincing evidence that the continuation of the [respondent's] parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven statutory factors delineated in [§ 17a-112 (k)]. . . . The seven factors serve simply as guidelines for the court and are not statutory prerequisites that need to be proven before termination can be ordered. . . . There is no requirement that each factor be proven by clear and convincing evidence." (Internal quotation marks omitted.) *In re Brian P.*, 195 Conn. App. 558, 579, 226 A.3d 159, cert. denied, 335 Conn. 907, 226 A.3d 151 (2020).

"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. . . . On appeal, our function is to determine whether the trial court's conclusion was factually supported and legally correct. . . . In doing so, however, [g]reat weight is given to the judgment of the trial court because of [the court's] opportunity to observe the parties and the evidence. . . . We do 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 Davonta V.*, 285 Conn. 483, 488, 940 A.2d 733 (2008).

The respondent argues that the "court erred in finding that it was in the best [interest] of the child to grant the petition for termination of parental rights . . . [because] [i]n this case, it is undisputed that there is a

bond between the respondent and her son, and that they both love and care for each other." The respondent asserts, therefore, that "[t]he proper determination for the child's best [interest] is not to terminate parental [rights but] rather, to institute a vigorous therapeutic program toward rebuilding the relationship between the parent and the child."[15] We are unpersuaded.

The court considered and made findings under each of the seven statutory factors of § 17a-112 (k) before determining that, under the totality of the circumstances, a termination of the respondent's parental rights was in the best interest of Anthony. In setting forth its findings, the court emphasized that Anthony "is thriving in [his department licensed relative foster care] placement and is extremely attached to his foster parents and their children" and has stated that "he enjoys the fact that there is no violence in this home." Additionally, the court stated that it "examined multiple relevant factors, including the child's interests in sustained growth, development, well-being, stability, and continuity of [his] environment; his length of stay in foster care; the nature of his relationship with [his] foster parents and biological parent; the degree of contact maintained with his biological parent; and [his] genetic bond to the respondent." Moreover, the court explicitly stated that it "also balanced the child's intrinsic need for stability and permanency against the potential benefit of maintaining a connection with his biological parent." Finally, the court noted that "counsel for

[15] In her reply brief, the respondent argues, for the first time, that "[t]here [was] a clear alternative to termination of parental rights especially when the child is placed with a family member . . . [and the court] can find that it is appropriate to have a permanent transfer of guardianship rather than a termination of parental rights as being in the [child's] best [interest]." During oral argument before this court, the respondent's appellate counsel conceded that, because this argument was not raised in the respondent's principal brief, this court need not review it. We decline to review the respondent's argument because not only was it not raised in her principal appellate brief, but it also was not raised before the trial court. See *In re*

the child recommends termination of the respondent's parental rights, as does the guardian ad litem for the minor child." In conclusion, the court stated that, "considering the child's sense of time, need for a secure and permanent environment, need to avoid future placements, and the totality of circumstances, the court concludes that termination of the parental rights of the respondent . . . is in the best [interest] of the minor child."

"Our appellate courts have recognized that long-term stability is critical to a child's future health and development . . . ." (Internal quotation marks omitted.) *In re Anthony H.*, 104 Conn. App. 744, 767, 936 A.2d 638 (2007), cert. denied, 285 Conn. 920, 943 A.2d 1100 (2008); see also *In re Davonta V.*, supra, 285 Conn. 494 (our Supreme Court recognizing that "[v]irtually all experts, from many different professional disciplines, agree that children need and benefit from continuous, stable home environments" (internal quotation marks omitted)). The court found that Anthony was removed from the respondent's care on November 8, 2016, and placed with his current relative foster placement at the age of six. At the time of the trial, Anthony, who was then eleven years old, had been living with his foster family for five years, and the trial court found that he "is extremely attached to his foster parents," loves them, and "wants to be adopted by [them]."[16] See General Statutes § 17a-112 (k) (4) and (5). Moreover, the

Sequoia G., 205 Conn. App. 222, 234–35, 256 A.3d 195, cert. denied, 338 Conn. 904, 258 A.3d 675 (2021).

[16] In support of her argument, the respondent asserts that she "raised her child for seven years and according to the testimony of Mr. Serrano and Mr. Perez, the respondent was loving, kind, attentive and met her son's needs when he was in her care." Additionally, the respondent cites to *In re Kezia M.*, 33 Conn. App. 12, 17–18, 632 A.2d 1122, cert. denied, 228 Conn. 915, 636 A.2d 847 (1993), for the proposition that "the commonly understood general obligations of parenthood entail these minimum attributes . . . 1. Expressions of love and affection; 2. Personal concern for the health, education and well-being of the child; 3. Supplying food, clothing, medical care, etc. for the minor child; 4. Providing adequate housing for the child; and 5.

trial court's findings were supported by the testimony of Anthony's guardian ad litem, who testified that it is "in Anthony's best interest to remain in the foster home and be adopted by the foster family . . . because they have been providing his basic needs . . . [t]hey have his best interests in mind . . . [and they take] care of him as if he was their own." See *In re Kadon M.*, 194 Conn. App. 100, 107, 219 A.3d 985 (2019) ("a guardian ad litem must promote and protect the best interest of a child" (internal quotation marks omitted)). In support of her argument, the respondent asserts that "it is undisputed that there is a bond between the respondent and her son, and that they both love and care for each other." Although there was some evidence for the court's consideration that the respondent and Anthony love one another, such evidence is insufficient for this court to conclude that the trial court improperly determined that it is in Anthony's best interest to terminate the respondent's parental rights. See *In re Ryder M.*, supra, 211 Conn. App. 821 ("[t]hat a bond *may* exist between the respondent and [the child] does not undercut the court's best interest determination in light of the myriad of other considerations taken into account by the court" (emphasis added)); *In re Anthony H.*, supra, 765–66 ("[o]ur courts consistently have held that even when there is a finding of a bond between parent and a child, it still may be in the child's best interest

Providing social and religious guidance for the child." (Internal quotation marks omitted.) Thereafter, she asserts that she "undeniably has expressed her love and affection for her son, she has expressed interest in her son's health, education and well-being by bringing gifts and food to the visits, she has bought him food, clothing and gifts, she can provide adequate housing, and she has attempted to provide social and religious guidance as well."

The court in *In re Kezia M.* cited to "[t]he commonly understood general obligations of parenthood" as part of its analysis of whether the parent had abandoned his child pursuant to what is now § 17a-112 (j) (3) (A), which is not at issue in this appeal. (Internal quotation marks omitted.) *In re Kezia M.*, supra, 33 Conn. App. 18. Accordingly, we are unpersuaded by the respondent's argument.

to terminate parental rights" (internal quotation marks omitted)). Accordingly, we conclude that the court's determination that termination of the respondent's parental rights was in Anthony's best interest was factually supported and legally sound.

The judgment is affirmed.

In this opinion the other judges concurred.

V. V. *v.* V. V.*
(AC 45304)

Alvord, Seeley and Sheldon, Js.

Syllabus

The defendant mother appealed to this court from the judgment of the trial court granting an application for relief from abuse filed on behalf of the minor plaintiff, V, by her father and issuing a restraining order protecting V against the defendant. The parents' marriage had been dissolved in New York, and, in the dissolution decree, the court incorporated by reference their agreement that they would have joint legal custody of V and that they would share parenting time with V in accordance with a detailed schedule. The parents and V later moved to Connecticut and the foreign dissolution judgment was registered in this state. Shortly thereafter, following motions filed by both parents, the dissolution judgment was modified, the father was awarded sole physical custody of V, and the mother's parenting time with V was limited to supervised visitation at the father's discretion. Thereafter, the father filed an application for relief from abuse on behalf of V against the mother, alleging that the mother had attempted to abduct V from her home and her private school despite the court order providing the mother parenting time with V only when supervised and at the father's discretion. After a hearing, the court granted the application and issued a restraining order with an expiration date one year later. Shortly after the expiration date of the first restraining order, the father filed a new application for relief from abuse, stating that, upon expiration of the

* 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 party's identity may be ascertained.

prior restraining order, the mother began appearing, uninvited, at V's home, at the private school she attended, and at her gymnastics classes and that the mother's behavior had been escalating. He also alleged that the mother's actions caused V to be anxious and fearful that the mother was trying to abduct her. The trial court, after a hearing, granted the application and issued a new restraining order, again with an expiration date one year later. *Held* that, contrary to the mother's claim, the trial court did not lack subject matter jurisdiction as the father had standing to pursue a restraining order on behalf of V, as her next friend: the interests of the father and V were not adverse and, to the contrary, were aligned because, at the time the father filed the second application for relief from abuse on behalf of V, he had sole physical custody of V and had been granted the discretion to determine whether or not to permit the mother to have supervised visitation with her, and this authority necessarily resulted from a determination that it was in the best interest of V that the father be responsible for her, and the trial court specifically credited the testimony of V's guardian ad litem that the father was a perfectly capable custodian for V and that it was in V's best interest that the restraining order be issued; moreover, the mother offered no specific basis for her contention that the father's interests were adverse to those of V and, conversely, her argument contradicted the evidence the court credited at the hearing.

Argued October 6, 2022—officially released March 14, 2023

Procedural History

Application for relief from abuse, brought to the Superior Court in the judicial district of New Haven, where the court, *Grossman, J.*, granted the application and issued an order of protection, and the defendant appealed to this court. *Affirmed.*

V. V., self-represented, the appellant (defendant).

Opinion

SHELDON, J. The self-represented defendant, V. V., appeals from the judgment of the trial court granting the application for relief from abuse filed by E. V. (E), on behalf of the plaintiff, V. V. (V), the minor daughter of the defendant and E,[1] pursuant to General Statutes

[1] For clarity, we refer to the mother, V. V., as the defendant. We refer to the father, E, and the daughter, V, individually by their first initials in this opinion. Additionally, neither E nor V has participated in this appeal. Thus, we decide this appeal on the basis of the record, the defendant's appellate brief, and the defendant's oral argument.

§ 46b-15.[2] On appeal, the defendant claims that the court lacked subject matter jurisdiction on the ground that E lacked standing to bring the application on behalf of V, as her next friend, because E's interests were adverse to those of V.[3] We disagree and, accordingly, affirm the judgment of the trial court.

[2] General Statutes § 46b-15 provides in relevant part: "(a) Any family or household member, as defined in section 46b-38a, who is the victim of domestic violence, as defined in section 46b-1, by another family or household member may make an application to the Superior Court for relief under this section. . . ."

In turn, General Statutes § 46b-1 (b) provides: "As used in this title, 'domestic violence' means: (1) A continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b-38a; (2) stalking, including, but not limited to, stalking as described in section 53a-181d, of such family or household member; (3) a pattern of threatening, including, but not limited to, a pattern of threatening as described in section 53a-62, of such family or household member or a third party that intimidates such family or household member; or (4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty. 'Coercive control' includes, but is not limited to, unreasonably engaging in any of the following:

"(A) Isolating the family or household member from friends, relatives or other sources of support;

"(B) Depriving the family or household member of basic necessities;

"(C) Controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services;

"(D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue;

"(E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or

"(F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images."

[3] The defendant's appellate brief additionally claims that (1) the court lacked personal jurisdiction, (2) the court's issuance of a domestic violence restraining order improperly modified the parties' settlement agreement regarding custody that was incorporated into a foreign divorce decree that was registered in Connecticut, (3) the court violated the statutory bill of rights for psychiatric patients, General Statutes §§ 17a-540 through 17a-550,

The following undisputed facts and procedural history are relevant to our resolution of this appeal.[4] E and the defendant were married in April, 2013, and have one minor child, V, born in December, 2013. On September 10, 2015, the Supreme Court of the state of New York, county of New York, dissolved the marriage between the defendant and E. In the dissolution decree, the court incorporated by reference the parties' June 18, 2015 agreement, in which the parties agreed that they would have joint legal custody of V and that they would share parenting time with V in accordance with a detailed parenting time schedule. The defendant, V, and E subsequently relocated to the New Haven area.

On May 7, 2019, E, pursuant to General Statutes § 46b-71 (a),[5] registered the foreign dissolution judgment in

by permitting the defendant to have contact with V at joint therapeutic sessions with a psychologist, (4) the court's issuance of a restraining order infringed on the defendant's civil liberties as the parent of V, (5) the court improperly denied her motion to reargue and set aside the restraining order, and (6) the court manifested bias and prejudice toward her. We carefully have considered each of the defendant's six additional claims in light of the record before us and conclude that they are unfounded and do not merit substantive discussion. See, e.g., *McCullough* v. *Rocky Hill*, 198 Conn. App. 703, 705 n.1, 234 A.3d 1049 (summarily disposing of unfounded claims), cert. denied, 335 Conn. 985, 242 A.3d 480 (2020).

[4] We take judicial notice of the court files in two prior actions between the parties; *V. V.* v. *E. V.*, Superior Court, judicial district of New Haven, Docket No. FA-19-4073157-S; *V. V.* v. *V. V.*, Superior Court, judicial district of New Haven, Docket No. FA-20-5049453-S; only to the extent that the contents of those files are not borne out by the record of the present appeal. See *Plainville* v. *Almost Home Animal Rescue & Shelter, Inc.*, 182 Conn. App. 55, 60 n.3, 187 A.3d 1174 (2018) (appellate court may take judicial notice of court files in other actions between same parties).

[5] General Statutes § 46b-71 (a) provides: "Any party to an action in which a foreign matrimonial judgment has been rendered, shall file, with a certified copy of the foreign matrimonial judgment, in the court in this state in which enforcement of such judgment is sought, a certification that such judgment is final, has not been modified, altered, amended, set aside or vacated and that the enforcement of such judgment has not been stayed or suspended, and such certificate shall set forth the full name and last-known address of the other party to such judgment and the name and address of the court in the foreign state which rendered such judgment."

the Superior Court in the judicial district of New Haven. Subsequently, the defendant and E each filed several motions in the Superior Court, seeking to modify their custody and visitation rights with respect to V. *V. V.* v. *E. V.*, Superior Court, judicial district of New Haven, Docket No. FA-19-4073157-S. In May, 2019, the court modified the dissolution judgment, awarded E sole physical custody of V, and ordered that the defendant's parenting time with V be limited to supervised visitation at E's discretion. *V. V.* v. *E. V.*, supra (May 21, 2019).

On December 11, 2020, E, on behalf of V, filed a prior application for relief from abuse against the defendant in a proceeding in the Superior Court. *V. V.* v. *V. V.*, Superior Court, judicial district of New Haven, Docket No. FA-20-5049453-S. In support of this application, E averred that the defendant, who suffers from bipolar disorder with psychosis, had attempted to abduct V from her home and her private school despite the court order providing the defendant parenting time with V only when supervised and at E's discretion. On December 23, 2020, the defendant filed a motion to dismiss this application on the ground, inter alia, that E lacked standing to bring the action on behalf of V, which was denied summarily by the court on the same date. Also on December 23, 2020, the court, after a hearing, granted the application for relief from abuse and issued a restraining order, set to expire on December 23, 2021, requiring the defendant: to surrender or transfer all firearms and ammunition; not to assault, threaten, abuse, harass, follow, interfere with, or stalk V; to stay away from the home of V and wherever V shall reside; not to contact V in any manner; and to stay 100 yards away from V.[6]

[6] The defendant filed two appeals from the judgments rendered in this prior restraining order action, and this court dismissed those appeals. See *V. V.* v. *V. V.*, Connecticut Appellate Court, Docket No. AC 44583 (appeal dismissed April 20, 2021) (failure to file required appellate documents); see also *V. V.* v. *V. V.*, 215 Conn. App. 737, 741, 283 A.3d 1045 (2022) (appeal dismissed for lack of subject matter jurisdiction).

On July 9, 2021, in Docket No. FA-19-4073157-S, the court modified the December 23, 2020 restraining order to allow the defendant to participate in therapeutic visitation sessions with V and a therapist, Kacian Fabish. On that same date, the court also appointed, pursuant to the parties' agreement, Attorney Corrine Boni-Vendola to serve as guardian ad litem for V.

On January 27, 2022, E, on behalf of V, filed the application for relief from abuse against the defendant that is the subject of this appeal, together with a personal affidavit of supporting facts. In the application, E contended that V had been subjected to a continuous threat of present physical pain or physical injury, stalking, a pattern of threatening, and/or coercive control by the defendant. The application requested that the court issue a restraining order mandating that the defendant: not assault, threaten, abuse, harass, follow, interfere with, or stalk V; stay away from V's home or wherever she shall reside; not contact V in any manner, including by written, electronic or telephonic means; not contact V's home, workplace, or other persons with whom the contact would be likely to cause annoyance or alarm to V; and stay 100 yards away from V. The application further requested that the court issue the restraining order ex parte on the ground that E believed there was an immediate and present physical danger to V.

In E's affidavit of facts submitted in support of the application for relief from abuse, he averred that, following the entry of the December 23, 2020 order of protection, V no longer had nightmares and was no longer afraid. E further averred that, after the expiration of the December 23, 2020 restraining order, the defendant began appearing, uninvited, at V's home, at the private school she attended, and at her gymnastics classes, and that the defendant's "behavior ha[d] been escalating." E concluded his affidavit by averring that

V "was thriving. Now that [the defendant] is stalking her, she is anxious when leaving school or going to gymnastic[s] class. She has a fear that [the defendant] is trying to take her."

On January 27, 2022, the court issued an ex parte restraining order against the defendant and scheduled a hearing for February 4, 2022. On February 2, 2022, the defendant filed a motion to dismiss the application for a domestic violence restraining order on the ground, inter alia, that the court lacked subject matter jurisdiction. In her memorandum of law in support of the motion to dismiss, the defendant argued, in part, that E lacked standing to bring the application for a restraining order on behalf of V. The defendant's motion to dismiss was not adjudicated.[7]

On February 4, 2022, the court held a hearing on the application for a restraining order. The court heard testimony at the hearing from E, Boni-Vendola, and the defendant. E testified that V had been doing much better while the prior restraining order was in effect, for then "[e]verything was very calm" and there were "no issues" between V and the defendant. E further testified, however, that after the expiration of the prior restraining

[7] We note that "[o]nce the question of lack of jurisdiction of a court is raised, [it] *must be disposed of* no matter in what form it is presented. . . . *The court must fully resolve it before proceeding further with the case*." (Emphasis in original; internal quotation marks omitted.) *Ajadi* v. *Commissioner of Correction*, 280 Conn. 514, 535, 911 A.2d 712 (2006); but see *Conboy* v. *State*, 292 Conn. 642, 653 n.16, 974 A.2d 669 (2009) ("[w]hen the jurisdictional facts are intertwined with the merits of the case, the court may in its discretion choose to postpone resolution of the jurisdictional question until the parties complete further discovery or, if necessary, a full trial on the merits has occurred"). Although the trial court did not rule on the defendant's motion to dismiss, this fact does not impact the resolution of the present appeal because "[t]he subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings, including on appeal . . . ." (Internal quotation marks omitted.) *Wolfork* v. *Yale Medical Group*, 335 Conn. 448, 459, 239 A.3d 272 (2020).

order, the defendant stopped attending therapeutic visitation with V and Fabish and began appearing, uninvited and unannounced, in places and at events where V was present. Specifically, E testified regarding a series of incidents that occurred between January 5 and 26, 2022, in which the defendant came to V's school when E was picking her up, followed E and V home from school, repeatedly rang their home doorbell, and walked her dog back and forth in front of their home for more than one hour. E also testified that the defendant attended and recorded V's gymnastics classes and attempted to take V from her school. E testified that these incidents caused V to be terrified of the defendant, to become very unhappy, and to suffer emotional distress. In addition, he testified that the defendant's disruptive conduct near V's school threatened V's continued enrollment in the school.

Boni-Vendola's testimony at the hearing corroborated E's description of the defendant's conduct at or near V's school. Boni-Vendola also testified that she met with the defendant before her behavior escalated and expressed her concerns that the defendant was not in treatment and that she had ceased her therapeutic visitation. She then testified that it was in the best interests of V for the restraining order to be issued, and she recommended that an exception to the restraining order be crafted to permit the defendant to see V during therapeutic visits with Fabish.

The defendant in her testimony disputed that she had engaged in most of the conduct that served as the basis for the restraining order, and, alternatively, she testified that her actions on several of those occasions did not negatively impact the psychological well-being of V. The defendant further testified that it was her understanding that she was permitted to be within 100 yards of V because the prior restraining order had expired. When asked whether E had given her permission to have

parenting time with V on those occasions, as required by the current custody and visitation order, the defendant stated that she misunderstood the requirements of the court's custody and visitation order.

On February 4, 2022, the court granted the application for relief from abuse and issued a restraining order protecting V from the defendant. The court stated on the record at the hearing that it found the testimony of E and Boni-Vendola to be credible, but it did not credit the testimony of the defendant. The court found, inter alia, that "there have been six incidents since the lapse of the last restraining order. So, that would be six incidents from December of 2021 to today in which the [defendant] has appeared at [V's] school, at [E's] home, and at [V's] events. All of those are events in which the [defendant] was not expected and not invited, and [E] testified credibly that those events for which [V] was present caused [V] a great deal of distress that she is scared of being taken by [the defendant], that she finds [the defendant's] presence to be unnerving and unpredictable. That [V], as a result of the [defendant's] unexpected appearance at these—on these six occasions, has sort of had some backsliding in terms of her mental health. That she'd become more anxious; that she has become more fearful." The court also found that E "has demonstrated in his testimony and the guardian [ad litem] has also recommended that he is a perfectly capable custodian, that he includes the [defendant] when it's appropriate, that he excludes the [defendant] when it's appropriate, and under the criteria of [§] 46b-15, he does meet the requirements to have—be the sole legal custodian for the period of time while the restraining order is in place." Consequently, the court concluded that the credible evidence established that, pursuant to § 46b-15, V would be at risk of psychological harm if the requested restraining order were not issued.

Also on February 4, 2022, the court issued a written order outlining the terms and conditions of the restraining order.[8] The order required the defendant: to surrender or transfer all firearms and ammunition; not to assault, threaten, abuse, harass, follow, interfere with, or stalk V; to stay away from the home of V and wherever V shall reside; not to contact V in any manner, including by written, electronic or telephonic means; not to contact V's home, workplace, or any other persons with whom the contact would likely cause annoyance or alarm to V; and to stay 100 yards away from V. As an additional term and condition, the court ordered that the defendant "at all times must stay 100 yards away from [V's] school, the home of [V] and the locations where [V] participates in swim and gymnastics. The only exception is court-ordered therapeutic access with Kacian Fabish, MS LPC. [E] is granted sole, physical and legal custody of [V]." The court set the restraining order to expire one year later, on February 4, 2023.[9] This appeal followed.

On appeal, the defendant claims that the court lacked subject matter jurisdiction on the ground that E lacked standing to bring the application for a domestic violence restraining order on behalf of V, as her next friend, because E's interests were adverse to those of V.[10] We disagree.

[8] The court, sua sponte, issued a corrected restraining order, which also is dated February 4, 2022. The only substantive distinction between the original and corrected orders is the addition in the corrected order of the provision granting E sole physical and legal custody of V.

[9] Despite the expiration of the restraining order on February 4, 2023, the defendant's appeal is not moot. See, e.g., *L. D.* v. *G. T.*, 210 Conn. App. 864, 869 n.4, 271 A.3d 674 (2022) (expiration of domestic violence restraining order issued pursuant to § 46b-15 does not render appeal from that order moot due to adverse collateral consequences). Additionally, we note that E, on January 17, 2023, filed two motions to extend the restraining order that is the subject of this appeal. The trial court has not acted on these motions.

[10] Although the defendant's principal appellate brief is not a model of clarity, we pause to define the contours of the defendant's standing claim on appeal. The defendant does not contest the general proposition that the

We begin with the standard of review and relevant legal principles. "The issue of standing implicates a court's subject matter jurisdiction and is subject to plenary review." *Channing Real Estate, LLC* v. *Gates*, 326 Conn. 123, 137, 161 A.3d 1227 (2017). "Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue . . . ." (Internal quotation marks omitted.) *Rodriguez* v. *Kaiaffa, LLC*, 337 Conn. 248, 274, 253 A.3d 13 (2020). "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented." (Internal quotation marks omitted.) *Wolfork* v. *Yale Medical Group*,

parent of a minor child can bring an application on behalf of the minor child, as next friend, seeking a domestic violence restraining order against another parent. See, e.g., *Carrubba* v. *Moskowitz*, 274 Conn. 533, 552, 877 A.2d 773 (2005) ("[u]nder normal circumstances," parents of minor child have standing as next friends of minor child "because they are presumed to act in the best interests of the minor child"); see also *L. L.* v. *M. B.*, 216 Conn. App. 731, 733, 286 A.3d 489 (2022) (parent commenced application for domestic violence restraining order on behalf of child against other parent); *L. D.* v. *G. T.*, 210 Conn. App. 864, 866, 271 A.3d 674 (2022) (same); *D. S.* v. *R. S.*, 199 Conn. App. 11, 13, 234 A.3d 1150 (2020) (same). The defendant also does not argue that, because Boni-Vendola was appointed as the guardian ad litem for V, no "exceptional circumstances" existed to warrant the bringing of the action by E. See, e.g., *Perry* v. *Perry*, 312 Conn. 600, 611, 95 A.3d 500 (2014) (outlining certain exceptional circumstances in which action may be brought on behalf of child by next friend notwithstanding existence of guardian appointed to protect interests of that child).

335 Conn. 448, 471, 239 A.3d 272 (2020). "It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Jenzack Partners, LLC* v. *Stoneridge Associates, LLC*, 334 Conn. 374, 382, 222 A.3d 950 (2020).

"A next friend is a person who appears in a lawsuit to act for the benefit of . . . [a] minor plaintiff . . . . It is well established that a child may bring a civil action only by a guardian or next friend, whose responsibility it is to ensure that the interests of the ward are well represented." (Internal quotation marks omitted.) *Harris* v. *Neale*, 197 Conn. App. 147, 149 n.1, 231 A.3d 357 (2020). "Next friend standing essentially allows a third party to advance a claim in court on behalf of another when the party in interest is unable to do so on his or her own. . . . The 'next friend' does not himself become a party to the action in which he participates, but simply pursues the action on behalf of the real party in interest." (Citations omitted; internal quotation marks omitted.) *Nonhuman Rights Project, Inc.* v. *R.W. Commerford & Sons, Inc.*, 192 Conn. App. 36, 42, 216 A.3d 839, cert. denied, 333 Conn. 920, 217 A.3d 635 (2019). "[T]he proper test for determining whether a person is the proper party to bring an action on behalf of a minor child as a guardian or next friend *is whether that person's interests are adverse to those of the child* . . . ." (Emphasis added; internal quotation marks omitted.) *Carrubba* v. *Moskowitz*, 274 Conn. 533, 550, 877 A.2d 773 (2005).[11]

[11] In support of her standing claim, the defendant relies only on *Orsi* v. *Senatore*, 31 Conn. App. 400, 626 A.2d 750 (1993), rev'd, 230 Conn. 459, 645 A.2d 986 (1994). This court's judgment in *Orsi* v. *Senatore*, supra, 31 Conn. App. 400, has no precedential value because it was reversed by our Supreme Court in *Orsi* v. *Senatore*, 230 Conn. 459, 645 A.2d 986 (1994). See *Harris* v. *Commissioner of Correction*, 271 Conn. 808, 827–28, 860 A.2d 715 (2004) (Supreme Court's reversal of Appellate Court judgment deprives Appellate Court judgment of any precedential value). For that reason, we do not apply *Orsi* v. *Senatore*, supra, 31 Conn. App. 400.

Applying these principles, we conclude that E had standing to pursue a restraining order on behalf of V, as her next friend, because E's interests were not adverse to those of V. It is evident that the interests of E and V were aligned for two reasons. Primarily, at the time that E filed the present application for relief from abuse on behalf of V, he had sole physical custody of V and had been granted the discretion to determine whether or not to permit the defendant to have supervised visitation with her. The postdissolution court's award of sole physical custody and visitation discretion to E necessarily resulted from a determination that it was in the best interest of V that E, her father, be responsible for her. See generally *J. Y.* v. *M. R.*, 215 Conn. App. 648, 657–59, 283 A.3d 520 (2022) (court is required to consider best interest of child when making or modifying any order regarding custody, care, education, visitation, and support of child). Second, the court in the present case specifically credited the testimony of Boni-Vendola, V's guardian ad litem, that it was in the best interest of V that the restraining order be issued and that E was a "perfectly capable custodian" for V. As stated previously, Boni-Vendola had been appointed by the postdissolution court to be the guardian ad litem for V on the basis of the agreement of the parties. Boni-Vendola's testimony at the restraining order hearing was made on behalf of V because "[i]t is well established that the role of the guardian ad litem is to speak on behalf of the best interest of the child." *In re Tayquon H.*, 76 Conn. App. 693, 704, 821 A.2d 796 (2003).

It is not made clear in the defendant's appellate brief what is the specific basis for her contention that E's interests were adverse to those of V. The defendant, however, contends that E "brought this restraining order action to advance his nonjusticiable interests that are adverse to [V's] interests and meant to subject [V] to his maltreatment 'continuously' . . . and in retaliation

against [the defendant] because she filed a Title IX complaint against [E] at . . . Yale University." (Citation omitted.) The defendant offers no support for her contention that E continuously mistreated V. Conversely, her argument contradicts the evidence that the court credited at the hearing.

In sum, indulging every presumption in favor of jurisdiction, we conclude that E had standing to apply for a domestic violence restraining order against the defendant on V's behalf, while acting in the capacity of her next friend. As V's father, and the person to whom the court previously had granted sole physical custody with respect to her, E's interests were not only not adverse to those of V but in fact were well aligned with those interests, as confirmed by her guardian ad litem, who opined at the hearing that the issuance of the restraining order was in the best interest of V. Therefore, E had standing to apply for the order here challenged as the next friend of V.

The judgment is affirmed.

In this opinion the other judges concurred.

JANE DOE *v.* QUINNIPIAC UNIVERSITY ET AL.
(AC 44938)

Elgo, Moll and Suarez, Js.

Syllabus

Pursuant to the accidental failure of suit statute (§ 52-592 (a)), if any action, *commenced within the time limited by law*, has failed one or more times to be tried on its merits because the action has been otherwise avoided or defeated for any matter of form, the plaintiff may commence a new action for the same cause at any time within one year.

Pursuant further to statute (§ 52-584), an action for negligence shall be brought within two years from the date the injury is sustained.

The plaintiff sought to recover damages from the defendants, a university and a fraternity, alleging that they were negligent in failing to prevent certain individual members of the fraternity from sexually assaulting

her on October 27, 2017. The plaintiff had filed a previous action against the defendants in 2019, serving the fraternity and the university on October 28 and 31, 2019, respectively. The trial court granted the defendants' motions to dismiss the 2019 action for lack of personal jurisdiction because the complaint that the plaintiff filed with the court was never served on the defendants. The plaintiff then commenced the present action in 2021 pursuant to the applicable savings statutes (§§ 52-592 and 52-593). The defendants again moved to dismiss the present action on the ground that the summons and complaint served on them were different than the summons and complaint that the plaintiff had filed with the court, depriving the court of personal jurisdiction over them. The university additionally argued that, because the 2019 action had not been commenced within the two year statute of limitations set forth in § 52-584, § 52-592 (a) did not apply to save the 2021 action. The trial court granted the defendants' motions to dismiss, and the plaintiff appealed to this court. *Held* that, because the plaintiff did not challenge on appeal every independent basis on which the trial court relied in granting the defendants' motions to dismiss, the appeal was moot: the plaintiff failed to challenge the specific ground on which the trial court relied with respect to the applicability of § 52-592, namely, that her failure to commence the 2019 action within the two year statute of limitations set forth in § 52-584, precluded § 52-592 from saving the present action, the plaintiff's counsel acknowledged at oral argument before this court that the 2019 action had not been commenced within the statute of limitations, and, thus, this court was incapable of providing her any practical relief.

Argued November 14, 2022—officially released March 14, 2023

Procedural History

Action to recover damages for the defendants' alleged negligence, and for other relief, brought to the Superior Court in the judicial district of New Haven, where the court, *Young*, *J.*, granted the defendants' motions to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Appeal dismissed.*

Kevin P. Walsh, for the appellant (plaintiff).

Tara F. Racicot, with whom were *Michael R. McPherson* and, on the brief, *Matthew G. Conway*, *Paul D. Meade*, and *Laura Pascale Zaino*, for the appellees (defendants).

Opinion

SUAREZ, J. The plaintiff, Jane Doe, brought the underlying action against the defendants, Alpha Sigma Phi Fraternity, Inc. (fraternity), and Quinnipiac University (Quinnipiac), pursuant to two savings statutes, General Statutes §§ 52-592 (accidental failure of suit statute) and 52-593 (wrong defendant statute). In her complaint, the plaintiff alleged that the defendants were negligent in that they failed to prevent members of the fraternity from sexually assaulting her. The plaintiff appeals from the judgment of the trial court granting the motions to dismiss filed by the defendants. On review of the arguments presented on appeal, we interpret the plaintiff's claims to be that the trial court erred in concluding that (1) the process filed with the court never was served on the defendants, (2) the plaintiff's service of process and filing of process violated General Statutes §§ 52-46[1] and 52-46a,[2] and (3) § 52-592[3] does not save the plaintiff's action.[4] We dismiss the plaintiff's appeal as moot.

[1] General Statutes § 52-46 provides in relevant part: "Civil process . . . shall be served . . . if returnable to the Superior Court, at least twelve days, inclusive, before [the day of the sitting of the court]."

[2] General Statutes § 52-46a provides in relevant part: "Process in civil actions . . . shall be returned . . . if returnable to the Superior Court, except process in summary process actions and petitions for parentage and support, to the clerk of such court at least six days before the return day."

[3] General Statutes § 52-592 provides in relevant part: "(a) If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because of insufficient service or return of the writ due to unavoidable accident or the default or neglect of the officer to whom it was committed, or because the action has been dismissed for want of jurisdiction, or the action has been otherwise avoided or defeated by the death of a party or for any matter of form . . . the plaintiff . . . may commence a new action . . . for the same cause at any time within one year after the determination of the original action or after the reversal of the judgment."

[4] We note that, in her statement of issues, the plaintiff characterized the claims raised on appeal as follows: "(1) Whether the trial court was correct in entering dismissal of the plaintiff's claims as detailed in the court's memorandum of decision on August 24, 2021, and/or as the issue has been briefed by the parties.

The following procedural history is relevant to our resolution of this appeal. The plaintiff served the fraternity and Quinnipiac on October 28 and 31, 2019, respectively, with a summons and a complaint in which she asserted claims against the defendants and certain individual members of the fraternity arising from an alleged sexual assault of the plaintiff by those members of the fraternity that took place on October 27, 2017. With respect to the defendants, the plaintiff alleged that they negligently failed to prevent the sexual assault. Subsequently, the plaintiff reached a settlement with the individual fraternity members, pursuant to which the plaintiff signed a nondisclosure agreement to protect their identities.

On November 27, 2019, the plaintiff filed with the court a different summons and complaint (2019 action) from those served on the defendants in October, 2019. In the complaint that the plaintiff filed with the court, the individual fraternity members were no longer named as defendants, and the counts that were brought against them in the original complaint were removed as a result of the settlement agreement.

The complaint that the plaintiff filed with the court was never served on the defendants. On this ground, the fraternity and Quinnipiac, on December 10, 2019, and January 10, 2020, respectively, filed motions to dismiss the actions against them for lack of personal jurisdiction. On April 27, 2020, the court granted both of the defendants' motions to dismiss.

On March 1, 2021, the plaintiff filed, inter alia, a summons and complaint (2021 action) naming the fraternity

"(2) Any issues that are identified after a review of the record."

We have reframed the claims in this appeal to more accurately reflect the arguments set forth in the body of the plaintiff's brief. See, e.g., *Festa* v. *Board of Education*, 145 Conn. App. 103, 106 n.1, 73 A.3d 904, cert. denied, 310 Conn. 934, 79 A.3d 888 (2013).

and Quinnipiac as defendants. The complaint, dated February 17, 2021, stated that it was "brought pursuant to [Connecticut's saving statutes] . . . § 52-592—accidental failure of suit, allowance of a new action, [and] . . . § 52-593[5]—action against wrong defendant, allowance of new action." (Footnote added.) In her 2021 complaint, the plaintiff brought the same claims against the fraternity and Quinnipiac as she had in the 2019 action. The summons and complaint filed with the court contained a return date of March 16, 2021. Process was then served on the fraternity and Quinnipiac on March 10 and 11, 2021, respectively.

Quinnipiac and the fraternity, on April 23 and 26, 2021, respectively, filed motions to dismiss the 2021 action. In their memoranda in support of their motions to dismiss, both defendants asserted that, in several respects, the summons and complaint served on them were different from the summons and complaint that the plaintiff had filed with the court, including having different return dates. Given that the defendants were not served with the same process that was filed with the court, they argued that the plaintiff failed to comply with §§ 52-46 and 52-46a, depriving the court of personal jurisdiction over them. The defendants further argued that the plaintiff could not thereafter amend the return date in an attempt to comply with §§ 52-46 and 52-46a. The fraternity, in its memorandum in support of its motion to dismiss, also argued that § 52-592 did not apply because the 2019 action was not dismissed "for any matter of form"; General Statutes § 52-592; rather, the fraternity argued, it was dismissed because the plaintiff "*chose* not to file or return the original writ to

[5] General Statutes § 52-593 provides in relevant part: "When a plaintiff in any civil action has failed to obtain judgment *by reason of failure to name the right person as defendant therein*, the plaintiff may bring a new action and the statute of limitations shall not be a bar thereto if service of process in the new action is made within one year after the termination of the original action. . . ." (Emphasis added.)

court . . . .'' (Emphasis added.) Additionally, the fraternity argued that, because the court had not dismissed the 2019 action for the plaintiff's failure to name the correct defendant, § 52-593 did not apply to the 2021 action.

On June 11, 2021, the plaintiff responded by filing a motion to amend the return date from March 16, 2021, to March 23, 2021. On June 14, 2021, the plaintiff filed objections to the motions to dismiss with accompanying memoranda of law.

On June 22, 2021, Quinnipiac filed a supplemental memorandum of law in support of its motion to dismiss. Quinnipiac argued, consistent with the fraternity's argument, that the plaintiff had willingly abandoned the 2019 action, thereby making § 52-592 inapplicable to the 2021 action. Quinnipiac further asserted that the 2019 action was not commenced within the relevant statute of limitations, namely, General Statutes § 52-584,[6] and that, because § 52-592 applies only to eligible, previously failed actions ''commenced within the time limited by law,'' § 52-592 did not apply to the 2021 action.

Quinnipiac filed a reply to the plaintiff's objection to its motion to dismiss on June 28, 2021. On July 27, 2021, the court held a hearing on the motions to dismiss.

On August 24, 2021, the court issued a memorandum of decision granting the defendants' motions to dismiss. In its memorandum of decision, the court first concluded that the summons and complaint that were filed with the court in the 2021 action were not identical to the summons and complaint served on the defendants

[6] General Statutes § 52-584 provides in relevant part: ''No action to recover damages for injury to the person . . . caused by negligence, or by reckless or wanton misconduct . . . *shall be brought but within two years from the date when the injury is first sustained or discovered* . . . .'' (Emphasis added.)

and, accordingly, it lacked personal jurisdiction over the defendants. Second, the court reasoned that the plaintiff's service of process in the 2021 action did not comply with § 52-46 or § 52-46a and that amending the return date would not remedy the noncompliance, further depriving the court of personal jurisdiction over the defendants. Third, the court concluded that the "alleged incident and corresponding acts of negligence . . . occurred on October 27, 2017. . . . Assuming arguendo that there was identical service of the filed process and complaint upon the defendants, that service was not made until March 10 [and] 11, 2021, by the marshal, long after the expiration of the statute of limitations, depriving the court of jurisdiction." Relatedly, the court concluded that the plaintiff's reliance on § 52-592 was misplaced because § 52-592 applies only to save eligible, previously failed actions "commenced within the time limited by law . . . ." (Internal quotation marks omitted.) The court concluded that the 2019 action did not commence until after the relevant statute of limitations, § 52-584, had expired and, therefore, the 2021 action could not be saved under § 52-592. Moreover, the court concluded that the plaintiff's reliance on § 52-593 was misplaced because "[t]he [2019] action was not dismissed for failure to name the right defendant." This appeal followed.

In this appeal, the plaintiff principally claims that the trial court erred in dismissing the 2021 action on the grounds that (1) the process filed with the court was never served on the defendants and (2) the process served on the defendants was not, and could not have been, timely returned to the court. Finally, the plaintiff cursorily claims that the court erred by failing to conclude that the 2021 action is saved under § 52-592, noting that § 52-592 is "remedial in nature and therefore warrants broad construction." (Internal quotation marks omitted.) The plaintiff, however, does not challenge one of

the independent grounds on which the court dismissed the 2021 action, namely, that the plaintiff's failure to commence the 2019 action within the relevant statute of limitations precludes § 52-592 from applying to the 2021 action.[7]

Because the plaintiff does not challenge every independent basis on which the court granted the defendants' motions to dismiss, we consider whether the present appeal is moot.[8] "Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . A determination regarding . . . [this court's] subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary. . . . [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 plaintiff or defendant in any way. . . .

[7] The plaintiff also does not challenge the trial court's conclusion that § 52-593 does not apply because the 2019 action was not dismissed for failure to name the right defendant.

[8] Following oral argument in this appeal, this court ordered the parties to file supplemental briefs addressing "whether this appeal should be dismissed as moot in light of the fact that the plaintiff has failed to challenge on appeal an independent basis for the trial court's decision to grant the defendants' motions to dismiss . . . namely, that . . . § 52-592 did not apply because the underlying action the plaintiff sought to revive was not timely commenced within the relevant statute of limitations." The parties complied with our supplemental briefing order and we have considered their arguments in our resolution of the appeal. The defendants argue that the appeal should be dismissed as moot. The plaintiff argues that the appeal is not moot. We note that, in her supplemental brief, the plaintiff fails to squarely address the effect of the court's conclusion in its memorandum of decision that § 52-592 does not apply to the 2021 action because the process that was served on the defendants in connection with the 2019 action did not commence the 2019 action within the relevant statute of limitations.

"Where an appellant fails to challenge all bases for a trial court's adverse ruling on [her] claim, even if this court were to agree with the appellant on the issues that [she] does raise, we still would not be able to provide [her] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *Bongiorno* v. *J & G Realty, LLC*, 211 Conn. App. 311, 322, 272 A.3d 700 (2022).

As stated previously in this opinion, the plaintiff does not challenge the specific ground on which the court concluded that § 52-592 did not apply to save the otherwise time barred 2021 action, namely, her failure to commence the 2019 action within the applicable statute of limitations. Indeed, counsel for the plaintiff acknowledged at oral argument before this court that the 2019 action was not commenced within the statute of limitations. In particular, although the defendants' alleged negligence occurred on or before October 27, 2017, they were not served with the summons and complaint in the 2019 action until October 28, 2019, with respect to the fraternity, and October 31, 2019, with respect to Quinnipiac, outside of the two year statute of limitations prescribed in § 52-584. To invoke the court's jurisdiction, it was incumbent on the plaintiff to demonstrate that one or both of the savings statutes on which she relied applied. Thus, even if we were to agree with the plaintiff with respect to the other claims that she raises on appeal, her failure to challenge the specific ground on which the court relied with respect to the applicability of § 52-592 renders us incapable of providing her any practical relief. See, e.g., *State* v. *Carter*, 194 Conn. App. 202, 203, 208, 220 A.3d 882 (2019) (defendant's failure to challenge all independent bases for court's

dismissal of motion to set aside judgment of conviction rendered appeal moot); see also, e.g., *State* v. *Lester*, 324 Conn. 519, 527–28, 153 A.3d 647 (2017) (defendant's appeal claiming that court improperly applied rape shield statute when it excluded evidence was moot for failure to challenge all independent bases for trial court's exclusion of evidence). Accordingly, the appeal is moot.

The appeal is dismissed.

In this opinion the other judges concurred.

STAMFORD PROPERTY HOLDINGS, LLC *v.* DORIAN JASHARI ET AL.
(AC 45151)

Moll, Seeley and Lavine, Js.

Syllabus

The plaintiff lessor sought, inter alia, reformation of a commercial lease between the plaintiff and the defendant lessees, J and I, based on unilateral or mutual mistake. The parties negotiated the long-term lease of a car wash facility owned by the plaintiff. Except for J's initial offer, all of the proposals contained rental payments on a triple net basis, wherein the defendants would be responsible for expenses related to insurance, maintenance, and real estate taxes in addition to base rent. After the parties signed a letter of intent that included a triple net provision, the plaintiff instructed its attorney to prepare a formal lease incorporating the material terms of the letter of intent. In doing so, the plaintiff's attorney mistakenly omitted the triple net provision in the lease. The parties signed the lease and, thereafter, the plaintiff sent J an invoice that included reimbursement for real estate taxes, which J refused to pay. After a bench trial, the court found in favor of the plaintiff on its reformation claim, primarily based on the ground of mutual mistake but, in the alternative, on the ground of unilateral mistake coupled with inequitable conduct on the part of the defendants. The court subsequently ordered that the lease be reformed to account for the triple net rent and that the defendants reimburse the plaintiff for the real estate taxes in accordance therewith. On the defendants' appeal to this court, *held*:

1. This court declined to consider the merits of the defendants' claim that the trial court improperly granted reformation of the contract based on

the ground of unilateral mistake because there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants, as that claim was moot: the trial court concluded that the plaintiff satisfied both alternative grounds alleged in the complaint for reformation, mutual mistake and unilateral mistake, and, because the defendants failed to challenge on appeal the court's finding of mutual mistake, this court, even if it agreed with the defendants' claim regarding unilateral mistake, could not provide them with any practical relief; moreover, although the plaintiff specifically urged the court to order reformation based on unilateral mistake in its posttrial brief, the defendants failed to show that doing so constituted a withdrawal of the mutual mistake ground, as the plaintiff's complaint, which asserted a claim for reformation on both grounds, was never amended; furthermore, contrary to the defendants' claim, it was not logically impossible for the trial court to find mutual mistake and, alternatively, unilateral mistake coupled with inequitable conduct, because, even if a party testifies that a mistake was not common to both parties, as J testified, the trial judge can find that testimony to be lacking credibility, find testimony in support of the contrary to be reliable, and, consequently, grant reformation on the ground of mutual mistake, and, simultaneously, the trial court could determine that the ground of unilateral mistake was alternatively satisfied because, even if the plaintiff failed to establish that J was also mistaken, there was sufficient evidence of inequitable conduct by J.

2. The defendants could not prevail on their claim that the plaintiff's misconduct prior to the execution of the lease precluded the plaintiff from prevailing on its claim for reformation: it is well settled that the unquestionable negligence of the party seeking relief, such as the failure to read the written instrument and notice the mistake, does not bar its claim for reformation, and, here, the trial court's factual findings directly refuted the underpinnings of the defendants' argument that the plaintiff's behavior prior to the execution of the lease was reckless, rather than merely negligent, and, accordingly, it was not an abuse of the trial court's discretion or an injustice for the court to have granted the plaintiff equitable relief in the form of reformation.

Argued October 11, 2022—officially released March 14, 2023

Procedural History

Action seeking, inter alia, reformation of a contract, and other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Hon. Kenneth B. Povodator*, judge trial referee; judgment for the plaintiff, from which the defendants appealed to this court. *Appeal dismissed in part*; *affirmed*.

Alexander H. Schwartz, for the appellants (defendants).

James R. Fogarty, for the appellee (plaintiff).

Opinion

SEELEY, J. The present appeal arises out of an action brought by the plaintiff lessor, Stamford Property Holdings, LLC, against the defendant lessees, Dorian Jashari (Jashari) and Ismet Jashari,[1] seeking, inter alia, reformation of a commercial lease between the parties based on unilateral or mutual mistake. The defendants appeal from the trial court's judgment in favor of the plaintiff. On appeal, they claim that the court (1) improperly granted reformation of the contract based on the ground of unilateral mistake because, contrary to the court's conclusion, there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants, and (2) erred by granting the plaintiff equitable relief because the plaintiff's misconduct before the parties executed the lease barred its claim for reformation. We conclude that the defendants' first claim is moot, and we are not persuaded by their second claim. Accordingly, we dismiss as moot the portion of the appeal related to the first claim and affirm the judgment of the trial court.

The following facts, which either were found by the trial court or are undisputed, and procedural history are relevant to our review of this appeal. In May, 2019, Jashari, a then twenty-one year old recent college graduate who was a "moderately sophisticated, well educated entrepreneur,"[2] was in search of a business venture

[1] Ismet Jashari, Dorian's father, acted as the guarantor on the lease that is at issue in this appeal. Ismet Jashari was not materially involved in the events that are relevant to this appeal.

[2] Jashari graduated with high honors from Manhattanville College, where he majored in both legal studies and economics and minored in psychology. During college, Jashari engaged in freelance work relating to e-commerce, stocks, and cryptocurrency, "[ran] the financials" for a mechanic shop of a gas station that his father co-owned, and assisted his father with his

when he learned that the plaintiff was offering a long-term lease of its car wash facility located at 249 Greenwich Avenue in Stamford. Jashari subsequently contacted the brokers on the listing, Jeff Snell and Andrew Paul of Pyramid Realty Group.[3] Paul emailed Jashari a brochure about the property that advertised a "key money"[4] amount of $400,000 and provided that "[g]oing forward the tenant will be responsible for payment of the [real estate] taxes, approximately [$]35,270 (2018)." Later that month, Jashari began negotiations with Gregg Mercede, the plaintiff's sole member and manager, through the brokers.

Jashari's first offer to Mercede to lease the car wash was for $200,000 in key money and $12,000 per month in rent. On June 6, 2019, Mercede counteroffered at $300,000 in key money with rental payments at $12,000 per month triple net for three years, escalating at the rate of 2 percent per year thereafter. Mercede's counteroffer, unlike Jashari's initial offer, contained rental payments on a triple net basis, also referred to as "NNN," which, as explained by Snell at trial, meant that, in addition to base rent, the tenant would be responsible for certain expenses of the property, including the payment of insurance premiums, maintenance expenses, and notably, for purposes of the present appeal, real estate taxes.[5]

construction business. Additionally, around the time that Jashari graduated college, his father transferred his ownership interest in several town houses to Jashari "for court purposes" so that Jashari could commence eviction proceedings. Jashari was a self-represented party in those proceedings.

[3] Although Pyramid Realty Group initially represented only the interests of the plaintiff, the parties later entered into an agreement that it represented both sides of the transaction.

[4] At trial, Jashari testified that "key money" refers to "[t]he money needed in order to acquire the business." Although the parties have not further explained this term with any additional specificity, it is apparent from the context of the record that it refers to a lump sum of money paid to a landlord by a tenant to secure a commercial tenancy.

[5] See also *Walgreen Eastern Co.* v. *West Hartford*, 329 Conn. 484, 488, 187 A.3d 388 (2018) ("[t]he developer entered into a 'triple net' or 'NNN' lease with the plaintiff under which the plaintiff was responsible for the payment of all insurance, maintenance, and property tax expenses").

Mercede and Jashari continued to negotiate and make offers to one another, all of which included, among other things, triple net rent. In mid-June, Jashari and Mercede signed a letter of intent that, in relevant part, provided for a key payment of $300,000 and rent of $9500 per month triple net for the first two years, increasing in the years thereafter. The letter also contained a provision that provided Jashari with a right, exercisable within six months, to lease an additional adjacent property for $2600 per month.

After Jashari signed the letter of intent, he prepared a pro forma profit and loss projection (projection) for the plaintiff so that it could obtain approval from its lender. During this time, the plaintiff instructed its attorney, Bruce Cohen, to prepare a formal lease incorporating the material terms of the letter of intent. In doing so, Cohen mistakenly omitted the triple net provision in the lease. The lease then was circulated among the parties. Jashari proposed three technical changes that did not alter the terms of the lease, which were accepted by Mercede and incorporated into the final agreement. The lease was signed without any comments from the parties as to the missing triple net provision. When Jashari signed the lease, he paid the $300,000 in key money and a security deposit to Mercede. The closing took place on September 17, 2019.[6] At the closing, Jashari signed a second lease addendum (addendum), which required Jashari to purchase specific equipment, supplies, and a billboard lease from the plaintiff. That same day, Jashari paid Mercede the prorated rent and utilities owed for September and prepaid for the month of October. Mercede did not ask Jashari to pay real estate taxes for September or October on that day.

[6] Although the parties refer to this date as the "closing," Paul clarified in his testimony that it was not a formal closing because, by that point, the lease had been signed and checks had been delivered. Nonetheless, for purposes of clarity, we will refer to it as the closing as well.

On September 30, 2019, approximately two weeks after Jashari took possession of the property, the plaintiff sent Jashari an invoice that included a charge for reimbursement of real estate taxes. That same day, Jashari emailed Snell the following: "We have a major issue with the rent. The contract does not reflect the current invoice billed. Please contact me as soon as possible." Snell responded that he needed "to review against the lease" and would call Jashari in the morning. Snell then advised Jashari to reach out to Mercede. Mercede emailed Jashari and Cohen an "invite" to a meeting "to have a discussion regarding the misunderstanding [of] the taxes." The evidence in the record does not confirm whether this meeting took place or, if it did, what was discussed. Ultimately, Jashari refused to pay the real estate taxes, and, thereafter, the plaintiff commenced this action on October 21, 2019. The plaintiff's complaint sought reformation of the lease because it did "not conform to the real contract agreed upon . . . and was executed as the result of a mutual mistake of the parties" or, alternatively, "[a] mistake of the [plaintiff] coupled with actual or constructive inequitable conduct on the part of [the defendants]."[7]

A two day bench trial was held on May 13 and 14, 2021, at which Jashari, Mercede, Cohen, Snell, and Paul testified. Jashari testified[8] that he was aware at the time he signed the lease that it did not contain the triple net provision and, consequently, under the terms of the lease, he was not obligated to pay the real estate taxes. He further testified that, before the lease was drafted,

[7] The plaintiff also asserted a claim for unjust enrichment. Because the trial court found in favor of the plaintiff on its claim for reformation, it concluded that it would be legally inconsistent to find in favor of the plaintiff on its unjust enrichment claim, and, therefore, it found in favor of the defendants on that claim. Thus, the unjust enrichment claim is not at issue in this appeal.

[8] As discussed throughout this opinion, the trial court found Jashari's testimony overall to be lacking in credibility.

he had discussed his concern about paying the real estate taxes with Snell and Paul, and they told him on multiple occasions that the plaintiff would pay the taxes. The plaintiff's counsel asked Jashari when this conversation took place and how many times, to which Jashari responded: "Could have been three. Could have been five. This is an ongoing conversation that we had. . . . Could have been around June time, I believe. Might have been in July . . . ." Although Jashari confirmed that there was no written documentation that corroborated those conversations, he testified that he was one "[h]undred percent" sure that they took place. Jashari was asked to explain how it was that in June, when he signed the letter of intent, he agreed to pay the real estate taxes, but then by the time the lease was signed in September he was no longer responsible for real estate taxes. He testified: "During this time the actual known financials of the car wash were not clear-cut. My biggest thing was, am I going to make money when I take over this business. . . . The real estate taxes, the numbers were all over the place. The only thing I could base it off of was three years prior for $35,000. . . . So when I'm working out my updated expenses, I come to the conclusion that I'm going to end up with a loss, or I'm going to end up working just to pay my rent. I could not do so."

The plaintiff's counsel pointed out to Jashari that, in the projection, which Jashari himself wrote in July, 2019, the line item for rent listed $156,000 for the first year, which was $42,000 more than the rent listed in the lease. Jashari testified that the difference was not intended to account for the real estate taxes; rather, he was accounting for the additional property that the lease provided him the option of renting for $2600 a month. Counsel further pointed out that the additional $2600 a month would not bridge the difference, to which

Jashari responded: "I may not have computed it a hundred percent, but at the time the expenses were not known, so I was not trying to nickel and dime the expenses."

Contrary to Jashari's testimony, Mercede testified that "from day one to the very end" it was his understanding that the rent was to be triple net and, therefore, Jashari was responsible for the payment of the real estate taxes. He further testified that he never had a discussion with Jashari, a representative of Jashari, or the brokers in which his understanding that the rent was to be triple net was changed and that the first time he learned that there was a misunderstanding on the issue of real estate taxes was when Jashari refused to pay them. Mercede was asked by the defendants' counsel about the projection and the missing taxes, to which he stated: "I noticed there was a—the missing taxes, but then I saw the rent was beefed up," so he "believed the taxes were in there." Mercede admitted that, although he was provided with the initial draft of the lease, the minor revisions made to the lease, and the final version, he did not notice the missing triple net provision. He testified, "Yeah. I—you know—I made a mistake. I missed it. I hired Bruce Cohen because I had been out of it for six, seven, eight years. I mean—it's been a long time since I was looking at leases. . . . It's my fault for missing it."

Cohen confirmed that he failed to include the triple net term in the lease, and, therefore, the lease did not impose upon Jashari the obligation to pay the real estate taxes. He agreed that the lease did not "conform to the letter of intent that [he was] using as the guideline for the preparation of the lease." He explained that he "overlooked the [triple net provision] as [he] was drafting the lease" and that he accepted responsibility for the mistake.

The brokers, Snell and Paul, each testified. Snell explained that the offers at the outset all contained triple net provisions because "that was a requirement of the owner landlord that . . . the tenants would be responsible for payment of those additional expenses." The plaintiff's counsel asked Snell, "did [Jashari] ever express to you any resistance or reluctance . . . to pay the real property taxes attributable to the demised premises?" Contrary to Jashari's testimony, Snell responded, "[n]o." Snell testified that he was "under the assumption that this was a triple net lease" and that, although he did have a meeting with Jashari between the time of the signing of the letter of intent and the closing, there was no discussion at the meeting about the real estate taxes; rather, it had to do with the terms of the lease addendum relating to inventory. Snell was also asked by the defendants' counsel whether Jashari had ever told him that he could not pay the real estate taxes because he did not know what they would be, to which Snell responded: "No, I don't recall him ever saying that." Paul testified similarly. The plaintiff's counsel asked Paul, "[t]hroughout the entire process, from beginning to end, what was your understanding as to who was responsible to pay the real property taxes attributable to the demised premises?" Paul responded: "The proposed tenant. It was always . . . the tenant. You know the real estate taxes were going to be in addition to the base rent." Counsel then followed up with, "[a]nd did that ever change, right up through the time when [Jashari] took possession of the premises?" to which Paul responded, "[n]o." Paul, like Snell, testified that he could not remember any conversation in which Jashari said that he did not want to pay the taxes.

The court found in favor of the plaintiff on its reformation claim based on both theories advanced: unilateral mistake and mutual mistake. It noted that it "primarily"

determined that there was a mutual mistake but, alternatively, it held that the unilateral mistake ground was satisfied as well. Overall, the court found that Jashari's testimony lacked credibility.[9] It concluded that this was "not a 'close call' as to whether the plaintiff [had] proven its case by clear and convincing evidence" and that "[t]he evidence and reasonable inferences [left] virtually no reasonable room for doubt." The court's specific findings were extensive. It reasoned that the "most obvious and critical evidence presented to the court" was that Jashari had, at all times, offered to pay more than what the lease required as executed without the triple net provision, including in the letter of intent that he signed. The court pointed out that, as executed, the lease provides for a total monthly payment of $9500, yet "no one EVER contemplated a final agreement that provided for a total monthly payment of $9500" and "[h]owever disingenuous [Jashari] has been, even he appears to lack the audacity to claim (explicitly) that there ever had been a discussion of a total rent of that magnitude, much less an agreement . . . ." The court further reasoned that there was no evidence or conceivable reason—"and one probably could not have been proffered with a straight face—as to why the plaintiff might have suddenly waived approximately $3000 of monthly revenue, dropping [the triple net] requirement" without offsetting the basic rent. It ultimately determined that Jashari's "refusal to acknowledge that there had been a material mistake in the drafting of the lease" by omitting the triple net provision was "patently unreasonable," for "that there had been a mistake is a factual matter that probably would satisfy even a beyond a reasonable doubt standard (if it were applicable)."

[9] "[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony." (Internal quotation marks omitted.) *Delena* v. *Grachitorena*, 216 Conn. App. 225, 231, 283 A.3d 1090 (2022).

Accordingly, the court ordered that the lease be reformed to account for the triple net rent and that the defendants reimburse the plaintiff for the real estate taxes in accordance therewith. This appeal followed.

I

The defendants first claim that the court improperly granted reformation of the contract based on the ground of unilateral mistake because, contrary to the court's conclusion, there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants. We determine that this claim is moot and, therefore, decline to consider its merits.

The following additional facts are relevant to our discussion. On the first day of trial, counsel for the plaintiff stated to the court that the plaintiff's claim for reformation was "based alternatively upon mutual mistake or unilateral mistake coupled with inequitable conduct." After trial, the parties submitted their posttrial briefs to the court. In its posttrial brief, the plaintiff again noted that its complaint asserted alternative grounds for reformation, but it focused its brief on unilateral mistake. The plaintiff reasoned: "It soon became obvious in this case that Jashari would never admit a mistake in the lease terms dealing with the obligation to pay real property taxes attributable to the demised premises. Instead, he clearly wants to take advantage of the mistake . . . . *The plaintiff, therefore, urges reformation based on the second alternative ground*—mistake of one party coupled with inequitable conduct of the other party." (Emphasis added.) The defendants addressed both unilateral mistake and mutual mistake in their posttrial brief. As previously mentioned in this opinion, the court found that both grounds were satisfied. It stated in relevant part: "The court concludes that the plaintiff has proven both

approaches to establishing a right to reformation. *Primarily, the court has concluded that there was a mutual mistake*, insofar as the lease that was executed did not reflect the actual agreement of the parties, materially departing from the agreement of the parties requiring the defendants to reimburse the plaintiff for property taxes. . . . [And] [t]o the extent that [Jashari] contends that the lease as executed comports with his intent as to the final terms of the agreement between the parties—which the court, admittedly, has unreservedly rejected as a proposition—*then there would have been a unilateral mistake* by the plaintiff coupled with inequitable conduct by [Jashari]." (Emphasis added.)

On appeal, the defendants' first claim challenges the court's decision only as to the unilateral mistake ground. The defendants did not specifically challenge the court's finding of reformation on the basis of mutual mistake but, rather, argued in their principal appellate brief that "[i]n its posttrial brief, the plaintiff withdrew its claim for reformation based on mutual mistake." The plaintiff responded in its brief to this court that it did not withdraw its claim for reformation based on the mutual mistake ground and that, because the defendants failed to challenge that ground on appeal, they abandoned any claim on appeal pertaining to it. The defendants argued in a footnote in their reply brief: "The plaintiff also improperly parses the English language by claiming . . . [that] it did not concede that it was not pursuing its claim [before the trial court] for relief based on mutual mistake. . . . On page eleven of its [posttrial] brief. . . the plaintiff wrote, 'The plaintiff . . . urges reformation based on the second alternative ground—mistake of one party coupled with inequitable conduct of the other party.' . . . It is true that the [previous] sentence does not contain the word withdraw, but the entirety of the plaintiff's argument to the trial court was directed solely to its claim of unilateral

mistake. Perhaps the defendants should have written that the plaintiff abandoned its claim of mutual mistake. Nevertheless, the effect of the plaintiff's conduct is unaffected by the language describing it." (Citations omitted; emphasis omitted.)

Prior to oral argument, we issued an order and requested that the parties be prepared to address the issue of mootness.[10] During oral argument, counsel for the defendants argued that their claim concerning the court's finding of reformation on the ground of unilateral mistake is not moot for three reasons: (1) the plaintiff, in essence, withdrew its claim based on mutual mistake in its posttrial brief, and, as a result, the defendants' counsel "had no notice" that the court was going to look at mutual mistake; (2) it is logically impossible to have mutual mistake simultaneously with unilateral mistake; and (3) based on the facts that the trial court found in its decision, there was no mutuality of agreement at the time the lease was signed, and, therefore, the court could not have found both unilateral and mutual mistake. Counsel for the plaintiff argued that, contrary to the defendants' contentions, the plaintiff did not withdraw its claim for mutual mistake, and, because the defendants failed to address that ground in their first claim, that claim is therefore moot. We agree with the plaintiff.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates

[10] We notified the parties that "counsel of record shall be prepared to address whether this appeal is moot; see *State* v. *Lester*, 324 Conn. 519, 526–27 [153 A.3d 647] (2017); for failure to challenge the trial court's conclusion that the plaintiff established its right to reformation on the ground of mutual mistake, which conclusion is an independent alternative basis for the trial court's judgment. See *Lopinto* v. *Haines*, 185 Conn. 527, 531 [441 A.2d 151] (19[8]1)."

"Although the parties did not raise the issue of mootness in this appeal, we do so sua sponte because mootness implicates the court's subject matter jurisdiction and is, therefore, a threshold matter to resolve." *State* v. *Arpi*, 75 Conn. App. 749, 751, 818 A.2d 48 (2003).

[a] court's subject matter jurisdiction. . . . We begin with the four part test for justiciability . . . . 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 [plaintiff] or [the defendant] in any way." (Emphasis in original; internal quotation marks omitted.) *In re Angela V.*, 204 Conn. App. 746, 752, 254 A.3d 1042, cert. denied, 337 Conn. 907, 252 A.3d 365 (2021). "Where an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if [the reviewing] court were to agree with the appellant on the issues that he does raise, [it] still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526–27, 153 A.3d 647 (2017).

A trial court's grant of reformation can be based on mutual mistake, unilateral mistake coupled with fraud or inequitable conduct, or, as in this case, primarily one, with the other in the alternative. See *Lopinto* v. *Haines*, 185 Conn. 527, 531, 441 A.2d 151 (1981) ("[a]

cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake, *or* mistake of one party coupled with actual or constructive fraud, or inequitable conduct on the part of the other" (emphasis added; internal quotation marks omitted)). Thus, if reformation is granted based on one ground and the other in the alternative, and an appellate claim challenges only one ground, the resolution of that claim will not result in practical relief, and, consequently, the claim is moot.

We are not convinced by the defendants' first argument that the plaintiff essentially withdrew its claim for reformation based on mutual mistake. Although the defendants are correct that the plaintiff "urged" unilateral mistake in its posttrial brief, the defendants have failed to persuade us that doing so constituted a withdrawal of the mutual mistake ground. The complaint, which asserted a claim for reformation based on both unilateral mistake and mutual mistake, never was amended. See *Costello & McCormack, P.C.* v. *Manero*, 194 Conn. App. 417, 426, 221 A.3d 471 (2019) ("The principle that a plaintiff may rely only [on] what he has alleged is basic. . . . It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations [in the] complaint." (Internal quotation marks omitted.)). Moreover, the plaintiff represented to the court at trial that it was seeking relief on the reformation claim based on both grounds, and it mentioned both grounds in its posttrial brief. Perhaps most importantly, the trial court did not interpret the plaintiff's focus on unilateral mistake as a withdrawal of the mutual mistake ground, and it appears that neither did the defendants. Rather, the court primarily concluded that there was a mutual mistake, and, although the defendants'

counsel claimed at oral argument before this court that he "had no notice" that the court was going to consider mutual mistake and that "both parties presented their arguments to the trial court based on unilateral mistake, not mutual mistake," the defendants' posttrial brief addressed the mutual mistake ground. In fact, it addressed both grounds under separate headings and in similar lengths.

We also are not convinced by the defendants' second or third arguments in support of their contention that their first claim on appeal is not moot. The defendants' counsel maintained at oral argument before this court that it is "logically impossible" to have reformation based on both mutual mistake and unilateral mistake in the alternative, and, therefore, their claim cannot be moot for failing to challenge mutual mistake because it was impossible for the trial court to have found both in the first place. The defendants' counsel further argued that, based on the facts found by the court, Jashari knew at the time he signed the lease that there was a mistake, which, according to the defendants, would support only a claim of unilateral mistake and inequitable conduct; see *Traggis* v. *Shawmut Bank Connecticut, N.A.*, 72 Conn. App. 251, 805 A.2d 105, cert. denied, 262 Conn. 903, 810 A.2d 270 (2002); and, consequently, the court could not have additionally found the basis of a mutual mistake.[11] We determine that these arguments are indistinguishable and unpersuasive.

A mutual mistake exists "where, in reducing to writing an agreement made or transaction entered into as

[11] To the extent that this argument could be construed as an independent challenge to the court's finding of mutual mistake, we note that such an argument would be unavailing. The fact that the defendants did not challenge the court's finding of mutual mistake in their first claim is the very reason that we determine this claim to be moot.

intended by the parties thereto, through mistake, common to both parties, the written instrument fails to express the real agreement or transaction." (Internal quotation marks omitted.) *Lopinto* v. *Haines*, supra, 185 Conn. 532. For example, this court affirmed reformation of a deed due to mutual mistake in *Derby Savings Bank* v. *Oliwa*, 49 Conn. App. 602, 714 A.2d 1278 (1998). In *Derby Savings Bank*, the defendant executed a mortgage deed and note to the plaintiff, but, due to a mistake by the attorney who drafted the mortgage documents, the deed had a description of the wrong property. Id., 602–603. The court, relying on the fact that the parties previously had signed a commitment letter that contained a description of the property that was intended to be covered by the mortgage, granted reformation based on mutual mistake, and we affirmed that decision. Id., 603. A unilateral mistake is a "mistake of one party," and to be a ground for reformation, it must be "coupled with actual or constructive fraud, or inequitable conduct on the part of the other." *Lopinto* v. *Haines*, supra, 531. Inequitable conduct exists where one party has "such knowledge as makes it 'inequitable' for [him] to retain his advantage." Id., 535. In *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 251, for instance, this court affirmed reformation based on unilateral mistake coupled with inequitable conduct where the defendant seller intended for the parties' contract to provide for a closing of the property sale on August 15, 1994, but a secretary mistakenly wrote August 15, 1995, and the plaintiff buyer, although aware that it was a mistake, sought to enforce it regardless. Id., 253–57. The court concluded, and we affirmed, that the plaintiff had engaged in inequitable behavior because he knew that it was a typographical error but demanded the benefit of the contract despite his knowledge. Id., 259–60.

We determine that it is possible for a trial court to find mutual mistake and, alternatively, unilateral mistake

coupled with inequitable conduct. "It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony." (Internal quotation marks omitted.) *In re Aubrey K.*, 216 Conn. App. 632, 658, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023). Thus, even if a party testifies that the mistake was not common to both parties, as was the case here, the judge can find that testimony to be lacking credibility, find testimony in support of the contrary to be reliable, and, consequently, grant reformation on the ground of mutual mistake. See *Lopinto* v. *Haines*, supra, 185 Conn. 536 ("[w]e hasten to point out that we fully realize that the trier is the judge of credibility and, specifically, that what the terms of the agreement were was a question of fact for the trier" (footnote omitted)). That is precisely how the court in this case primarily found mutual mistake. It found Jashari's testimony that he believed the lease was intentionally executed without the triple net provision to be lacking credibility and the brokers' testimony to the contrary reliable. The finder of fact also can determine simultaneously that, even if it were a unilateral mistake, that ground is alternatively satisfied because there was sufficient evidence of inequitable conduct. In this case, for example, the court concluded that, even if the plaintiff had failed to establish that Jashari was also mistaken, "then there would have been a unilateral mistake by the plaintiff coupled with inequitable conduct by [Jashari]" because he was "attempting to rely upon and ratify an error which could not have been reasonably perceived to be an agreement of the plaintiff such that the defendant is attempting to take inequitable advantage of an obvious mistake by the plaintiff."

Moreover, assuming, arguendo, that the defendants are correct that reformation based on both mutual mistake and unilateral mistake is logically impossible, in

this case the court "*primarily*" found "that there was a *mutual* mistake." (Emphasis added.) Unilateral mistake—which is the ground that the defendants focus on entirely in this appeal—was the alternative basis. Thus, even if we were to agree with the defendants and, as a result, hold that the court erred in concluding that the unilateral mistake ground was also alternatively satisfied, that does not change the fact that the defendants have not challenged on appeal mutual mistake, which, in that circumstance, would be the court's sole basis for reformation. Therefore, this argument by the defendants, even if it were persuasive, does not support their contention that their claim is not moot.

In sum, because the defendants have failed to challenge mutual mistake in addition to unilateral mistake in their first claim on appeal, we conclude that, even if we agreed with the defendants' first claim, we could not provide them with any practical relief. Accordingly, the defendants' first claim is moot.

II

We now turn to the defendants' second claim. The defendants argue that the court erred by granting the plaintiff equitable relief because the plaintiff's misconduct before the parties executed the lease barred its claim for reformation. Specifically, the defendants argue that, pursuant to *Essex* v. *Day*, 52 Conn. 483, 1 A. 620 (1885), the court should have precluded the plaintiff from prevailing on its claim for reformation because Mercede's conduct amounted to recklessness.[12] We are not persuaded.

[12] In their principal appellate brief, the defendants also rely heavily on § 157 of the Restatement (Second) of Contracts and case law from other jurisdictions interpreting it. Section 157 provides: "A mistaken party's fault in failing to know or discover the facts before making the contract does not bar him from avoidance or reformation under the rules stated in this Chapter, unless his fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing." 1 Restatement (Second), Contracts § 157, p. 416 (1981). The defendants argue that Mercede did not act in "good faith" or comport himself "in accordance with reasonable

We first set forth the standard of review that governs this claim and the substantive law relevant to when conduct can bar a claim for reformation. "A cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake, or mistake of one party coupled with actual or constructive fraud, or inequitable conduct on the part of the other." (Internal quotation marks omitted.) *Lopinto* v. *Haines*, supra, 185 Conn. 531. "We will reverse a trial court's exercise of its equitable powers only if it appears that the trial court's decision is unreasonable or creates an injustice. . . . [E]quitable power must be exercised equitably . . . [but] [t]he determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court. . . . In determining whether the trial court has abused

standards of fair dealing," and, therefore, the court should have rejected the plaintiff's claim for reformation. (Internal quotation marks omitted.) No Connecticut court has cited to, let alone adopted, § 157 of the Restatement (Second) of Contracts. The defendants acknowledge that it is nonbinding secondary authority but assert that we should look to it for guidance because "[t]he law has changed since the Supreme Court issued its decision in [*Day*], yet neither it nor this court in the ensuing 137 years has had cause to address a fact pattern similar to the one presented in this case."

Day, despite its age, remains good law, and this court and other courts have continued to rely on it. See *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 267–68; *Office Furniture Rental Alliance, LLC* v. *Liberty Mutual Fire Ins. Co.*, 981 F. Supp. 2d 111, 122 n.7 (D. Conn. 2013). Moreover, "[i]t is axiomatic that, [a]s an intermediate appellate court, we are bound by Supreme Court precedent and are unable to modify it. . . . [W]e are not at liberty to overrule or discard the decisions of our Supreme Court but are bound by them. . . . [I]t is not within our province to reevaluate or replace those decisions." (Internal quotation marks omitted.) *State* v. *Yury G.*, 207 Conn. App. 686, 693–94 n.2, 262 A.3d 981, cert. denied, 340 Conn. 909, 264 A.3d 95 (2021). Thus, we decline the defendants' invitation to look to § 157 of the Restatement (Second) of Contracts for guidance and, instead, we address the defendants' claim only as it relates to *Day*.

its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Internal quotation marks omitted.) *Bank of New York Mellon* v. *Madison*, 203 Conn. App. 8, 15, 247 A.3d 210 (2021). "When a decision in an equitable matter lies within the trial court's discretion, an appellate court will reverse that decision only when an abuse of discretion is manifest or where an injustice appears to have been done . . . ." (Internal quotation marks omitted.) *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 264.

It is settled law in Connecticut that the unquestionable negligence of the party seeking relief, such as the failure to read the instrument and notice the mistake, does not bar its claim for reformation. The seminal case for this principle is *Essex* v. *Day*, supra, 52 Conn. 483.[13] In *Day*, the town of Essex sought to issue bonds that were to be payable at the option of the town in ten years and due in twenty years, but, due to a printing error, mistakenly issued bonds that were payable in twenty years and did not contain the option clause. Id.,

[13] See also *Voll* v. *Lafayette Bank & Trust Co.*, 223 Conn. 419, 429, 613 A.2d 266 (1992) (affirming that mere negligence cannot defeat claim for reformation because holding otherwise "would reward fraudulent conduct at the expense of one whose mere carelessness had caused him unwittingly to agree to terms not contemplated by the parties" and "[e]quity should not sanction such an unconscionable result"); *Cherkoss* v. *Gasser*, 123 Conn. 368, 371, 195 A. 737 (1937) (holding that negligence of parties seeking relief did not preclude them from obtaining reformation); *Geremia* v. *Boyarsky*, 107 Conn. 387, 392, 140 A. 749 (1928) (holding that defendants were entitled to decree canceling contract despite their negligence in calculating their bid, when plaintiff, before he signed contract, had good reason to believe substantial error had been made in amount of bid and, while contract was still executory, refused to permit correction of error and attempted to take unconscionable advantage of it).

485 (preliminary statement of facts). Although many of the town's agents assisted in executing and issuing the bonds, none of them noticed the mistake until years later, and the treasurer, "who was charged more especially with the duty of vigilance in every thing affecting the finances of the town, signed the bonds without reading them, supposing that they were payable at the option of the town in ten years . . . ." Id., 492. The town filed suit, seeking reformation to correct the bonds when the defendant, who knew about the mistake when he purchased the bonds, refused to surrender them at the end of the ten year period. Id., 494. Our Supreme Court assessed whether the town had been guilty of "fatal negligence" such that it should be precluded from equitable relief. Id., 492. The court recognized that there was "unquestionably a reprehensible carelessness; a lack of intelligent attention to the matter that must be regarded as not only unreasonable but culpable." Id. Nonetheless, the court noted that "[t]he question however, as we conceive, is not so much whether a culpable negligence existed, as it is, whether such negligence should operate to bar the plaintiffs from relief against this defendant. This negligence is not of the extremist kind which the courts sometimes characterize as the equivalent of fraud. It was not recklessness; it was mere want of care. There was no indifference to the effect; it was simply an honest assumption that all was right. It is to be classed only with those incautious and unbusiness-like acts which are constantly presenting themselves and would not have been noticed but for some mischief that they have wrought. Thus a man carelessly signs a note for [$1000] which he supposed to be for [$100]. Through a mistake of the scrivener it is thus written, when he had directed that it be written [one] hundred, and he signs it without reading it. This is certainly gross carelessness; but should it debar him from all remedy against a party

who receives the note knowing of the mistake? Would not a court of equity enjoin the holder who took it with full knowledge against its collection? Would it be good in his hands, in any court admitting of equitable defenses, for more than [$100]? We think therefore that the negligence of the plaintiffs in the execution and issuing of the bonds, was not of such a character as to preclude all equitable relief against the present defendant." Id., 492–93.

In the present case, the defendants argued that, although under *Day* a party will not be barred from reformation if the party is merely negligent, here, "the plaintiff acted recklessly" and went "far beyond" the conduct in *Day*, and, therefore, the plaintiff should have been barred from reformation. Specifically, the defendants argued that, although *Day* involved a "single mistake that no one involved" saw, in the present case, Mercede "had at least six and possibly more chances to see and correct his so-called 'mistake' "; "knew even before his lawyer started drafting the lease that who was to pay taxes was an issue between himself and Jashari"; "was consciously aware that there was no line item in Jashari's [projection] demonstrating that the tenant would pay property taxes, but he did nothing to clarify that"; "pro-rated rent, but not taxes" at the closing; and overall was "aware of and consciously ignored the facts that were obviously arrayed before him."

The court was not persuaded by the defendants' argument. It reasoned: "The most plausible observation made by the defendants is that [Mercede] . . . was remiss in not having caught the error sooner. That, however, is likely an almost-always applicable observation in contract reformation—why didn't the plaintiff catch the error sooner (before execution)? As reflected in the cases cited by the defendants, [*Essex* v. *Day*, supra, 52 Conn. 483, and *Voll* v. *Lafayette Bank & Trust*

Co., 223 Conn. 419, 429, 613 A.2d 266 (1992)], negligence—even 'gross' negligence—is not an automatic disqualifier for reformation. With refreshing candor, counsel for the plaintiff, involved in the drafting of the lease, admitted responsibility for the disparity between the actual agreement of the parties as reflected by the letter of intent and the lease he drafted ostensibly based on that letter of intent." (Footnote omitted.) The court additionally noted that, despite the defendants' efforts, it had "great difficulty distinguishing" from the present case *Day* and *Voll*, in which cases the parties who sought relief were merely negligent.

The court also made factual findings that directly refuted the underpinnings of the defendants' argument that Mercede was reckless. The defendants argued that Mercede was reckless because he knew that who was going to pay taxes was an issue, yet the court concluded that "[t]here is no documentary evidence, and no plausible/credible testimony (if at all), to the effect that the defendants had ever communicated 'second thoughts' about a triple net provision in the lease to the plaintiff. Even if [Jashari] had communicated to the brokers his concerns about how much taxes might escalate over the years, the court cannot find any credible basis for any contention that [Jashari] had communicated with the plaintiff in any way suggesting a reluctance to proceed on a triple net basis."

The defendants also argued that Mercede was reckless because he "was consciously aware" that the projection did not have a line item for real estate taxes and "did nothing to clarify that," yet the court, like Mercede, found that the projection's line item for rent must have incorporated real estate taxes within it. The court determined: "If the argument is that there was no explicit or separate 'provision for real estate taxes' on [the projection], that statement would appear to be correct (in a literal sense). However, the aggregate

rental expense shown on that document for the first two years is $156,000 and $162,000, respectively. With a base rent of $9500 per month for each of those years, and if it were assumed that there were no triple net requirement, the aggregate annual rent would be $114,000 (12 x $9500), leaving a difference between 'true' rent and the total rent expense shown on the form of $42,000 for the first year and $48,000 for the second year. Those disparities are well in excess of the annual tax for the 2018-2019 fiscal year ($35,270), such that even if there were a modestly substantial increase in taxes for the first year of the lease (2019-2020), the discrepancy in figures would be adequate to cover it. There may well be other expenses characterized in terms of being related to rent, but the only apparent and plausible explanation for the sizeable discrepancies would seem to be that the defendants did, in fact, include tax reimbursement as part of the aggregate rental expense on the document." (Footnote omitted.)

Although the court noted that the defendants' argument about Mercede having adjusted for rent but not for taxes at the closing was "[t]he only portion of the defendants' narrative that potentially could support the defendants' position," it concluded that it would only support the position "if there were any evidence of an intent to change the terms of the lease." But "[t]here was no credible evidence, if any at all, to [that] effect."

On appeal, the defendants make the same argument that they did to the trial court. They state in their brief that "[r]esearch has not located a single case in Connecticut, or elsewhere for that matter, in which a party seeking relief under unilateral mistake has been so oblivious to its rights as was the plaintiff in this case" and "[t]he closest analogous case to the one at bar is [*Essex* v. *Day*, supra, 52 Conn. 483]," which "does not come close to approaching the sloppiness with which Mercede claims he acted." They further argue that "the

facts demonstrate that Mercede's conduct was at least reckless, if not intentional." Specifically, they contend that Mercede was reckless because "[he] knew or could certainly have known that Jashari did not intend to pay real estate taxes and intentionally ignored that fact"; "[he] alone had multiple opportunities to discover the mistake and had actual evidence that Jashari did not share his understanding on the real estate taxes," whereas in *Day*, "numerous town actors were involved in creating and perpetrating the mistake"; and he did not catch the mistake when he saw that the projection did not have a line item for taxes or when he adjusted for rent at the closing.

We are not persuaded that the court's decision to grant reformation was an abuse of discretion or caused an injustice. The defendants have failed to cite to any evidence in the record to support their contentions that Mercede "knew or could certainly have known that Jashari did not intend to pay real estate taxes and intentionally ignored that fact" and "had actual evidence that Jashari did not share his understanding on real estate taxes." Upon our review, these unsupported assertions are the very antithesis of the trial court's findings. We also are not persuaded by the defendants' attempt to distinguish *Day* from the facts of this case. Rather, we agree with the trial court's conclusion that *Day* is indistinguishable.

As previously mentioned in this opinion, our Supreme Court held in *Day* that, although it was "certainly gross carelessness" for the town to miss the error on the bonds, "[i]t was not recklessness" and did not preclude equitable relief. *Essex* v. *Day*, supra, 52 Conn. 493. In the present case, the defendants have failed to persuade us that Mercede's conduct was any different from that involved in *Day*. We are not convinced by the defendants' non sequitur argument that, because in *Day*, "numerous town actors were involved in creating and

perpetrating the mistake" whereas here, Mercede acted alone, he was therefore reckless. If anything, one would surmise that the more hands a mistake passes through without it being caught, the greater the negligence. The defendants in their brief and at oral argument adamantly relied on the fact that the lease passed through Mercede's hands on multiple occasions without him reading the lease and recognizing the mistake, but "it has never been the law of this state that the mere omission to read [the written instrument], or to know all its contents, would bar any relief by way of reformation of such instrument." *Fidelity & Casualty Co.* v. *Palmer*, 91 Conn. 410, 418, 99 A. 1052 (1917). That is exactly what happened in *Day*—multiple town officials and the treasurer failed to read the bonds and notice the mistake—and that is exactly what our Supreme Court held was *not* enough to constitute recklessness so as to bar reformation. As the trial court in the present case correctly pointed out, negligence in the form of failing to read the instrument and recognize the mistake, although still negligence, is "almost always applicable" to this context and has never been, and is not now, "an automatic disqualifier for reformation."

The only arguments by the defendants that may be somewhat persuasive are that Mercede did not inquire into the projection despite the fact that it did not have a line item for real estate taxes and that he did not account for the taxes when he adjusted for the rent at the closing. We are required to make every reasonable presumption in favor of the correctness of the court's actions. See *Bank of New York Mellon* v. *Madison*, supra, 203 Conn. App. 15. In doing so, we conclude that the court's rejection of those arguments, as discussed earlier in this opinion, was reasonable.

For the foregoing reasons, we conclude that it was not an abuse of discretion or an injustice for the court

to have granted the plaintiff equitable relief in the form of reformation.

The portion of the appeal related to the claim that the trial court improperly granted reformation of the contract on the ground of unilateral mistake is dismissed as moot; the judgment is affirmed.

In this opinion the other judges concurred.

CENTRIX MANAGEMENT COMPANY, LLC *v.* DONALD FOSBERG (AC 45880)

Bright, C. J., and Suarez and Seeley, Js.

Syllabus

The plaintiff landlord sought, by way of summary process, to regain possession of certain premises leased to the defendant tenant. The plaintiff served the defendant with a notice to quit possession for violations of statutory provisions (§ 47a-11 (c) and (g)) relating to the responsibilities of tenants and, thereafter, served him with a summons and complaint, seeking immediate possession of the premises. Following a trial, the trial court rendered judgment of possession in favor of the defendant, concluding, inter alia, that the plaintiff failed to meet its burden of proof as to the alleged violations. The defendant subsequently filed a motion for attorney's fees pursuant to the statute (§ 42-150bb) that allows a consumer to recover attorney's fees from a commercial party when the consumer successfully defends an action based on a lease that provides for attorney's fees for the commercial party. The trial court granted the motion and awarded the defendant $3500 in attorney's fees. Following the denial of its motion to reargue, the plaintiff appealed to this court, challenging the trial court's postjudgment award of attorney's fees. The defendant moved to dismiss the appeal for lack of subject matter jurisdiction on the ground that it was untimely. *Held* that this court had subject matter jurisdiction over the plaintiff's appeal, and, therefore, the defendant's motion to dismiss was denied; contrary to the defendant's assertion that the plaintiff's appeal was untimely because it was not filed within the five day appeal period set forth in the statute (§ 47a-35) that pertains to appeals in summary process actions, this court concluded that, when, as here, there has been no challenge to the underlying judgment of possession, an appeal taken from a postjudgment award of attorney's fees does not affect the underlying judgment of possession in any way, and the twenty day appeal period set forth in the applicable

rule of practice (§ 63-1) applies; accordingly, because the plaintiff appealed from the trial court's award of attorney's fees within the applicable twenty day period, its appeal was timely, and this court had jurisdiction over it.

Considered January 11—officially released March 14, 2023

Procedural History

Summary process action brought to the Superior Court in the judicial district of New Britain, Housing Session, and tried to the court, *Baio, J.*; judgment for the defendant; thereafter, the court granted the defendant's motion for attorney's fees; subsequently, the court denied the plaintiff's motion to reargue, and the plaintiff appealed to this court; thereafter, the defendant filed a motion to dismiss the appeal. *Motion to dismiss denied.*

Jeffrey Gentes and *Anika Singh Lemar*, in support of the motion.

Robert J. Shluger, in opposition to the motion.

Opinion

BRIGHT, C. J. In this summary process action, the plaintiff landlord, Centrix Management Company, LLC, appeals from the trial court's postjudgment award of attorney's fees to the defendant tenant, Donald Fosberg, pursuant to General Statutes § 42-150bb. The defendant moves to dismiss this appeal for lack of subject matter jurisdiction on the ground that the plaintiff failed to timely appeal pursuant to General Statutes § 47a-35. The plaintiff opposes the motion, arguing that the applicable appeal period is not five days under § 47a-35 but, rather, twenty days under Practice Book § 63-1, as it is not challenging the judgment of possession. We conclude that the twenty day appeal period set forth in Practice Book § 63-1 applies to a postjudgment award of attorney's fees in the summary process context. We therefore deny the motion to dismiss.

The following undisputed facts and procedural history are relevant to our review of the defendant's motion. The plaintiff leased the property located at 55 Spring Street, Unit 308, in New Britain (premises) to the defendant. The defendant occupied the premises and agreed to pay $795 per month for rent. When the plaintiff instituted the underlying action, the parties were in a one year lease of the premises. On August 19, 2021, the plaintiff sent the defendant a pretermination notice for violations of General Statutes § 47a-11 (c) and (g).[1] The defendant attempted to remedy the violations. On September 17, 2021, the plaintiff served the defendant with a notice to quit possession for violations of § 47a-11 (c) and (g), namely, his refusal or failure to remove garbage that created a smell that "disturb[ed] [his] neighbor's peaceful enjoyment of the premises or constitute[d] a nuisance . . . ."

The defendant did not quit possession. On September 28, 2021, the plaintiff served the defendant with a summary process summons and complaint, seeking immediate possession of the premises. The defendant filed an answer and special defenses to the complaint on October 13, 2021.[2]

After a virtual trial held on January 20 and 21, 2022, the court rendered judgment of possession in favor of the defendant on May 12, 2022, on the basis of the plaintiff's failure to meet its burden of proof as to the

[1] General Statutes § 47a-11 provides in relevant part: "A tenant shall . . . (c) remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner to the place provided by the landlord pursuant to subdivision (5) of subsection (a) of section 47a-7 . . . [and] (g) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15 . . . ."

[2] On December 3, 2021, the defendant filed a request to amend his special defenses, which the trial court granted on the same date.

alleged violations and the defendant's having established the applicability of the equitable doctrine of nonforfeiture.

On June 10, 2022, twenty-nine days after the court rendered its judgment, the defendant, relying on § 42-150bb, filed a motion for attorney's fees and requested $6622.15 for 30.6 hours of work by his counsel. The plaintiff filed an objection on June 20, 2022, arguing that, because the amount of legal fees the plaintiff could recover was capped in the lease at $750, that was the most the defendant could recover pursuant to the reciprocal attorney's fees language of § 42-150bb.[3] On September 13, 2022, the court granted the defendant's motion and awarded $3500 in attorney's fees. On September 19, 2022, the plaintiff filed a motion to reargue the court's award of attorney's fees, which the court denied on September 21, 2022.

The plaintiff filed the present appeal on October 7, 2022, challenging only the court's postjudgment award of attorney's fees. On October 17, 2022, the defendant moved to dismiss the appeal for lack of subject matter jurisdiction, arguing that it was untimely under § 47a-35. The plaintiff filed an objection to the motion on October 19, 2022.

The issue before this court is whether the five day appeal period applicable to summary process actions or the twenty day appeal period set forth in Practice Book § 63-1 is applicable to the plaintiff's appeal from the trial court's award of attorney's fees. In particular, we must decide whether the five day appeal period set forth in § 47a-35 for judgments in summary process

[3] General Statutes § 42-150bb provides in relevant part: "Whenever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. . . ."

actions applies to a postjudgment award of attorney's fees issued pursuant to § 42-150bb.

The defendant's motion to dismiss raises a question of statutory interpretation. "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Jobe* v. *Commissioner of Correction*, 334 Conn. 636, 648, 224 A.3d 147 (2020).

"A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Dominguez* v. *New York Sports Club*, 198 Conn. App. 854, 861, 234 A.3d 1017 (2020). When a statute is not plain and unambiguous, among other things, we "look for interpretive guidance . . . to the legislative policy [the statute] was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *Kinsey* v. *Pacific Employers Ins. Co.*, 277 Conn. 398, 405, 891 A.2d 959 (2006).

We begin our analysis with the language of § 47a-35, which provides: "(a) Execution shall be stayed for five days from the date judgment has been rendered, provided any Sunday or legal holiday intervening shall be excluded in computing such five days.

"(b) No appeal shall be taken except within such five-day period. If an appeal is taken within such period, execution shall be stayed until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to give bond, as provided in section 47a-35a. If execution has not been stayed, as provided in this subsection, execution may then issue, except as otherwise provided in 47a-36 to 47a-41, inclusive."

In the present case, the dispositive issue is whether the phrase "[n]o appeal shall be taken except within such five-day period" in § 47a-35 applies to the defendant's appeal from the postjudgment attorney's fees award. We initially note that, by its plain language, § 47a-35 clearly is directed to appeals from judgments of possession. Subsection (b) of the statute requires that a party appeal within five days after the judgment was rendered, during the automatic stay of execution provided in subsection (a). General Statutes § 47a-35 (a) and (b). Although § 47a-35 does not specify the type of executions to which it applies, the exceptions it identifies in subsection (b) all relate to executions of judgments of possession. General Statutes § 47a-36 lists the types of occupancies to which a stay of execution does not apply. General Statutes § 47a-37 provides that a defendant against whom judgment was rendered for nonpayment of rent may apply for a stay if he deposits the full amount of the rent arrearage with the court. General Statutes § 47a-39 sets forth reasons for which a court can grant a stay of execution, all of which relate to the defendant's need for possession of the premises. In addition, the bond provided for in General Statutes § 47a-35a, which is required in connection with a stay of execution, is "to guarantee payment for all rents that may accrue during the pendency of the appeal . . . ."

Finally, General Statutes § 47a-42 (a) provides in relevant part that, "upon expiration of any stay of execution, the plaintiff may obtain an execution upon such summary process judgment, and the defendant or other occupant bound by the judgment . . . may be removed by a state marshal, pursuant to such execution . . . ."

Furthermore, as this court has stated: "The ultimate issue in a summary process action is the right to *possession* . . . and [t]he relief available in summary process actions *is possession* of the premises." (Emphasis in original; internal quotation marks omitted.) *Centrix Management Co., LLC* v. *Valencia*, 145 Conn. App. 682, 691, 76 A.3d 694 (2013). "Summary process is a special statutory procedure designed to provide an expeditious remedy. . . . It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms. . . . Summary process statutes secure a prompt hearing and final determination. . . . Therefore, the statutes relating to summary process must be narrowly construed and strictly followed." (Citations omitted; internal quotation marks omitted.) *Young* v. *Young*, 249 Conn. 482, 487–88, 733 A.2d 835 (1999). "The process is intended to be summary and is designed to provide an expeditious remedy to the landlord seeking possession." (Internal quotation marks omitted.) *HUD/Barbour-Waverly* v. *Wilson*, 235 Conn. 650, 658, 668 A.2d 1309 (1995).

In *HUD/Barbour-Waverly*, our Supreme Court examined the plain meaning of § 47a-35 and the legislative policy surrounding the enactment of the statute. Id., 656–59. In that case, the court concluded that, "[i]n light of the plain language of § 47a-35, the fact that the summary process statutes are in derogation of common law and *the legislative policy in favor of the swift resolution of disputes between landlords and tenants*

regarding rights of possession, we conclude that an appeal pursuant to § 47a-35 must be brought within five days of the rendering of a summary process judgment." (Emphasis added.) Id., 659.

It is not just that the summary process statutes are designed to provide for prompt resolution of the issue of possession of the leased premises; that is their sole purpose. A plaintiff may not seek any remedy in a summary process action other than possession of the premises. In particular, it may not seek damages and it may not seek attorney's fees provided for in the lease. See *Centrix Management Co., LLC* v. *Valencia*, supra, 145 Conn. App. 692 n.4 (" '[p]ostjudgment claims for attorney's fees by prevailing landlords can only be brought pursuant to a specific lease provision in a separate postjudgment civil action because they are not statutorily derived' "). Furthermore, it is clear that the legislature intended for remedies other than possession to be available through an action separate from the summary process proceeding. See General Statutes § 47a-34 ("[a]ll persons claiming title to premises concerning which any proceedings under this chapter have been had shall be entitled to any other legal remedy in the same manner as if such proceedings had not been had"). Consequently, we conclude that the phrase "[n]o appeal shall be taken except within such five-day period," when read in the context of the rest of § 47a-35, the entire summary process chapter, and the decisions of our Supreme Court and this court, refers only to appeals from judgments of possession. Appeals from a postjudgment ruling like that at issue in the present case are properly governed by our general rules of practice.

Our conclusion is consistent with this court's reasoning in *Centrix Management Co., LLC*. In that case, this court addressed an argument made by the Connecticut Coalition of Property Owners, as amicus curiae, that the limited scope of summary process actions did not

permit a defendant to file a postjudgment motion for attorney's fees pursuant to § 42-150bb. *Centrix Management Co., LLC* v. *Valencia*, supra, 145 Conn. App. 690–91. This court rejected that argument, noting that our Supreme Court had held that "claims for attorney's fees under § 42-150bb must be brought by a motion under Practice Book § 11-21. That provision provides that the motion must be filed within thirty days after the final judgment of the trial court was rendered or within thirty days after an appellate decision on the underlying matter. Practice Book § 11-21. *We see no hindrance to preserving the expeditious nature of summary process cases in allowing such motions.*" (Emphasis added.) *Centrix Management Co., LLC* v. *Valencia*, supra, 692. Implicit in this holding is that the filing of such a motion would not delay any appeal from the judgment of possession. It would hinder the expeditious nature of a summary process action if a plaintiff could delay filing its appeal until after the court ruled on a defendant's postjudgment motion for attorney's fees. Generally, a posttrial hearing is scheduled for presentation of evidence in support of a claim for attorney's fees. See *Landry* v. *Spitz*, 102 Conn. App. 34, 59–60, 925 A.2d 334 (2007). It is virtually certain that a defendant's motion for attorney's fees would not be resolved prior to the expiration of the five day appeal period in § 47a-35. Thus, this court necessarily recognized in *Centrix Management Co., LLC*, that a postjudgment motion for attorney's fees pursuant to § 42-150bb is a separate ancillary proceeding distinct from the judgment of possession rendered pursuant to the summary process statutes; see *Centrix Management Co., LLC* v. *Valencia*, supra, 692 n.4; see also *Freeman* v. *A Better Way Wholesale Autos, Inc.*, 174 Conn. App. 649, 652 n.1, 166 A.3d 857 ("a trial court's supplemental postjudgment order determining the amount of attorney's fees to be awarded to a prevailing party may raise a collateral

and independent claim that is separately appealable as a final judgment" (internal quotation marks omitted)), cert. denied, 327 Conn. 927, 171 A.3d 60 (2017); and that the procedure for resolving such a motion is that set forth in the rules of practice.[4] See *Centrix Management Co., LLC* v. *Valencia*, supra, 692.

Similarly, we conclude that when, as in the present case, there has been no challenge to the underlying judgment of possession, an appeal from the award of attorney's fees does not affect the judgment of possession in any way. Permitting the plaintiff to file its appeal from the award pursuant to the time periods set forth in Practice Book § 63-1 "will not thwart the purpose behind the summary process statutes." Id. Accordingly, we are not persuaded that the plaintiff's failure to file this appeal within the appeal period set forth in § 47a-35 deprives this court of jurisdiction.

In sum, when an appeal is taken from a summary process judgment of possession, the five day appeal period prescribed in § 47a-35 applies. However, when an appeal is taken from a postjudgment award of attorney's fees made pursuant to § 42a-150bb, which does not go to the merits of the underlying judgment of possession, the applicable appeal period is twenty days as prescribed in Practice Book § 63-1. Because the plaintiff filed its appeal from the court's award of attorney's fees within that twenty day period, this court has jurisdiction over the appeal.

The motion to dismiss is denied.

In this opinion the other judges concurred.

[4] Our conclusion is buttressed further by the fact that the defendant's motion for attorney's fees was not based on any summary process statute. In fact, the summary process statutes do not provide for such an award. The defendant's motion was based on § 42-150bb. Section 42-150bb is codified in title 42 of the General Statutes, under the heading "Business, Selling, Trading and Collection Practices," which is separate and apart from the summary process statutes, which appear in title 47a under the heading "Landlord and Tenant."