IN RE FAYTH C.*
(AC 46100)

Moll, Seeley and Pellegrino, Js.

Syllabus

The respondent father appealed to this court from the judgment of the trial court terminating his parental rights with respect to his minor child. The child had been adjudicated neglected and committed to the custody of the petitioner, the Commissioner of Children and Families. The court found, inter alia, that the petitioner had proven by clear and convincing evidence that the father, who was incarcerated at the time of trial, failed to achieve sufficient personal rehabilitation pursuant to the applicable statute (§ 17a-112 (j) (3) (B) (i)) and that termination of his parental rights was in the best interest of the child. On appeal, the father claimed, inter alia, that the court applied an incorrect legal standard in making its determination that he had failed to rehabilitate by misinterpreting the phrase "assume a responsible position in the child's life" in § 17a-112 (j) (3) (B) (i). *Held* that the trial court's analysis of the father's failure to achieve sufficient personal rehabilitation demonstrated that the court used the correct legal standard and that there was sufficient evidence to support its determination that the petitioner had proven, by clear and convincing evidence, that the respondent father had failed to achieve the degree of personal rehabilitation that would encourage the belief that, within a reasonable time, considering the age and needs of the child, he could assume a responsible position in the child's life: the court correctly recited the statutory standard in its analysis and detailed the father's failure to comply with any of the court-ordered specific steps, including taking part in counseling, making progress toward developing parenting skills to provide adequate and safe supervision for the child and submitting to substance abuse evaluation and following recommendations concerning treatment, and it was clear from the decision, as a whole, that the court required that it be foreseeable

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

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

within a reasonable time that the father be able to assume a responsible position in the child's life and the court did not state that it was assessing whether the father could assume full-time responsibility for the child; moreover, the court indicated that the father's motivation while incarcerated to complete programs aimed at addressing his mental health and substance abuse issues had nothing to do with being reunited with his child but was instead based entirely on obtaining his freedom early.

Argued May 9—officially released June 29, 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 Fairfield, Juvenile Matters at Bridgeport, and tried to the court, *McLaughlin, J.*; judgment terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

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

Rosemarie T. Weber, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Evan O'Roark*, assistant attorney general, for the appellee (petitioner).

Opinion

PELLEGRINO, J. The respondent father, Makai C., appeals from the judgment of the trial court terminating his parental rights with respect to his minor child, Fayth C. (Fayth).[1] On appeal, the respondent claims that the trial court improperly determined that he had failed to

** June 29, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The court also terminated the parental rights of the minor child's mother, who consented to the termination of her parental rights and has not appealed from the judgment of the trial court. We refer in this opinion to the respondent father as the respondent.

rehabilitate sufficiently. We disagree and, accordingly, affirm the judgment of the trial court.[2]

The following facts, which were found by the court, and procedural history are relevant. The Department of Children and Families (department) became involved when Fayth was born in August, 2019, and her mother tested positive for marijuana. Subsequently, there were several physical altercations between the respondent and the mother, wherein the respondent was the aggressor. Two such incidents, which occurred in 2020 and 2021, resulted in a restraining order and a protective order in favor of the mother and against the respondent, which orders were extended to protect Fayth.[3] The respondent was incarcerated on certain criminal charges in August, 2021, and his release date was set for September, 2023.

On October 19, 2021, the petitioner, the Commissioner of Children and Families, filed a petition seeking the termination of the respondent's parental rights with respect to Fayth. Following a trial, the court rendered

[2] The respondent also claims that the court improperly determined that he had abandoned Fayth and that there was no ongoing parent-child relationship. In light of our conclusion affirming the court's determination that the statutory ground for termination of parental rights of failure to rehabilitate under General Statutes § 17a-112 (j) was satisfied, we decline to address the respondent's additional claims concerning the court's finding of the statutory grounds of abandonment and lack of an ongoing parent-child relationship. "[T]he statutory grounds necessary to grant a petition for termination of parental rights are expressed in the disjunctive, and the court, therefore, needs to find only one ground to grant a petition to terminate parental rights." *In re Jermaine S.*, 86 Conn. App. 819, 822 n.3, 863 A.2d 720, cert. denied, 273 Conn. 938, 875 A.2d 43 (2005).

[3] In December, 2020, the respondent physically attacked the mother in her home, forced her into his car, drove to a dark area, pulled her out of the car by her hair and continued his physical attack. After the attack, the respondent left the mother and drove away. The restraining and protective orders stemmed from this incident. In January, 2021, another physical altercation occurred. The respondent denied involvement in the physical altercation but conceded that he had been with the mother, which constituted a violation of the restraining order.

judgment on October 19, 2022, terminating the respondent's parental rights with respect to Fayth. The court noted that Fayth had been adjudicated neglected on February 26, 2020, and found that the petitioner had proven by clear and convincing evidence that the respondent failed to achieve sufficient personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i). The court further determined that termination of the respondent's parental rights was in Fayth's best interest. This appeal followed.[4]

The respondent claims that the court's finding that he had failed to achieve sufficient personal rehabilitation is in error on the merits and that, in making its determination, the court applied an incorrect legal standard. We are not persuaded.

We begin by setting forth the following relevant legal principles and standard of review. "Failure of a parent to achieve sufficient personal rehabilitation is one of six statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. [See General Statutes § 17a-112 (j) (3) (B) (i).]"[5] (Internal quotation marks omitted.) *In re G. Q.*, 158 Conn. App. 24, 25, 118 A.3d 164, cert. denied, 317 Conn. 918, 118 A.3d 61 (2015). In regard to the failure to achieve personal rehabilitation, § 17a-112 (j) (3) (B) provides, in relevant part, for the termination of parental rights when "the child (i)

[4] Pursuant to Practice Book §§ 67-13 and 79a-6 (c), the attorney for the minor child filed a statement adopting in its entirety the brief filed by the petitioner and supporting the affirmation of the judgment terminating the respondent's parental rights.

[5] "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence." (Internal quotation marks omitted.) *In re Phoenix A.*, 202 Conn. App. 827, 837, 246 A.3d 1096, cert. denied, 336 Conn. 932, 248 A.3d 1 (2021).

has been found . . . to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . 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 . . . .''

''Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [his] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue.'' (Internal quotation marks omitted.) *In re Eric M.*, 217 Conn. App. 809, 829, 290 A.3d 411, cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023). ''An inquiry regarding personal rehabilitation requires us to obtain a historical perspective of the respondent's child-caring and parenting abilities.'' (Internal quotation marks omitted.) *In re Tremaine C.*, 117 Conn. App. 590, 597, 980 A.2d 330, cert. denied, 294 Conn. 920, 984 A.2d 69 (2009). ''Although the standard is not full rehabilitation, the parent must show more than any rehabilitation. . . . Successful completion of the petitioner's expressly articulated expectations is not sufficient to defeat the petitioner's claim that the parent has not achieved sufficient rehabilitation. . . . [E]ven if a parent has made successful strides in [his] ability to manage [his] life and may have achieved a level of stability within [his] limitations, such improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, [he] could assume a responsible position in the life of [his] children.'' (Citations omitted;

internal quotation marks omitted.) *In re Alejandro L.*, 91 Conn. App. 248, 260, 881 A.2d 450 (2005).

"[T]he 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." (Internal quotation marks omitted.) *In re G. H.*, 216 Conn. App. 671, 685, 286 A.3d 944 (2022).

"Whether the trial court applied the proper legal standard is subject to plenary review on appeal." (Internal quotation marks omitted.) *In re Eric M.*, supra, 217 Conn. App. 836. "The interpretation of a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole." (Internal quotation marks omitted.) *In re James O.*, 322 Conn. 636, 649, 142 A.3d 1147 (2016).

The respondent states that he was not seeking to regain custody of Fayth upon his release from prison and argues that the court applied an incorrect legal standard by misinterpreting the phrase "assume a responsible position in the child's life" in § 17a-112 (j) (3) (B) (i) by requiring him to assume full-time responsibility and custody of Fayth, rather than simply requiring him to assume a responsible position in her life. He contends that the court stated "plainly that it was assessing only whether the respondent could assume

full-time parenting responsibilities in determining that he had failed to rehabilitate."

The court, however, did not state that it was assessing whether the respondent could assume full-time responsibility for Fayth. Rather, it began its analysis of whether the respondent had failed to achieve sufficient personal rehabilitation by quoting the relevant language from § 17a-112 (j) (3) (B) (i). The court stated that § 17a-112 (j) (3) (B) "provides for the termination of parental rights when the child (i) has been found by the Superior Court . . . to have been neglected, abused or uncared for in a prior proceeding . . . and [the respondent] has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child." (Internal quotation marks omitted.) The court then quoted *In re Sarah Ann K.*, 57 Conn. App. 441, 448, 749 A.2d 77 (2000), for the proposition that, in assessing personal rehabilitation, "the critical issue [for the court] is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue." (Internal quotation marks omitted.)

Despite the court's correct recitation of the legal standard, the respondent focuses in isolation on the following sentences from the court's detailed analysis to support his claim that the court applied an incorrect legal standard: "[The respondent] is not any closer to being able to care for the child today than from the day he signed the specific steps. The [respondent] does not know when he will be released from prison. He does not have known employment or housing upon his release. His rehabilitation to care for the child is not foreseeable. Finally, and most telling, the [respondent] testified that he wants the child's foster parents to adopt

her. He testified that the foster parents have done a good job raising the child. The court has viewed this as an admission that the [respondent] is not a viable custodian for the child and that he has not rehabilitated to care for the child."

In those highlighted statements, the court first mentions that it is not foreseeable that the respondent will be able to care for the child. The court's discussion of the respondent's ability to care for and meet the needs of Fayth within a reasonable time does not evince the application of an incorrect legal standard. As correctly stated and applied by the court, the critical issue in assessing rehabilitation is whether the parent "has gained the ability to care for the particular needs of the child at issue." (Internal quotation marks omitted.) *In re Sarah Ann K.*, supra, 57 Conn. App. 448. The court also noted that it viewed the respondent's testimony as an admission that he was not a viable custodian for Fayth.[6] It is well established that personal rehabilitation as used in § 17a-112 (j) does not require a parent to prove that he will be able to assume full responsibility for his child, unaided by available support systems. See *In re Eric M.*, supra, 217 Conn. App. 829; see also *In re Migdalia M.*, 6 Conn. App. 194, 206, 504 A.2d 533 (parent not required to "either assume a full time responsibility for a child's care, or suffer a termination of parental rights"), cert. denied, 199 Conn. 809, 508 A.2d 770 (1986). It is clear, when the decision is read

[6] The respondent testified: "I think every day where she's at. I have nothing to say but she's being, you know, taken care of. When I see her, she's well groomed. She looked happy. She's growing. She's smart. And I just want to be in her life as her father and I support her. But I don't mind that she lives with them. They can have the final say. I just want to be in her life. . . . I don't know how I can say it, but all I want is for her to be where she's at and to be raised and to live there, but I have a, not a say, but I could still be in her life as well. You know, take her to see her family, bring her back. She goes to school. I'll be there for her graduations. You know, the simple stuff."

as a whole, that the court required that it be foreseeable within a reasonable time that the respondent be able to assume a responsible position in Fayth's life.

In its analysis, the court noted that, on February 26, 2020, Fayth was adjudicated neglected, and the court ordered specific steps, which the respondent signed, and which required the respondent to take part in counseling and make progress toward developing parenting skills to provide adequate and safe supervision for the child; to submit to substance abuse evaluation and follow recommendations concerning treatment, including inpatient treatment if necessary, aftercare and relapse prevention; to submit to random drug testing; to avoid using illegal drugs or abusing alcohol or medicine; to cooperate with service providers recommended for parenting and/or substance abuse assessment/treatment; to attend and complete an appropriate domestic violence program; and not to become involved with the criminal justice system. The court then stated that the respondent did not maintain consistent contact with the department until he was incarcerated, refused any in-home support services through the department and told the department that he did not need such services because he was not at fault for Fayth's removal, did not comply with scheduled drug testing although he admitted to using marijuana and alcohol in the past, and continued to accrue criminal charges after signing and acknowledging the specific steps. The court further noted that the respondent denied that he needed any mental health or substance abuse services until December, 2020, after the restraining order was in place. In December, 2020, the respondent asked the department to assist him in finding services, and the department referred him to Wheeler Clinic for a mental health evaluation. Although he completed an intake in May, 2021, as a result of which he was diagnosed with post-traumatic stress disorder, bipolar disorder and attention deficient/

hyperactivity disorder, was prescribed medication, and received a recommendation of engaging in biweekly services, he failed to follow through and was discharged in June, 2021. Upon requesting another referral from the department, he was provided with new referrals to Wheeler Clinic but failed to follow through. The department referred the respondent to eight different service providers for parenting, mental health, and substance abuse, but he failed to enter or complete any services until May, 2022, while he was incarcerated.[7] The court noted that the respondent "never complied with any of the specific steps," and, therefore, "[h]is unaddressed mental health and substance use issues remain unchanged."[8] Moreover, the court indicated that the

[7] Although these events occurred after the petitioner had filed the termination petition in October, 2021, the trial court has discretion concerning whether to consider events and behavior that occurred after the filing of the petition to determine whether the respondent had failed to achieve sufficient personal rehabilitation to allow him to assume a responsible position in his child's life. See *In re Jennifer W.*, 75 Conn. App. 485, 495, 816 A.2d 697, cert. denied, 263 Conn. 917, 821 A.2d 770 (2003); see also Practice Book § 35a-7 (a).

[8] Specifically, the court found that, "[s]ince 2019, [the department] has referred [the respondent] to at least eight different programs to address his mental health, substance abuse, parenting, and intimate partner violence, including: (1) Clifford Beers Community Care Center (the [respondent] did not attend any of the three intakes scheduled); (2) Gary Vertula, LPC (the [respondent] attended the intake and never participated in the recommended follow-up treatment); (3) HELP 24/7 Dads (the [respondent] did not attend the three scheduled meetings); (4) Family ReEntry's Fatherhood Engagement Services (the [respondent] attended three sessions and then stopped going and answering calls). The [respondent] told [the department] that 'he is a busy man and the worker needs to work around his schedule, which is 7 a.m. –10 a.m.' When attempts were made to contact the [respondent] during these hours, they were unsuccessful); (5) Southwest Community Health Center (the [respondent] reported to [the department] that he made an intake appointment for intensive outpatient treatment. [The department] came to learn that no such appointment was ever scheduled); (6) Wheeler Clinic (the [respondent] completed an intake and failed to follow up with the recommended treatment); (7) Beacon Health Options (the [respondent] never engaged); and (8) Wheeler Clinic New Haven and Meriden (the [respondent] never followed up with referrals). The [respondent] failed to complete any program. Each time a program released the [respondent], the [depart-

respondent's motivation to complete the programs had nothing to do with being reunited with Fayth but, instead, was based entirely on obtaining his freedom early. The court then concluded, while reciting the correct standard, that "[the petitioner] proved by clear and convincing evidence that [the respondent] ha[d] failed to achieve rehabilitation that would encourage the belief that he could assume a responsible position in the child's life within a reasonable time."

The court's analysis of the respondent's failure to achieve sufficient personal rehabilitation evinces the use of a correct legal standard, as the court detailed the respondent's lack of engagement in services that were aimed at rehabilitation and inability to care for the needs of Fayth within a reasonable time, cited the correct legal standard, and repeated that standard in its conclusion.[9] See *In re Jason R.*, 306 Conn. 438, 453, 51 A.3d 334 (2012) ("if it is not otherwise clear from the record that an improper standard was applied, the appellant's claim will fail on the basis of inadequate support in the record" (internal quotation marks omitted)). We conclude, on the basis of the court's decision as a whole, that the court used the correct legal standard and that there is sufficient evidence to support its determination that the petitioner had proven, by clear and convincing evidence, that the respondent had failed to achieve the degree of personal rehabilitation that would

ment] found another suitable program to assist him. He was not interested. [The department] made great efforts to reunite the [respondent] with the child without success due to the [respondent's] refusal to engage in much needed services."

[9] It was not improper for the court to determine that the respondent's engagement in services following his incarceration was insufficient to demonstrate personal rehabilitation given the court's uncontested finding that those actions were not motivated by a desire to reunify with Fayth. See *In re Shane M.*, 318 Conn. 569, 589, 122 A.3d 1247 (2015) (claim that parent's personal motivating factors for participating in programs play no role under § 17a-112 (j) (3) (B) is "stunningly contrary to common sense").

encourage the belief that, within a reasonable time, considering the age and needs of the child, he could assume a responsible position in Fayth's life.

The judgment is affirmed.

In this opinion the other judges concurred.

IN RE CAIDEN B. ET AL.*
(AC 45822)

Bright, C. J., and Elgo and Clark, Js.

Syllabus

The respondent father appealed to this court from the judgments of the trial court terminating his parental rights with respect to six of his minor children. The father had an extensive criminal history as a result of drug and alcohol abuse and his involvement in domestic violence incidents with the mothers of the children. Over the course of more than three years, the Department of Children and Families obtained custody of the six children as a result of the father's neglect and inability to care for them. Although the department provided the father in-person visitation with the children and, during the COVID-19 pandemic, virtual visitation, he failed to interact with the department to set up visitation schedules and missed numerous visits with the children. He also stopped taking medications that had been prescribed for him and refused to attend counseling and other therapy programs to which he had been referred by the department. The trial court adjudicated all six children neglected, and the petitioner, the Commissioner of Children and Families, thereafter sought termination of the father's parental rights. The trial court granted the petitions for the termination of the father's parental rights, concluding, on the basis of clear and convincing evidence, that the department, pursuant to statute (§ 17a-112), had made reasonable efforts to reunify him with the children and that termination of his parental rights was in the children's best interests. *Held*:

1. The evidence was sufficient to support the trial court's conclusion that the department had made reasonable efforts to reunify the respondent father with his minor children: the court's finding that the department

---

* 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.

facilitated adequate visitation with the children was not clearly erroneous, as the father had been provided frequent opportunities for in-person and, after the onset of the COVID-19 pandemic, virtual visitation, which included parenting education supervised by a credentialed provider when circumstances allowed, and the father was prevented from engaging in some monthly in-person visits as a result of his inconsistent visitation and reluctance to engage with the department to create visitation schedules, and visitation with one child was delayed due to his attempt to deceive the department about his paternity status as to that child; moreover, the father presented no authority for his claim that the department was required to seek a court order to compel him to comply with its referrals for therapy, as it was his choice and responsibility as to whether to engage in services aimed at reunifying him with the children; furthermore, contrary to the father's contention, the department's reunification efforts were not unreasonable, and the parenting education services it offered were not inadequate because the department had denied his request that a specific therapist, C, supervise visitation, as the department, at the time of his request, was no longer supplying providers for virtual visits, and, because C's ability to properly supervise visits had been called into question and the department's approval of C to provide supervisory services had been revoked, it was not possible to fulfill the father's request.

2. The respondent father could not prevail on his claim that the trial court erroneously determined that he had failed to achieve a degree of rehabilitation such as would encourage the belief that, within a reasonable time, considering the ages and needs of his children, he could assume a responsible position in their lives: the record showed that the father had abused and tested positive for illegal substances, including cocaine, up to and during the termination trial, he acted aggressively toward supervisors during visits with the children, which led one supervisor to request a security escort to her car, and he had to be removed from the premises during another visit; moreover, the father disregarded supervisors' attempts to engage him in parenting education and inaccurately asserted that a counselor had stated that there was no need for him to engage in additional counseling when, in fact, he had been discharged for having failed to participate in a mental health group; furthermore, he consistently and repeatedly refused to attend therapy sessions or to engage in the anger management, substance abuse and parenting services he had been offered, as well as programs concerning domestic violence, despite a police record of involvement in such instances with the mothers of his children, and he failed to gain an understanding of the harmful effects of domestic violence on his family.

3. The trial court's conclusion that termination of the respondent father's parental rights was in his children's best interests was factually supported and legally sound: although the father contended that, in light of his alleged consistent engagement in substance abuse treatment, his

affection for the children and his efforts to maintain visitation with them, the petitions should not have been granted, the evidence established that the father would be unable to provide shelter, nurturance, safety and stability for the children or to meet their emotional, educational, medical and moral needs in a reasonable amount of time, as he was unable to maintain his sobriety and had ceased taking his prescribed medications, he continued to be involved in domestic violence incidents, and he failed to engage in mental health treatment and domestic violence programs; moreover, a psychologist who evaluated the father testified that the father's continued behavioral and emotional problems could put the children at risk; furthermore, the evidence showed that the children had bonded with the grandparents and foster parents with whom they had been placed.

Argued March 8—officially released July 3, 2023**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New London, Juvenile Matters at Waterford, and tried to the court, *Hoffman, J.*; judgments terminating the respondents' parental rights, from which the respondent father appealed to this court. *Affirmed.*

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

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

Opinion

BRIGHT, C. J. The respondent father, Derek B., appeals from the judgments of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating his parental rights as to his minor children, Caiden B., Adrion B., Paislee B., Payton

**July 3, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

B., Skylar O., and Alexandria B., on the grounds that (1) he failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i) and (ii), and (2) with respect to Caiden, Adrion, Paislee, and Payton, his acts of parental commission or omission denied them the care necessary for their well-being pursuant to § 17a-112 (j) (3) (C).[1] On appeal, the respondent claims that the court improperly concluded that (1) the Department of Children and Families (department) had made reasonable efforts to reunify him with his children pursuant to § 17a-112 (j) (1) and that he was unable or unwilling to benefit from the reunification services, (2) he failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3), and (3) termination of his parental rights was in the children's best interests.[2] We affirm the judgments of the trial court.[3]

The record reveals the following relevant facts and procedural history. The respondent has eight children, six of whom are at issue in the present appeal.[4] The

[1] The court also rendered judgments terminating the parental rights of Brittani B., the mother of Caiden, Adrion, Paislee, and Payton, and Erika O., the mother of Skylar and Alexandria. Neither Brittani B. nor Erika O. have appealed from the judgments terminating their parental rights, and, therefore, we refer in this opinion to Derek B. as the respondent.

[2] The respondent also claims that the court erred in finding that the petitioner had proved acts of parental commission or omission with respect to Caiden, Adrion, Paislee, and Payton. Pursuant to § 17a-112 (j) (3), the petitioner need only prove that one or more statutory ground for termination exists. Accordingly, we need not address this claim in light of our conclusion that the court did not err in finding that the respondent failed to achieve such a degree of personal rehabilitation as would encourage the belief that he could assume a responsible position in the lives of his children. See *In re Nasia B.*, 98 Conn. App. 319, 326, 908 A.2d 1090 (2006) ("[w]e need not address the other statutory grounds alleged, as proof of one statutory ground is sufficient to terminate parental rights"); *In re Shane P.*, 58 Conn. App. 234, 242, 753 A.2d 409 (2000) ("[w]e need only uphold one statutory ground found by the court to affirm its decision").

[3] The attorneys for the children have adopted the petitioner's appellate brief.

[4] The respondent's eldest two minor children reside with their biological mother and are not involved in these proceedings.

respondent and Brittani B. met in 2016 and married in May of that year. The two share four children: Caiden, Adrion, Paislee, and Payton. Brittani B. also has three minor children from a previous relationship with a different man.[5] The department has been involved with Brittani B. since November, 2013, due to inadequately addressed mental health needs and an inability to care for her children.

Caiden was born in April, 2017. On June 6, 2017, the department received a report indicating that Brittani B. was overwhelmed with caring for her children and had threatened to kill herself. "It was reported that [Caiden] screamed constantly, and [Brittani B.] responded by screaming and swearing at him. [Brittani B.] was heard smacking one of her older children at least [twenty] times."

Adrion was born in March, 2018. On April 16, 2018, Brittani B. attended a biopsychosocial assessment at The Connection, a statewide community based human services agency that connects individuals with a variety of resources, in which she was diagnosed with "attention-deficit hyperactivity disorder, combined type [ADHD], opioid dependence mild symptoms or some difficulty in social and occupational functioning."

On May 1, 2018, the department received a report from Connecticut Children's Medical Center (medical center) regarding Adrion through its Child Abuse and Neglect Careline (careline). Adrion had sustained a right parietal skull fracture with overlying hematoma. The respondent told medical center staff that, while he was caring for Adrion the previous day, Adrion fell out of his bouncer seat and hit his head. Medical center staff, however, concluded that such a fall could not cause Adrion's injury. A follow-up skeletal survey took

[5] The three minor children reside with their biological father and are not involved in these proceedings.

place on May 15, 2018, at the medical center, which revealed that Adrion had six or seven healing rib fractures that appeared to be ten to fourteen days old. Medical center staff noted that Adrion's injuries were indicative of child abuse.

On May 16, 2018, the petitioner applied for and secured orders of temporary custody (OTC) on behalf of Adrion and Caiden, which were sustained on May 25, 2018. Therein, she alleged that the children were in physical danger and that immediate removal was necessary to ensure their safety. On May 16, 2018, the petitioner also filed neglect petitions on behalf of Adrion and Caiden alleging that they had been denied proper care and had been permitted to live under conditions injurious to their well-being. Additionally, the petitioner alleged that both Caiden and Adrion had been abused in that they had suffered nonaccidental physical injury or injuries that were inconsistent with the respondent's explanations. On July 24, 2018, the court, *Driscoll*, *J.*, adjudicated Adrion and Caiden neglected and committed them to the care and custody of the petitioner. The court also ordered preliminary specific steps for the respondent to take to facilitate his reunification with Adrion and Caiden.[6] On March 8, 2019, the petitioner filed motions to review and approve a permanency plan of termination of parental rights and adoption of Caiden and Adrion. On April 16, 2019, following a hearing, the court granted the motions.

[6] Those steps required the respondent to keep all appointments set by or with the department; cooperate with the department's home visits; partake in both individual and parenting counseling to address anger management; submit to a substance abuse evaluation and follow treatment recommendations; submit to random drug testing; not use illegal drugs or abuse alcohol or medicine; cooperate with service providers recommended for counseling, in-home support services, and/or substance abuse treatment; continue treatment at The Connection and a substance abuse treatment center, in addition to individual therapy to address anger issues; cooperate with court-ordered evaluations or testing; obtain and maintain adequate housing; attend and complete an appropriate domestic violence program; and visit the children as often as the department permits.

In April, 2019, Brittani B. gave birth to twin girls, Paislee and Payton. On April 12, 2019, the petitioner applied for and secured OTCs on behalf of the twins. In issuing the orders on April 12, 2019, the court also ordered specific steps for the respondent to take to facilitate his reunification with the twins.[7] In the motion for temporary custody, the petitioner alleged that Paislee and Payton were in physical danger and that immediate removal was necessary to ensure their safety. On April 12, 2019, the petitioner also filed neglect petitions on behalf of the twins based on predictive neglect. Therein, the petitioner alleged that the twins had been denied proper care and had been permitted to live under conditions that were injurious to their well-being.[8] A preliminary hearing on the OTCs was held on April 18, 2019, at which point the court, *Hon. Michael A. Mack*, judge trial referee, granted the petitioner's motion for a paternity test to confirm that the respondent was the father of Paislee and Payton. The court, *Driscoll, J.*, sustained the OTCs on May 3, 2019. The respondent was adjudicated to be the father of Paislee and Payton on July 2, 2019.

On June 6, 2019, the petitioner filed petitions to terminate the parental rights of the respondent with respect

[7] The steps largely mirrored those issued to the respondent to facilitate his reunification with Caiden and Adrion; see footnote 6 of this opinion; and specifically ordered the respondent to continue treatment at the Root Center for Advanced Recovery and to attend individual therapy for anger management.

[8] The neglect petition specifically alleged that "[the respondent] has a history with the department beginning in 2008 for domestic violence. [The respondent] has a history of heroin abuse as well as an extensive criminal history, including seven incarcerations. . . . In May, 2018, a skeletal survey found Adrion to have a right parietal skull fracture and two weeks later six to seven healing rib fractures, indicative of child abuse. Paislee and Payton are similarly situated, as neither parent has accepted responsibility for causing these injuries, nor have they participated in meaningful rehabilitative services to ensure the safety of the newborn twins. . . . Parents have demonstrated that they are unable to make safe decisions. . . . Neither mother nor [the respondent's] other children are in their care at this time."

to Adrion and Caiden.[9] The petitioner alleged, as a ground for termination, that, pursuant to § 17a-112 (j) (3) (B) (i), Caiden and Adrion had been found in a prior proceeding to have been neglected and that the respondent had failed to achieve the degree of personal rehabilitation that would encourage the belief that, considering the children's ages and needs, he could assume a responsible position in their lives. The petitions also alleged that, pursuant to § 17a-112 (j) (3) (C), Caiden and Adrion had been denied, by reason of an act or acts of parental commission or omission, including severe physical abuse or a pattern of abuse, the care necessary for their physical or emotional well-being. The petitions further alleged that reasonable efforts had been made to reunify Caiden and Adrion with the respondent. Last, the petitions alleged that "reasonable efforts to reunify are not required for the [respondent] because the court has approved a permanency plan other than reunification in accordance with [General Statutes § 17a-111b]."

On November 8, 2019, the petitioner filed petitions to terminate the parental rights of the respondent with respect to Paislee and Payton.[10] The petitions were amended on December 10, 2021, and again on February 25, 2022. In the operative February 25, 2022 petitions, the petitioner alleged that, pursuant to § 17a-112 (j) (3) (B) (ii), Paislee and Payton had been neglected, they had been in the custody of the petitioner for at least fifteen months, and the respondent had failed to achieve an appropriate degree of personal rehabilitation.[11] The

[9] The petitioner also sought to terminate the parental rights of Brittani B. See footnote 1 of this opinion.

[10] The petitioner also sought to terminate the parental rights of Brittani B. See footnote 1 of this opinion.

[11] In the original petitions, filed November 8, 2019, the petitioner alleged only that Paislee and Payton had been denied, by reason of acts of parental commission or omission, the care, guidance, or control necessary for their physical, educational, moral or emotional well-being. On December 10, 2021, the court granted the petitioner's motion to amend the petitions to allege that the twins were found to have been neglected in a prior proceeding and that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3)

petitions further alleged that the respondent had denied Paislee and Payton, by reason of an act or acts of parental commission or omission, the care necessary for their well-being. Last, the petitions alleged that the department had made reasonable efforts to reunify Paislee and Payton with the respondent and that he was unable or unwilling to benefit from those efforts.

The respondent and Erika O. met in 2017. The two maintained an on-again, off-again relationship over the next several years and share two children, Skylar and Alexandria. In addition to Skylar and Alexandria, Erika O. has four other children who are not involved in these proceedings.[12] Erika O. has a long history with the department dating back to 2012 when she tested positive for oxycodone at the birth of one of her children.

Erika O. gave birth to Skylar in June, 2019. On June 7, 2019, the department received a report that Erika O. had tested positive for amphetamines upon Skylar's birth. At that time, Erika O. refused to provide a name for the father. On June 13, 2019, the petitioner applied for and secured an OTC on behalf of Skylar, which was sustained on June 21, 2019. The petitioner alleged that Skylar was in physical danger and that immediate removal was necessary to ensure her safety. That day, the petitioner also filed a neglect petition alleging that

(B) (i). Significantly, Paislee and Payton had *not* been adjudicated neglected prior to the consolidated trial on the petitions to terminate the respondent's parental rights. Accordingly, on February 25, 2022, the court, *Hoffman*, *J.*, granted the petitioner's motion to open the evidence and to amend the petitions as to Paislee and Payton to allege that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (ii) rather than § 17a-112 (j) (3) (B) (i). The court simultaneously adjudicated the twins neglected and granted the petitions to terminate the respondent's parental rights as to the twins on June 1, 2022.

[12] None of Erika O.'s children are in her care. Three reside with their respective fathers. Erika O.'s parental rights as to the fourth child were terminated on the ground of abandonment.

Skylar was being denied proper care and had been permitted to live under conditions injurious to her well-being. The petitioner premised the petition on the doctrine of predictive neglect.[13] On September 17, 2019, the court, *Hon. Michael A. Mack*, judge trial referee, adjudicated the respondent as the father of Skylar. On February 13, 2020, the court ordered specific steps for the respondent to take to facilitate his reunification with Skylar.[14]

Erika O. gave birth to Alexandria in June, 2020. That day, the department received a report that Erika O.'s urine was positive for methadone at the time of Alexandria's delivery. On June 29, 2020, the petitioner filed a motion for an OTC, alleging that Alexandria was in physical danger and that immediate removal was necessary to ensure her safety. On July 6, 2020, the court, *Suarez, J.*, sustained the OTC and ordered specific steps for the respondent to take to facilitate his reunification with Alexandria.[15] On June 29, 2020, the petitioner also filed a neglect petition on behalf of Alexandria on the basis of predictive neglect. The petitioner alleged that

[13] The petitioner specifically alleged that Erika O. had tested positive for amphetamines on June 6, 2019, that she had a history of abusing cocaine as well as prescription pain medication dating back to 2012, and that the father of Skylar was unknown.

[14] The steps required the respondent to keep all appointments set by or with the department; cooperate with the department's home visits; partake in both individual and parenting counseling to increase parenting skills and learn appropriate discipline; submit to a substance abuse evaluation and follow treatment recommendations; submit to random drug testing; not use illegal drugs or abuse alcohol or medicine; cooperate with service providers recommended for counseling, in-home support services, and/or substance abuse treatment; remain clean and sober; engage in the parenting program at Fatherhood International Program; comply with the safety plan and the department's instructions; undergo individual therapy to address and demonstrate progress in managing anger and explosive outbursts; maintain adequate housing and legal income; and visit the children as often as the department permits.

[15] The steps mirrored those ordered for the respondent to reunify with Skylar. See footnote 14 of this opinion.

Alexandria was being denied proper care and had been permitted to live under conditions that were injurious to her well-being.

On April 1, 2021, the petitioner filed a petition to terminate the respondent's parental rights with respect to Skylar.[16] Therein, the petitioner alleged that Skylar had been neglected and had been in the petitioner's custody for at least fifteen months, that the respondent had been given specific steps to facilitate his reunification with Skylar, and that he had failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (ii).

On August 2, 2021, the court, *Hoffman*, *J.*, adjudicated both Skylar and Alexandria neglected and committed them to the care and custody of the petitioner. The petitioner filed a petition to terminate the respondent's parental rights as to Alexandria on August 30, 2021, and amended the petition as to Skylar on September 13, 2021. In the petitions, the petitioner alleged that Alexandria and Skylar had been found in a prior proceeding to have been neglected, abused, or uncared for and that the respondent had failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i). The petitions further alleged that the department had made reasonable reunification efforts and that the respondent was unable or unwilling to benefit from those efforts.

A consolidated trial on the petitions to terminate the respondent's parental rights as to all six children at issue in this appeal occurred on October 14 and December 20, 2021, and February 7, 2022. The respondent appeared and was represented by counsel. Numerous witnesses testified and several exhibits were admitted into evidence. On June 1, 2022, the court, *Hoffman*, *J.*, issued a memorandum of decision terminating the parental rights of the respondent as to each of the six

[16] The petitioner also sought to terminate the parental rights of Erika O. See footnote 1 of this opinion.

children. The court made extensive findings of fact and concluded that the petitioner had established by clear and convincing evidence that statutory grounds for the termination of the respondent's parental rights existed for each child, and that termination was in the best interests of the children.

The court made the following relevant findings concerning the children: "[Caiden] was born [in April], 2017, to Brittani B. and [the respondent]. Caiden was placed with his paternal grandmother, where he is placed with his younger brother, Adrion. Caiden does well in the home. Caiden can be timid at times and prefers to be with his grandmother. . . .

"[Adrion] was born [in March], 2018, to Brittani B. and [the respondent]. . . . [Adrion] appears to have a good relationship with [his paternal grandmother]. [Adrion], at two months of age, went through a traumatic event, as he was found with skull and rib fractures without any clear explanation by his parents. Adrion has been observed to have overcome the trauma. Adrion started Birth to Three services on August 31, 2018, in the area of fine/gross motor skills. Services were discontinued [after] Adrion's third birthday, and he did not qualify for additional services."

"[Payton] was born [in April], 2019, to Brittani B. and [the respondent]. Payton was placed in a legal risk home since August 16, 2019. Payton shares a room with her sister, Paislee. Payton is developmentally on target. She is diagnosed with laryngomalacia and allergy rhinitis. Payton currently visits with her parents weekly through virtual and in-person visits. Payton has begun to demonstrate behaviors following visits with her parents. Behaviors include Payton['s] being agitated following visits, being quick to yell in frustration, shove, and pull hair. . . .

"[Paislee] was born [in April], 2019, to Brittani B. and [the respondent]. Paislee was placed in a legal risk foster home with her twin sister on August 16, 2019. [The] foster parents are gentle and nurturing to Paislee. Paislee is doing well there. Paislee has weekly virtual and in-person visits with her parents. Due to behaviors directly following visits, [the department] has made a referral to Child First. Behaviors include Paislee['s] having trouble sleeping; she awakes from her brief naps and her nighttime sleep screaming and is inconsolable. Furthermore, Paislee's behaviors include feces smearing. The behaviors generally resolve within a few days of the visits; however, [they] resume immediately upon returning to the foster home after a visit."

"[Skylar] was born to Erika O. and [the respondent in June], 2019. Skylar was exposed to amphetamines and methadone in utero. She is developmentally on target. [Skylar] is medically complex. Skylar has club foot and capillary hemangioma. Since July, 2019, [Skylar] has been receiving Birth to Three services in the home weekly to support her developmental growth because she has delays following birth and her extensive medical concerns. Skylar has been placed in the same foster home since June 18, 2019, and [it] is a permanent adoptive resource for her. On June 29, 2020, her younger sibling, [Alexandria], was placed in the same foster home. Since March of 2020, Erika O. and [the respondent] were afforded once a week visitation with Skylar and since June 29, 2020, with her sister [Alexandria]. Erika O.'s and [the respondent's] visitation as to Skylar was suspended as of April, 2021. As of February 3, 2022, [the department] reported that [Erika O.] and [the respondent] have not inquired as to any updates as to the welfare of their daughter medically, educationally, socially or emotionally. . . .

"[Alexandria] was born [in June], 2020, to [the respondent] and Erika O. Alexandria was born prematurely

and had exposure to substances in utero. Alexandria is receiving Birth to Three services once a month and is reaching her milestones with the additional supports of her foster family following through with any and all of the recommendations. Since June 29, 2020, [Erika O.] and [the respondent] were visiting once a week with Alexandria and her sister, Skylar. Erika O.'s and [the respondent's] visitation as to [Alexandria] was suspended as of April, 2021. As of February 3, 2022, [the department] reported that [Erika O.] and [the respondent] have not inquired as to any updates as to the welfare of their daughter medically, educationally, socially or emotionally."

As to the respondent, the court found that he "was born [in December], 1986. [He] has one brother. [The respondent] reported he had a normal childhood and was raised mainly by his mother. [He] graduated from high school in 2004. [He] attended New England Technical Institute for a year and a half.

"[The respondent] reported he began using illegal drugs and became involved with his friends [who] joined him in that habit. [He] reported he first tried alcohol when he was seventeen. [The respondent] reported in his twenties he began using both cocaine and marijuana quite frequently. He stated he then graduated to heroin use.

"[The respondent] became involved with Shannon B. in 2007. Shannon B. reported [that] after the birth of their daughter, Leeanna, [the respondent] began using substances including marijuana, crack cocaine and eventually heroin. [The department] became involved with [the respondent] in 2008 due to domestic violence with Shannon B. and their two children, Leanna and Dylaina. Leanna and Dylaina live with their mother, and [the respondent] has supervised visitation with them. In 2010, Shannon B. prevented [the respondent] from

seeing their children for three years due to his substance abuse.

"In 2016, [the respondent] became involved with Brittani B. and [the two] have been connected despite alternate relationships. They were married in March, 2016. On June 7, 2016, Brittani B. found out [that the respondent] was using heroin and threw him out, and, in 2016, she filed for divorce. [The respondent] went to a rehabilitation program, and the parties reconciled and Brittani B. became pregnant with Caiden. The reconciliation did not last long, and Caiden was born [in April], 2017. [Adrion] was born [in March], 2018. The parties reconciled again but divorced in January, 2018.

"On May 1, 2018, it was reported by [the medical center] to [the department] that Adrion [had] sustained a skull fracture with overlying hematoma. A follow-up skeletal survey two weeks later at [the medical center] revealed that Adrion had six to seven healing rib fractures, indicative of child abuse.

"It was reported that Erika O. met [the respondent] in 2017, and they started a relationship in 2018. They have two children together, Skylar . . . and [Alexandria] . . . . [The respondent] has been engaged in an off and on relationship [with Erika O.] marked by either completely supporting one another [or the respondent's] tearing Erika O. down.

"[The respondent] was referred to an inpatient program by his probation officer after relapsing on heroin shortly after Caiden and Adrion were removed. On May 28, 2018, [the respondent] entered Connecticut Valley Hospital [CVH] men's intensive outpatient program for the treatment of substance abuse. On June 4, 2018, [the respondent] left the program against clinical advice. [The respondent's] case manager recommended [that he] attend another inpatient program, as he had not recognized his condition; he minimized his addiction,

and, at the end of 2018, [the respondent] started attending the Root Center for Advanced Recovery [Root Center] for his methadone treatment.

"[In March, 2021, the respondent] self-reported that . . . he had a 'dirty urine' for ecstasy. [The respondent] reported that he felt the Root Center was making mistakes, and he transferred his treatment to the New London office. The Root Center confirmed the positive urine screen. [The respondent] was attending the Root Center for medication management.

"On March 16, 2021, [the respondent] self-reported [that] he was no longer taking his medication, Lamotrigine (mood stabilizer) and Vyvanse (ADHD), since March 2, 2021, because the Root Center would no longer be prescribing [them] and he needed to find a new prescriber. However, it was reported by the Root Center [that the respondent's] last medication management appointment was on March 23, 2021, and [he] was a no call/no show. On April 4, 2021, [the respondent] was discharged and no longer prescribed Vyvanse because [he] did not follow through with [a] referral to attend a mental health group.

"On July 13, 2021, [the respondent] admitted he relapsed on July 6, 2021, the day of [a domestic violence] incident with Brittani B. He reported [that] he used cocaine. [The respondent's] probation officer reported [that he] tested positive for cocaine and methadone.

"On April 16, 2018, [the respondent] attended a biopsychosocial assessment at The Connection. In the assessment, he was diagnosed with [ADHD], combined type, opioid dependence mild symptoms or some difficulty in social and occupational functioning. [The respondent] was recommended for individual counseling and random drug screens. In October, 2018, [he] stopped attending individual counseling at The Connection and was discharged for lack of engagement and

lack of contact with his therapist. On January 1, 2022, [the respondent] reported [that] he was not engaged in individual therapy.

"[The respondent] has been inconsistent with his visits with [Caiden], [Adrion] and [Paislee] and [Payton] since they came into care. While the visits were virtual due to COVID-19 concerns, [the respondent] missed several visits. [The respondent] asked for the day and time to be changed; [the department complied]. [The respondent] also requested for the [social work case aide (SWCA)] supervising the visits to be changed, twice. The visits were scheduled for the day/time [the respondent] requested and with the SWCA he requested. Despite all the changes, [he] continued to miss visits with the girls or was doing something else during the visits. However, he would frequently appear during . . . Brittani B.'s visits.

"From February, [2020], through April, [2021], [the respondent] was provided a once a week supervised virtual visit with Skylar. From June, 2020, through April, 2021, [he] was offered a once a week visit with Alexandria. On September 29 and October 27, 2020, [he] was provided with an in-person visit with Alexandria and Skylar. On March 29, 2021, [the department] requested [the respondent] to confirm an hour before his scheduled virtual visit, as he had missed the last four scheduled visits out of eight visits. On April 29, 2021, [the respondent's] visits with Alexandria and Skylar were suspended by the court. As of February, 2022, [he] had not asked for any updates regarding the welfare of his daughters.

"On January 20 and 24, 2020, [the respondent] completed a psychological evaluation with Kelly F. Rogers, Ph.D. It was noted [that the respondent] was 'superficially cooperative with the evaluation and was not particularly candid and forthcoming.' [Rogers] noted 'the

extreme presentation for [the respondent's] hyperactivity, and that [it] would be important to rule out substance abuse affecting his psychomotor behavior.' Also, [the respondent] was 'quick to minimize his anger and its expression. Results did show [him] to be angrier than most, which is most likely to be expressed in negativity and resistance.' [Rogers] further reported, coupled 'with [the respondent's] apparent limited frustration tolerance, limited self-control and substance abuse (at least, by history), aggressive action is possible.' [Rogers] also noted [that the respondent] did not present 'with good social skills but has the ability to relate reasonably well on a superficial level: particularly when the roles are clear to him.' [The respondent] was diagnosed with [ADHD] combined presentation severe, other specified disruptive, impulse control, and conduct disorder (features of intermittent explosive disorder, disruptive dysregulation, rule-out substance/medication-induced disorder), opioid use disorder (severe, on maintain therapy), stimulant use disorder (severe, cocaine, in sustained remission by report), and adjustment disorder with depressed mood.

"From May 16, 2018, to [October, 2018], [the respondent] was living in a hotel, motel, in his car, and with a friend. In October, 2018, he moved to a residence but was later evicted. From November, 2019, to April, 2020, he resided with Erika O. In March of 2021, it was reported he lived with Brittani B.

"[The respondent] has an extensive criminal history due to domestic violence and substance abuse. [He] has numerous prior convictions, including possession of narcotics, larceny [in the sixth degree], and violation of probation. [The respondent] was on probation but has pending charges, including violation of probation, failure to appear [in the first degree], two counts of possession of [a] controlled substance, failure to appear [in the second degree], assault [in the third degree],

disorderly conduct, unlawful restraint [in the second degree], and interfering with an emergency call. [The respondent] was arrested for assault on two different occasions that stemmed from domestic disputes with former girlfriends. On February 23, 2021, there was a police report of a verbal argument with Erika O. and [the respondent]. Brittani B. was arrested for [a domestic violence] incident with [the respondent]. [The respondent] failed to engage in a domestic violence program."

In setting forth its determinations with respect to the adjudicatory phase of the trial, the court, citing relevant case law and Practice Book § 35a-7, observed that, in the adjudicatory phase, it was limited to making its assessment of the department's reasonable efforts on the basis of facts preceding the filing of the petitions for termination of parental rights or the latest amendments thereto. The court then evaluated whether, pursuant to § 17a-112 (j) (1), the petitioner had proved by clear and convincing evidence that the department had made reasonable efforts to locate the respondent and to reunify him with his children or, in the alternative, that the respondent was unable or unwilling to benefit from reunification efforts.

The court found that the petitioner had met her burden, stating that "[she] has proven by clear and convincing evidence that [the department] made reasonable efforts to reunify [the respondent] with Payton, Paislee, Adrion, Caiden, Skylar and Alexandria. As discussed [previously], [the respondent] was offered numerous services to [attain] reunification with his children, including supervised visitation by [the department] and a credential[ed] provider, individual counseling, drug screening, parenting education, case management services and [a] psychological evaluation. [The respondent] has a history with [the department] dating back to 2008 due to concerns regarding substance use/abuse, unmet mental health issues and [domestic violence]

issues. [The respondent] has failed to successfully complete services and change his circumstances and has failed to attain a level of sobriety and stability to permit his children to be safely placed in his care. As noted [previously], in May of 2018, [Adrion] suffered significant injuries while in the care of [the respondent] resulting in his removal, and [the respondent] has failed to acknowledge the cause of the injuries and has not taken any meaningful therapeutic steps to prevent such events from occurring again.

"Accordingly, the court finds by clear and convincing evidence that [the department] made reasonable efforts to locate [the respondent] and reunite [him] with [Adrion], [Caiden], [Payton], [Paislee], [Skylar], and [Alexandria] and, further, that he is unwilling or unable to benefit from reunification efforts."

With respect to the statutory grounds for termination, the court determined, by clear and convincing evidence, that the respondent (1) had failed to achieve such degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and needs of the children, he could assume a responsible position in each of the six children's lives pursuant to § 17a-112 (j) (3) (B) (i) and (ii),[17] and (2) had denied Caiden, Adrion, Paislee, and Payton, by reason of an act or acts of parental commission or omission, the care, guidance, or control necessary for their physical, educational, moral or emotional well-being, pursuant to § 17a-112 (j) (3) (C). Finally, in the dispositional phase of the proceedings, the court considered and

[17] As to Paislee and Payton, the court found § 17a-112 (j) (3) (B) (ii) satisfied insofar as the respondent failed to rehabilitate and both children had been adjudicated neglected and had been in the care of the petitioner for at least fifteen months. As to the other four children, the court found § 17a-112 (j) (3) (B) (i) satisfied insofar as the respondent failed to rehabilitate and those four children previously had been adjudicated neglected.

made the requisite factual findings pursuant to § 17a-112 (k)[18] and concluded that the petitioner had proven by clear and convincing evidence that terminating the respondent's parental rights was in the children's best interests. The court thus granted the petitions to terminate the respondent's parental rights as to Caiden, Adrion, Paislee, Payton, Skylar, and Alexandria. This appeal followed. Additional facts will be set forth as necessary.

As a preliminary matter, we first set forth the legal principles relevant to our review. "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the

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

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

"If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence." (Citation omitted; internal quotation marks omitted.) *In re Autumn O.*, 218 Conn. App. 424, 430–31, 292 A.3d 66, cert. denied, 346 Conn. 1025, A.3d (2023).

I

The respondent first claims that the court erred in concluding that the department had made reasonable efforts to reunify him with his children and that he was unable or unwilling to benefit from the reunification efforts. The respondent contends that the evidence was insufficient to support the court's conclusion because "the [department] failed to provide appropriate and meaningful services [to him]." In particular, he argues that the department (1) failed to facilitate adequate visitation with his children, (2) failed to file a motion

with the court to enforce his compliance with individual therapy, and (3) denied his request to have Heather Colino, a therapist with Innovative Therapeutic Solutions, LLC, continue to supervise visitation with his children, thus failing to provide him with adequate parenting education services "so that he could be a better parent for his children . . . ." We are not persuaded.

"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 . . . ." (Citation 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).

"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.) Id., 809.

"[We do] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . In our review of the record for evidentiary sufficiency, we are mindful that, as a reviewing court, [w]e cannot retry the facts or pass upon the credibility of the witnesses. . . . Rather, [i]t is within the province of the trial court, when sitting as the fact finder, to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Citations omitted; internal quotation marks omitted.) *In re Gabriella A.*, 319 Conn. 775, 790, 127 A.3d 948 (2015).

Pursuant to § 17a-112, the department has the duty "to make reasonable efforts to reunite the child or children with the parents. 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]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. . . . [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." (Citations omitted; internal quotation marks omitted.) *In re Ryder M.*, supra, 211 Conn. App. 810–11.

In the present case, the department determined that the respondent's presenting problems were his significant mental health issues, including emotional outbursts and anger management difficulties, deficits in parenting abilities, ongoing, unresolved substance abuse issues, and incidents of domestic violence. The record reveals that the department took various steps to address these problems and to facilitate the respondent's reunification with his children before the petitioner sought to terminate his parental rights as to each of the six children.

The petitions to terminate the respondent's parental rights as to Adrion and Caiden were filed on June 6, 2019. The record reflects that, in May, 2018, the respondent was attending individual therapy twice a week at The Connection. In addition, on May 28, 2018, the respondent entered the CVH men's intensive program for the treatment of substance dependence and co-occurring disorders. On June 4, 2018, however, he left the program against clinical advice and was subsequently discharged on July 9, 2018. The respondent's case worker at CVH recommended that he continue to attend another inpatient program, as he had not recognized his condition, had minimized his addiction, and had not yet taken any responsibility for his actions and their consequences.

Sometime between June and October, 2018, the department requested that the respondent attend an anger management group, which he refused to do. Further, in October, 2018, the respondent stopped attending individual therapy at The Connection and was discharged

for lack of attendance and engagement and failure to respond to his therapist's phone calls. He thereafter refused the department's referrals to additional mental health, substance abuse, and individual therapy services. He likewise declined the department's referrals to Alcoholics Anonymous and Narcotics Anonymous. Although the respondent began attending the Root Center for methadone maintenance and substance abuse services at the end of 2018, the Root Center does not offer individual therapy.

In addition to referrals to the aforementioned service providers, the record shows that the department provided the respondent with substance abuse evaluations and urine screenings, case management services, permanency team meetings, safety planning, and a considered removal meeting. The department also facilitated visitation between the respondent and Caiden and Adrion that included an integrated parenting education component supervised by a credentialed provider associated with Child Guidance or Innovative Therapeutic Solutions, LLC. Specifically, the department provided the respondent with two, two hour supervised in-person visits a week in addition to in-person visits supervised by Caiden and Adrion's paternal grandmother.[19]

The petitions to terminate the respondent's parental rights as to Paislee and Payton were filed on November 8, 2019, amended on December 10, 2019, and amended again on February 25, 2022. The record reflects that, prior to the filing of the November, 2019 petitions, the department continued to refer the respondent to mental health services and individual therapy providers despite his repeated refusals to engage with such services. The department also provided him with substance abuse

[19] The record is unclear as to whether the respondent's visitation with Caiden and Adrion continued in-person or via remote means after the onset of the COVID-19 pandemic in March, 2020. In addition, the record is unclear as to the respondent's consistency with visitation with them.

evaluations, and urine screenings and case management services.

In addition, beginning in November, 2019, the respondent was offered weekly, supervised in-person visits with Paislee and Payton. Those visits included an integrated parenting education component supervised by a credentialed provider. In March, 2020, due to the onset of the COVID-19 pandemic, the department changed the respondent's weekly visits with the twins to a virtual format. Department staff, rather than credentialed supervisors, oversaw the virtual visits. Notably, the respondent missed seventeen visits with Paislee and Payton from August, 2020, through March, 2021, and did not attend any visits from March 30 through May 25, 2021. Because the respondent was inconsistent in attending the virtual visits, the department declined to resume in-person visits between the respondent and the twins until August, 2021. In September, 2021, the respondent missed two out of three in-person visits with the twins and all of his scheduled virtual visits. On September 22, 2021, the department offered the respondent alternating weekly virtual and in-person visits with the twins. In October and November, 2021, the respondent missed each of his scheduled in-person and virtual visits. In December, 2021, the department moved to suspend visits between the respondent and Paislee and Payton due to the respondent's inconsistent attendance.

The petition to terminate the respondent's parental rights as to Skylar was filed on April 1, 2021, and amended on September 30, 2021. The petition to terminate the respondent's rights as to Alexandria was filed on August 30, 2021. The record indicates that, prior to the filing of those petitions, the department explored family resources with the respondent, continued to provide substance abuse evaluations and urine screenings, continued to provide case management services, and

made several referrals to individual therapy and mental health service providers. Moreover, the department ordered a psychological evaluation, which occurred on January 20 and 24, 2020, and resulted in recommendations to address the respondent's unique barriers to reunification.

On October 21, 2019, the respondent met with the department to arrange a weekly, in-person visitation schedule with Skylar that included an integrated parenting education component supervised by a credentialed provider. The respondent attended each of his scheduled visits in October and November, 2019. On December 2, 2019, the respondent's in-person visit with Skylar was cancelled early. According to the department's protocols, the respondent was required to keep Skylar in the supervisor's line of sight during visits. He failed to do so and, upon being reminded to comply with that protocol, became angry and yelled at the supervisor while he was holding Skylar. A department security officer ended the visit and escorted the respondent out of the room. On December 3, 2019, the petitioner filed an emergency motion, requesting that the court temporarily suspend the respondent's visitation with Skylar and order a psychological evaluation for the respondent. On December 17, 2019, the court, *Hon. Michael A. Mack*, judge trial referee, denied the motion and ordered that weekly in-person visits continue and that they be supervised by the respondent's choice of provider, Colino.

The respondent continued attending weekly in-person visits with Skylar until the onset of COVID-19 in March, 2020, at which point visits changed to a virtual format supervised by department staff. Between March and September, 2020, the respondent missed three virtual visits with Skylar. On July 2, 2020, Alexandria began joining the respondent's visits with Skylar. The department facilitated two in-person visits between the

respondent and Skylar and Alexandria in September and October, 2020, in addition to the virtual visits. Due to both an increase in the transmission of COVID-19 and the concerns of Skylar and Alexandria's foster parents, visitation returned solely to a virtual format thereafter. From November, 2020, through April, 2021, the respondent missed ten of twenty-three virtual visits. As a result of the respondent's inconsistent attendance, the department moved to suspend the respondent's visitation with Skylar and Alexandria. On April 29, 2021, the court, *Hoffman*, *J.*, granted the motion and suspended the respondent's visitation with Skylar and Alexandria until further notice. Since the court suspended his visitation, the respondent has not asked for any updates regarding the welfare of Skylar or Alexandria.

Given these facts, the respondent's arguments that the department's efforts toward reunification were unreasonable are unavailing. Put simply, the record contains ample evidence to support the court's reasonable efforts determination. See *In re Anthony S.*, 218 Conn. App. 127, 141, 290 A.3d 901 (2023) (department made reasonable efforts where it provided case management and support services, weekly supervised visits, offered visits in clinical setting, referred respondent to health service to be evaluated for and receive drug and mental health treatment and other individual therapy services, and offered transportation assistance and permanency placement services); *In re Ryder M.*, supra, 211 Conn. App. 811–12 (department made reasonable reunification efforts where it referred respondent father to two different providers offering mental health and substance abuse services and provided him with opportunity to attend fatherhood program and have visitation with his child); *In re Phoenix A.*, 202 Conn. App. 827, 839–40, 246 A.3d 1096 (department made reasonable efforts to reunify where it repeatedly referred respondent to numerous service providers in attempt to

address his substance abuse, mental health, and parenting issues), cert. denied, 336 Conn. 932, 248 A.3d 1 (2021); *In re Jacob M.*, 204 Conn. App. 763, 783, 255 A.3d 918 (department made reasonable efforts when respondent was offered mental health treatment, parent mentoring services, visitation services, domestic violence counseling and transportation), cert. denied, 337 Conn. 909, 253 A.3d 43 (2021), and cert. denied sub nom. *In re Natasha T.*, 337 Conn. 909, 253 A.3d 44 (2021).

Furthermore, the specific deficiencies that the respondent claims are either belied by the evidentiary record or unsupported in the law. First, we are unconvinced by the respondent's argument that the department failed to provide him with adequate visitation with his children. Specifically, the respondent contends that (1) virtual visitation was unreasonable because it "was not a meaningful way to foster and maintain a parent-child relationship," and (2) any inconsistencies in his engaging in visitation with his children was a result of the department's actions and the reality of COVID-19.[20] The record, however, does not support either contention.

As recounted previously, the record indicates that the department provided the respondent with weekly virtual visitation with his daughters after the onset of the COVID-19 pandemic. It is silent as to what kind of visitation occurred between the respondent and Caiden and Adrion after March, 2020. Nevertheless, because

[20] The respondent also points to alleged technical difficulties that occurred at several of his virtual visits, which he maintains the department failed to address. He argues that such difficulties constituted a failure on the department's part to facilitate appropriate visitation with his children. Evidence in the record, however, indicates that technical issues with the virtual visits did not significantly interfere with the respondent's ability to visit his children. Because we must construe evidence in the manner most favorable to sustaining the judgment of the trial court, we conclude that there was sufficient evidence that any technical difficulties were short-lived and resolved such that the respondent's visitation was not rendered inadequate.

the petitions to terminate the respondent's parental rights as to Caiden and Adrion were filed on June 6, 2019, before the onset of the COVID-19 pandemic and the necessity of virtual visitation, any alleged deficiencies in virtual visitation are irrelevant to the reasonableness of visitation the department provided in relation to Caiden and Adrion. See *In re Ryder M.*, supra, 211 Conn. App. 809 ("[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" (internal quotation marks omitted)).

Moreover, it is significant that the respondent was subsequently denied in-person visitation with Paislee, Payton, Skylar, and Alexandria because he was inconsistent in attending virtual visitation. At trial, Robin Brisson—the department social worker assigned to Skylar's and Alexandria's cases—testified that, because the department was dealing with limited resources during the COVID-19 pandemic, there was a finite amount of in-person visits the department could facilitate. Brisson further testified that, in May, 2021, the department began reviewing cases individually to determine whether it would be appropriate to permit monthly in-person visits. She clarified that, "how many . . . virtual visits were provided, [and] how many were missed out of a certain period of time" was one of the factors used to determine which cases were going to be permitted in-person visitation.

Karina Sanchez, the department social worker assigned to the cases of Caiden, Adrion, Paislee, and Payton, testified that, "because [the respondent] was already . . . missing so many virtual visits [with Paislee and Payton], one of the things was for him to make [a certain number] of virtual visits before [the department resumed] the in-person visits." She then

reiterated that the respondent "was inconsistent with his visits. So, he needed to show some consistency before starting the in-person visits." Similarly, on February 24, 2021, the department conducted a review of Skylar's and Alexandria's cases that was the subject of the following note: "Visitation re-triage. [Foster parents] continue to be concerned with exposure to COVID-19. [Erika O.] has been inconsistent with virtual visits and [the respondent] has missed some. [Erika O.] has not been consistent with meeting with [the department], so this makes it difficult to assess for recent [domestic violence] concerns. Decision: no [in-person] visitation at this time given ongoing assessment for possible current [domestic violence] (moreso [Erika O.]) need to demonstrate consistency with virtual visits." Although the department did not permit in-person visitation to resume until May, 2021, after it had suspended the respondent's visits with Skylar and Alexandria in April, 2021, it is clear that the department began evaluating the possibility of in-person visitation in February, 2021. Accordingly, it was the respondent's own failure to be consistent with virtual visitations that prevented him from having sooner in-person visitation with his daughters.

In addition, there is evidence in the record indicating that it was the respondent who delayed initiating visitation with Paislee, Payton, and Skylar. At trial, Sanchez testified that, when she received Paislee's and Payton's cases in June, 2019, there was no established visitation schedule between the respondent and the twins. She further testified that the respondent was not responsive to the department, though she acknowledged meeting him at an administrative case review in June or July, 2019. In a case status report dated December 3, 2019, Sanchez noted that, since late September, 2019, "[t]he department repeatedly asked to meet with [the respondent] to set up his services and his visitation." Ultimately, despite the department's earlier requests, the

respondent did not meet with Sanchez to arrange a consistent visitation schedule with the twins until October 21, 2019.

The record further indicates that, despite denying paternity at the time, the respondent attended two of Skylar's medical appointments with Erika O. in August, 2019, under the pseudonym Henry Pratt. Although he was aware that Skylar was in the department's care, the respondent failed to inform it that he was Skylar's father and, instead, actively attempted to deceive the department. At trial, Brisson testified that, once paternity had been established in September, 2019, the department could not begin visitation immediately, as it needed to complete an assessment of the respondent, given that he had been presenting himself under another name.[21] The respondent did not meet with the department to arrange visitation with Skylar until October 21, 2019.

"[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

[21] During cross-examination the following exchange occurred between Brisson and counsel for the respondent:

"A. [B]ecause [the respondent] had just come aboard, and we just identified him as [the] father; we still needed to assess his housing, his services, all of those things. So, until everything was assessed, we needed to move forward.

"Q. When you say you needed to move forward, what do you mean?

"A. With what the visitations were going to look like, and I had scheduled a meeting because he didn't want to be—at that point, only wanted to be—unless he had his attorney . . . so, we had to coordinate schedules so I could see his apartment because, at that point, he was another name, he wasn't [the respondent], the father. So, at that point, once he was, you know, adjudicated, we needed to start the assessment and figure out where [the respondent] was.

"Q. So, you started from a position of he doesn't get visits until we decided that he can.

"A. No, no, no. Not that he—but we did have to manage what it was going to look like based on—I didn't even know [the respondent] at this point, only based on the adjudication and him, you know, reporting that he was someone else, a boyfriend, a friend, all of these different things. So, I needed to find out who [the respondent] was . . . ."

been made." (Internal quotation marks omitted.) *In re Corey C.*, 198 Conn. App. 41, 65, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020). On the basis of the evidence presented, we conclude that the court's finding that the department facilitated adequate visitation between the respondent and his children is not clearly erroneous. The record reflects that the department provided the respondent with frequent opportunities for in-person and virtual visitation with his children; that, when circumstances allowed, those visitations included a parenting education component supervised by a credentialed provider; that the respondent's own inconsistency in visitation prevented him from having the opportunity to engage in monthly in-person visitation with his daughters; and that the respondent's own reluctance to engage with the department caused much of the delay in the creation of visitation schedules with his daughters. Therefore, we conclude that there is sufficient evidence in the record to support the court's finding that the department's visitation efforts were reasonable.

Second, the respondent argues that the department's efforts were not reasonable because the petitioner never sought a court order compelling him to engage in the individual therapy the department offered him. This argument requires little discussion. The respondent has not cited any authority, and we are aware of none, that requires the department, as part of its reasonable efforts, to seek a court order requiring the respondent to comply with each department referral. In fact, such a requirement would be inconsistent with the requirement that child protection matters be addressed in an expedited fashion so that children are not left in a state of limbo. See, e.g., *In re Davonta V.*, 285 Conn. 483, 495, 940 A.2d 733 (2008) ("[n]o child can grow emotionally while in limbo, never really

belonging to anyone except on a temporary and ill-defined or partial basis" (internal quotation marks omitted)); *In re Avia M.*, Superior Court, judicial district of New Britain, Juvenile Matters, File No. H14-CP16-011696-A (April 3, 2018) (reprinted at 188 Conn. App. 740, 805, 205 A.3d 770) ("child's needs for safety, stability and permanency cannot wait for the uncertainty of her parents' rehabilitation"), aff'd, 188 Conn. App. 736, 205 A.3d 764 (2019). Furthermore, a parent who does not take advantage of the department's reunification efforts should not be permitted to challenge the reasonableness of those efforts on the ground that a court did not compel him to do so. The reunification efforts are offered for the benefit of the parent with a view to meeting the needs of the children. They are intended to give parents the opportunity to demonstrate that they can assume the responsibility of parenting, which includes addressing identified deficits in their capacity to fulfill that role. It would turn the child protection statutes on their head to allow a parent who fails to engage in reunification efforts to argue that he would have complied if only a court had ordered him to do so. Reunification with his children, as opposed to a potential court sanction, should be sufficient motivation for the respondent to engage in the recommended services. Thus, although the provision of reunification services always remains the burden of the department, the choice and responsibility to engage in services so that his children may have a parent who can meet their needs must ultimately lie with the respondent. Consequently, the offering of services meets the reasonable efforts requirement.

Finally, the respondent argues that the department's reunification efforts were not reasonable because the department denied his request to have Colino continue to supervise visitation with his children, thus failing to

provide him with adequate parenting education services. The respondent's claim is not supported by the evidence. The record reflects that, once the department moved to virtual visitations in March, 2020, visits were no longer supervised by a credentialed provider but by department staff. The respondent thereafter requested that Colino be brought in to supervise virtual visitations with Skylar and Alexandria. At trial, Brisson testified that the department had denied the respondent's request because it was not supplying any providers for virtual visitation at that time. Furthermore, Brisson testified that there had been several reports taking issue with Colino's ability to appropriately supervise visits. Accordingly, the department's approval of Colino to provide supervisory services was revoked at about the time the respondent requested that she supervise all visitation with his children. Thus, it was not possible to fulfill the respondent's request.

In sum, the record reflects sufficient evidence to support the court's conclusion that the department made reasonable efforts to reunify the respondent with each of his six children at issue in this appeal.[22]

II

The respondent next claims that the trial court erred in finding that he had failed to achieve such a degree

[22] In its analysis under § 17a-112 (j) (1), the court also found that the respondent was unable or unwilling to benefit from reunification efforts. "[T]he [petitioner] must prove [by clear and convincing evidence] *either* that [the department] has made reasonable efforts to reunify or, *alternatively*, that the parent is unwilling or unable to benefit from the reunification efforts. Section 17a-112 (j) clearly provides that the [petitioner] is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis in original; internal quotation marks omitted.) *In re Corey C.*, supra, 198 Conn. App. 66. Because we conclude that the court properly found that the department had made reasonable efforts to reunify the respondent with his children, a finding that is sufficient to satisfy § 17a-112 (j), we need not address the merits of the respondent's claim that the court erred in finding that he was unable and unwilling to benefit from those efforts. See id.

of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and needs of his children, he could assume a responsible position in their lives. We disagree.

We begin by setting forth the following relevant legal principles and standard of review. "Failure to achieve a sufficient degree of personal rehabilitation is one of the seven statutory grounds on which parental rights may be terminated under § 17a-112 (j) (3). Section 17a-112 (j) permits a court to grant a petition to terminate parental rights if it finds by clear and convincing evidence that . . . (3) . . . (B) the child . . . has been found by the Superior Court . . . to have been neglected . . . in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . 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 . . . . In making that determination, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue. . . .

"We review the trial court's subordinate factual findings for clear error, and review its finding that the respondent failed to rehabilitate for evidentiary sufficiency. . . . In reviewing that ultimate finding for evidentiary sufficiency, we inquire 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]. . . . [I]t is not the function of this court to sit as the [fact finder] when we review the sufficiency of the evidence . . . rather,

we must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including reasonable inferences therefrom, supports the [judgment of the trial court] . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the [judgment] of which it is reasonably capable. . . . In other words, [i]f the [trial court] could reasonably have reached its conclusion, the [judgment] must stand, even if this court disagrees with it." (Citation omitted; footnote omitted; internal quotation marks omitted.) *In re A'vion A.*, 217 Conn. App. 330, 347–48, 288 A.3d 231 (2023).

In this case, the court's analysis as to why the respondent failed to rehabilitate was substantively the same for all six children. The court found that "the respondent was provided with court-ordered specific steps to facilitate the return of [his children] to his care. [The department] assisted [the respondent] by referring him to appropriate services. [The respondent's] minimal compliance with his specific steps was not sufficient to achieve sufficient rehabilitation. He has only minimally engaged in services. [The respondent] has failed to engage and make progress in mental health treatment, substance abuse treatment or maintain his sobriety. [The respondent] has failed to demonstrate progress in engaging in individual therapy to fully address his unmet mental health issues, explosive behaviors when he is in a stressful situation, lack of ability to maintain emotional regulation, and maintaining his medication management. There is clear and convincing evidence that, when the termination of parental rights [petitions were filed], [the respondent] had failed to achieve such a degree of personal rehabilitation as would encourage the belief that, within a reasonable period of time, considering the ages and needs of his children, he could assume a responsible position in their lives. [The respondent] has failed to gain insight and ability to care

for [his children], given their ages and needs, within a reasonable time."

The court explained that, "due to his domestic violence and substance use, [the department] has been involved with [the respondent] since 2008. [The respondent] has attempted to engage in services for many years to address his ongoing issues with his mental health and domestic violence. [The respondent] has not engaged in any mental health treatment. He often would self-report that either he did not have mental health concerns or he was in the process of engaging with a therapist. Although [the respondent] was attending the Root Center for medication management . . . since April 20, 2021, he was no longer prescribed his medication because he refused to be involved in mental health treatment. It was reported [that the respondent] tested positive for methadone and amphetamines/ecstasy. On July 6, 2021, [the respondent] admitted to using . . . cocaine and, on February 2, 2022, his probation officer reported [that the respondent had] tested positive for cocaine and methadone. Despite being offered services for mental health and substance abuse issues by [the department, the respondent] has failed to reap any benefit or insight from these services. Notably, [the respondent] has failed to engage in appropriate domestic violence programs and continues not to engage in mental health treatment. He has demonstrated poor parenting skills and failed to provide [the department] with a plausible explanation as [to] how his son Adrion sustained a skull fracture and rib injuries. [The respondent] has failed to gain an understanding of the harmful effect of family violence on his family. As demonstrated in the past, [the respondent] remains unable to benefit from the treatment and services he has received.

"[The respondent] has not consistently engaged in services offered by [the department]. [He] did engage in methadone treatment but has failed to engage in

mental health treatment or complete a program to address his domestic violence. [The respondent] has failed to acknowledge the cause of the injuries to [Adrion] and has not taken any meaningful therapeutic steps to prevent such events from happening again."

Accordingly, the court found that, "[d]espite [the department's] reasonable efforts, [the respondent] is unable to parent [his children] and serve as their caregiver. [He] has failed to engage in services to address the recommendations for his unmet mental health [needs], his ability to control his anger outburst[s], and [domestic violence] concerns. [The respondent] has a long history of chronic substance abuse issues. He cannot provide for the shelter, nurturance, safety, and security of his children. . . . [The respondent] does not have the stability in his own life to enable him to care for [his children]. [He] has failed to reap any benefit or insight from these services. [He] has clearly failed to gain an understanding of the harmful effects of family violence on his family. . . . He is unable to meet the developmental, emotional, educational, medical and moral needs of [his children]. . . . [The respondent] has not made significant progress toward personal rehabilitation and clearly cannot assume a responsible position in [his children's lives], considering their age[s] and needs. While [the respondent] has continued to visit [Caiden] and [Adrion], it has been inconsistent, and his attempt to reunify has failed.[23]

"In light of the above, the court finds that [the department] has met its burden of proof that [the respondent]

[23] As to Skylar and Alexandria, the court noted that "[the respondent's] visitation rights were suspended by the court in April, 2021, and his attempt to reunify has failed." As to Paislee and Payton, the court incorporated by reference all of the factual findings it had made previously in its memorandum of decision regarding the respondent's failure to rehabilitate and found "by clear and convincing evidence that [the respondent] has failed to achieve the necessary degree of rehabilitation that would encourage the belief that within a reasonable period of time, considering the age and needs of [Paislee] and [Payton], he could assume a responsible position in their lives."

has failed to rehabilitate in that, given the age[s] and needs of [his children], he cannot assume a responsible position in their lives within a reasonable period of time. [The respondent] continues to fail to demonstrate the ability to rehabilitate despite being offered ongoing services.

"Of paramount consideration to the court is the issue of stability and permanency for [the children]. . . . The need for permanence for [the children] far outweighs any remote chance that [the respondent] may rehabilitate in the far distant future. [The respondent] has, either because [of] the lack of ability or lack of desire, failed to successfully accomplish what was needed to consider reunification as an appropriate conclusion. [The children] cannot afford to wait for their father to rehabilitate. [The petitioner] has presented compelling evidence that [the children] need permanency and stability now. They have the same needs of all children for permanency and stability in their [lives].

"Thus, the evidence clearly and convincingly establishes that, at the end of the trial of this matter, [the respondent] has not sufficiently rehabilitated himself to the extent he could assume a responsible position in their lives, given their ages and needs or within a reasonable period of time." (Citations omitted; footnote added.)

On appeal, the respondent claims that "there is insufficient evidence to support the court's finding that [he] has failed to rehabilitate himself." Specifically, the respondent contends that "the [department] failed to provide meaningful and appropriate services to engage [him]." We disagree.

As we concluded in part I of this opinion, there was sufficient evidence in the record from which the court reasonably determined that the department had provided meaningful and appropriate reunification services

to the respondent. In particular, the evidence indicates that the department provided him with frequent in-person and virtual visitation with each of his children, integrated parenting education services supervised by credentialed providers, referrals to mental health service providers and individual therapy providers, referrals to Alcoholics Anonymous and Narcotics Anonymous, substance abuse evaluations and urine screenings, and case management services. Furthermore, prior to the filing of the petitions to terminate the respondent's parental rights as to Skylar and Alexandria, the department provided the respondent with a psychological evaluation on January 20 and 24, 2020. These services were tailored to address the respondent's substance abuse, anger management issues, and parenting deficits, but the respondent refused to attend.

The respondent also argues that he "was making progress toward rehabilitating himself so that he could nurture and care for his children." To support that contention, he points to evidence in the record reflecting that (1) he was self-employed with an income, (2) as of trial, he had maintained adequate housing for several years despite brief periods of transience early in the department's involvement, (3) he consistently engaged in substance abuse treatment at the Root Center, (4) he always acted appropriately when engaging with his children during visits, and (5) Rogers testified that he did not believe that the respondent posed any risk of imminent harm to his children. The respondent asserts that, "despite multiple difficulties, [he] was still actively engaging in substance abuse treatment, maintaining housing and his income, and visiting his children as often as he could. . . . The respondent has been engaged with his substance abuse counseling, and his counselor [at the Root Center] saw no need to recommend any additional counseling." In essence, the respondent posits that the evidence indicated that he

would be able to assume a responsible position in the lives of his children within a reasonable period of time with the use of available support programs.[24] We are not persuaded.

First, we note that the record belies the respondent's assertion that he always acted appropriately when engaging with his children during visits. In addition to the previously described incident that took place on December 2, 2019, on November 4, 2019, the respondent became aggressive during another visit with Skylar. In response to the supervising provider's attempts to engage him in parenting education, the respondent disregarded the supervisor's recommendations and thereafter repeated several inappropriate statements referencing Brisson while getting louder with each repetition. A security agent then removed the respondent from the premises.

Second, the respondent's contention that his counselor at the Root Center saw no need to recommend any additional counseling is not a complete picture of the record regarding the Root Center's recommendations. On June 1, 2021, Leilanie Huertas, a substance abuse counselor at the Root Center in Norwich

[24] We note that, as discussed further in this opinion, the undisputed evidence indicated that the respondent continually resisted the department's rehabilitation services. Thus, we disagree with the respondent's contention that the record demonstrates that he is willing and capable of benefiting from continued reunification efforts. See, e.g., *In re Lillyanne D.*, 215 Conn. App. 61, 92–93, 281 A.3d 521 (rejecting respondent's argument that evidence was insufficient to support conclusion that he failed to rehabilitate because record demonstrated he was willing and capable of benefiting from continued efforts toward reunification where no evidence demonstrated that he sought department's help in obtaining additional support services or intended to rely on support services if reunification were granted), cert. denied, 345 Conn. 913, 283 A.3d 981 (2022). In addition, to the extent the respondent father is arguing that he should have been afforded more time to rehabilitate, "such an argument is inconsistent with our Supreme Court's repeated recognition of the importance of permanency in children's lives." (Internal quotation marks omitted.) Id., 93.

informed the department that, as of April 20, 2021, Nicole Snyder—an advanced practice registered nurse who worked with the Root Center and had been responsible for prescribing Vyvance to the respondent for his ADHD and Lamotrigine as a mood stabilizer—had discharged the respondent as a patient and would no longer prescribe his medication because he did not follow through with a referral to attend the Root Center's weekly mental health group. Accordingly, although the respondent engaged in substance abuse treatment at the Root Center, he failed to follow its separate requirement that he participate in a mental health group in order to continue receiving prescriptions to address his mental health issues. Notably, the respondent has not since engaged with a provider to manage or prescribe this medication to address those issues.

Moreover, the existence of favorable evidence in the record is not a basis from which to determine that the court's finding that the respondent failed to rehabilitate was clearly erroneous. "[T]he mere existence in the record of evidence that would support a different conclusion, without more, is not sufficient to undermine the finding of the trial court. . . . [T]he proper inquiry is whether there is *enough* evidence in the record to support the finding that the trial court made." (Emphasis altered.) *In re Jayce O.*, 323 Conn. 690, 716, 150 A.3d 640 (2016). On the basis of our review of the record, we conclude that there is sufficient evidence to support the court's conclusion that clear and convincing evidence demonstrated that the respondent had failed to achieve a sufficient degree of rehabilitation to be able to assume a responsible position in the lives of his children within a reasonable period of time.

The evidence shows that the respondent's struggles with mental health issues, anger management, and emotional regulation were the primary concerns of the

department throughout its involvement with the respondent. Despite this, the respondent consistently and repeatedly refused to attend individual therapy or engage in any of the mental health services to which the department had referred him in order to address his anger and emotional regulation issues.[25] The department's focus on these issues was reasonable considering the various incidents in which the respondent demonstrated a continued inability to regulate his anger. Notably, after the November 4, 2019 incident, the provider who had been supervising the visit requested that security escort her to her car following the visit because "she felt unsafe . . . it was only her second visit with [the respondent], and her visit the first time was notable for his politeness and he was a 'completely different' person this time." Following that visit, Brisson also received a voice mail from the respondent, "which was coarse, and full of foul language." In the social study for termination of parental rights prepared in March,

[25] For example, on January 14, 2019, after the respondent stated a preference for a male therapist, the respondent was provided with a list of several community resources and male clinicians. The respondent, however, declined to reach out to any of those resources. On November 6, 2019, the respondent informed the department that he did not want the department to choose a therapist for him and that he would choose one on his own. He failed to do so and continued to decline to engage in any individual therapy. On April 2, 2020, the respondent reported to the department that he was beginning to work with Lighthouse Counseling in Groton but had decided not to begin until the COVID-19 pandemic was over. On April 23, 2020, the department emailed the respondent with the name of a therapeutic agency that was accepting new patients via telehealth. On May 9, 2020, the respondent confirmed receipt of resources for individual therapists and informed the department that he had not yet contacted any of them. On July 13, 2021, the respondent informed the department that he had obtained a new therapist through the assistance of his court-appointed attorney. He did not provide the department with the name or contact information of that therapist, however, and the department was unable to confirm the respondent's participation in individual therapy. At trial, Brisson testified that, "to date, I have not—there hasn't been any individual therapy engagement that I am aware of." On January 12, 2022, the respondent reported to the department that he was not engaged in individual therapy.

2021, Brisson noted that, "[s]ince the case opened, credentialed providers, [the department's] staff, foster parents, and Skylar have observed [the respondent] presenting with explosive reactions to situations. This included through text messages, voice mail, and in person. Due to this, the [d]epartment continues to have concerns with [the respondent's] ability to provide a safe environment free from violence."[26]

Although the respondent was engaged in methadone maintenance treatment at the Root Center and was consistent in such treatment, that does not resolve the other issues the department identified. Moreover, the undisputed evidence indicates that the respondent continued abusing substances up to and during trial. In particular, the respondent tested positive for ecstasy in March, 2021. The respondent also relapsed and used cocaine in July, 2021, in the aftermath of a domestic violence incident with Brittani B. In addition, the respondent's probation officer reported to the department that the respondent's urine was positive for cocaine on September 7, 2021. In January, 2022, the respondent again tested positive for cocaine.

In addition, the undisputed evidence demonstrates that the respondent failed to engage in any domestic violence program, despite the fact that he continued to be involved in domestic violence incidents. At trial, the petitioner presented the court with six police reports detailing various domestic disputes between the respondent and both Brittani B. and Erika O., which occurred in 2021 and 2022. Further, in a case status report dated February 3, 2022, Brisson noted that, in relation to domestic violence, "[t]he department continues to have concerns with [the respondent's] continued

[26] Notably, many of the reports the department prepared during the pendency of the respondent's engagement with it included references to the respondent's use of derogatory or vulgar language toward department staff.

choices to put himself in compromising positions and [his] failed ability to regulate his emotions to reduce the occurrences of unsafe situations."

In short, there is sufficient evidence to support the court's finding that the respondent failed to achieve the requisite degree of personal rehabilitation required by § 17a-112 (j) (3) (B). See *In re Shane M.*, 318 Conn. 569, 589, 122 A.3d 1247 (2015) ("the respondent's 'failure to acknowledge the underlying personal issues that form the basis for the department's concerns indicates a failure to achieve a sufficient degree of personal rehabilitation' "); *In re Anthony S.*, supra, 218 Conn. App. 149 (respondent failed to rehabilitate where she lacked consistent engagement in individual counseling, was reluctant to participate in behavioral therapy as court-appointed psychologist recommended, and displayed inappropriate, aggressive, and argumentative behaviors during visitations); *In re Ryder M.*, supra, 211 Conn. App. 803–804 (father failed to rehabilitate where he failed to attend substance abuse and mental health services, "missed visits from time to time," acted belligerently during visits, and failed to "comprehend the effect of his mental health difficulties" on minor child); *In re Phoenix A.*, supra, 202 Conn. App. 845 (respondent failed to rehabilitate where he "continued to struggle with substance abuse and mental health issues throughout the department's involvement"); *In re Joseph M.*, 158 Conn. App. 849, 865, 120 A.3d 1271 (2015) (respondent failed to rehabilitate where he "cancelled at least two of his scheduled biweekly visits with the child every month" and refused department's referrals for substance abuse and domestic violence treatment).

"Although the respondent encourages us to focus on the positive aspects of his behavior and to ignore the negatives, we will not scrutinize the record to look for reasons supporting a different conclusion than that reached by the trial court." *In re Shane M.*, supra, 318

Conn. 593. Consequently, we conclude that, when indulging every reasonable presumption in favor of the court's ruling, as our standard of review requires; see, e.g., *In re Jayce O.*, supra, 323 Conn. 716; the evidence credited by the court supports its conclusion that the respondent failed to achieve sufficient rehabilitation that would encourage the belief that, within a reasonable time, he could assume a responsible position in the lives of his children.

III

The respondent's final claim is that the trial court improperly determined that terminating his parental rights was in his children's best interests. We are not persuaded.

In reviewing a trial court's best interests determination, we apply the clearly erroneous standard of review. See *In re Aubrey K.*, 216 Conn. App. 632, 653, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023). "In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of the child. . . . It is well settled that we will overturn the trial court's decision that the termination of parental rights is in the best interest of the [child] only if the court's findings are clearly erroneous. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the [respondent's] parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make 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. . . .

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

"A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made." (Citations omitted; internal quotation marks omitted.) Id., 654–55.

In the present case, the court considered and made findings under each of the seven statutory factors of § 17a-112 (k) before determining, by clear and convincing evidence, that termination of the respondent's parental rights was in the best interests of the minor children. In reaching that determination, the court's findings were substantively the same for all six children. Specifically, the court found that "[t]he problems that led to the removal [of the children] have not been rectified, and the prospects of improvement are bleak especially in light of . . . [the respondent's] unaddressed

substance and mental health issues. [The respondent has not] acknowledged causing the injuries to . . . [Adrion] and therefore . . . cannot provide a competent, safe and nurturing parenting to [the children]. This conclusion is supported by the testimony of the witnesses as well as the information contained in the exhibits presented at the trial.

"[The children] desperately [need] the permanency and stability that [they] have in [their] foster home[s]; termination of parental rights will bring that much needed stability and permanency to [them] and give [them] the opportunity to have a healthy and emotionally stable life. [The children's] needs are those of all children. [They have] an interest in sustained growth, development, well-being, and a continuous, stable environment. Accordingly, based upon the clear and convincing evidence presented, it is in [the children's] best interest[s] to terminate the parental rights of [the respondent]."

On appeal the respondent does not challenge any particular factual finding made by the court in support of its best interests determination. Rather, he claims that, "[e]ven if this court finds that there were sufficient grounds for termination of the respondent's parental rights, nevertheless . . . [i]n light of the respondent's consistent engagement with substance abuse treatment and his efforts toward maintaining visitation with his children, this court should find that it is in the best interest[s] of the minor children not to grant the petition[s] terminating the respondent's parental rights." The respondent further points to the affection he has for his children as a basis for concluding that the court's best interests determination was improper. In response, the petitioner argues that the evidence supports the trial court's finding that it was in the best interests of the children to terminate the respondent's parental rights. We agree with the petitioner.

This court recently rejected an argument similar to that of the respondent, explaining that, "[i]n addition to considering the seven factors listed in § 17a-112 (k), [t]he best interests of the child include the child's interests in sustained growth, development, well-being, and continuity and stability of [his or her] environment. . . . Furthermore, in the dispositional stage, it is appropriate to consider the importance of permanency in children's lives. . . . [T]he court's inquiry in the dispositional phase of the proceeding was properly focused on whether termination of the respondent's parental rights was in the children's best interest[s]. . . . The respondent's efforts to rehabilitate, although commendable, speak to [his] own conduct, not the best interests of the child. . . . Further, whatever progress a parent arguably has made toward rehabilitation is insufficient to reverse an otherwise factually supported best interest finding. . . . Additionally, although the respondent may love [his] children and share a bond with them, the existence of a bond between a parent and a child, while relevant, is not dispositive of a best interest determination." (Citations omitted; internal quotation marks omitted.) *In re Autumn O.*, supra, 218 Conn. App. 444; see also *In re Aubrey K.*, supra, 216 Conn. App. 667 ("the dispositional phase of a termination of parental rights proceeding centers on the best interest of the child, not the conduct or improvements of the parent").

The same reasoning applies in the present case, in which there is ample evidence to support the court's finding that it was in the best interests of the minor children to terminate the respondent's parental rights, despite his purported progress and affection for his children. The evidence at trial established that the respondent had failed to engage in appropriate domestic violence programs, mental health treatment, or individual therapy, had ceased taking medication to manage his ADHD, was involved in several domestic violence

incidents in 2021 and 2022, and was unable to maintain his sobriety, all of which support the court's finding that he would be unable to "provide for the shelter, nurturance, safety and security of his children" or meet their "emotional, educational, medical and moral needs . . . ."

Significantly, at trial, Rogers testified: "I highlighted in my evaluation . . . some concerns about substance abuse for [the respondent] and [his] ability to regulate [his] behavior in such a way that [he] could safely and consistently manage a child and provide primary care for that child or children. The information that's been provided [recounting the respondent's actions up to trial] suggests that [he has] not overcome [his] limitations and/or consistently participated in recommended treatment, and that there remains serious concern about [his] behavior and stability. That would certainly include statements regarding . . . ongoing substance abuse. In light of those facts and in light of the time that the children have been outside the home, I would say that it would be appropriate to consider permanent placement of the children apart from the biological parent."

Rogers further testified that he thought the respondent's ADHD symptoms were "severe" and was "concerned about how that impulsivity might interact with his relationships and ultimately the circumstances to which he might expose a dependent child." Rogers explained that "[the respondent] has a history of outbursts. Sometimes angry outbursts and conflictual relationships that I believe are augmented by his poor impulse control. And I would be concerned at the risk for additional such episodes where he [acts] in the role of primary caregiver. I would add that, in light of his history of stimulant abuse, that further such substance

abuse would increase the related risks." Notably, Rogers testified that he was concerned about the respondent's ability to function and effectively regulate his emotions and behavior without ADHD medication. In particular, Rogers testified that "exposing a child to that kind of volatility would be concerning. It's noted that [the respondent has] had several instances of domestic violence. I would always be concerned when a child was exposed to domestic violence because we know that that has lasting effects on children's psychological adjustment and indeed their progress in a number of areas of development as they grow."

Moreover, department reports admitted into evidence at trial indicate that Adrion and Caiden are "very bonded to [their] paternal grandmother and great-grandmother" and are doing well in the home. Similarly, the reports indicate that Paislee and Payton are doing well in their nonrelative foster home and "are bonded to [their] foster parents." The reports likewise note that Skylar and Alexandria have both been placed with their nonrelative foster parents since infancy, and that they identify their foster parents as their psychological parents and look to them to have their basic, emotional, and social needs met. Last, Brisson testified that the children's respective foster parents have arranged visits between the children, including one with all six children. Brisson testified that it was her understanding that, should the termination of parental rights petitions be granted, the foster parents would continue to nurture the bonds between all six siblings.

In light of the children's needs for safety, stability, and permanency, the evidence of the respondent's inability to demonstrate that he could resolve his substance abuse issues, address his emotional dysregulation, and provide a safe home environment free from incidents of domestic violence in a reasonable amount of time supports the court's finding that termination of

his parental rights was in the children's best interests. See *In re Phoenix A.*, supra, 202 Conn. App. 850 (upholding best interests finding where child was bonded with foster parents and respondent "continued to struggle with substance issues throughout the department's involvement"); *In re Brian P.*, 195 Conn. App. 558, 580, 226 A.3d 159 ("given . . . [inter alia] the court's findings as to the respondents' failure to rehabilitate . . . we cannot conclude that the court's finding as to [the minor child's] need for a 'permanent, safe, supportive, nurturing home' and the respondents' inability to meet that need were clearly erroneous"), cert. denied, 335 Conn. 907, 226 A.3d 151 (2020). Accordingly, we conclude that the court's determination that termination of the respondent's parental rights was in the children's best interests was factually supported and legally sound.[27]

[27] The respondent also argues that "[a] permanent transfer of guardianship would be the better way to resolve" the issue of providing the children with permanency. This argument is without merit.

"It is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial. . . . [O]nly in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.) *In re Sequoia G.*, 205 Conn. App. 222, 235, 256 A.3d 195, cert. denied, 338 Conn. 904, 258 A.3d 675 (2021).

Prior to ordering a permanent transfer of guardianship, a court must first make five factual findings, including that adoption of the child is not possible or appropriate. See General Statutes § 46b-129 (j) (6) (A) through (E). In the present case, the respondent never sought to transfer permanent guardianship of the children to another individual, and, therefore, the court made no findings regarding whether a transfer of guardianship was both in the children's best interests and a more appropriate disposition than the one approved by the court. Consequently, this court is unable to review this aspect of the respondent's best interests claim as it was not raised before the trial court and no exceptional circumstances exist. See, e.g., *In re Sequoia G.*, supra, 205 Conn. App. 234–35 (rejecting respondent's unpreserved claim that trial court's best interest determination was erroneous because court

The judgments are affirmed.

In this opinion the other judges concurred.

IN RE SERENITY W.*
(AC 46183)

Alvord, Clark and Keller, 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, S. The petitioner, the Commissioner of Children and Families, had obtained an ex parte order of temporary custody of S after the mother was arrested in connection with an intimate partner violence incident. The mother thereafter agreed to the petitioner's motion to modify the disposition to commitment of S to the care and custody of the petitioner, and the trial court ordered specific steps for reunification. Several months later, the mother gave birth to T, who remained in the hospital for three months due to health issues. While T was hospitalized, the mother was arrested for various motor vehicle and drug related charges. The petitioner was not aware of T's birth until a social worker with the Department of Children and Families conducted a home visit and discovered baby supplies at the mother's residence. The petitioner thereafter filed the petition for termination of the mother's rights with respect to S. *Held* that the respondent mother could not prevail on her

---

should have ordered transfer of guardianship instead of terminating parental rights); *In re Skylar B.*, 204 Conn. App. 729, 745, 254 A.3d 928 (2021) (only properly filed motion provides requisite notice to all interested parties and court of alternative disposition as well as evidence relevant for court to evaluate merits of transfer of guardianship versus termination of parental rights).

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

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

claim that the trial court incorrectly concluded that she had failed to rehabilitate sufficiently so as to encourage the belief that she could assume a responsible position in S's life, within a reasonable time, pursuant to statute (§ 17a-112 (j) (3) (B) (i) and (E)): contrary to the mother's claim that the court could not have reached its conclusion because T remained in her care, an argument premised on the contention that she has assumed a responsible position in T's life, a trial court's consideration of a respondent's parenting abilities with respect to her other child or children is not dispositive of the court's analysis, as the court is required to analyze the parent's rehabilitative status as it relates to the needs of the particular child for whom the petition had been filed, in this case, S, and a court may reasonably conclude that a parent is unable to assume a responsible position in the life of one child, even though another child remains in that parent's care; in the present case, the record contained sufficient evidence for the court to reasonably conclude that the mother failed to achieve sufficient rehabilitation so as to assume a responsible position in S's life and, although the petitioner had not sought the removal of T from the mother's care at the time of the termination trial, the petitioner had filed a neglect petition, which was granted, and T remained in the mother's care only under the protective supervision of the department; moreover, regardless of the petitioner's decision not to seek custody of T, the court expressed concern about the mother's ability to care for T in the long-term, finding that the mother, who had a history of substance use, had a pattern of relapsing after periods of sobriety, had not demonstrated an extended period of stable mental health, had admitted that she drank alcohol during T's pregnancy, had been arrested twice for drug related and intimate partner violence related charges just months before the termination trial and had tested positive for marijuana one month before the termination trial; furthermore, the court found credible the opinion of a psychologist who conducted a court-ordered evaluation of the mother, that the mother had failed to make significant progress toward personal rehabilitation given her continued issues with substance use, intimate partner violence, and involvement with the police; accordingly, because the mother's ongoing care of T was not free of concerning incidents, the trial court appropriately determined that the fact that T remained in her care did not outweigh all of the other significant evidence evincing her lack of progress, and this court declined to second-guess the court's weighing of the evidence.

Argued May 17—officially released July 5, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondent mother's parental

** July 5, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

rights with respect to her minor child, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and tried to the court, *Hon. Shelley A. Marcus*, judge trial referee; judgment terminating the mother's parental rights, from which the mother appealed to this court. *Affirmed.*

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

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

Opinion

KELLER, J. The respondent mother, Tanisha S.,[1] appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families (commissioner), terminating her parental rights with respect to her minor child, Serenity.[2] On appeal, the respondent claims that the trial court improperly concluded that she had failed to rehabilitate to such a degree as to reasonably encourage a belief that, within a reasonable time, she could assume a responsible position in Serenity's life. We affirm the judgment of the trial court.

The following facts, which were found by the trial court, and procedural history are relevant to this appeal. The Department of Children and Families (department) first became involved with the respondent in 2015, prior to Serenity's birth, in relation to the respondent's oldest child, Sanai. In 2016, Sanai was adjudicated neglected

[1] Gerald W., Serenity's father, died on July 2, 2021, 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 Gerald W. by name.

[2] The attorney for the minor child filed a statement adopting the brief of the commissioner.

and committed to the care and custody of the commissioner as a result of the respondent's alcohol abuse, transience, and violation of a no contact protective order that was in place between herself and Serenity's father, Gerald W. The respondent's parental rights with respect to Sanai subsequently were terminated with the respondent's consent on March 9, 2021.

Serenity was born in August, 2019. The respondent was not forthcoming about her pregnancy and alerted the department by text message about Serenity's birth when she was discharged from the hospital. On September 19, 2019, the commissioner filed a neglect petition as to Serenity. The commissioner did not initially seek an order of temporary custody because, at that time, the respondent was not abusing substances and she was actively engaging in services with the department regarding Sanai. On November 12, 2019, Serenity was adjudicated neglected and placed under a six month period of protective supervision subject to the respondent's compliance with certain specific steps prescribed by the trial court.

Shortly thereafter, in December, 2019, the respondent was involved in an intimate partner violence incident with Gerald W., after which Gerald W. was arrested and charged with strangulation and disorderly conduct. In February, 2020, the commissioner filed a motion to modify the disposition from protective supervision to commitment on the basis of the respondent's failure to comply with the court-ordered specific steps, including her failure to cooperate and make progress with her individual therapy and treatment goals and her failure to maintain relationships free from violence. On March 5, 2020, the period of protective supervision was extended "until further order of the court until a hearing date could be set on the motion to modify."[3]

[3] Shortly thereafter, many in person court proceedings were suspended due to the COVID-19 pandemic.

In April, 2020, the respondent was arrested for operating a motor vehicle while under the influence of alcohol and operating a motor vehicle with a suspended license. The charges arose from an incident in which a police officer found the respondent unconscious in the driver's seat of a vehicle that contained open bottles of alcohol, with the engine running and the gearshift in drive. In May, 2020, the department referred the respondent to the Intimate Partner Violence-Family Assessment Intervention Response program, but she did not successfully complete the program.

The respondent was arrested again in August, 2020. At that time, the respondent permitted Gerald W. to use the bathroom inside her home, even though there was a protective order in place prohibiting him from being at her residence. They got into an argument and threw each other's belongings out of the home and into the driveway. The respondent was arrested for disorderly conduct, and Gerald W. was arrested for disorderly conduct and for violating the protective order.

In February, 2021, the respondent was involved in another intimate partner violence incident. When the police arrived at the respondent's home, they found that she was intoxicated and smelled of alcohol. The respondent admitted to striking her boyfriend, Michael G., with a cooking pot, which caused injuries to his face and forehead. Serenity was present during this incident. When the police informed the respondent that she was being arrested, she resisted and kicked an officer in the groin. The respondent was thereafter arrested on charges of disorderly conduct, assault in the third degree, risk of injury to a child, interfering with an officer, and assault of public safety personnel. The respondent left Serenity with Michael G., whom she had falsely identified to the police as Serenity's father. The department was unaware of Serenity's

whereabouts that evening, as the respondent did not know where Michael G. took her. The department located Serenity, hours later, with Gerald W.

As a result of that incident, the commissioner sought and obtained an ex parte order of temporary custody with respect to Serenity on February 11, 2021. On February 19, 2021, at the preliminary hearing on the order of temporary custody, the respondent agreed to the commissioner's motion to modify the disposition to commitment. Serenity was committed to the care and custody of the commissioner and placed with the same foster family caring for Sanai. The court also ordered final specific steps to facilitate reunification between the respondent and Serenity,[4] in addition to a psychological examination of the respondent.

After Serenity was removed from the respondent's care, the department arranged visitation between the respondent and Serenity and continued to refer the respondent to services for mental health, substance abuse, and intimate partner violence, as it had been doing since 2016 in relation to Sanai. The respondent consistently began attending individual counseling in February, 2021, but stopped participating later that year.[5] The respondent also was accepted into an intensive outpatient program at Midwestern Connecticut

[4] Among other things, the trial court ordered the respondent to keep appointments with and to cooperate with the department, to take part in counseling and to make progress toward the identified treatment goals of understanding the impact of intimate partner violence and drug or alcohol use on functioning/parenting, to submit to random toxicology testing, to refrain from the use of illegal drugs and the abuse of alcohol or medicine, to cooperate with service providers, to cooperate with any restraining or protective order or safety plan approved by the department to avoid intimate partner violence incidents, to attend and complete an appropriate intimate partner violence program, and to not get involved with the criminal justice system.

[5] The respondent returned for one session in March, 2022, and scheduled her next appointment but never returned.

Council of Alcoholism, Inc. (MCCA) in March, 2021, and she initially did well in the program.

In May, 2021, however, the respondent's toxicology screens tested positive for alcohol and fentanyl, and, in July, 2021, her toxicology screens tested positive for fentanyl and norfentanyl. In addition, the respondent became noncompliant with her treatment at MCCA in July, 2021, which coincided with Gerald W.'s untimely death. On July 6, 2021, the respondent's neighbor heard yelling from inside the respondent's apartment and called the police. The police responded and found that the respondent was intoxicated and that Gerald W. had suffered from a fatal overdose. The respondent became physically violent toward the officers and broke a kitchen window. The police brought the respondent to the hospital for evaluation due to her "dysregulated presentation" and intoxicated state, and she remained hospitalized for two days due to mental health concerns.

The respondent's attendance with MCCA lapsed from July until October, 2021. The respondent's clinician at MCCA reported to the department that she was " 'very concerned about [the respondent] as she has definitely had a lot of trouble moving forward in her treatment. She seems to take [three] steps forward and then slides back due to her relationships with men, so I'm not surprised to hear about this recent relapse.' " Nevertheless, the respondent reengaged with the intensive outpatient program at MCCA in October, 2021, and was "successfully discharged" from the program in January, 2022.

Also in January, 2022, the respondent gave birth to her son, Tyshawn. Tyshawn was born prematurely, at twenty-six weeks of gestation, and remained in the hospital for three months due to the health issues he faced as a result of his prematurity. The commissioner was

not aware of Tyshawn's birth, or that the respondent had been pregnant, until a social worker with the department conducted a home visit and discovered a crib and baby supplies at the respondent's residence. The respondent disclosed that she drank wine throughout her pregnancy with Tyshawn, but she believed that it was not problematic because she " 'didn't get drunk.' " As a result, a social worker with the department consulted with the department's regional resource group to determine the appropriate referral for services.

Approximately two months later, on March 15, 2022, while Tyshawn remained hospitalized, the respondent was arrested for various motor vehicle and drug related charges. The police initially stopped the respondent's vehicle because it did not have a front license plate, and then they learned that the car was not registered and had improper insurance. When the police asked the respondent for her name, she initially provided her cousin's name rather than her own. After the police placed the respondent under arrest and were waiting for the car to be towed, they found a handbag inside of the vehicle containing marijuana, crack cocaine, suspected heroin, and fentanyl. The respondent was charged with criminal impersonation, interfering with an officer, possession of narcotics, possession of narcotics with intent to sell, operation of a motor vehicle with a suspended license, and operation of an unregistered and uninsured motor vehicle.

Shortly thereafter, on March 22, 2022, the commissioner filed a petition for termination of the respondent's parental rights as to Serenity, alleging that the respondent failed to achieve a sufficient degree of personal rehabilitation in accordance with General Statutes § 17a-112 (j) (3) (B) (i) and (E).[6] The commissioner

[6] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court . . . may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected,

subsequently filed a motion to amend the petition to include additional factual allegations, which the court granted without objection on May 12, 2022.

The respondent was arrested again on June 9, 2022, while the termination proceeding was pending. She was charged with assault in the third degree after an intimate partner violence incident involving Sanai's father.

Less than one week later, on June 14, 2022, the commissioner filed a neglect petition as to Tyshawn. The respondent had received training regarding how to care for Tyshawn's medical needs due to his prematurity, and the social worker for the department who was working with the respondent did not believe that Tyshawn was in imminent danger of physical injury at that time. Thus, the commissioner did not seek an order of temporary custody. Tyshawn was adjudicated neglected on September 20, 2022, two days before trial began in the present proceeding, but he remained with the respondent under the protective supervision of the department.

On June 29, 2022, the respondent became involved with an intimate partner violence program at Yale that the department had referred her to a couple of months earlier, which included a mental health component and

abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . [or] (E) the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families . . . ."

assigned an individual therapist to each participant. The respondent consistently attended the program and engaged in both group and individual therapy. The department also previously contacted MCCA to determine whether the respondent should be referred to a more intensive substance abuse treatment program, and it made a referral to a substance abuse program at Griffin Hospital in July, 2022. Because the respondent reported that she had stopped drinking alcohol in February, 2022, however, she was not considered eligible for the program at that time. The department made another referral to MCCA and the respondent's intake was scheduled for August 19, 2022, but the respondent missed her appointment. The respondent attended a second intake appointment on August 31, 2022, and received a recommendation to engage in a weekly relapse prevention program. The respondent tested negative for alcohol, but she tested positive for marijuana.

The respondent became involved in the weekly relapse prevention program at MCCA on September 12, 2022, and she consistently attended her sessions. Around this time, the department also referred the respondent to the Women's Recovery, Engagement, Access, Coaching & Healing program for case management services, and to Fostering Family Services (FFS) for supervised visitation and parenting education. The respondent was consistent in her visitation with Serenity, but there had been some lapses in attendance due to transportation issues once FFS began facilitating supervised visits in the community, rather than at the respondent's home.[7]

On September 22 and 29, 2022, a trial was held on the petition for termination of the respondent's parental

[7] The department initially offered virtual visitation between the respondent and Serenity, when protocols related to the COVID-19 pandemic were still in place, and then facilitated supervised visits in the community. When Tyshawn was discharged from the hospital, the department facilitated supervised visits at the respondent's home due to Tyshawn's medical concerns.

rights as to Serenity. The commissioner presented the testimony of two social workers with the department, Erica Wright and Kelly Stratton, and a psychologist, Jessica Biren Caverly, who had conducted a court-ordered evaluation of the respondent. The commissioner also offered nine documents that were admitted into evidence as full exhibits. The respondent testified on her own behalf and called no other witnesses.

On November 18, 2022, the court issued a memorandum of decision in which it terminated the respondent's parental rights with respect to Serenity. In the adjudicatory phase, the court first determined by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent with Serenity, as it had referred her to numerous services including substance abuse evaluation and treatment, drug screening, intimate partner violence programs, mental health services, individual counseling, supervised visitation, parenting education, and case management services. The court also found that the respondent was unable or unwilling to benefit from those efforts, explaining that, "[w]hile the court credits the [respondent] with her engagement in programs and her current ability to manage to parent Tyshawn under a period of protective supervision, [she] still has not achieved her goals pursuant to the specific steps," particularly in light of her admission to drinking alcohol during her pregnancy with Tyshawn, her marijuana use, and her recent arrests.

Next, with respect to the statutory grounds for termination alleged in the petition, the court found that the respondent had failed to achieve an appropriate degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the age and needs of Serenity, she could assume a responsible position in Serenity's life. Specifically, the court found that "[t]he respondent has had issues with substance abuse

and her mental health for a significant period of time, with [department] involvement beginning in 2016 regarding her daughter Sanai. There has been a pattern over time . . . where the [respondent] engages in services and programs and achieves sobriety for a period of time only to relapse within the year. The [respondent] was doing sufficiently well when Serenity was born that [the commissioner] did not seek an [order of temporary custody] and a period of protective supervision was granted instead of commitment. However, by February 25, 2020, a period of only three months later, [the commissioner] filed a motion to modify, seeking the commitment of Serenity for the [respondent's] failure to comply with her specific steps and her failure to benefit from the services in which she did engage."

The court recognized that the respondent was involved in several "concerning incident[s]," beginning only one month after Serenity was adjudicated neglected, including the intimate partner violence incidents with Gerald W., her separate arrests for driving while under the influence and possession of narcotics, and her recent positive test for marijuana. Regarding the respondent's March 15, 2022 arrest, the court found the respondent's denial of any knowledge of the narcotics in her car to be not credible "given the [respondent's] substance abuse history, her lack of being forthcoming about her pregnancy with Tyshawn, her previous positive toxicology results for fentanyl, and her lying to the police as to her identity."[8] The court similarly found the respondent not credible as to her explanations surrounding her positive test results for fentanyl and then marijuana.[9] Additionally, the court noted that, although

[8] The respondent reported that she had recently bought the car from a neighbor and that she was unaware that the handbag, or its contents, were in the vehicle.

[9] The respondent testified that she used marijuana by mistake when she used a vape pen someone had given her and learned, after the fact, that it contained THC. The court found this explanation not credible as the respondent had reported to her therapist that she was smoking marijuana through-

the respondent had been "successfully discharge[d]" from the intensive outpatient program at MCCA, Stratton testified credibly that MCCA was not aware of the respondent's continued alcohol use during her pregnancy with Tyshawn.

The court continued: "This court acknowledges and appreciates that the [respondent] has made progress in completing programs to address her substance use and mental health and appears to have gained more stability over her mental health. The [respondent] also sought out and completed education as to how to appropriately meet Tyshawn's medical needs. As a result, [the commissioner], in [a] similar fashion to the circumstances that existed at the time Serenity was born, agreed to a neglect adjudication with a period of protective supervision for Tyshawn, which judgment was entered on September 20, 2022.

"Regardless of the recent disposition of Tyshawn's case, the [respondent] still has not attained her goals of an extended period of sobriety and an extended period of stable mental health. While the last known use of alcohol was in February of 2022, the [respondent] tested positive for marijuana in August of 2022, only a few months ago. The [respondent] was arrested in a car full of illicit drugs in March of 2022. The credible testimony of [Stratton] was that the [respondent] never disclosed her pregnancy with Tyshawn and [the department] did not become aware of Tyshawn's existence until after his birth when [Stratton] was visiting the home and observed a crib and baby provisions. [Stratton] testified credibly that while there were no grounds

out the course of her treatment with her. The respondent also suggested that she tested positive for fentanyl in connection with painkillers that she was prescribed after a Cesarean section surgical procedure during Tyshawn's birth, but the court found this explanation not credible, given that the respondent tested positive for fentanyl in May, 2021, and did not have the surgical procedure until Tyshawn was born in January, 2022.

for an [order of temporary custody] when Tyshawn was released from the hospital, had [the department] known of the pregnancy, she would have sought legal consultation as to whether to seek an [order of temporary custody] at Tyshawn's birth. Further, the [respondent's] clinician at MCCA . . . disclosed to [Biren Caverly] that the [respondent], during an individual therapy session in January of 2022, revealed her pregnancy and stated that she would probably be drinking if she were not pregnant. Thus, although the [respondent] is currently caring for Tyshawn, there are still grave concerns regarding the [respondent's] ability to maintain her sobriety according to the credible testimony of [Wright] and [Stratton]. [Biren Caverly] . . . testified credibly that given the [respondent's] continued positive toxicology, [intimate partner violence] and police involvement, that she has concerns about any child being in the [respondent's] care, including Tyshawn.[10] This court shares those concerns given the recent use of marijuana which is merely substituting one substance for another, the use of alcohol during her pregnancy with Tyshawn, the recent arrest for possession and the recent arrest for assault.

"Further, [Biren Caverly] conducted the court-ordered psychological evaluation and credibly opined that the [respondent] has failed to rehabilitate and cannot do so within a reasonable time. [Biren Caverly] first

[10] Biren Caverly also testified as to her concern about how the respondent would be able to manage the "stressor" of having two children in her care given her lack of a support system and her history of turning to substance use when faced with stressful situations. Wright and Stratton expressed similar concerns. Wright testified that it would be difficult for the respondent to meet the needs of the two children at the same time "just based on the energy level of Serenity and the medical needs of Tyshawn and for [the respondent] to attend the appointments that had been recommended for her as well," and Stratton testified regarding her concern that the respondent caring for "two very young children, one with significant needs . . . [would be] quite a lot for somebody who has a difficult time dealing with stress and often turns to substances during that time."

conducted an evaluation in 2019 in connection with Sanai and subsequently performed an updated evaluation in connection with Serenity on July 29, 2022. Thus, the [respondent] had given birth to Tyshawn at the time of the second evaluation and [Biren Caverly] was aware that Tyshawn was in the [respondent's] care when she tendered her opinions." (Footnote added.)

The court summarized some of Biren Caverly's findings set forth in her evaluation report, which was filed with the court on August 30, 2022, and admitted as a full exhibit at trial. Biren Caverly diagnosed the respondent with alcohol use disorder, depressive disorder, borderline personality disorder, and raised the possibility that the respondent might meet the criteria for a cannabis or opioid related diagnosis. Biren Caverly opined, among other things, that the respondent "has not made significant progress in regards to her mental health, substance abuse, domestic violence or stability. . . . It is believed that [the respondent] cannot achieve a degree of rehabilitation that would make her capable of independently caring for a child. At this time, there are significant concerns about her untreated mental health and substance use. . . . While she has been able to engage in mental health and substance services for periods of time, it does not appear that she is effectively utilizing these services and demonstrating change." Biren Caverly cited to "significant concerns that [the respondent] continues to repeat the relationship patterns that have caused her to be involved with the [d]epartment for three different children," her belief that the respondent "appears to continue to be significantly impacted by [Gerald W.'s] death," despite being engaged in mental health services, and the respondent's several pending criminal charges.

The court found Biren Caverly's opinions to be "credible and persuasive," explaining that "[t]he [respondent] tested positive for marijuana, just recently in August of

2022, demonstrating her inability to refrain from substances for an extended period of time. The [respondent] has pending charges involving narcotics and [intimate partner violence], despite participating in treatment. Serenity does not have special needs, having been assessed by Birth to Three, given speech therapy, and discharged from services. However, Serenity is three years old and has been in care since she has been one and one-half years old, a period of almost two years. The [respondent] has not corrected these issues despite [department] involvement since 2016, a period of six years. The [respondent] has made some progress recently, but has a pattern of relapsing after six to nine months or sooner. She has not sustained sobriety or stable mental health and has not refrained from incidents of [intimate partner violence], having been arrested just this past June for assault. The same issues exist today as existed at the outset of this case." Accordingly, the court found that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i) and (E).

In the dispositional phase, the court made findings as to each of the criteria set forth in § 17a-112 (k) and concluded that the termination of the respondent's parental rights was in Serenity's best interest.[11] Accordingly, the court rendered judgment terminating the respondent's parental rights as to Serenity and appointing the commissioner as Serenity's statutory parent.[12] This appeal followed.

On appeal, the respondent claims that the court improperly found that she had failed to rehabilitate

[11] The respondent does not challenge the court's finding that termination of her parental rights was in Serenity's best interest.

[12] The court also denied a motion to revoke commitment that the respondent had filed on September 21, 2022, for the same reasons that it terminated the respondent's parental rights. The respondent does not appeal from the court's denial of her motion.

sufficiently to assume a responsible position in Serenity's life within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i) and (E). Specifically, the respondent argues that the court could not reasonably have reached this conclusion in light of the fact that Tyshawn remained in her care. She contends that the commissioner's decision not to seek the removal of Tyshawn is conclusive evidence that she adequately rehabilitated, and that the commissioner cannot seek termination of parental rights as to one child if the parent at issue has custody of another, unless that parent, "although capable of parenting one child, is incapable of parenting two." We disagree.

We begin by setting forth the relevant legal principles and the applicable standard of review. "The trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life. . . . 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 child at issue. . . .

"[The] completion or noncompletion [of the specific steps], however, does not guarantee any outcome. . . . Accordingly, successful completion of expressly articulated expectations is not sufficient to defeat a . . . claim [by the commissioner] 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." (Emphasis omitted; internal quotation marks omitted.) *In re Eric M.*, 217 Conn. App. 809, 829–30, 290 A.3d 411, cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023).[13]

[13] Although the respondent claims that evidentiary sufficiency is an improper standard of review in child protection cases and that it "should be replaced by the former clear error standard," the respondent's counsel conceded at oral argument before this court that, as an intermediate court of appeals, this court is bound by our Supreme Court's decision in *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015), in which the court held

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 Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015); we conclude that the record contains sufficient evidence for the court to reasonably conclude that the respondent failed to rehabilitate sufficiently to assume a responsible position in Serenity's life within a reasonable time, notwithstanding the fact that Tyshawn remained in her care.

At the outset, we emphasize that the relevant inquiry under § 17a-112 (j) requires the court "to analyze the [parent's] rehabilitative status as it relates to *the needs of the particular child* . . . ." (Emphasis added; internal quotation marks omitted.) *In re Shane M.*, supra, 318 Conn. 585. Thus, although a court may consider a respondent parent's history with her other children "to gain perspective on the respondent's child caring and parenting abilities to determine if she had achieved rehabilitation"; *In re Dylan C.*, 126 Conn. App. 71, 82, 10 A.3d 100 (2011); see also *In re Jennifer W.*, 75 Conn. App. 485, 499, 816 A.2d 697 (trial court must make "an inquiry into the *full* history of the respondent's parenting abilities" (emphasis in original)), cert. denied, 263 Conn. 917, 821 A.2d 770 (2003); such a consideration is not dispositive of the court's analysis. A court may reasonably conclude that a respondent parent is unable to assume a responsible position in the life of one child, even though another child remains in that parent's care. See, e.g., *In re G. H.*, 216 Conn. App. 671, 689 n.7, 286 A.3d 944 (2022) (rejecting respondent's challenge to

that "the appropriate standard of review is one of evidentiary sufficiency . . . ." See *State* v. *Yury G.*, 207 Conn. App. 686, 693–94 n.2, 262 A.3d 981 ("[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.)), cert. denied, 340 Conn. 909, 264 A.3d 95 (2021).

court's conclusion that she was unable to assume responsible position in lives of her two children at issue, when she purportedly had " 'proven herself to be a capable caregiver' " to two other children who remained in her care); *In re Anthony H.*, 104 Conn. App. 744, 750, 759–60, 936 A.2d 638 (2007) (upholding determination that respondent failed to achieve sufficient degree of personal rehabilitation regarding two of her children, even though department was not concerned about third child in respondent's care while she remained in program at residential facility), cert. denied, 285 Conn. 920, 943 A.2d 1100 (2008); *In re Ashley M.*, 82 Conn. App. 66, 73, 842 A.2d 624 (2004) (upholding determination that respondent failed to achieve sufficient degree of personal rehabilitation, despite evidence that respondent had been caring for another child, her newborn son).[14]

Moreover, the respondent's argument is premised on the contention that she, in fact, has assumed a "responsible position" in Tyshawn's life. In support of her argument, the respondent points to the commissioner's decision not to seek an order of temporary custody as to Tyshawn, and to Stratton's testimony explaining that there were no grounds for such an order because Tyshawn was not in imminent physical danger.[15] Although the

[14] As the commissioner points out, there are numerous other cases in which this court has upheld a trial court's determination that a respondent parent has failed to achieve a sufficient degree of personal rehabilitation, even where there was evidence that another child remained in the care of that same parent. See, e.g., *In re Kylie P.*, 218 Conn. App. 85, 121, 291 A.3d 158, cert. denied, 346 Conn. 926, 295 A.3d 419 (2023); *In re Ja'La L.*, 201 Conn. App. 586, 588, 243 A.3d 358 (2020), cert. denied, 336 Conn. 909, 244 A.3d 148 (2021); *In re Tremaine C.*, 117 Conn. App. 590, 599, 980 A.2d 330, cert. denied, 294 Conn. 920, 984 A.2d 69 (2009).

[15] "[General Statutes § 46b-129 (b)] authorizes courts to issue an order ex parte vesting in some suitable agency or person the child's or youth's temporary care and custody if it appears, on the basis of the petition and supporting affidavits, that there is reasonable cause to believe that (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the child's or youth's surroundings, and (2) that as a result of said conditions, the child's or youth's safety is

commissioner did not seek custody of Tyshawn, she did file a neglect petition, which was granted, and Tyshawn only remained in the respondent's care because he was under the protective supervision of the department. In addition, at trial, Stratton testified that she typically would have sought a legal consultation to determine whether to seek an order of temporary custody at the time of Tyshawn's birth, but she was unable to do so in this case because the respondent had not disclosed that she was pregnant. Stratton further testified that, once she learned of Tyshawn's birth, there was no imminence to seek custody at that point because she knew that Tyshawn would remain in the hospital's care for several months. Although Wright testified that she had no "serious concerns" about the respondent's care of Tyshawn "[a]t this time," she attributed that to the fact that the respondent had remained compliant with all recommended services as to Tyshawn and received training as to his particular medical needs.

In addition, regardless of the commissioner's decision not to seek custody of Tyshawn, the court expressed concern about the respondent's ability to care for Tyshawn in the long-term.[16] See, e.g., *In re Tremaine C.*, 117 Conn. App. 590, 599, 980 A.2d 330 (respondent's care of her newborn child for few short months failed to establish degree of rehabilitation necessary to prove that she could provide adequate care for child at issue), cert. denied, 294 Conn. 920, 984 A.2d 69 (2009). Specifically, the court found that the respondent has been able to care for Tyshawn "thus far,"

endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety . . . ." (Emphasis omitted; internal quotation marks omitted.) *In re Alizabeth L.-T.*, 213 Conn. App. 541, 551–52, 278 A.3d 547 (2022).

[16] The respondent acknowledges that "[t]he record supports at least an inference that the trial court was concerned both about the future trajectory of the respondent's ability to care for Tyshawn and the decision to allow him to remain in the home in the first place."

given the training she had received regarding Tyshawn's medical needs. The court noted, however, that Tyshawn's neglect adjudication with an order of protective supervision was "a repeat of the commencement of this case, where [the respondent] presented as sober and capable after Serenity's birth," and that "[t]he [respondent] has made some progress recently, but has a pattern of relapsing after six to nine months or sooner."

> The court also specifically found that, "[r]egardless of the recent disposition of Tyshawn's case, the [respondent] still has not attained her goals of an extended period of sobriety and an extended period of stable mental health" and, "although [the respondent] is currently caring for Tyshawn, there are still grave concerns regarding [her] ability to maintain her sobriety according to the credible testimony of . . . [Wright] and [Stratton]." The court observed that, since giving birth to Tyshawn, the respondent had admitted to drinking alcohol during her pregnancy, she had been arrested twice for drug related and intimate partner violence related charges, and she had tested positive for marijuana only one month before trial.[17]

The court repeatedly emphasized and found credible the opinion of Biren Caverly that, even though Tyshawn remained in the respondent's care, the respondent had failed to make significant progress toward personal rehabilitation given her continued substance use, intimate partner violence, and involvement with the police. "The testimony of professionals is given great weight in parental termination proceedings. . . . 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.

[17] The respondent does not challenge as clearly erroneous any of the court's findings regarding her substance abuse, intimate partner violence, and involvement with the police.

. . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . On appeal, we do not retry the facts or pass on the credibility of witnesses. . . . It is the quintessential function of the fact finder to reject or accept certain evidence, and to believe or disbelieve any expert testimony. . . . The trier may accept or reject, in whole or in part, the testimony of an expert offered by one party or the other." (Internal quotation marks omitted.) *In re G. H.*, supra, 216 Conn. App. 688.

In her evaluation report, Biren Caverly opined that "[the respondent] cannot achieve a degree of rehabilitation that would make her capable of independently caring for a child." Biren Caverly reached this conclusion despite being aware that Tyshawn was in the respondent's care, as the court noted in its memorandum of decision. At trial, Biren Caverly explained, consistent with the findings set forth in her report, that she recommended termination of the respondent's parental rights due to "concerns about there not being significant progress, either in terms of her mental health, her substance abuse, or [intimate partner violence]." Biren Caverly testified that she was aware that the respondent was currently caring for Tyshawn but stated that this fact did not impact her recommendations regarding Serenity. She also testified that she had "significant concerns" about the respondent's ability to maintain Tyshawn in her care, particularly given the respondent's "continued [intimate partner violence] and significant police involvement since the birth of [Tyshawn]." Indeed, she testified: "I have concerns about [the respondent's] ability to have *any* child in her care . . . ." (Emphasis added.)

Accordingly, the evidence sufficiently supports the court's determination that the respondent was unable

to assume a responsible role in Serenity's life within a reasonable time, even considering the fact that Tyshawn remained in the respondent's care under a period of protective supervision. The fact that a parent retains custody of one child under the department's protective supervision is not conclusive evidence that the parent has rehabilitated as to another child previously removed from the parent's care. That fact is just one piece of evidence for the trial court to weigh and consider with all of the other evidence. In the present case, the respondent's ongoing care of Tyshawn was not free of concerning incidents and, thus, the trial court appropriately determined that the fact that Tyshawn remained in her care did not outweigh all of the other significant evidence evincing her lack of progress and insight on the issues that led to the removal of her first two children. We decline to second-guess the trial court's weighing of the evidence. See, e.g., *In re Kylie P.*, 218 Conn. App. 85, 113, 291 A.3d 158, cert. denied, 346 Conn. 926, 295 A.3d 419 (2023). Thus, we conclude that the court reasonably determined that the respondent failed to achieve a sufficient degree of personal rehabilitation.

The judgment is affirmed.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* CASEY LIEM SULLIVAN (AC 45378)

Cradle, Clark and Palmer, Js.

Syllabus

Convicted of the crimes of unlawful restraint in the second degree, sexual assault in the fourth degree, attempt to commit sexual assault in the third degree and sexual assault in the third degree, the defendant appealed to this court. The defendant rented a basement apartment in his raised ranch home to K. One day, K texted the defendant to let him know that her daughter, C, would be staying in the apartment that night. C arrived

that evening and stayed in K's apartment, where no one else was present. At one point that evening, before K arrived home, the defendant knocked on the basement door and invited C upstairs to meet his dogs. Approximately one-half hour later, after C had returned to the apartment, the defendant again came downstairs and invited C upstairs to show her some sculptures he had made. After C had viewed the sculptures, C climbed over a dog gate on the stairway to return to the basement. At that point, the defendant grabbed C under her arms and lifted her back over the gate, placing her on a couch in the living room and laying on top of her. He rubbed C's breasts and genitals over her clothing. When the defendant shifted his position, C was able to slide out from underneath him and off the couch, and she walked to the stairway with the dog gate. The defendant followed, and, using his leg to pin C against the gate, he undid his waistband, exposed his penis, and grabbed C's hand. As C attempted to climb over the dog gate, the defendant tugged at her shirt and bra, exposing her breasts, and proceeded to kiss and lick one of C's exposed breasts and neck. C was eventually able to get over the gate, after which she returned to K's apartment and locked the door behind her. On appeal, the defendant claimed, inter alia, that the prosecutor committed prosecutorial impropriety during rebuttal closing argument, specifically by her use of the phrase "nuts and sluts" in her statement that, "[i]n sex cases, it's generally nuts and sluts is what they call it. Either the victim has had other, you know, situations that you're not gonna believe that she wasn't consenting or she's nuts. And the question is do you think [C] is nuts? Because she'd have to be nuts to make all of this up." *Held*:

1. The defendant could not prevail on his claim that prosecutorial impropriety occurred as a result of certain of the prosecutor's statements during rebuttal closing argument:

   a. A statement made by the prosecutor discussing four general defenses in criminal cases during argument was not improper and did not imply that the defendant had a duty to present a defense: the prosecutor's statement was a brief preface to the state's rebuttal argument that C did not have a motive to lie, and, in context, was used simply to rebut defense counsel's asserted defense that C was lying about the incident and that the alleged incident never occurred; moreover, at no point during the rebuttal argument did the state suggest that the defendant had a duty to present one of the four defenses or a defense at all, and, in fact, on multiple occasions during closing arguments, the prosecutor reminded the jury that, before it could find the defendant guilty, it must find that the evidence presented proved the defendant's guilt beyond a reasonable doubt.

   b. This court concluded that, in this particular case, the prosecutor's use of the phrase "nuts and sluts" during rebuttal closing argument did not constitute prosecutorial impropriety: the prosecutor's statements, in context, invited the jury to assess C's credibility based on the relevant

evidence, and were used to rebut the arguments that defense counsel had made during his summation in which he suggested that C was lying about the incident and that the alleged incident never occurred, and the statement at issue did not imply any burden of proof on the part of the defense; moreover, contrary to the defendant's claim, the statement, in context, was not highly inflammatory and did not appeal to the emotions of the jurors, as the statement was not used as a personal attack on the defendant's character or as a plea for sympathy for C or her family; furthermore, even if this court were to conclude, for the sake of argument, that the use of the phrase "nuts and sluts" in the prosecutor's argument was improper, it did not deprive the defendant of a fair trial, as the remarks were not frequent or severe, defense counsel did not object to the remarks when they were spoken, request curative instructions, or move for a mistrial, and, although the credibility of C was a central issue in the case and the remarks had some bearing on credibility, the defendant's reliance on centrality in support of his due process argument was counterbalanced by the fact that the defense, at least in part, invited the remarks by calling into question the veracity of C's testimony by arguing that the alleged assault did not occur, and the state presented strong direct and circumstantial evidence against the defendant, including the presence of his DNA on C's neck and contemporaneous Facebook messages from C to K pleading for help, evidence sufficiently strong enough not to have been overshadowed by the alleged improper remarks.

2. The defendant could not prevail on his claim that his punishments stemming from his convictions of sexual assault in the third degree and sexual assault in the fourth degree violated his constitutional protection against double jeopardy: the offenses charged did not arise from the same act or transaction as the evidence showed that the conduct related to the charge of fourth degree sexual assault began on the living room couch and ended when C slid out from underneath the defendant, stood up, and proceeded to walk away, and a separate act, the basis of the third degree sexual assault charge, occurred when the defendant subsequently approached C at the top of the stairs leading to K's apartment and pulled down C's shirt and bra, exposing her breasts, and licked her breast and neck, and the state's theory of the case at trial buttressed the conclusion that the charges stemmed from these separate acts or transactions; moreover, contrary to the defendant's contentions, the fact that the state charged the defendant with multiple offenses that occurred at the same residence in a relatively short time span did not necessarily mean that his convictions arose from the same criminal act or transaction.

Argued April 6—officially released July 11, 2023

Procedural History

Substitute information charging the defendant with the crimes of unlawful restraint in the second degree,

sexual assault in the fourth degree, attempt to commit sexual assault in the third degree, and sexual assault in the third degree, brought to the Superior Court in the judicial district of Windham, and tried to the jury before *Chaplin*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

Trent A. LaLima, with whom was *Virginia M. Gillette*, for the appellant (defendant).

Jonathan M. Sousa, assistant state's attorney, with whom, on the brief, was *Anne Mahoney*, state's attorney, for the appellee (state).

Opinion

CLARK, J. The defendant, Casey Liem Sullivan, appeals from the judgment of conviction, rendered following a jury trial, of unlawful restraint in the second degree in violation of General Statutes § 53a-96, sexual assault in the fourth degree in violation of General Statutes § 53a-73a (a) (2), attempt to commit sexual assault in the third degree in violation of General Statutes §§ 53a-49 (a) (2) and 53a-72a (a) (1), and sexual assault in the third degree in violation of § 53a-72a (a) (1). On appeal, the defendant claims that (1) the prosecutor committed prosecutorial impropriety and deprived him of a fair trial when she made certain improper statements during closing arguments, and (2) his punishments stemming from his conviction of sexual assault in the third degree and sexual assault in the fourth degree violated his constitutional protection against double jeopardy. We disagree with both claims and, accordingly, affirm the judgment of the court.

The jury reasonably could have found the following facts. In January, 2017, K responded to a Craigslist ad for a basement apartment rental in the defendant's raised ranch home. K entered into a verbal agreement with the defendant for the apartment, which included a six

month lease term, a $500 security deposit, and a monthly rent of $700. K had received a notice to quit from her former landlord for nonpayment of rent and liked that the terms of the lease agreement with the defendant were "loose" because she was in a "transitional period" in her life.

On March 29, 2017, K texted the defendant to let him know that her daughter, C, would be staying over that night.[1] C, who was then twenty years old, had recently gone through a difficult breakup with her boyfriend and needed a place to stay for the night as she prepared to move into a new apartment the following day.

On the evening of March 29, 2017, K went to band practice[2] at her bandmate M's house and left a key under the doormat so that C could enter the basement apartment after C finished her shift at work.[3] C arrived that evening and stayed in her mother's apartment, where no one else was present. Sometime before 10 p.m., the defendant came downstairs and knocked on the basement door. After C opened the door, the defendant asked her if she needed anything and if she wanted to come upstairs to meet his dogs. C agreed to come upstairs. She followed the defendant up the stairs and proceeded to pet the defendant's dogs. The defendant then asked C if she wanted the Wi-Fi password to access his Internet. C accepted the password, after which the defendant approached her and hugged her. C did not hug him back and kept her arms at her side because she felt uncomfortable and did not like to be touched

[1] K has two other children, a daughter approximately two years older than C and a son who was then two years old. K's son was spending the night at his father's house the evening of March 29, 2017.

[2] K met with her band on Wednesdays to play various instruments and make music.

[3] C worked as a character actress for a local business, in which she would dress up as various Walt Disney princess characters and appear at children's birthday parties.

by strangers.[4] She told the defendant that the interaction "was weird," and she proceeded to jump over the dog gate that was at the top of the basement stairs and returned to her mother's apartment downstairs.[5]

Approximately one-half hour later, the defendant again came downstairs to K's apartment where C was. He brought with him his cell phone where he had C's Instagram account visible on the screen. The defendant proceeded to show C her own photos from her account, commenting on her looks and telling her that she looked attractive. His comments made her feel uncomfortable, especially in light of the prior interaction that she had with the defendant that evening. But, to be polite, she thanked him. During this conversation, the defendant told her that he had an interest in sculpting and wanted to show her some sculptures in the garage that he had made. C, in an effort to be polite, followed the defendant to the doorway of the garage, where he proceeded to show her his sculptures and around the room, which contained a motorcycle and his dirt bikes. C did not enter the garage. Instead, she viewed the garage from the doorway.

After showing C the garage area, the defendant mentioned that he had more sculptures upstairs and invited C to see them. C agreed and followed the defendant upstairs. The defendant led C to his bedroom to show her a sculpture but, again, C remained in the doorway because she did not feel comfortable entering the room. At that point, the defendant told C that he had a projector in the bedroom and wanted to "Netflix and chill" with her. C said no because it was strange and that she did not know him like that. The defendant went to exit

[4] C testified that she previously had seen the defendant once while she visited her mother, but she was not familiar with him.

[5] The dog gate measures approximately 28.5 inches high and is positioned at the top edge of the staircase. The first step measures approximately eight inches below the dog gate.

the bedroom, and C backed straight up against the wall in the hallway to give him space to walk by her. Instead of walking by C, who moved against the wall to let the defendant go by, the defendant walked toward her and put his hands on her hips. C stepped to the side and walked down the hallway away from the defendant and toward the dog gate.

C climbed over the dog gate and turned around when she reached the top step because she did not want her back to the defendant. The defendant had followed quickly behind her, grabbed her under her arms, and lifted her back over the gate, saying, "oh, you are so light, I could just pick you up." He then placed C on the couch in the living room and laid on top of her. While on the couch, the defendant put all of his weight on top of her and started kissing her neck. He then rubbed her breasts and genitals over her clothing. The defendant told C that she was "a bombshell," that he "couldn't pass up the opportunity," and that she was "being quarantined." C, who weighed significantly less than the defendant, was unable to move underneath him due to his weight. She did not put her arms around the defendant or kiss him back.

At some point, the defendant shifted his position on C, which freed C's hand to allow her to utilize her cell phone. While the defendant continued to kiss her neck and rub her genitals, C accessed the Facebook messenger application on her phone and sent "help me" to her mother. The defendant then shifted his position a second time, which allowed C to slide out from underneath him and off the couch. She told the defendant that she was expecting a phone call and proceeded to walk toward the dog gate.

The defendant followed behind C to the dog gate. When C reached the gate, she once again turned toward the defendant because she was scared and did not want

her back to him. The defendant used his leg to pin her against the gate. He then undid his waistband, exposed his penis, grabbed C's free hand, and moved it toward his penis. C ripped her hand away and pushed the defendant. As C attempted to climb over the dog gate, the defendant tugged at her V-neck shirt and bra, exposing C's breasts. The defendant proceeded to kiss and lick one of C's exposed breasts and her neck. C was eventually able to get over the gate, after which she ran downstairs to her mother's apartment and locked the door behind her. As she was running down the stairs, she heard the defendant yell, "fuck" in what sounded to her to be a very aggravated tone.

While C was attempting to get away from the defendant, she missed a call from her mother, who, at that time, had left band practice and was on her way to the defendant's house in response to C's Facebook message. When she secured herself in her mother's apartment, C frantically called her mother, told her what the defendant had done, and asked her to get her out of the house. C also messaged "hurry" to her mother using the Facebook messenger application.[6] When K arrived, C was exiting the house. K entered the entryway of the house and yelled up the stairs, but she did not see or hear the defendant. Her priority was getting C out of the house.

K drove her daughter back to M's house. On the way, K pulled into a parking lot to call the police because she did not want to call them in front of M and the other bandmates. K and C then drove to M's house and entered his basement. During the drive and in the basement, C was crying and trembling as she explained the details of the situation to her mother.

[6] Out of anger, K sent messages to the defendant after hearing C's account of what occurred. The messages to the defendant stated, inter alia: "Jail Asshole"; "She's a kid you fuck"; "Here they come."

Less than one-half hour later, state troopers arrived at M's house. The state troopers spoke to C and K separately and took their written statements. C gave a statement to Trooper Kyle Cormier explaining, in detail, what had happened at the defendant's house, including that the defendant had licked and kissed her neck and breast. Cormier photographed the area of C's neck that she identified and swabbed it for forensic evidence. He also collected saliva from C's mouth so that the lab would have a "confirmatory sample" of C. Cormier did not swab C's breast, which the defendant had also licked, because he did not want to further victimize her. He also did not collect any clothing from C. C did not want to go to the hospital and refused any medical treatment.

After collecting evidence from C, Trooper Cormier went to the defendant's residence and took photographs of several rooms in the home.[7] Cormier observed several items in the home that corroborated C's description, including a certain item on the coffee table, the couch in the living room, the dog gate, and the sculptures and projector in the bedroom.

State troopers arrested the defendant the next day. In September, 2017, an inspector collected a DNA sample from the defendant and later submitted it to the state forensic laboratory for comparative analysis. When the laboratory analyzed the samples collected from C's neck, it did not detect the presence of amylase, which is a protein found in human saliva. The negative result indicated that amylase either was not present or was present but was below a detectable level. When the

[7] After K picked up C from the house but before the state troopers arrived there to speak to the defendant, K sent an additional message to the defendant. Still angry, she threatened a lawsuit against him because he purportedly locked her and her two year old son out of the home after she failed to pay rent earlier that winter, claiming that he owed her three months of rent because of the lockout.

same samples from the neck were tested for DNA, however, the laboratory determined that they contained a mixture of DNA profiles from C, the defendant, and one unknown individual. The results showed that the profiles detected in the sample were at least 100 billion times more likely to occur if it originated from C, the defendant, and one unknown individual than if it originated from C and two unknown individuals taken at random.

The defendant was charged with unlawful restraint in the second degree, sexual assault in the fourth degree, attempt to commit sexual assault in the third degree, and sexual assault in the third degree. A jury trial was held in December, 2021, and, on December 15, 2021, the jury found the defendant guilty on all charges. On March 18, 2022, the trial court, *Chaplin*, *J.*, imposed a total effective sentence of ten years of imprisonment, execution suspended after four years, followed by ten years of probation. The defendant was ordered to register as a sex offender for his lifetime. This appeal followed. Additional facts will be set forth as necessary.

I

On appeal, the defendant first claims that the prosecutor committed prosecutorial impropriety and deprived him of a fair trial when she made certain improper statements during closing arguments. Specifically, he complains that during the state's rebuttal closing argument, the state discussed general defenses in criminal cases, which suggested that he had a duty to present one of those defenses. The defendant also contends that the prosecutor's use of the phrase "nuts and sluts" during the state's rebuttal closing argument was "highly, highly inflammatory" and implied a burden of proof on the part of the defense.[8] We are not persuaded.

[8] Although defense counsel did not object to the challenged remarks, "under settled law, a defendant who fails to preserve claims of prosecutorial [impropriety] need not seek to prevail under the specific requirements of *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), and, similarly,

We begin with the relevant legal principles. "In analyzing claims of prosecutorial impropriety, we engage in a two step analytical process. . . . We first examine whether prosecutorial impropriety occurred. . . . Second, if an impropriety exists, we then examine whether it deprived the defendant of a constitutionally protected right. . . . [W]hen a defendant raises on appeal a claim that improper remarks by the prosecutor deprived the defendant of his constitutional right to a fair trial, the burden is on the defendant to show, not only that the remarks were improper, but also that, considered in light of the whole trial, the improprieties were so egregious that they amounted to a denial of due process." (Internal quotation marks omitted.) *State* v. *Gary S.*, 345 Conn. 387, 407, 285 A.3d 29 (2022).

"It is well established that prosecutorial [impropriety] of a constitutional magnitude can occur in the course of closing arguments. . . . When making closing arguments to the jury, [however, counsel] must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument. . . .

"Nevertheless, the prosecutor has a heightened duty to avoid argument that strays from the evidence or diverts the jury's attention from the facts of the case. [The prosecutor] is not only an officer of the court, like every attorney, but is also a high public officer, representing the people of the [s]tate, who seek impartial justice for the guilty as much as for the innocent. . . . By reason of [her] office, [she] usually exercises great influence [on] jurors. . . . While the privilege of counsel in addressing the jury should not be too closely

it is unnecessary for a reviewing court to apply the four-pronged *Golding* test." (Internal quotation marks omitted.) *State* v. *Ortiz*, 343 Conn. 566, 579, 275 A.3d 578 (2022).

narrowed or unduly hampered, it must never be used as a license to state, or to comment [on], or to suggest an inference from, facts not in evidence, or to present matters [that] the jury ha[s] no right to consider." (Internal quotation marks omitted.) *State* v. *Courtney G.*, 339 Conn. 328, 341–42, 260 A.3d 1152 (2021).

The following additional facts are relevant to this claim. On December 15, 2021, closing arguments took place. After bringing the jury into the courtroom, the court explained: "At this point now, we're preparing to hear closing argument from counsel. What will happen is the state will go first. Then the defendant will argue through his counsel. Then the state will have a chance to make a rebuttal argument. Each side is given the same amount of time for argument. It's only the state that breaks its argument into two parts because they have the burden of proving the defendant guilty beyond a reasonable doubt. The arguments of counsel are not evidence. It is your recollection of the evidence that controls."

The state then proceeded to its argument, laying out its theory of the case, based on the evidence presented, in addition to discussing the charges. The prosecutor concluded by arguing, inter alia, that "when put together what [C] said and you look at the evidence in terms of the exhibits and whatnot, you will see that what she has given you is a credible account, and you will see by virtue of her testimony the elements are proven beyond a reasonable doubt."

Defense counsel then began his summation. He greeted the jury and stated that "[w]hat you just heard from the state is a nice . . . CliffsNotes version of the young female's testimony." Defense counsel further stated: "But let me rehash what the actual testimony was. So, this way everyone has a clear picture. She testified this March 29th date was not the first time she

met my client. So, just to be clear, she was actually at the house three weeks prior to this actual date. You've heard [from the] state . . . here today that we have to look at the [veracity], the truth of the testimony. So, let's address that. The young lady testified that the first time she was staying overnight was on March 29, 2017. However, you heard testimony from her mother that, in fact, she stayed there the night before. So, right off the bat she wasn't being . . . truthful with you. If the state's going to ask that you believe her mother, and her mother's testified that, hey, she was here the night before. [The defendant] didn't know about it, but she was here the night before, then we have a veracity issue with this witness." Defense counsel then went through the defendant's version of the timeline and the evidence. Counsel concluded his summation by stating, inter alia, "[b]ut if you put your emotions aside, rely on your intellect, all we have here is we have a witness who was emotional, an actress, by the way, who lied about being there the night before. Who gave you a timeline and that timeline doesn't add up to her story. She tells you this guy made out on my neck, licked all over my neck heavily. But the evidence doesn't support that. And we have a coin flip upon the DNA. So, based on all of that, I ask you to find my client not guilty of all charges."

The prosecutor then began her rebuttal closing arguments by addressing some of defense counsel's arguments about the timeline of the events and the DNA and enzyme tests that had been conducted. She then made the following statements, which are at the heart of the defendant's claim on appeal: "So, usually in that case there are in criminal cases basically four defenses. It's alibi, somebody else did it, I did [it] I was justified, or I did it I was out of my mind. In sex cases, it's generally nuts and sluts is what they call it. Either the victim has had other, you know, situations that you're

not gonna believe that she wasn't consenting or she's nuts. And the question is do you think [C] is nuts? Because she'd have to be nuts to make all of this up. There's no reason for her to fabricate this, is there? What does she gain out of this?" Defense counsel did not object to these statements. The prosecutor then made a few additional remarks to the jury and argued that the state was confident that the jury would find that the state had proved its case beyond a reasonable doubt.

A

The defendant first claims that the prosecutor improperly discussed general defenses in criminal cases during the state's rebuttal argument. In his view, when the prosecutor stated that there were "basically four defenses" in criminal cases, "the state implied [that] the defendant has a duty to present one of those defenses, and thus to present a defense at all." We disagree.

It is well known that the state must prove beyond a reasonable doubt all the essential elements of the crimes with which a defendant is charged in order to obtain a conviction; *State* v. *Valinski*, 254 Conn. 107, 120, 756 A.2d 1250 (2000); and that prosecutors are not permitted to make statements that "distort the government's burden of proof . . . because such statements are likely to improperly mislead the jury." (Internal quotation marks omitted.) *State* v. *Courtney G.*, supra, 339 Conn. 357. A prosecutor may cross the line by arguing to the jury that the defendant is obligated to present evidence of his innocence. See id., 360 ("the prosecutor committed an impropriety when she informed the jury that [the victim's] testimony was 'unchallenged and uncontroverted' ").

But that is not what happened here. The prosecutor's statement that there are "basically four defenses" in criminal cases, in context, was a brief preface to the

state's rebuttal argument that C did not have a motive to lie. Indeed, the statement, in context, was used simply to rebut defense counsel's asserted defense that C was lying about the incident and that the alleged incident never occurred.[9] Our courts have held that "the state may argue that a witness has no motive to lie." *State* v. *Warholic*, 278 Conn. 354, 365, 897 A.2d 569 (2006); see also *State* v. *Ancona*, 270 Conn. 568, 607, 854 A.2d 718 (2004) ("[i]t is permissible for a prosecutor to explain that a witness either has or does not have a motive to lie"), cert. denied, 543 U.S. 1055, 125 S. Ct. 921, 160 L. Ed. 2d 780 (2005). At no point during the rebuttal argument did the state suggest that the defendant had a duty to present one of those defenses or a defense at all. See *State* v. *Frasier*, 169 Conn. App. 500, 519, 150 A.3d 1176 (2016) (prosecutor's statements during closing arguments about what defense theories defendant might present during his closing did not distort state's burden of proof), cert. denied, 324 Conn. 912, 153 A.3d 653 (2017). In fact, on multiple occasions during closing arguments, the prosecutor reminded the jury that, before it could find the defendant guilty, it must find that the evidence presented proved the defendant's guilt beyond a reasonable doubt. Accordingly, we conclude that the statement was not improper.

B

The defendant next assails the prosecutor's use of the phrase "nuts and sluts" during her rebuttal argument. He argues that the statement was "highly, highly inflammatory" and that the statement "again implied a burden of proof on the part of the defense." He argues that the statement affected the fairness of the entire trial. We are not persuaded.

[9] During defense counsel's closing argument, defense counsel argued, inter alia, that "[t]here's absolutely no physical evidence that my client touched her at all." He further argued that "[s]he tells you this guy made out on my neck, licked all over my neck heavily. But the evidence doesn't support that."

In context, it is clear that the prosecutor used the phrase "nuts and sluts" to advance the state's rebuttal argument that C did not have a motive to lie. Specifically, the prosecutor stated: "In sex cases, it's generally nuts and sluts is what they call it. Either the victim has had other, you know, situations that you're not gonna believe that she wasn't consenting or she's nuts. And the question is do you think [C] is nuts? Because she'd have to be nuts to make all of this up. There's no reason for her to fabricate this, is there? What does she gain out of this?"

These statements were clearly used to rebut the arguments that defense counsel had just made during his summation in which he suggested that C was lying about the incident and that the alleged incident never occurred. See *State* v. *Michael T.*, 338 Conn. 705, 728, 259 A.3d 617 (2021) ("[a]lthough we generally disapprove of remarks suggesting to the jury that it must conclude that a witness is deliberately lying and, by implication, evil, before it may question the witness' credibility, the prosecutor here was simply attempting to rebut the defendant's claim to that effect"). As the state's advocate, a prosecutor is permitted to argue the state's case forcefully, which includes arguments about the credibility of witnesses, "as long as her assertions are based on evidence presented at trial and reasonable inferences that jurors might draw therefrom." (Internal quotation marks omitted.) *State* v. *O'Brien-Veader*, 318 Conn. 514, 547, 122 A.3d 555 (2015). "[I]t does not follow . . . that every use of rhetorical language or device [by the prosecutor] is improper. . . . The occasional use of rhetorical devices is simply fair argument." (Internal quotation marks omitted.) *State* v. *Michael T.*, supra, 723–24. Despite the defendant's arguments to the contrary, we are not persuaded that the statement at issue implied any burden of proof on the part of the defense.

We also are not persuaded that this statement, in context, was "highly, highly inflammatory" to divert the jurors' attention from their duty to decide the case based on the evidence. On that front, our courts have explained, "[a] prosecutor may not appeal to the emotions, passions and prejudices of the jurors. . . . We have stated that such appeals should be avoided because they have the effect of diverting the jur[ors'] attention from their duty to decide the case on the evidence. . . . When the prosecutor appeals to emotions, he invites the jur[ors] to decide the case, not according to a rational appraisal of the evidence, but on the basis of powerful and irrelevant factors which are likely to skew that appraisal." (Internal quotation marks omitted.) *State* v. *Santiago*, 143 Conn. App. 26, 40, 66 A.3d 520 (2013). "An improper appeal to the jurors' emotions can take the form of a personal attack on the defendant's character . . . or a plea for sympathy for the victim or her family." (Citation omitted.) *State* v. *Long*, 293 Conn. 31, 59, 975 A.2d 660 (2009).

The defendant contends that the state's argument was highly inflammatory because "[s]ociety, particularly in the past few years after the MeToo movement, has developed significant sensitivity toward allegations of sexual abuse and complainants in those cases." He argues that the prosecutor's statement is "likely to inflame the emotional reactions of the jurors and cause them to reflexively side with the person being unfairly accused of being 'nuts' or a 'slut.' "

As the state points out, however, the defendant's argument "presumes that the jury, notwithstanding any argument from the state, is already basing its verdict on information outside the record for which he provides no supporting authority and is, in any event, improper." The state also correctly notes that, during voir dire, the parties had the opportunity to question jurors about any knowledge or experience they had with sexual

assault or sexual harassment, presumably for the purpose of identifying those venirepersons who were particularly sensitive to issues of sexual abuse.

Although the defendant contends that the prosecutor's statement was "likely to inflame the emotional reactions of the jurors," the statement was not used as a personal attack on the defendant's character or as a plea for sympathy for C or her family, which are the types of factors our courts often consider when determining whether a prosecutor improperly appealed to the emotions of the jurors. See *State* v. *Michael T.*, supra, 338 Conn. 725 ("[a]n improper appeal to the jurors' emotions can take the form of a personal attack on the defendant's character . . . or a plea for sympathy for the victim or her family" (internal quotation marks omitted)). Rather, the prosecutor's statement, in context, invited the jury to assess C's credibility on the basis of the relevant evidence in the case, particularly the absence of any motive on her part to fabricate the allegations. Although we do not condone the statement used by the prosecutor and do not foreclose the possibility that the use of such language in front of a jury conceivably could constitute prosecutorial impropriety in a different context, we do not believe that its use in this particular case diverted the jury's attention from its duty to decide the case on the evidence that was before it. Accordingly, we conclude that the statement did not arise to prosecutorial impropriety in this case.

Moreover, even if we were to assume for the sake of argument that the statement was improper, we still would not conclude that it deprived the defendant of a fair trial. See *State* v. *Gary S.*, supra, 345 Conn. 407 ("the burden is on the defendant to show, not only that the remarks were improper, but also that, considered in light of the whole trial, the improprieties were so

egregious that they amounted to a denial of due process" (internal quotation marks omitted)). In determining whether an impropriety deprived the defendant of a fair trial, this court considers whether "(1) the impropriety was invited by the defense, (2) the impropriety was severe, (3) the impropriety was frequent, (4) the impropriety was central to a critical issue in the case, (5) the impropriety was cured or ameliorated by a specific jury charge, and (6) the state's case against the defendant was weak due to a lack of physical evidence." *State* v. *Fauci*, 282 Conn. 23, 51, 917 A.2d 978 (2007), citing *State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987).

First, the prosecutor's remarks were not frequent or severe. During the relatively lengthy closing argument, the prosecutor used the phrase "nuts and sluts" only once, followed by three sentences that each contained the word "nuts" a single time. These remarks occurred in only four sentences of the hundreds of sentences spoken by the prosecutor to the jury during closing arguments. Additionally, as to the severity, defense counsel did not object to the prosecutor's statements when they were spoken, request curative instructions, or move for a mistrial. See *State* v. *Warholic*, supra, 278 Conn. 398 ("we take into consideration whether defense counsel object[ed] to any of the improper remarks, request[ed] curative instructions, or move[d] for a mistrial" (internal quotation marks omitted)). And even if the remarks could be interpreted as implying a burden of proof on the part of the defense—a contention that we reject—the remarks were counterbalanced by the court's initial remarks to the jury explaining that the state had an opportunity for a rebuttal argument because the state has "the burden of proving the defendant guilty beyond a reasonable doubt." The remarks also were counterbalanced by the prosecutor, who reminded the jury multiple times during her

argument that, before it could find the defendant guilty, it must find that the evidence presented proved the defendant's guilt beyond a reasonable doubt, and by the court, whose instructions to the jury made clear that "[t]he arguments of counsel are not evidence" and that "[t]he state has the burden of proving that the defendant is guilty beyond a reasonable doubt of the crime with which he is charged. The defendant does not have to prove his innocence. This means that the state must prove beyond a reasonable doubt each and every element necessary to constitute the crime charged."

We next consider whether the prosecutor's statements were central to critical issues in the case and whether the improprieties were invited by the defense. Although the credibility of C was a central issue and the remarks had some bearing on credibility, the defendant's reliance on centrality in support of his due process argument is counterbalanced by the fact that the defense, at least in part, invited the remarks by calling into question the veracity of C's testimony, arguing, inter alia, that the alleged sexual assault did not occur. See footnote 9 of this opinion; see also *State* v. *Gary S.*, supra, 345 Conn. 419 ("the defendant's reliance on centrality is counterbalanced by the fact that the defense, at least in part, invited the remarks").

As to the strength of the state's case, we agree with the state that it presented strong direct and circumstantial evidence against the defendant. As the state notes, unlike in some sexual assault cases in which the state's case rests entirely on the victim's credibility, C's testimony in this case was corroborated by physical evidence, including the presence of the defendant's DNA on her neck and a contemporaneous Facebook message that C sent to her mother pleading for help. The state also presented testimony from Trooper Cormier about his observations and photographs that corroborated C's

account of where each assault occurred in the defendant's house. Although we would not necessarily describe the evidence as overwhelming, the evidence was sufficiently strong not to have been overshadowed by the alleged improper remarks. See *State* v. *Courtney G.*, supra, 339 Conn. 365–66 ("[W]e have never stated that the state's evidence must have been overwhelming in order to support a conclusion that prosecutorial [impropriety] did not deprive the defendant of a fair trial. . . . [T]he state's case was not so weak as to be overshadowed by the prosecutorial improprieties." (Citation omitted; internal quotation marks omitted.)). On this record, we are confident that the defendant was not deprived of his due process right to a fair trial.

II

The defendant next contends that his sentences stemming from his conviction of third degree sexual assault, in violation of § 53a-72a (a) (1), and fourth degree sexual assault, in violation of § 53a-73a (a) (2), violated the double jeopardy clause of the fifth amendment because (1) the "allegations that formed the basis of both charges stemmed from the same solitary event occurring on one date during one alleged interaction between the [defendant] and the complainant" and (2) the two offenses are the same under the test enunciated in *Blockburger* v. *United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). The defendant recognizes that his claim was not preserved in the trial court and, accordingly, seeks review pursuant to *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).[10] Although we agree with the defendant that the

[10] "[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 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

record is adequate for review and that his claim is of constitutional magnitude, we disagree with him that he can prevail under *Golding*'s third prong because we conclude that there was no constitutional violation. We address his arguments in turn.

The fifth amendment to the United States constitution provides in relevant part: "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb. . . ." U.S. Const., amend. V. The double jeopardy clause "prohibits not only multiple trials for the same offense, but also multiple punishments for the same offense in a single trial." (Internal quotation marks omitted.) *State* v. *Porter*, 328 Conn. 648, 655, 182 A.3d 625 (2018). The double jeopardy clause is applicable to the states through the fourteenth amendment to the United States constitution. See *Benton* v. *Maryland*, 395 U.S. 784, 794, 89 S. Ct. 2056, 23 L. Ed. 2d 707 (1969).

When a defendant is charged with the violation of two distinct statutes in a single criminal proceeding arising from a single underlying set of events, our courts have generally employed a two step analysis. "First, the charges must arise out of the same act or transaction. Second, it must be determined whether the charged crimes are the same offense. Multiple punishments are forbidden only if both conditions are met." (Internal quotation marks omitted.) *State* v. *Brown*, 299 Conn. 640, 652, 11 A.3d 663 (2011). If we determine that the charges do not arise from the same act or transaction, we need not proceed to the second step of the analysis. See *State* v. *Schovanec*, 326 Conn. 310, 329, 163 A.3d 581 (2017).

We start at step one. In determining whether the charges arise out of the same act or transaction, "it is

a reasonable doubt." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40; see *In re Yasiel R.*, supra, 317 Conn. 781 (modifying third prong of *Golding*).

not uncommon that we look to the evidence at trial and to the state's theory of the case . . . in addition to the information against the defendant, as amplified by the bill of particulars." (Citation omitted; internal quotation marks omitted.) *State* v. *Porter*, supra, 328 Conn. 662. "When determining whether two charges arose from the same act or transaction, our Supreme Court has asked whether a jury reasonably could have found a separate factual basis for each offense charged." (Internal quotation marks omitted.) *State* v. *Jarmon*, 195 Conn. App. 262, 284, 224 A.3d 163, cert. denied, 334 Conn. 925, 223 A.3d 379 (2020).

In the long form information, the state charged the defendant in count two with sexual assault in the fourth degree on the basis that "on or about March 29, 2017, at or near [a certain residence on] Reed Road, Tolland, Connecticut, [the defendant] subjected another person ([C]) to sexual contact without her consent." Count four, which charged the defendant with sexual assault in the third degree, alleged that "on or about March 29, 2017, at or near [a certain residence on] Reed Road, Tolland, Connecticut, [the defendant] compelled another person ([C]) to submit to sexual contact by the use of force against her, to wit: using his superior physical strength, he pulled her shirt and bra down and licked her breast for his own sexual gratification." Although count four details the specific act that underlies the charge, count two does not. There was no bill of particulars to amplify the information. See *State* v. *Goldson*, 178 Conn. 422, 424, 423 A.2d 114 (1979) ("we . . . refer to the language of the information against the defendant, as amplified by the bill of particulars").

Because the long form information does not resolve the question before us, we look to the evidence presented at trial and to the state's theory of the case to determine whether each count arose from a separate act or transaction. See *State* v. *Porter*, supra, 328 Conn.

658 n.8. The defendant argues that the evidence shows that the charges arose out of the same act or transaction because "all of the conduct occurred at the same house in Tolland" and took place in "one room/hallway area." He argues that "[t]he complainant's testimony makes clear the criminal conduct was all one continuous course of action," stating: "The [defendant] began kissing her on the couch, she got up and he allegedly pulled her hand towards his penis, and then he allegedly pulled her top down. . . . When she left the same room as him, the conduct ended. . . . There was no intervening event during the conduct, and when there was an intervening event (the complainant leaving the room), the course of action ceased. The conduct also had the same motive, that being alleged sexual gratification. The court can also note that the conduct took place over a very condensed time period. The conduct began at or around 10:51 p.m., when the complainant was allegedly on the couch texting her mother. Only *after* 10:51 p.m. did the [defendant's] alleged forcible moving of the complainant's hand (the third degree offense) and touching of the complainant's breast (the fourth degree offense) begin. That conduct was ended before 11:02 p.m. when the complainant was out of the room and missed the phone call. Therefore, the criminal course of conduct in this case took place over approximately ten minutes or less." (Citations omitted; emphasis in original.) The defendant argues that this militates heavily toward concluding that the first prong is met.

The state counters by arguing that "[t]he information, evidence presented at trial, and the state's clearly expressed theory of the case, establish that each crime arose from separate acts committed at separate times, in separate locations, and in separate ways." In support of this argument, the state argues that "C testified that the defendant, without her consent, put her on the sofa, laid on top of her, and rubbed her genitalia and breast

over her clothing. . . . C was unable to move underneath the defendant because of the weight from the defendant's body and only freed herself after the defendant shifted positions." (Citation omitted.) In the state's view, the jury reasonably could have concluded from C's testimony and the photographs admitted into evidence that this incident, the fourth degree sexual assault, began and ended on the sofa in the living room of the defendant's home.

The state further argues that, "[c]onversely, the third degree sexual assault occurred after C freed herself from the sofa and attempted to go back downstairs to her mother's apartment. . . . The defendant pinned her against the gate leading to the basement stairs as she was trying to leave, at which point he pulled down her shirt and bra and licked her breast and neck. . . . C's testimony and the photographs taken inside the home establish that the two assaults took place in separate areas of the house . . . and they were separated by C's attempt to leave the area and retreat to her mother's apartment." (Citations omitted.)

On the basis of our review of the evidence presented at trial, we agree with the state that the offenses did not arise from the same act or transaction. In particular, as to the fourth degree sexual assault charge, the evidence shows that it began and ended on the living room couch. Specifically, there was a clear end to that incident—or act—when C slid out from underneath the defendant, stood up, and proceeded to walk back toward the dog gate, as she explained to the defendant that she was expecting a phone call.

The separate act—the basis of the third degree sexual assault charge—occurred when the defendant subsequently approached C at the stairs leading down to her mother's apartment and pulled down C's V-neck shirt

and bra, exposing her breast, and licking her breast and neck.

The state's theory of the case at trial buttresses the conclusion that the charges stem from these separate acts or transactions. Indeed, during closing arguments, the prosecutor stated in relevant part: "The next crime is sexual assault in the fourth degree. And that takes place, again, on the couch. So, he's on top of her on the couch. Again, there's a size differential between the two of them. And the sexual contact here is the touching of her what we call intimate parts, her genital area. So, her genital area and her breast area. He's not touching them—this isn't a game of tag. This is for him to satisfy himself. He's fondling her over the clothes." As to the sexual assault in the third degree charge, the prosecutor stated in relevant part: "And so, the fourth count is, again, a sex assault in the third. And with the fourth count is where he does complete it because he does pull her shirt down to lick her breast. . . . She's trying to get away from him. That he did it intentionally. This wasn't a joke. And that he used force, his physical superior strength."

Contrary to the defendant's contentions, the fact that the state charged the defendant with multiple offenses that occurred at the same residence in a relatively short time span does not necessarily mean that his convictions arose from the same criminal act or transaction. See, e.g., *State* v. *Scott*, 270 Conn. 92, 100, 851 A.2d 291 (2004) (concluding that sexual assault convictions were permissible, "irrespective of the brief period of time separating them"), cert. denied, 544 U.S. 987, 125 S. Ct. 1861, 161 L. Ed. 2d 746 (2005). Our courts have made clear that "[i]t is not dispositive in a double jeopardy analysis that multiple offenses were committed in a short time span and during a course of conduct that victimized a single person. Instead, the relevant inquiry focuses on whether each offense of which the defendant

has been convicted and punished properly is based upon distinct criminal acts or transactions that occurred within that course of conduct." *State* v. *Urbanowski*, 163 Conn. App. 377, 393, 136 A.3d 236 (2016), aff'd, 327 Conn. 169, 172 A.3d 201 (2017); see id., 393–94 (collecting cases).

The defendant further suggests that, because both crimes shared the same motive (or intent) of sexual gratification, this fact counsels in favor of a conclusion that the convictions and resulting punishments arose out of the same act or transaction. But this contention lacks merit. As this court has explained, "[t]he test is not whether the *criminal intent* is one and the same and inspiring the whole transaction, but whether *separate acts* have been committed with the requisite criminal intent and are such as are made punishable by the [statutes]." (Emphasis in original; internal quotation marks omitted.) *State* v. *Bennett*, 187 Conn. App. 847, 853, 204 A.3d 49, cert. denied, 331 Conn. 924, 206 A.3d 765 (2019).

For the reasons previously explained, we are persuaded that the offenses in question did not arise from the same act or transaction and that, as a result, the defendant's convictions did not violate double jeopardy. As such, the defendant has failed to demonstrate that a constitutional violation exists under the third prong of *Golding*.[11]

The judgment is affirmed.

In this opinion the other judges concurred.

---

[11] "Because the defendant failed to show that the two charges arose out of the same act or transaction, there is no need to proceed to step two and perform a *Blockburger* analysis. See *State* v. *Porter*, supra, 328 Conn. 663 n.11." *State* v. *Jarmon*, supra, 195 Conn. App. 286.