IN RE A'VION A. ET AL.*
(AC 45357)

Elgo, Cradle and Clark, Js.

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to her minor children, A, L, and Z. She claimed that the trial court improperly denied her motion to compel the Department of Children and Families to provide additional reunification services to her, improperly concluded that she had failed to achieve the requisite degree of personal rehabilitation required by statute (§ 17a-112 (j) (3) (B)) with respect to Z, and erroneously determined that the department made reasonable efforts at reunification pursuant to § 17a-112 (j) (1), which requires a trial court to find by clear and convincing evidence that the department made reasonable efforts to reunify a parent and children unless it finds, instead, that the parent is unable or unwilling to benefit from such efforts. The trial court found, pursuant to § 17a-112 (j) (1), that the mother also was unwilling or unable to benefit from reunification efforts. *Held*:

1. The trial court did not abuse its discretion in denying the respondent mother's motion to compel the department to provide additional reunification services: it was within the court's discretion to make decisions relating to its case management authority and it was not improper for the court to have predicated its decision on the fact that the termination trial had been postponed months earlier and was scheduled to begin in eighteen days, more than two years after the children had been transferred to the custody of the petitioner, the Commissioner of Children and Families; moreover, because the adequacy of the department's efforts at reunification would have been an issue at the termination trial, the mother would have had the opportunity to present argument and evidence at that trial refuting the petitioner's claims that she was provided

* 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 Appellate Court.

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

with appropriate reunification services or that she was unwilling or unable to benefit from them.

2. The respondent mother could not prevail on her claim that the trial court improperly concluded that she had failed to achieve the requisite degree of personal rehabilitation so as to encourage the belief that, within a reasonable time, she could assume a responsible position in the life of Z: record evidence supported the court's findings that the mother failed to fully comply with key portions of the court-ordered specific steps to facilitate her reunification with the minor children, including that she had refused to participate in certain services for which she had been referred, she had rescinded releases with some providers, she refused to cooperate with home visits by department workers, and she failed to properly notify the department of a change in her household when she subsequently became pregnant and gave birth to another child during the termination proceedings; moreover, the court also found that she continued to exhibit inappropriate behaviors during visits with the minor children, was argumentative and hostile with visitation supervisors and had not acknowledged her personal issues that had led to the removal of the children; furthermore, the mother failed to challenge the court's determination that she had not achieved the requisite degree of rehabilitation with respect to her older children.

3. This court concluded that the respondent mother's claim that the trial court improperly determined that the department made reasonable efforts to reunify her with the minor children was moot: because the mother did not challenge the trial court's finding that she was unable or unwilling to benefit from reunification efforts, but challenged only one of the two separate and independent bases for upholding the trial court's determination that the requirements of § 17a-112 (j) (1) had been satisfied, there existed a separate independent basis for upholding the court's determination, and, therefore, even if this court agreed with the mother's claim, there was no practical relief that could be afforded to her; accordingly, that portion of the appeal was dismissed as moot.

Argued October 3, 2022—officially released January 12, 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 Britain, Juvenile Matters, and tried to the court, *C. Taylor, J.*; judgments terminating the respondents' parental rights, from

** January 12, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

which the respondent mother appealed to this court. *Appeal dismissed in part*; *affirmed.*

Joshua Michtom, assistant public defender, for the appellant (respondent mother).

Chelsea Ruzzo, 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

ELGO, J. The respondent mother appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights as to A'vion, Aaliyah, and Azra, her minor children.[1] On appeal, the respondent claims that the court improperly (1) denied her October 2, 2019 motion to compel the Department of Children and Families (department) to provide additional reunification services, (2) concluded that she failed to achieve the requisite degree of personal rehabilitation required by General Statutes § 17a-112 (j) (3) (B) with respect to Azra, and (3) determined that the department made reasonable efforts to reunify her with the minor children pursuant to § 17a-112 (j) (1). We conclude that the appeal is moot as to the final claim and dismiss that portion of the appeal. We otherwise affirm the judgments of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this

[1] The court also terminated the parental rights of the biological father of A'vion, Aaliyah, and Azra, whom we refer to as the father in this opinion. Because he has not appealed, we refer to the respondent mother as the respondent. We refer to A'vion, Aaliyah, and Azra collectively as the minor children.

We also note that both the attorney for the minor children and the guardian ad litem for the minor children filed statements adopting the brief of the petitioner in this appeal pursuant to Practice Book §§ 67-13 and 79a-6 (c).

appeal. The respondent is a convicted felon who has a variety of mental health issues. She has been diagnosed with bipolar disorder, recurrent depression, borderline personality disorder, and adult antisocial behaviors.

The respondent began a romantic relationship with the father in 2011, and they married in 2015. Both the respondent and the father have extensive histories of domestic violence incidents and violations of protective orders.

A'vion and Aaliyah were born in 2012 and are fraternal twins. On April 17, 2014, the department received a report of an incident involving the respondent and A'vion and Aaliyah. After the father left the family's home following a domestic altercation with the respondent, the respondent sent him a text message stating that she was holding a knife to A'vion; she then threatened to kill A'vion and Aaliyah if he did not return. The respondent at that time also slashed the couches in the home. Police responded and arrested the respondent for threatening A'vion and Aaliyah with a knife.

Following that incident, A'vion and Aaliyah were adjudicated neglected and placed under an order of protective supervision, which was allowed to expire in June, 2016. The department referred the respondent to two parenting programs and an individual therapy and medication management program, which she completed. The respondent also participated in a psychological evaluation conducted by Bruce Freedman, a licensed psychologist. In his written evaluation, Freedman stated that the respondent's "history of fighting and assaults, her inadequately treated psychological problems, her early maladjustment, and her failure to accept court restriction on her behavior all are factors associated with a high probability of future aggressive behavior." Between May 5, 2014, and February 24, 2016, the respondent was arrested for threatening to kill her

mother, creating a public disturbance, and violating a protective order on multiple occasions that had been issued to protect the father.

On May 11, 2017, the department received a report of physical neglect pertaining to A'vion and Aaliyah stemming from a motor vehicle accident in which the vehicle operated by the respondent struck another vehicle and then fled the scene. The police later located the respondent's vehicle and confirmed that, although A'vion and Aaliyah were inside, the vehicle contained no booster seats for the children. The respondent, who at that time was seven and one-half months pregnant, refused a request by the police to have the children evaluated for injuries.

On May 18, 2017, the department received another report alleging physical abuse of A'vion by the respondent. A bystander witnessed the respondent strike A'vion on the back of the head, causing him to fall to the sidewalk. The bystander flagged down a police officer, who found the respondent to be uncooperative with his investigation and expressed concern about the respondent's use of profanity around the child. Although the allegations of physical abuse were unsubstantiated, the case was transferred to ongoing services with the department. Azra was born several weeks later.

On October 3, 2017, the department received a report from school officials of facial injuries to A'vion, which A'vion indicated were caused when the respondent struck him in the face. Although the respondent denied any involvement in causing those injuries and blamed a teenage babysitter,[2] Aaliyah subsequently confirmed

[2] The pediatrician who treated the children prepared a written report that was admitted into evidence and testified at trial regarding her conversation with the respondent following that incident. On the day that the injuries to A'vion were discovered, the respondent stated that she received a text message from a " 'male companion' " at 2 a.m. or 3 a.m., that she departed the family home to be with that companion, that she left the minor children in the care of a seventeen year old babysitter, and that she did not return home until after A'vion and Aaliyah had left for school that morning.

that the respondent had hit A'vion in the face with a boot. In response, the department initiated a ninety-six hour hold on behalf of the minor children.

The next day, A'vion and Aaliyah were evaluated by Rebecca Moles, a pediatrician at Connecticut Children's Medical Center, who was admitted without objection at trial as an expert in child abuse pediatrics. Moles opined that the injuries to A'vion's face were "highly suspicious for inflicted injury." Moles also observed bruising on Aaliyah's forehead and linear scars on her back, which Moles opined were "suspicious for inflicted injury." The respondent later was arrested and pleaded guilty to risk of injury to a child in violation of General Statutes § 53-21 with respect to the injuries sustained by A'vion.

On October 6, 2017, the petitioner applied for and secured an order of temporary custody for all three minor children, which was sustained on October 13, 2017. The minor children thereafter were adjudicated neglected and were committed to the care and custody of the petitioner on January 11, 2018. At that time, the court issued specific steps for the respondent to take to facilitate her reunification with the children, which the respondent signed.[3] The children subsequently disclosed additional details regarding the trauma they endured while in the respondent's care, including additional acts of physical violence and an incident in which A'vion and Aaliyah had soiled themselves and "were so afraid that they were going to get beat[en]" by the respondent that they ate their own feces.

[3] The specific steps issued on January 11, 2018, required, among other things, the respondent (1) to "[t]ake part in counseling and make progress toward the identified treatment goals," (2) to "[s]ign releases allowing [the department] to communicate with service providers to check on your attendance, cooperation and progress toward identified goals," and (3) to "[i]mmediately let [the department] know about any changes in the make-up of the household . . . ."

On March 27, 2019, the petitioner filed petitions to terminate the respondent's parental rights predicated on her failure to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B). In response, the respondent denied the substance of those allegations and filed a motion to revoke the commitment of the minor children.[4] A trial on the termination petitions was held over the course of ten days on various dates in 2021, at which the parties submitted documentary and testimonial evidence. On December 28, 2021, the court issued its memorandum of decision, in which it granted the petitions to terminate the respondent's parental rights. In so doing, the court made extensive findings of fact and concluded that the petitioner had established that the adjudicatory grounds for termination existed and that termination was in the best interests of the minor children. From those judgments, the respondent now appeals.

Before turning to the respondent's claims, we first set forth the legal principles that govern 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 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

[4] The respondent thereafter filed a motion to consolidate the termination trial with her motion to revoke the commitment of the minor children, which the court granted.

parental rights in the absence of consent. . . . Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun." (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 322–23, 222 A.3d 83 (2019).

Section 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing . . . may grant a petition . . . if it finds by clear and convincing evidence that (1) the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the [petitioner] for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ."

I

The respondent first claims that the court improperly denied her motion to compel the department to provide additional reunification services. We do not agree.

The following additional facts are relevant to the respondent's claim. After securing an order of temporary custody for the minor children in October, 2017, the department provided the respondent with a variety of mental health resources, parenting education resources, intensive family preservation services, anger management and domestic violence services, and psychological evaluations. The petitioner subsequently filed petitions to terminate the respondent's parental rights on March 27, 2019. The department thereafter continued to provide services to the respondent to facilitate her reunification with the minor children, including domestic violence treatment and supervised visitation services.

On May 20, 2019, the petitioner filed a motion for review of the permanency plan, in which she sought approval of the proposed plan of termination and adoption of the minor children and a finding that the department made reasonable efforts to achieve that plan.[5] The respondent filed an objection, in which she contested the issue of whether the department had made reasonable efforts at reunification. The trial court then conducted an evidentiary hearing in accordance with General Statutes § 46b-129 (k) (1) (A), at which department worker Kaylee Cordero testified and counsel presented argument. At the conclusion of that hearing, the trial court found on the record that the department had made reasonable efforts and ordered the respondent

[5] "A 'permanency plan' is the proposal for what the long-term, permanent solution for the placement of the child should be. . . . Our statutory scheme provides five permanency options: (1) reunification with a parent; (2) long-term foster care; (3) permanent guardianship; (4) transfer of either guardianship or permanent guardianship; or (5) termination followed by adoption." (Citations omitted; footnote omitted.) *In re Adelina A.*, 169 Conn. App. 111, 121, 148 A.3d 621, cert. denied, 323 Conn. 949, 169 A.3d 792 (2016). If a court does not approve a proposed permanency plan, it may order the petitioner to submit another permanency plan, on which another hearing must be scheduled. See Practice Book § 35a-14 (e).

to sign releases necessary for certain referrals. The permanency plan ultimately was approved by the trial court.

Although the termination trial was scheduled to begin in June, 2019, the parties agreed to a postponement so that Freedman could conduct an updated

psychological evaluation of the respondent. Freedman completed that evaluation and submitted his report to the court in August, 2019. In that report, Freedman noted that the respondent had "continued to visit her children. The visits have gone reasonably well for the most part, although [the respondent] is sometimes cold to the children, other times gets angry with them for normal child behaviors, and has repeatedly made inappropriate comments." During that evaluation, the respondent admitted that she did not have much patience with the minor children, that she would become agitated and lose her temper with them, that she used too much physical discipline, and that she had struck the children on their heads. With respect to her current psychological functioning, Freedman stated that the respondent's "psychological testing during the current evaluation produces results similar to those from the previous evaluation. Her defensiveness, difficulty in acknowledging problems and tendency to say what sounds best are strong enough to render the psychological testing of little value." While Freedman indicated that he was "cautiously optimistic" about the respondent's potential for reunification, he did not endorse reunification or any particular permanency plan.

One of the referral questions asked Freedman to identify the types of services that he would recommend if the respondent lacked "the ability to meet the needs of her children given the trauma" that they had experienced. Freedman opined that the respondent "would

need some parent coaching and family therapy to help her regain her children's trust, tolerate criticism and normal misbehavior from them." Freedman also was asked, "[i]f it is not recommended for the [minor children] to live with [the respondent] at this time, when might reunification be possible and what specific recommendations are made before reunification takes place?" In his report, Freedman did not answer the first part of that question as to when reunification would be possible. Instead, he stated: "*If* the court is inclined to consider reunification, it would be recommended that [the respondent and minor children] be referred to a reunification program." (Emphasis added.) Soon after receiving Freedman's updated evaluation, the department issued a referral for parent coaching services to the respondent.[6]

On October 2, 2019, the respondent filed a motion to compel the department to refer her for additional reunification services. The court held a hearing on that motion on October 17, 2019, at which the parties acknowledged that the previously postponed termination trial was scheduled to begin in eighteen days. At that time, the court noted that an objection to the permanency plan had been filed and inquired whether that matter had been resolved. Counsel for the parties acknowledged that they had already had an evidentiary hearing in July, and the petitioner represented that the plan for termination and adoption had been approved.

[6] The record indicates that the department initially referred the respondent to All Pointe Care for parenting education services. When that provider did not have any staff members available in August or September, 2019, the department issued a referral to AHAVA Family Services, LLC. As the court found in its memorandum of decision, although the department "immediately contacted [the respondent] by email to attempt to coordinate scheduling" with that provider, the respondent "refused to confirm any dates or times that would accommodate her schedule . . . ." The respondent ultimately received parent coaching services with Connecticut Youth Services in late 2019.

The parties then disputed whether the department had provided appropriate referrals following the filing of Freedman's updated evaluation and whether Freedman had recommended reunification services and in what context, and counsel for the petitioner raised concerns that the respondent had been involved in a recent domestic violence incident that would be addressed in the termination trial.[7] At the conclusion of that brief hearing, the court ruled on the respondent's motion from the bench, stating: "Based on what I've heard [and] in view of the fact that the [termination trial is scheduled] to start fairly soon [and] [a]lso in view of the age of the case, the motion to compel is denied." The respondent now challenges the propriety of that determination.

As a preliminary matter, we note that we are aware of no Connecticut authority in which a trial court has entertained a motion to compel additional reunification services by a respondent, particularly in light of the procedural backdrop of this case, nor has the respondent furnished any such authority. Here, the record indicates that the motion to compel was filed shortly before the termination of parental rights trial was scheduled to commence and followed an evidentiary hearing that was held two and one-half months earlier, which the trial court had scheduled pursuant to the respondent's objection to the court's finding that the department made reasonable efforts at reunification pursuant to § 46b-129 (k) (1) (A).

We also note that the parties disagree as to the applicable standard of review. The respondent maintains that our review of the court's decision to deny her

[7] As the petitioner's counsel emphasized at the October 17, 2019 hearing, the motion to compel was *not* predicated on any intentional violation of a court order by the petitioner. Rather, it was based on the respondent's contention that the department should provide additional services in light of the updated evaluation recently filed by Freedman.

motion to compel is plenary, as it implicates her constitutional rights and involves a purely legal determination.[8] The petitioner, by contrast, submits that a motion to compel the department to provide additional reunification services that is filed shortly before the commencement of trial is governed by a more deferential standard, as it implicates the court's case management authority and a variety of other factors, including the interests of the minor children, the age of the case, and the fact that the department's provision of reunification services and the respondent's ability to benefit from such services are issues subsumed in the litigation of the termination petition itself. Because the trial court is in a superior position to balance those factors, we agree with the petitioner that deference is warranted. See *Allstate Ins. Co.* v. *Palumbo*, 296 Conn. 253, 279, 994 A.2d 174 (2010) (*Rogers*, *C. J.*, concurring) ("we afford trial courts broad discretion to make determinations requiring the balancing of multiple factors because trial courts are often in a better position to make this type of determination"). We therefore review the court's denial of the motion to compel for an abuse of discretion.

The transcript of the October 17, 2019 hearing on the respondent's motion to compel plainly indicates that the court's decision to deny that motion was predicated on the fact that the termination trial was scheduled to begin in eighteen days, which implicated the court's case management authority. As our Supreme Court has explained, "case management decisions [are reviewed]

[8] In her appellate brief, the respondent asserts that reunification "is fundamentally constitutional in nature" and cites to *In re Teagan K.-O.*, 335 Conn. 745, 755, 242 A.3d 59 (2020), in which our Supreme Court observed that "[a] constellation of constitutional and statutory rights serve to protect the integrity of the family unit, the parent-child relationship, and the best interest of the child." She has provided no authority that supports the claim that vindication of those rights must be advanced via a motion to compel given the procedural posture of this case.

for abuse of discretion, giving [trial] courts wide latitude. . . . A party adversely affected by a [trial] court's case management decision thus bears a formidable burden in seeking reversal. . . . A trial court has the authority to manage cases before it as is necessary. . . . Deference is afforded to the trial court in making case management decisions because it is in a much better position to determine the effect that a particular procedure will have on both parties. . . . The case management authority is an inherent power necessarily vested in trial courts to manage their own affairs in order to achieve the expeditious disposition of cases." (Citations omitted; internal quotation marks omitted.) *Krevis* v. *Bridgeport*, 262 Conn. 813, 818–19, 817 A.2d 628 (2003).

With trial scheduled to begin in fewer than three weeks, the respondent's motion to compel the department to issue a referral and thereafter provide additional services was tantamount to a request for a continuance, which likewise is a matter entrusted to the discretion of the trial court.[9] See *In re Ivory W.*, 342 Conn. 692, 730, 271 A.3d 633 (2022). We further reiterate that the motion to compel also followed an evidentiary

[9] For that reason, we reject the petitioner's alternative contention that the court's denial of the motion to compel constituted an immediately appealable order that precludes appellate review due to the respondent's failure to take an interlocutory appeal. Unlike the orders of temporary custody at issue in *In re Shamika F.*, 256 Conn. 383, 773 A.2d 347 (2001), and *Madigan* v. *Madigan*, 224 Conn. 749, 620 A.2d 1276 (1993), which our Supreme Court expressly considered in light of "constitutional considerations"; *In re Shamika F.*, supra, 404; the denial of a motion to compel additional services filed shortly before the commencement of a termination trial, at which the petitioner bears the burden of establishing that it made reasonable efforts at reunification, does not terminate "a separate and distinct proceeding, or . . . so [conclude] the rights of the parties that further proceedings cannot affect them." *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). We therefore conclude that, on the particular facts of this case, the denial of the respondent's motion to compel was not an immediately appealable interlocutory order.

hearing held on July 23, 2019, pursuant to the respondent's objection to the petitioner's motion for review of permanency plan. Under § 46b-129 (k) (4) (E) and (F), the court is required to determine "the services to be provided to the parent *if the court approves a permanency plan of reunification* and the timetable for such services" and "whether the commissioner has made reasonable efforts to achieve the permanency plan." (Emphasis added.) Against that backdrop wherein the parties have already had the opportunity to litigate similar and/or overlapping issues and would be litigating those same issues, albeit under a higher standard of proof at the termination trial, the court properly could consider the impact that a further delay to the termination trial could have on the minor children. See *In re Ivory W.*, supra, 731 (concluding that "it was not unreasonable for the trial court to conclude that the interests of the children and the petitioner in having the matter resolved as soon as reasonably possible outweighed the respondent's interest in postponing the matter"); *In re Alexander V.*, 25 Conn. App. 741, 748, 596 A.2d 934 (1991) ("[b]ecause of the psychological effects of prolonged termination proceedings on young children, time is of the essence" when resolving issues related to permanent care of neglected children), aff'd, 223 Conn. 557, 613 A.2d 780 (1992); *Burkett* v. *Arkansas Dept. of Human Services*, 507 S.W.3d 530, 534 (Ark. App. 2016) (trial court did not abuse discretion in denying father's motion to stay termination trial pending conclusion of related criminal proceedings because "a child's need for permanency and stability may override a parent's request for additional time to improve the parent's circumstances").

Moreover, because the adequacy of the department's efforts at reunification necessarily would be an issue at the termination trial scheduled to begin in eighteen days, the respondent remained free to present argument

and evidence at the termination trial refuting the petitioner's claims that the respondent was provided appropriate reunification services or that she was unwilling or unable to benefit from them.

In its oral decision, the court also indicated that it had considered "the age of the case" in denying the respondent's motion to compel.[10] As this court has observed, the "statutory mandates [contained in General Statutes §§ 17a-110a, 17a-111a, 17a-111b, and 46b-129 (j) (6) (B)] . . . reflect the legislature's desire to shift the focus of juvenile proceedings from parental rights to the child's right to safety, stability, and permanency." *In re Adelina A.*, 169 Conn. App. 111, 122 n.14, 148 A.3d 621, cert. denied, 323 Conn. 949, 169 A.3d 792 (2016). Given the interests of the children "in having the matter resolved as soon as reasonably possible"; *In re Ivory W.*, supra, 342 Conn. 731; as well as other public policy concerns such as eligibility for federal funding for foster care in this state,[11] we cannot say

[10] The minor children were removed from the respondent's care on October 3, 2017; the hearing on the motion to compel was held on October 17, 2019.

[11] To continue to receive federal funding, the federal Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, requires states to enact certain provisions, which in turn require timely action in juvenile proceedings. See, e.g., General Statutes § 17a-15 (b) (requiring petitioner to review permanency plan for each child under her care "at least every six months"); General Statutes § 17a-110a (a) ("[i]n order to achieve early permanency for children, decrease children's length of stay in foster care, reduce the number of moves children experience in foster care and reduce the amount of time between termination of parental rights and adoption, the [petitioner] shall establish a program for concurrent permanency planning"); General Statutes § 17a-111a (a) (1) (requiring petitioner to file petition to terminate parental rights when "the child has been in the custody of the [petitioner] for at least fifteen consecutive months, or at least fifteen months during the twenty-two months, immediately preceding the filing of such petition"); General Statutes § 46b-129 (k) (1) (A) (requiring motion for review of permanency plan to be filed with court "[n]ine months after placement of the child . . . in the care and custody" of petitioner); see generally *In re Darien S.*, 82 Conn. App. 169, 174–76, 842 A.2d 1177 (2003) (reviewing history of federal permanency plans for children who have been removed from parents and observing that "our legislature passed several pieces of legislation to keep the state in compliance with federal law and thereby to

that the court's consideration of the age of the case was improper in ruling on a motion to compel the department to provide additional reunification services.

In matters for which discretion is vested in the trial court, that court is "in a much better position to pass upon [the] question than we are." *State* v. *Laudano*, 74 Conn. 638, 646, 51 A. 860 (1902). Such is the case here, where the court exercised its discretion over the management of cases before it and balanced several factors in acting on the respondent's motion to compel. Moreover, the court's exercise of discretion occurred in the context of a statutory scheme that requires that the department and the court provide multiple, regular and timely opportunities for parents to be heard and to challenge the adequacy and propriety of the department's treatment plan and reunification services. See footnote 11 of this opinion; cf. *In re Tyqwane V.*, 85 Conn. App. 528, 541, 857 A.2d 963 (2004) (noting "the extensive nature of the judicial resources involved throughout the termination process"). On the record before us, the court did not abuse its discretion in making the decision not to further delay a termination trial that had been postponed months earlier and was scheduled to begin more than two years after the children were transferred to the care of the petitioner. We therefore conclude that the respondent's challenge to the denial of her motion to compel is without merit.

II

The respondent also claims that the court improperly concluded that she failed to achieve the requisite degree

continue to receive federal funds"), cert. denied, 269 Conn. 904, 852 A.2d 733 (2004). Notably, each component of this statutory scheme providing for permanency planning, including reunification services with parents, requires notice to parents and an opportunity to be heard. See, e.g., General Statutes § 17a-15 (c) (parents aggrieved by plan of treatment services, temporary or permanent placement, including reunification services with parent, entitled to administrative hearing, which outcome can be appealed to Superior Court).

of personal rehabilitation required by § 17a-112 (j) (3) (B) with respect to Azra, the youngest of the minor children. We disagree.

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 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." *In re Danuael D.*, 51 Conn. App. 829, 840, 724 A.2d 546 (1999).

"We review the trial court's subordinate factual findings for clear error,[12] 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,

[12] "Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *In re Jacob W.*, 330 Conn. 744, 770, 200 A.3d 1091 (2019).

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." (Citations omitted; footnote added; internal quotation marks omitted.) *In re Jayce O.*, 323 Conn. 690, 715–16, 150 A.3d 640 (2016). Applying that standard, we conclude that there is sufficient evidence in the record to support the trial court's finding that the respondent failed to achieve a sufficient degree of personal rehabilitation.

In its memorandum of decision, the court found that the respondent had "failed to fully comply with the key portions" of the specific steps ordered by the court to facilitate her reunification with the minor children. See *In re Devon B.*, 264 Conn. 572, 584, 825 A.2d 127 (2003) ("the failure to comply with specific steps ordered by the court typically weighs heavily in a termination proceeding"); *In re Jermaine S.*, 86 Conn. App. 819, 833, 863 A.2d 720 (respondent's failure to comply with specific steps supported finding that she failed to attain sufficient degree of rehabilitation), cert. denied, 273 Conn. 938, 875 A.2d 43 (2005). The court found, inter alia, that the respondent had refused to participate in certain services for which she had been referred; that she had rescinded her releases with some providers, which impaired the department's ability to monitor her progress; that she refused to cooperate with home visits by

department workers; and that she failed to promptly notify the department of a change to her household when she became pregnant and subsequently gave birth to another child in March, 2020. Those findings are amply supported by the testimonial and documentary evidence in the record before us.

The court also found that the respondent continued to exhibit inappropriate behavior during visits with the minor children. The record substantiates that finding. Nordia Savage, an employee of Connecticut Youth Resources who provides supervised visitation services, testified at trial that the respondent would yell at the minor children during visits. Savage also testified that the respondent would become easily triggered by the children, leaving them terrified. As one example, Savage recounted a visit at a McDonald's restaurant when Savage asked A'vion and Aaliyah not to take refillable soda containers home with them. Savage testified that, when she explained to the respondent that the children had spilled soda in her car the previous week, the respondent "snapped at them." Savage testified that the children got "this terrified look in their eyes. . . . [They] started crying [and apologizing]. . . . [T]heir reaction made me feel like they didn't feel safe." Cordero similarly testified that the respondent "consistently" was "very critical" of the minor children during supervised visits. In his updated psychological evaluation, Freedman similarly noted that, although the respondent's visits with the children "have gone reasonably well . . . [the respondent] is sometimes cold to the children, other times gets angry with them for normal child behaviors, and has repeatedly made inappropriate comments [including] criticism of the foster care [family] and [the department], promises for reunification and a trip to Disney." Moreover, the court credited evidence that, during a visit in December, 2018, Azra was "extremely upset" and "cried for most of the two hour

visit, but [the respondent] did not attempt to console her. Instead, [the respondent] yelled at Azra to stop crying several times."

The court further found, and the evidence indicates, that the respondent frequently became argumentative and hostile with visit supervisors. During one visit, a supervisor encouraged the respondent to participate in Azra's potty training. As visitation worker Alexandria Szantyr testified, the respondent was not receptive to that advice and "in a very aggressive tone [she] told me that she was not going to kiss anybody's butt to get her children back and that she did not want to participate in Azra's potty training." When asked what type of language the respondent had used, Szantyr testified that the respondent would "use vulgar language [and was] very aggressive, very hostile. She will curse at me. . . . [I]t was very argumentative . . . when it came to feedback."

Significantly, the court also found that the respondent had not acknowledged her own personal issues that led to the removal of her minor children and was "unable to acknowledge any wrongdoing" with respect to her own conduct. See *In re Vincent D.*, 65 Conn. App. 658, 670, 783 A.2d 534 (2001) ("[i]n determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment"). The court specifically noted an incident that transpired during a supervised visit with Azra at a restaurant on December 13, 2019, as to which the court heard uncontroverted testimony at trial. During that visit, Azra had an accident that required a diaper change and left her "soaking wet from the urine." The respondent admonished Azra, who was two years old at the time, and began "huffing and puffing" about her accident. Although the respondent had been instructed to bring supplies for Azra during visits, she failed to bring a

change of clothes for the child. As a result, Szantyr wrapped Azra in a cardigan that Szantyr had been wearing. Szantyr then brought up the issue of accountability with the respondent. The respondent asked what accountability had to do with parenting, and Szantyr explained that it pertained to the respondent's "role [in] what has happened with the children." The respondent became extremely upset and stated: "I don't understand what this has to do with anything. . . . I don't need to do [any of] this . . . ." Although Szantyr told the respondent that she needed her to "calm down" and "bring [her] tone down," the respondent was "adamant" that she did not want to discuss the issue of accountability. When Szantyr explained that they needed to talk about "what [the respondent's] role was" in the events that led to the removal of the children, the respondent became more agitated and began to curse at Szantyr.

As the situation continued to escalate, Szantyr informed the respondent that she had to conclude the visit. At that point, the respondent, who was holding Azra, grew even more irate and started screaming at Szantyr. When Szantyr said that she needed to take Azra back, the respondent threw Azra in the air at Szantyr, who caught the child.[13] The respondent's outburst continued as they exited the restaurant. As Szantyr testified: "She was still very aggressive, very hostile towards me. Her language was still very cursing, she was angry. . . . [The respondent said] you're going to make up my visit bitch. . . . I don't give an f, I don't give an f. I'm calling my lawyer." The respondent then threw Azra's wet diaper at Szantyr. Once in her vehicle, Szantyr called her supervisor and informed her that she was very concerned for her own personal safety as well as Azra's safety. Freedman, who had submitted his updated psychological evaluation approximately six

[13] Szantyr testified that Azra "was very scared" after the respondent threw her at Szantyr.

months *prior* to this incident, testified at trial that the respondent's behavior during that visit demonstrated a lack of parenting skills and a lack of self-control.

As the United States Supreme Court has observed, "[a]cceptance of responsibility is the beginning of rehabilitation." *McKune* v. *Lile*, 536 U.S. 24, 47, 122 S. Ct. 2017, 153 L. Ed. 2d 47 (2002). A finding that a respondent parent has failed to acknowledge her own personal issues that led to a child's removal may form the basis for a court's determination that she had not achieved a sufficient degree of personal rehabilitation. See, e.g., *In re Shane M.*, 318 Conn. 569, 589, 122 A.3d 1247 (2015) ("the respondent's failure to acknowledge the underlying personal issues that form the basis for the department's concerns indicates a failure to achieve a sufficient degree of personal rehabilitation" (internal quotation marks omitted)); *In re Jermaine S.*, supra, 86 Conn. App. 834 (respondent's inability to admit she had substance abuse problem "thwarted her ability to achieve rehabilitation"); *In re Sheila J.*, 62 Conn. App. 470, 481, 771 A.2d 244 (2001) (respondent failed to "accept or recognize her need" for recommended counseling).

In its decision, the court also expressly credited evidence that "[t]he department continues to have concerns regarding [the respondent's] ability to parent [the minor] children, given her explosive reactions to things that can trigger her. [She] has a history of intimate partner violence . . . and continues to demonstrate poor insight [into] the past as to how domestic violence has impacted her ability to provide safe, stable, appropriate, and adequate supervision to her children. . . . Despite completing [two] parenting programs, [the respondent] continued to use excessive physical discipline which led to the removal of her children. When engaged in services, [she] is . . . fully engaged . . . [but] she continues to demonstrate poor judgment with

regard to her interaction with her children. . . . [Her] behaviors observed are an ongoing concern for the department. . . . The department continues to have concerns regarding the type of interaction [the respondent] would have if there was no supervision, all of which remain a barrier to reunification." That evidence provides further support for the court's determination that the respondent has not achieved a sufficient degree of personal rehabilitation.

On appeal, the respondent implicitly concedes that she has not achieved the requisite degree of rehabilitation with respect to A'vion and Aaliyah, as she has not challenged the court's determination in that regard. Rather, she claims that, because there was no evidence that Azra suffered from the particular trauma symptoms exhibited by A'vion and Aaliyah, the court's determination as to Azra was improper. We do not agree. The factual findings that underlie the court's failure to rehabilitate determination—including the respondent's inability to acknowledge her own personal issues that led to the removal of the minor children, her failure to fully comply with the specific steps ordered by the court, and her inappropriate behavior during visits with the minor children—bear directly on the ultimate question of whether the respondent had achieved a sufficient degree of personal rehabilitation to assume a responsible position in Azra's life. Indulging every reasonable presumption in favor of the court's ruling, as our standard of review requires; see *In re Jayce O.*, supra, 323 Conn. 716; we conclude that the evidence credited by the court supports its conclusion that the respondent failed to achieve the requisite degree of personal rehabilitation required by § 17a-112 (j) (3) (B).

III

As a final matter, we address the respondent's contention that the court improperly determined that the

department made reasonable efforts to reunify her with the minor children. We conclude that the respondent's appeal is moot with respect to that claim.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . A case is considered moot if [the] court cannot grant the appellant any practical relief through its disposition of the merits . . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way. . . . Our review of the question of mootness is plenary." (Internal quotation marks omitted.) *In re Katia V.*, 214 Conn. App. 468, 482, 281 A.3d 509, cert. denied, 345 Conn. 913, 283 A.3d 980 (2022).

Section 17-112 (j) (1) provides in relevant part that the Superior Court "may grant a petition [for termination of parental rights] if it finds 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 . . . that the parent is unable or unwilling to benefit from reunification efforts . . . ." (Emphasis added.) In construing that statutory language, our Supreme Court has explained that, "[b]ecause the two clauses are separated by the word 'unless,' this statute plainly is written in the conjunctive. Accordingly, the department must prove *either* that it has made reasonable efforts to reunify *or*, *alternatively*, that the parent is unwilling or unable to benefit from reunification efforts. . . . [E]ither showing is sufficient to satisfy this statutory element." (Emphasis in original.) *In re Jorden R.*, 293 Conn. 539, 552–53, 979 A.2d 469 (2009).

Because "either finding, standing alone, provides an independent basis for satisfying § 17a-112 (j) (1)"; id., 556; in cases in which the trial court concludes that *both* findings have been proven, a respondent on appeal must demonstrate that both determinations are improper. If the respondent fails to challenge either one of those "independent alternative" bases; id., 555; "the trial court's ultimate determination that the requirements of § 17a-112 (j) (1) were satisfied remains unchallenged and intact." Id., 557. In such instances, the appeal is moot, as resolution of a respondent's claim of error in her favor "could not [afford] her any practical relief."[14] Id., 554.

In *In re Natalia M.*, 190 Conn. App. 583, 585, 210 A.3d 682 (per curiam), cert. denied, 332 Conn. 912, 211 A.3d 71 (2019), this court dismissed a respondent's appeal for precisely that reason. As we explained: "In the present case, the [trial] court found that both alternatives set forth in § 17a-112 (j) (1) had been satisfied—the department had made reasonable efforts to reunify the respondent with the child, *and* the respondent was unable or unwilling to benefit from reunification efforts. Because the respondent challenges only one of the two separate and independent bases for upholding the court's determination that the requirements of § 17a-112 (j) (1) had been satisfied, even if we were to agree with his claim, the fact that there is a second independent basis for upholding the court's determination, which he does not challenge, renders us unable to provide him with any practical relief on appeal." (Emphasis in original.) Id., 588.

[14] For that reason, when an appellate court concludes that the trial court properly found that one of those independent bases was proven, the appellate court lacks subject matter jurisdiction to thereafter consider a claim of error with respect to the alternative basis under § 17a-112 (j) (1). Appellate review of that alternative basis is a "moot issue" because any decision thereon "cannot benefit the respondent meaningfully." *In re Jorden R.*, supra, 293 Conn. 557; see also id., 554 (appellate courts "should not address a moot issue substantively").

Like *In re Jorden R.*, supra, 293 Conn. 556, and *In re Natalia M.*, supra, 190 Conn. App. 588, the trial court in the present case found that both alternatives set forth in § 17a-112 (j) (1) had been satisfied. To obtain practical relief, it therefore was incumbent on the respondent to properly challenge both findings. That she failed to do.

In part II of her appellate brief, the respondent contests the propriety of the court's finding that the department made reasonable efforts to reunify her with the minor children. Over the course of ten pages, she discusses relevant legal authority and the evidence before the court with respect to that claim. She has not, however, briefed any claim with respect to the court's finding that she alternatively was unwilling or unable to benefit from reunification efforts. The sole reference to that independent basis under § 17a-112 (j) (1) comes in a paragraph designated as subsection (a) and labeled "Introduction," in which the respondent argues that the department's reunification efforts "fell short of any standard of reasonableness." At the end of that introductory paragraph, the respondent states: "[The court] erred when it found that the [department] made reasonable efforts and when it found that [the respondent] was unable or unwilling to rehabilitate." In a subsequent subsection titled "The trial court erred when it found that [the department] fulfilled its statutory duty to make reasonable efforts at reunification, ignoring evidence that the agency refused to make referrals recommended by clinicians," the respondent offers her analysis of that claim. Nowhere in her appellate brief does she address the propriety of the court's finding that she was unwilling or unable to rehabilitate.

As our Supreme Court has noted, "[o]rdinarily, [c]laims are inadequately briefed when they are merely mentioned and not briefed beyond a bare assertion. . . . Claims are also inadequately briefed when they

. . . consist of conclusory assertions . . . with no mention of relevant authority and minimal or no citations from the record . . . ." (Internal quotation marks omitted.) *In re Elijah C.*, 326 Conn. 480, 495, 165 A.3d 1149 (2017); see also *Gonzalez* v. *O & G Industries, Inc.*, 341 Conn. 644, 697, 267 A.3d 766 (2021) ("[a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly" (internal quotation marks omitted)). Apart from one conclusory sentence in the introduction subsection, the respondent makes no mention of any claim regarding the court's unwilling or unable to rehabilitate finding, nor does she provide any legal authority or discussion related thereto. Such a claim is not readily discernible from the respondent's brief and the record before us, which is the "dispositive question" in determining whether a claim has been adequately briefed. *In re Elijah C.*, supra, 495; see also *Burton* v. *Dept. of Environmental Protection*, 337 Conn. 781, 803, 256 A.3d 655 (2021) ("[f]or a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs" (internal quotation marks omitted)). Rather, the respondent's appellate brief focuses exclusively on the department's alleged failure to make reasonable efforts at reunification.[15]

Because the respondent has failed to properly challenge the court's findings with respect to both independent bases under § 17a-112 (j) (1), we decline to consider the merits of her claim that the court improperly determined that the department made reasonable

[15] Five weeks after the respondent filed her principal appellate brief with this court, the petitioner filed her appellate brief, in which she argued that the respondent's claim is moot due to her failure to properly challenge both findings made by the trial court pursuant to § 17a-112 (j) (1). The respondent did not file a reply brief with this court. See Practice Book § 67-5A.

efforts to reunify her with the minor children. Even if we were to agree with that claim, this court could not provide her any practical relief due to her failure to challenge the court's alternative finding regarding her unwillingness or inability to rehabilitate. Her claim, therefore, is moot. See *In re Jorden R.*, supra, 293 Conn. 557; *In re Natalia M.*, supra, 190 Conn. App. 588.

The appeal is dismissed with respect to the respondent's claim that the court improperly determined that the department made reasonable efforts at reunification; the judgments are affirmed in all other respects.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* CHAZANTINE GRIFFIN (AC 45019)

Prescott, Elgo and DiPentima, Js.

Syllabus

Convicted of assault of an elderly person in the second degree, the defendant appealed to this court. The defendant regularly sold illegal drugs to the victim, who was sixty-four years old. After the victim failed to pay off an outstanding debt, the defendant went to her residence and struck her multiple times on the head with a handgun. The victim reported the incident to the police, and, a few weeks later, in an attempt to apprehend the defendant, the police arranged for a confidential informant to conduct a controlled purchase of illegal drugs from him. When the defendant arrived at the agreed upon location, the informant identified him to the police officers who were observing the transaction from unmarked vehicles. The officers arrested the defendant, handcuffed him, and placed him into a police car. At the time of his arrest, the defendant had a key fob to a vehicle in his pocket, and the police used it to find the vehicle the defendant had arrived in, which was parked in a visitor's spot of the parking lot of a nearby apartment building. One of the vehicle's windows was down, and the smell of marijuana emanated from it. The police officers determined that the vehicle was registered to the defendant's foster mother and then conducted a warrantless search of it, seizing illegal drugs, a scale, and a handgun. After finding clothing consistent with that worn by a suspect in an unrelated shooting that had occurred earlier that month, the police officers stopped their search, towed the vehicle to the police department, and subsequently obtained

a warrant to seize the clothing and the handgun. The defendant filed a motion to suppress the evidence recovered from the vehicle, claiming that the police had lacked probable cause to search it. The trial court denied the motion, and the state introduced into evidence the handgun and a photograph of it. On the defendant's appeal to this court, *held* that the defendant was not entitled to a new trial because the trial court's denial of the defendant's motion to suppress was not improper, as the court properly relied on the automobile exception to the fourth amendment's warrant requirement to determine that the police were not obligated to obtain a warrant before searching the vehicle: the defendant's claim that the state was required to prove that he was in or near the vehicle at the time he was detained by the police in order for the automobile exception to apply was unavailing, as the defendant did not cite to any cases in his brief that were decided under the fourth amendment that imposed such a proximity requirement and, even though most Connecticut cases that arose under the exception typically involved factual scenarios in which the warrantless search of a vehicle was conducted immediately after observing the defendant in or near the vehicle, the policy justifications that underlie the exception, namely, the reduced expectation of privacy in the contents of a vehicle and the inherent mobility of a vehicle, applied regardless of whether the defendant was near the vehicle at the time of the search or otherwise lacked access to it because he was in the custody of law enforcement, and, in the present case, any expectation of privacy the defendant may have had in the contents of the vehicle was further reduced by the fact that the vehicle was left in a public place with the window of the vehicle open; moreover, the defendant's reliance on *State* v. *Miller* (227 Conn. 363) was misplaced because he raised a claim pursuant only to the federal constitution, whereas *Miller* specifically addressed a claim under our state constitution and, by its own terms, was limited to situations in which a vehicle was searched at a police station and, therefore, did not govern situations in which a vehicle remained in public and was potentially mobile; furthermore, the totality of the facts supported the conclusion that probable cause existed to search the defendant's vehicle, as the police had ample evidence to infer that the vehicle was the one that the defendant had driven to the scene to complete a narcotics transaction, including that the defendant had agreed to meet the confidential informant to engage in a narcotics transaction, the defendant was in possession of cocaine and marijuana at the time of his arrest, other individuals to whom the defendant had previously sold drugs told the police that he typically would park his vehicle near the agreed upon location and then walk the remainder of the way, the key fob found on the defendant operated the vehicle's lights, the vehicle was located less than 500 yards from where the defendant was arrested, and the vehicle was registered to his foster mother, and, although the police did not observe the defendant in or near the vehicle, that did not undermine

the factual nexus between the defendant and the vehicle; additionally, the police had a reasonable basis to conclude that there was a fair probability of finding contraband or evidence of a crime in the defendant's vehicle, as it was found by the police within minutes of the defendant's arrest, the police knew that the defendant had arrived in the vehicle with the intent to sell illegal drugs, the defendant had illegal drugs on his person when he was taken into custody, and the police could smell marijuana emanating from the vehicle.

Argued September 12, 2022—officially released January 24, 2023

Procedural History

Substitute information charging the defendant with the crimes of robbery in the first degree and assault of an elderly person in the second degree, brought to the Superior Court in the judicial district of New Haven, geographical area number seven, where the court, *Alander*, *J.*, denied the defendant's motion to suppress certain evidence; thereafter, the case was tried to the jury before *Alander*, *J.*; verdict and judgment of guilty of assault of an elderly person in the second degree, from which the defendant appealed to this court. *Affirmed.*

Alexander T. Taubes, for the appellant (defendant).

Kathryn W. Bare, senior assistant state's attorney, with whom, on the brief, were *Patrick J. Griffin*, chief state's attorney, and *Andrew Reed Durham*, former assistant state's attorney, for the appellee (state).

Opinion

PRESCOTT, J. The defendant, Chazantine Griffin, appeals from the judgment of conviction, rendered after a jury trial, of assault of an elderly person in the second degree in violation of General Statutes § 53a-60b (a) (1). On appeal, the defendant claims that the trial court improperly denied his motion to suppress a firearm and narcotics that were seized by the police following a warrantless search of a motor vehicle that was connected to the defendant and located near the scene of

the defendant's arrest.[1] We conclude that, under the circumstances of this case, the court properly relied on the automobile exception in determining that the police were not obligated to obtain a warrant before searching the vehicle. Accordingly, we affirm the judgment of the court.

The jury reasonably could have found the following facts. The defendant regularly sold crack cocaine to the victim, who was sixty-four years old and resided in Meriden. In August, 2018, the victim owed the defendant $80, which she intended to pay after receiving her next pension check. On August 2, 2018, the defendant went to the victim's residence and threatened to shoot her if she did not have the money by the following day.

The defendant returned the next day to collect his money. A friend of the victim was present, and the victim began taking pictures of the defendant with her friend's cell phone. This enraged the defendant. The defendant took out a small black and silver handgun, struck the victim in the head with it several times, and said to her, "bitch, I should end you." The assault caused her to suffer physical pain and lumps on her head. After the defendant left the residence, the victim's friend called 911 and reported the assault to the police.

The following day, the victim gave a statement to the police regarding the incident and identified the defendant in a photographic array as the individual who had struck her with a handgun. The friend of the victim also gave a statement to the police, corroborated the victim's account of the incident, and described the firearm used to strike the victim.

[1] The defendant also claims that the state cannot demonstrate that the admission of evidence unlawfully obtained from the search of the motor vehicle was harmless beyond a reasonable doubt. Because we conclude that the trial court properly denied the motion to suppress, we need not address this claim.

Approximately three weeks after the assault, police officers arrested the defendant in Meriden on an outstanding warrant. At the time of his arrest, the defendant tossed a yellow baggy containing crack cocaine onto the ground. In a search incident to his arrest, the police seized from one of his pockets marijuana and a car key with a key fob that opened a motor vehicle parked nearby. From the vehicle, the police ultimately seized a small black and silver handgun and other contraband. Comparisons of DNA taken from swabs of the handgun and the defendant's DNA yielded a statistical probability of one in one hundred billion that the defendant was not a contributor to the DNA found on the firearm. The firearm and a photograph of it were admitted into evidence at the defendant's subsequent trial.

The jury returned a split verdict of not guilty of robbery in the first degree and guilty of assault of an elderly person in the second degree. The court subsequently sentenced the defendant to fifty-four months of incarceration. This appeal followed.

On appeal, the defendant claims that he is entitled to a new trial on the assault charge because the trial court improperly denied his motion to suppress the evidence seized from the vehicle. Specifically, he contends that the search of the vehicle by the police without a warrant violated the fourth amendment's prohibition on unreasonable searches and seizures[2] because the automobile exception did not excuse the police officer's failure to obtain a search warrant authorizing a search of the vehicle.[3] We are not persuaded.

[2] The fourth amendment to the United States constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., amend. IV.

[3] Although the defendant, in his written motion to suppress, referred to our state constitution, he did not brief or otherwise argue to the court that the warrantless search of his automobile violated the state constitution. On

The following additional facts and procedural history are relevant to the defendant's claim. In late August, 2018, the police attempted to find the defendant to serve on him two arrest warrants. On August 29, 2018, the police, with the cooperation of a reliable, confidential informant, arranged a controlled purchase of illegal drugs from the defendant. The police had the confidential informant set up the purchase to take place on Crown Street in Meriden because the defendant lived nearby. The police officers awaited in several unmarked vehicles nearby to observe.

As the defendant approached the area, the confidential informant identified the defendant for the officers, who then converged on him near the intersection of Roy and Crown Streets. During the process of taking him into custody, the defendant threw a cellophane wrapped package into the tall grass just off the street. The substance contained in the package field tested positive for cocaine.

The police searched the defendant incident to his arrest, and, in his pocket, the police found a bag of marijuana and a car key to a Mercury automobile. The defendant was handcuffed and put into a police car.

Prior to the defendant's arrest, the police had obtained information from individuals who previously had purchased drugs from the defendant that it was his practice when selling drugs to park on a side street or

appeal, the defendant also does not appear to claim that the warrantless search of his vehicle violated article first, § 7, of the Connecticut constitution. Although in his principal brief on appeal he relies on one case addressing the scope of the automobile exception under our state constitution, we construe his brief, as does the state, as raising only a federal constitutional claim. The defendant in his reply brief does not challenge the state's assertion that he properly briefed only a federal claim. Moreover, to the extent that the defendant has attempted to advance such a state constitutional claim on appeal, he has not adequately briefed it pursuant to the strictures of *State* v. *Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992). Accordingly, even if raised, we deem it abandoned.

around the corner from the location where the sale was to take place and then to walk to that location. On the basis of this information, and after considering the direction from which the defendant had walked to the scene, two officers began to search for the defendant's vehicle. Within five minutes, the officers located the defendant's automobile, a 2004 Mercury Sable LS. They were successful in doing so by pressing the key fob taken from the defendant, which illuminated the vehicle's lights. The hood and front grill of the vehicle were warm to the touch, suggesting that it recently had been driven.

The vehicle was parked in a visitor's parking spot at an apartment building located at 27 Harrison Place, less than one-quarter mile away from where the defendant was taken into custody. One of its windows was down and the officers could smell the odor of marijuana coming from the vehicle. The officers quickly determined that the vehicle was registered to the defendant's foster mother.

The police officers then conducted a warrantless search of the Mercury and seized from the vehicle crack cocaine, marijuana, and a digital scale. The officers also found a handgun in the center console and, in the backseat area, clothing that was consistent with clothing worn by a suspect who had been involved in a shooting incident at a Sam's Food Store in Meriden earlier that August. The officers then stopped the search and towed the vehicle to the police department. The police subsequently obtained a warrant to seize the clothing and the gun found in the Mercury.

Following the evidentiary portion of the hearing on the defendant's motion to suppress, the state argued to the court that the officers had probable cause to search the vehicle and that their warrantless search of the

vehicle was permitted by the well established automobile exception to the warrant requirement. The state argued that, having found that the defendant possessed marijuana and cocaine at the time he was taken into custody, they had probable cause to suspect that additional contraband would be found in his vehicle because (1) the officers possessed information that the defendant typically engaged in the sale of narcotics and that he would park in an area near to where the sale was to occur and then walk to that location, (2) the officers knew, through the confidential informant, that the defendant had come to the location to sell drugs that day, (3) the Mercury was found in close proximity to where the defendant was arrested, (4) the car key found on the defendant connected him directly to the vehicle, and (5) the smell of marijuana was emanating from a window of the vehicle.

In response, defense counsel claimed that the motion to suppress should be granted because the police lacked probable cause, under the totality of the circumstances, to search the vehicle. Specifically, defense counsel contended that the degree of attenuation between the Mercury and the defendant was too great because (1) no one saw him operating the vehicle or in close proximity to it, (2) the vehicle was not in eyesight when he was arrested, (3) the Mercury was not registered to him, and (4) the officers had to search for the vehicle in order to locate it.

At the conclusion of the parties' legal arguments, the court, *Alander*, *J.*, denied the defendant's motion to suppress in an oral ruling. The trial court found, in addition to much of the evidence discussed by the state in its argument, that, on the basis of the evidence that had been presented, including the search warrant, the vehicle was registered to someone directly connected to the defendant and the vehicle was warm to the touch, thereby suggesting that the defendant had just driven

the vehicle to the location where it was found. As a result, the state was permitted to introduce into evidence during the defendant's subsequent trial the handgun seized from the defendant's vehicle and a photograph taken by the police of the handgun. The victim and her friend who was present during the assault testified at trial that the handgun depicted in the photograph was the weapon used to strike the victim in the head or was at least consistent in appearance thereto.

We now address the standard of appellate review applicable to the defendant's claim on appeal and the substantive law governing the warrantless search of an automobile. "The standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [If] a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] and the credibility of witnesses is not the primary issue, our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. . . . [If] the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . ." (Internal quotation marks omitted.) *State* v. *Pompei*, 338 Conn. 749, 756, 259 A.3d 644 (2021). In the present case, the defendant on appeal does not challenge any of the factual findings made by the court in adjudicating his motion to suppress. Accordingly, our review of the trial court's legal conclusion that the search of the defendant's vehicle was permitted by the automobile exception is plenary.

"We next consider the scope of the warrant requirement as applied to motor vehicle searches. The police ordinarily may not conduct a search and make a seizure unless a neutral and detached magistrate first issues a warrant based on probable cause. . . . [A] warrantless search and seizure is per se unreasonable, subject to a few well defined exceptions. . . . These exceptions have been jealously and carefully drawn . . . . Specifically, a warrantless search of an automobile may be deemed reasonable if it was: (1) made incident to a lawful arrest; (2) conducted when there was probable cause to believe that the car contained contraband or evidence pertaining to a crime; (3) based upon consent; or (4) conducted pursuant to an inventory of the car's contents incident to impounding the car." (Citations omitted; internal quotation marks omitted.) *State* v. *Winfrey*, 302 Conn. 195, 201, 24 A.3d 1218 (2011). The burden is on the state to establish the applicability of the automobile exception. *State* v. *Badgett*, 200 Conn. 412, 424, 512 A.2d 160, cert. denied, 479 U.S. 940, 107 S. Ct. 423, 93 L. Ed. 2d 373 (1986).

Under our federal constitution, "[t]he justification for . . . [the] automobile exception is twofold: (1) the inherent mobility of an automobile creates exigent circumstances; and (2) the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. . . . In recent years, the United States Supreme Court has placed an increasing emphasis on the reduced expectation of privacy justification . . . [such] that [e]ven in cases where an automobile [is] not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justifie[s] application of the vehicular exception. Thus, under the fourth amendment, a warrantless vehicle search does not require a showing of exigent circumstances."[4] (Internal quotation

[4] We recognize that, under article first, § 7, of the Connecticut constitution, the policies that justify the automobile exception are narrower than those

marks omitted.) *State* v. *Brito*, 170 Conn. App. 269, 293, 154 A.3d 535, cert. denied, 324 Conn. 925, 155 A.3d 755 (2017).

"Probable cause to search exists if: (1) there is probable cause to believe that the particular items sought to be seized are connected with criminal activity or will assist in a particular apprehension or conviction . . . and (2) there is probable cause to believe that the items sought to be seized will be found in the place to be searched. . . . The determination of whether probable cause exists under the fourth amendment to the federal constitution . . . is made pursuant to a totality of circumstances test. . . . Under [this] test, a court must examine all of the evidence relating to the issue of probable cause and, on the basis of that evidence, make a commonsense, practical determination of whether probable cause existed. . . . We have said that the question is whether there was a fair probability that the contraband was within the place to be searched." (Citations omitted; internal quotation marks omitted.) *State* v. *Smith*, 257 Conn. 216, 223, 777 A.2d 182 (2001).

We now turn to the merits of the defendant's claim. The defendant first argues that the "automobile exception cannot apply where the defendant was neither seen inside the vehicle nor anywhere near the vehicle." We construe the defendant's assertion to mean that, even if law enforcement has probable cause to search a vehicle for contraband or evidence of a crime, the automobile exception categorically does not apply unless the

that underlie the fourth amendment's automobile exception. See *State* v. *Miller*, 227 Conn. 363, 384–85, 630 A.2d 1315 (1993) (state constitution "tolerate[s] the warrantless on-the-scene automobile search *only* because obtaining a warrant would be impracticable in light of the inherent mobility of automobiles and the latent exigency that mobility creates" (emphasis in original)). Because the defendant has not asserted a claim under our state constitution, however, we may properly rely on the defendant's reduced privacy interests in the contents of his vehicle under federal law. See footnote 3 of this opinion.

state also proves that the defendant was inside or near the vehicle at the time he was arrested or that the police stopped the vehicle with the defendant in it. We disagree that the fourth amendment imposes such a requirement.

In the two pages that the defendant devotes to this argument in his principal brief, he has not cited to a single case decided under the fourth amendment that specifically has imposed such a proximity requirement. Although Connecticut cases arising under the automobile exception to the fourth amendment's warrant requirement typically have involved factual scenarios in which the warrantless search of a vehicle is conducted immediately after observing the defendant near or in the vehicle; see, e.g., *State* v. *Longo*, 243 Conn. 732, 735, 708 A.2d 1354 (1998) (defendant was in rear seat of vehicle when it was stopped by police); *State* v. *Dukes*, 209 Conn. 98, 100–101, 547 A.2d 10 (1988) (defendant was stopped by police while he was driving vehicle); *State* v. *Badgett*, supra, 200 Conn. 414 (defendant was driving vehicle when stopped by police); *State* v. *Patterson*, 31 Conn. App. 278, 309, 624 A.2d 1146 (1993) (police observed defendant as he exited vehicle to approach them), rev'd on other grounds, 230 Conn. 385, 645 A.2d 535 (1994);[5] the policy justifications that underlie the automobile exception to the fourth amendment's warrant requirement apply just as vigorously even if the defendant is not found in or observed near the

[5] This is not always the case, at least not with respect to other jurisdictions. In *United States* v. *Williams*, 878 F. Supp. 2d 190, 206–207 (D.D.C. 2012), aff'd, 773 F.3d 98 (D.C. Cir. 2014), cert. denied, 575 U.S. 1019, 135 S. Ct. 2336, 191 L. Ed. 2d 997 (2015), the United States District Court for the District of Columbia upheld the warrantless search of a defendant's vehicle that the police located by using a key fob seized from the defendant during his arrest at the police station on unrelated drug charges. There was no evidence in *Williams* that the police had ever seen the defendant driving, occupying, or standing near this vehicle prior to conducting the warrantless search. See id., 196, 206–207; see also *United States* v. *Wider*, 951 F.2d 1283, 1285–86 (D.C. Cir. 1991) (warrantless vehicle search was upheld even though police did not observe defendant in vehicle or standing next to it).

vehicle at the time of the search. Indeed, the defendant has a reduced expectation of privacy in the contents of the vehicle regardless of whether he is viewed by law enforcement in or near his vehicle at the time of the search because it is the inherent nature of an automobile and its presence in a public place that creates a reduced expectation of privacy in it. See *California* v. *Carney*, 471 U.S. 386, 391–93, 105 S. Ct. 2066, 85 L. Ed. 2d 406 (1985).[6] Moreover, any expectation of privacy the defendant may have in the contents of the vehicle may be further reduced if he has left the vehicle in a public location where he lacks the ability to monitor

[6] Specifically, the United States Supreme Court in *Carney* stated: "[T]he expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. . . .

"Even in cases where an automobile was not immediately mobile, the lesser expectation of privacy resulting from its use as a readily mobile vehicle justified application of the vehicular exception. . . . In some cases, the configuration of the vehicle contributed to the lower expectations of privacy . . . because the passenger compartment of a standard automobile is relatively open to plain view . . . . But even when enclosed repository areas have been involved, we have concluded that the lesser expectations of privacy warrant application of the exception. . . .

"These reduced expectations of privacy derive not from the fact that the area to be searched is in plain view, but from the pervasive regulation of vehicles capable of traveling on the public highways. . . . As we [have] explained . . . [a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order. . . .

"The public is fully aware that it is accorded less privacy in its automobiles because of this compelling governmental need for regulation. Historically, individuals always [have] been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts. . . . In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met." (Citations omitted; internal quotation marks omitted.) *California* v. *Carney*, supra, 471 U.S. 391–92.

the vehicle and others' access to it. This is especially true if a person leaves a window of the vehicle open, as did the defendant here.

Additionally, fourth amendment case law makes clear that the inherent mobility of the vehicle exists regardless of whether the defendant is near the vehicle; see *United States* v. *Howard*, 489 F.3d 484, 492–94 (2d Cir.) (concluding that vehicles parked on side of highway were inherently mobile despite defendant's voluntary presence at police barracks located some distance from highway), cert. denied, 552 U.S. 1005, 128 S. Ct. 525, 169 L. Ed. 2d 365 (2007); *State* v. *Smith*, supra, 257 Conn. 227, 230 (despite defendant's flight from his vehicle, there was "continuing possibility that the defendant's car, which was located in a parking lot accessible to a public housing building, would be moved"); or otherwise lacks access to the vehicle because he or she is in the custody of, or detained by, law enforcement. See *State* v. *Winfrey*, supra, 302 Conn. 206; *State* v. *Smith*, supra, 229–30.

The defendant principally relies on our Supreme Court's decision in *State* v. *Miller*, 227 Conn. 363, 384–85, 630 A.2d 1315 (1993), to assert that the automobile exception does not apply unless the defendant, at the time the vehicle was searched, had just been seen by law enforcement in or near the vehicle. In *Miller*, the court specifically addressed a claim that our state constitution prohibited the warrantless search of a vehicle after it had been impounded and towed to the police station. Id., 377. Although the federal constitution does not prohibit the warrantless search of a vehicle that has been impounded at a police station, provided the police have probable cause to search the car; see id.; see also *Chambers* v. *Maroney*, 399 U.S. 42, 51–52, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970); our Supreme Court

concluded that article first, § 7, of the Connecticut constitution prohibits such a warrantless search.[7] *State* v. *Miller*, supra, 386–87.

The defendant's reliance on *Miller* is misplaced for two reasons. First, as we previously discussed, the defendant in the present case has raised a claim pursuant to only our federal constitution. See footnotes 3 and 4 of this opinion. Second, "*Miller*, by its own terms, was limited to situations in which a vehicle is searched at the police station . . . [and] does not govern cases [in which] an automobile remains in public and is therefore potentially mobile, even [if] the driver has been taken into police custody and the police have effective control of the vehicle." *State* v. *Winfrey*, supra, 302 Conn. 206. Accordingly, *Miller* does not support the defendant's fourth amendment challenge to the warrantless search in the present case.

We recognize, as the defendant argues, that our Supreme Court sometimes has referred to the automobile exception as applying to " 'warrantless on-the-scene automobile searches' . . . ." See, e.g., *State* v. *Williams*, 311 Conn. 626, 641, 88 A.3d 534 (2014); *State* v. *Miller*, supra, 227 Conn. 384. The defendant attempts to rely on this language, in isolation, to argue that the automobile exception applies only to cases in which a defendant's vehicle is searched immediately after his arrest or detention after he had been driving the vehicle or standing near it. This assertion is devoid of merit. Read in context, our Supreme Court has occasionally used such shorthand terminology simply to distinguish a warrantless search of a vehicle conducted while the

[7] Article first, § 7, of the Connecticut constitution provides: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation."

vehicle is impounded at the police station from a warrantless search of a vehicle conducted while that vehicle is still located in a public place. None of the cases cited by the defendant that employs such language purports to define what is meant by the term "on-the-scene" or, with the exception of *Miller*, involved a claim in which the vehicle is searched when the defendant is not immediately next to or taken out of the vehicle.

By rejecting the defendant's claim, we do not mean to suggest that a defendant's physical proximity to, and factual connection with, the vehicle to be searched is irrelevant to the question of whether the automobile exception applies in a particular case. Such facts often will bear directly on the question of whether probable cause exists to search the vehicle under the totality of the circumstances. See, e.g., *United States* v. *Edwards*, 632 F.3d 633, 644–45 (10th Cir. 2001) (analyzing defendant's lack of proximity to vehicle as part of totality of circumstances bearing on existence of probable cause). Indeed, if a vehicle is located hundreds of miles from the location of the defendant's arrest or the site of the criminal activity, it may be more factually difficult to prove that there is probable cause to believe that the vehicle contains contraband or evidence of a crime. On the other hand, in such circumstances, there may be other facts in existence that support a finding of probable cause despite a lack of physical proximity to the vehicle. In sum, the location of the vehicle, including its proximity to the defendant, is just one fact to be considered, under the totality of the circumstances, in determining whether there is probable cause to search the vehicle under the automobile exception to the fourth amendment's warrant requirement.

Having disposed of the defendant's assertion that the automobile exception categorically does not apply unless the state also proves that the defendant was seen inside or near the vehicle at the time he is arrested or

that the police stopped the vehicle, we next address the defendant's assertion that the police lacked probable cause under the totality of the circumstances to search his vehicle. Although the defendant does not challenge any of the underlying facts found by the trial court in support of its conclusion that the police had probable cause to search his vehicle in this case, he argues that those facts, alone or in combination, do not demonstrate probable cause to search his vehicle. We are not persuaded.

We agree with the court that the totality of the following facts supported a reasonable belief by law enforcement that there was a fair probability that evidence of a crime or contraband was within the defendant's vehicle. First, the defendant had agreed to meet the confidential informant on Crown Street to engage in a narcotics transaction. That fact was confirmed when the police officers took the defendant into custody at the location and found him to be in possession of marijuana and cocaine. The police officers also knew from other individuals to whom the defendant had sold drugs in the past that he typically would drive his vehicle to a place near the location at which the sale was to occur, park his vehicle, and then walk to the agreed upon location.

Moreover, the police officers had substantial evidence tying the defendant to the particular vehicle they searched because the key fob found on the defendant operated the vehicle's lights, the vehicle was located less than 500 yards from where the defendant was arrested, and it was registered to someone directly connected to the defendant, his foster mother.[8] Accordingly, the police officers had ample evidence to infer

[8] The fact that the vehicle's hood was warm to the touch also supports a finding of probable cause because it reasonably suggests that it had just been driven to the location in which it was found. Although the defendant attempts to minimize this fact by asserting that the hood could have been warm because it was August, the court was free to infer from the officer's

that this was the vehicle that the defendant had driven to the scene so that he could complete a nearby narcotics transaction. The fact that no police officer observed the defendant in or near the vehicle at that precise moment does not undermine in any way the strong factual nexus between the defendant and this vehicle.

The police officers had a reasonable basis to conclude that there was a fair probability of finding contraband or evidence of a crime in the defendant's vehicle. The defendant's vehicle was found by the police within five minutes of his arrest. They knew that the defendant had arrived in his vehicle to sell drugs, and he had cocaine and marijuana on his person when he was taken into custody. From these facts, it was reasonable to infer that his vehicle may contain additional contraband or other evidence regarding the sale of illegal drugs. Moreover, the police could smell the odor of marijuana emanating from the vehicle.[9] See *State* v. *Brito*, supra,

testimony that the warmth was caused by the vehicle's operation rather than the August sun. Even if this fact did not support a determination of probable cause and we were to disregard it, the totality of the remaining factual circumstances amply supports the court's ultimate determination of probable cause.

[9] In his reply brief, the defendant asserts that General Statutes § 54-33p undermines the probable cause determination to the extent that it is premised on the odor of marijuana coming from his vehicle. This statute, first enacted in 2021; see Public Acts, Spec. Sess., June, 2021, No. 21-1, § 18; provides in relevant part: "(a) . . . [T]he existence of any of the following circumstances shall not constitute in part or in whole probable cause or reasonable suspicion and shall not be used as a basis to support any stop or search of a person or motor vehicle: (1) [t]he odor of cannabis or burnt cannabis . . . .

"(b) Any evidence discovered as a result of any stop or search conducted in violation of this section shall not be admissible in evidence in any trial, hearing or other proceeding in a court of this state. . . ." General Statutes § 54-33p.

The defendant's reliance on this statutory provision is misplaced for at least two reasons. First, it is well established that we do not entertain arguments raised for the first time in a reply brief. See *State* v. *Myers*, 178 Conn. App. 102, 103, 174 A.3d 197 (2017). Second, this provision became effective on July 1, 2021, almost three years after the defendant's arrest and search of his motor vehicle. The defendant has not adequately briefed

170 Conn. App. 313–15. All of these facts, considered in their totality, amply support a conclusion that probable cause existed to search the defendant's vehicle.

The judgment is affirmed.

In this opinion the other judges concurred.

GALINA MYSHKINA *v.* VLADIMIR GUSINSKI (AC 45192)

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

Syllabus

Pursuant to the rules of practice (§ 17-25 (b) (1)), an affidavit of debt in support of a motion for default and judgment must be signed by "the plaintiff or by an authorized representative of the plaintiff who is not the plaintiff's attorney."

The plaintiff sought to recover damages from the defendant for his breach of a promissory note. The trial court granted the plaintiff's motion to default the defendant for failure to appear. Subsequently, the plaintiff filed a motion for judgment based on the defendant's failure to appear, which was signed the plaintiff's counsel, G. G also signed an affidavit of debt in support of the motion. The trial court granted the motion for judgment and rendered judgment in favor of the plaintiff, from which the defendant appealed to this court. *Held* that the trial court, in rendering the judgment, improperly relied on the affidavit of debt signed by G in contravention of Practice Book § 17-25; in the present case, because it was undisputed that the only affidavit of debt filed in support of the plaintiff's motion was signed by G, the court should have denied the motion for failing to comply with § 17-25 (b) (1) or required the submission of additional information pursuant to § 17-25 (c), and it did neither.

Argued November 7, 2022—officially released January 24, 2023

Procedural History

Action to collect on a promissory note, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where the defendant was

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whether this statute must be applied retroactively to the present case. Finally, even if the police officer had not been able to smell the odor of marijuana emanating from the vehicle, the other facts we have recited are sufficient to establish probable cause to search the vehicle.

defaulted for failure to appear; thereafter, the court, *Hon. Edward T. Krumeich II*, judge trial referee, granted the plaintiff's motion for judgment and rendered judgment thereon, from which the defendant appealed to this court. *Reversed*; *further proceedings*.

John R. Harness, for the appellant (defendant).

Opinion

PER CURIAM. The defendant, Vladimir Gusinski, appeals from the default judgment rendered in favor of the plaintiff, Galina Myshkina. The defendant claims that the court, in rendering the judgment, improperly relied on the affidavit of debt of the plaintiff's counsel in contravention of Practice Book § 17-25 (b) (1).[1] We agree and reverse the judgment of the trial court.

The following procedural history is relevant to our analysis. The plaintiff initiated the underlying action by way of a one count complaint dated August 20, 2021, alleging that the defendant breached a promissory note. The return of service filed with the court indicates that the defendant was served by abode service on August 26, 2021. The plaintiff sought money damages, attorney's fees, and costs, pursuant to the terms of the note. The complaint was signed by the plaintiff's counsel, Philip Russell of Philip Russell, LLC.

On October 5, 2021, the plaintiff, pursuant to Practice Book § 17-20, filed a motion to default the defendant for failure to appear. The court granted that motion on October 13, 2021. On November 30, 2021, the plaintiff, pursuant to Practice Book §§ 17-25 (b) (1) and 17-33,[2]

[1] The plaintiff did not file a brief and, therefore, this court considered the appeal on the basis of the defendant's brief, the record, and the defendant's oral argument only. See Practice Book §§ 60-4 and 70-4.

[2] Practice Book § 17-33 (a) provides: "If a defendant is defaulted for failure to appear for trial, evidence may be introduced and judgment rendered without notice to the defendant."

Although the plaintiff referenced Practice Book § 17-33 in her motion, because this case never proceeded to a trial, that section is inapplicable to her motion for judgment. The applicable section is Practice Book § 17-25, which is discussed further in this opinion.

filed a motion for judgment based on the defendant's failure to appear. Attorney Andrew Gould signed the motion for judgment as an attorney with Philip Russell, LLC. Attorney Gould also signed the affidavit of debt filed in support of the motion for judgment. In the affidavit, Attorney Gould identified himself as "the attorney for [the plaintiff]" and averred, among other things, that, "[a]s of today, November 30, 2021, the amount outstanding [on the promissory note] is in excess of [£]85,000 G.B.P. (As of the exchange rate on [November] 19, 2021, $114,333.50 U.S.D.)." Attorney Gould also filed an affidavit of attorney's fees in support of the motion for judgment. In that affidavit, Attorney Gould averred that he had reviewed the underlying promissory note, sent demand letters to the defendant, and drafted the summons, complaint, motion for default, and the motion for judgment. He further averred that the prosecution of the collection matter required legal fees, as of that date, in the amount of $7143.92. The plaintiff presented no other evidence in support of her motion for judgment as to the amount of the debt.

On December 13, 2021, the court, *Hon. Edward T. Krumeich II*, judge trial referee, granted the motion for judgment and rendered judgment for the plaintiff in the amount of $114,333.50. As to attorney's fees and costs, the court instructed the plaintiff to "submit a bill of costs and a fee affidavit that sets forth evidence the fee requested is reasonable under the lodestar method for calculation of legal fees." It does not appear that the plaintiff ever complied with this directive.[3] This appeal followed.

[3] Although the court never awarded attorney's fees, despite indicating its intent to do so, we nonetheless have jurisdiction over this appeal. See *Ledyard* v. *WMS Gaming, Inc.*, 330 Conn. 75, 84, 191 A.3d 983 (2018) (reaffirming "bright line rule" that "judgment on the merits is final for purposes of appeal even though the recoverability or amount of attorney's fees for the litigation remains to be determined" (internal quotation marks omitted)).

The defendant's sole claim on appeal is that the court improperly relied on Attorney Gould's affidavit of debt when it rendered judgment. The defendant argues that, because the only affidavit of debt filed in support of the plaintiff's motion for judgment was signed by her attorney, Attorney Gould, the court should have denied the plaintiff's motion for failing to comply with Practice Book § 17-25 (b) (1), which requires that the affidavit of debt be signed by "an authorized representative of the plaintiff who is not the plaintiff's attorney." We agree.

The interpretation of our rules of practice is a question of law over which we exercise plenary review. See *Wiseman* v. *Armstrong*, 295 Conn. 94, 99, 989 A.2d 1027 (2010). Practice Book § 17-25 (b) (1) requires that a plaintiff filing a motion for default for failure to appear and judgment must file with the motion "[a]n affidavit of debt signed by the plaintiff or *by an authorized representative of the plaintiff who is not the plaintiff's attorney*." (Emphasis added.) That mandate is clear and unambiguous. Furthermore, § 17-25 (c) makes clear that the requirements of § 17-25 (b) constitute the minimum information necessary for the rendering of judgment, as it provides: "Nothing contained in this section shall prevent the judicial authority from requiring the submission of additional written documentation or the presence of the plaintiff, the authorized representative of the plaintiff or other affiants, as well as counsel, before the court prior to rendering judgment if it appears to the judicial authority that additional information or evidence is required in order to enter judgment." Although § 17-25 (c) gives the court discretion to require information in addition to that required in § 17-25 (b), nothing in § 17-25 gives the court the discretion to accept less than the required information.

On the basis of the plaintiff's affidavit of debt in the present case, the court either should have denied the

motion for judgment or required the submission of additional information pursuant to Practice Book § 17-25 (c). It did neither. Consequently, because it is undisputed that the only affidavit of debt before the court was signed by Attorney Gould, who admittedly was the plaintiff's attorney, the court improperly granted the plaintiff's insufficiently supported motion for judgment.

The judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

STATE OF CONNECTICUT *v.* CHARLES L.*
(AC 44690)

Elgo, Cradle and Clark, Js.

Syllabus

Pursuant to statute (§ 53-21 (a) (1)), any person who, inter alia, wilfully or unlawfully does any act likely to impair the health or morals of a child under sixteen years old shall be guilty.

Convicted, following a jury trial, of risk of injury to a child pursuant to § 53-21 (a) (1) in connection with his actions in attempting to entice his three year old daughter, J, to ingest cleaning solution, the defendant appealed to this court. Following an angry discussion at a friend's house, the defendant, J, and his wife and J's stepmother, D, returned to their apartment. While the three were standing in the kitchen, the defendant made a remark that implied that no one loved him or J, and he was just going to "take" his life and J's life. He then proceeded to retrieve a cleaning solution from a cabinet and poured it into two cups for himself and J, instructing J to come and drink it. D, who was standing next to J, told her to stay where she was. The defendant then poured the cleaning solution from J's cup into his own and went outside. On appeal to this court, the defendant claimed that the evidence was insufficient for the jury to conclude beyond a reasonable doubt that his actions constituted an act likely to impair the health of a child and that § 53-21 (a) (1) was unconstitutionally vague as applied to the facts of the case. *Held*:

1. There was sufficient evidence presented at trial to convict the defendant pursuant to the act prong of § 53-21 (a) (1): under our Supreme Court's

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* In accordance with our policy of protecting the privacy interests of the victims of the crime of risk of injury to a child, we decline to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

decision in *State* v. *Ares* (345 Conn. 290), a defendant need not touch or have direct physical contact with a child in order to be convicted under the act prong of § 53-21 (a) (1) for engaging in conduct likely to impair the health of a child, and the defendant's attempts to distinguish other cases involving defendants who were convicted for their actions in either directly handing alcohol to a victim or physically pursuing a child with a dangerous weapon were not persuasive, as those cases were instructive in showing that the jury reasonably could have concluded that the defendant's conduct was sufficiently egregious to rise to the level of deliberate, blatant abuse under § 53-21 (a) (1); moreover, the evidence was sufficient for the jury reasonably to conclude that the consumption of a toxic cleaning solution would be injurious to J and that it was likely that J, who was only three years old and standing close to the defendant at the time, would follow her father's instruction to consume the toxic substance, and the fact that, subsequent to the defendant's actions, D ultimately intervened to protect J did not render unreasonable the jury's conclusion that the defendant's conduct was likely to impair J's health.

2. The defendant could not prevail on his claim that § 53-21 (a) (1) was unconstitutionally vague as applied to the facts of the case, as the defendant had sufficient notice that his conduct was prohibited by that statute: the operative information accused the defendant of committing an act likely to impair the health and morals of a child in attempting to entice a three year old minor child to ingest a cup of cleaning solution, and, because prior judicial decisions provided fair warning that § 53-21 (a) (1) prohibited such conduct, the statute was not unconstitutionally vague as applied to the defendant; moreover, this court's decision in *State* v. *March* (39 Conn. App. 267), in which a defendant handed a cup containing rum to a four year old victim who had requested something to drink, made clear that providing a harmful substance to a young child was an act likely to impair the health of that child pursuant to § 53-21 (a) (1); furthermore, cases decided well before the defendant committed the act in question in this case made clear that physical contact with the victim was not necessary for a conviction under the act prong of § 53-21 (a) (1).

Argued October 3, 2022—officially released January 24, 2023

Procedural History

Substitute information charging the defendant with four counts of the crime of risk of injury to a child and one count of the crime of cruelty to persons, brought to the Superior Court in the judicial district of Hartford, and tried to the jury before *Graham*, *J.*; thereafter, the court granted the defendant's motion for a judgment

of acquittal as to two counts of risk of injury to a child; verdict and judgment of guilty of one count of risk of injury to child, from which the defendant appealed to this court. *Affirmed.*

Richard E. Condon, Jr., senior assistant public defender, for the appellant (defendant).

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

Opinion

CLARK, J. The defendant, Charles L., appeals from the judgment of conviction, rendered after a jury trial, of risk of injury to a child in violation of General Statutes § 53-21 (a) (1). On appeal, the defendant claims that (1) the evidence was insufficient for the jury to conclude beyond a reasonable doubt that his actions constituted an act likely to impair the health of a child and (2) "§ 53-21 (a) (1) is unconstitutionally vague as applied to the facts of this case . . . ." We disagree and, accordingly, affirm the judgment of the trial court.

The following facts, which are either undisputed or reasonably could have been found by the jury, and procedural history are relevant to this appeal. In April, 2014, the defendant had a daughter, J, with his then wife. The defendant's wife died soon thereafter.

In June, 2016, following the death of his wife, the defendant married D. They had a daughter together, L, and the two children resided with them in a two bedroom apartment in Manchester. D's sister, B, and B's daughter also lived with them in the two bedroom apartment.

At some time in September, 2017, the defendant, D, J, L, and B were visiting the defendant's friend, who lived nearby. At one point during that visit, D said that

she was ready to leave, and B joked that they were going to leave J with the defendant. In response, the defendant "blew up," said, "f this! You all act like you all love [J]," and then said that no one cared for J. The family then left the friend's house and began walking back to their apartment, and the defendant argued with B as they walked.

After the family returned to their apartment, the defendant went to the kitchen with D and J. Still angry, the defendant stated: "[I]f anybody loved me and [J], then I'm just going to take our lives." He then proceeded to retrieve a generic brand cleaning solution from a cabinet, as well as a cup for himself and a cup that specifically belonged to J, and then poured the cleaning solution into both cups. He instructed J to "come here and drink this . . . ." D was standing next to J and told her to stay where she was, and J obeyed. The defendant then poured the cleaning solution from J's cup into his own and went outside. D left the apartment with J.

In December, 2017, D disclosed this incident to an investigator with the Department of Children and Families (department) while present at a meeting between the investigator and B. The department prepared a report reflecting these allegations and submitted it to the Manchester Police Department. On December 13, 2017, Officer Antony DeJulius spoke with the defendant about the allegations in the report, and the defendant admitted to them, stating that he was angry and "just reacted." The defendant then became upset and threatened to harm himself, so DeJulius prepared a hospital committal form and brought the defendant to a hospital. In January, 2018, DeJulius obtained written statements from D and B about the September, 2017 incident. DeJulius then obtained an arrest warrant for the defendant. The defendant was arrested on February 8, 2018.

The state charged the defendant with three counts of risk of injury to a child in violation of § 53-21 (a) (1),[1] two counts of threatening in the second degree in violation of General Statutes § 53a-62, and one count of strangulation in the second degree in violation of General Statutes (Rev. to 2017) § 53a-64bb. The state subsequently filed a new short form information that removed the threatening and strangulation counts, added a fourth risk of injury count, and added a count charging the defendant with cruelty to persons in violation of General Statutes § 53-20 (b) (1). On April 11, 2018, the defendant pleaded not guilty to all charges and requested a jury trial.

Prior to trial, on January 14, 2020, the state filed a five count long form information, setting forth specific accusations supporting the crimes charged.[2] On January 22, 2020, the defendant's trial commenced. After the

[1] General Statutes § 53-21 (a) provides in relevant part: "Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child . . . shall be guilty of (A) a class C felony . . . ."

[2] The five charges arose from separate incidents that were alleged to have occurred "in or around August—November, 2017 . . . ." Count one accused the defendant of committing "an act likely to impair the health and morals of any such child, to wit: attempting to entice a three year old minor child to ingest a cup of cleaning solution . . . ." Count two accused the defendant of committing "an act likely to impair the health and morals of any such child, to wit: physically and verbally threatening to drown a three year old minor child . . . ." Count three accused the defendant of committing "an act likely to impair the health and morals of any such child, to wit: restricting a three year old minor child's airway as a form of punishment . . . ." Count four accused the defendant of committing "an act likely to impair the health and morals of any such child, to wit: threatening a three year old minor child with a knife . . . ." And count five, cruelty to persons, accused him of having "control and custody of a child under the age of nineteen years, to wit: a three year old minor child, and intentionally maltreated such child . . . ."

state rested its case, the defendant moved for a judgment of acquittal pursuant to Practice Book §§ 42-40 and 42-41 on counts one, two, and four, which charged the defendant with risk of injury, and count five, which charged the defendant with cruelty to persons. The trial court granted the motion as to counts two and four but denied it as to counts one and five.

On January 23, 2020, the state amended its long form information, removing the two counts of which the defendant had been acquitted and renumbering the counts so that count three, which charged the defendant with risk of injury, and count five, which charged the defendant with cruelty to persons, were now labeled counts two and three, respectively. After the close of evidence, the court instructed the jury as to the remaining three counts, and the jury returned a verdict of guilty as to count one and not guilty as to counts two and three. On March 9, 2021, the court, *Graham*, *J.*, sentenced the defendant to a term of imprisonment of ten years, execution suspended after five years, and five years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The defendant claims that there was insufficient evidence to convict him of risk of injury to a child pursuant to the act prong of § 53-21 (a) (1). Specifically, he argues that the state "did not present evidence that [he] committed an act of blatant physical abuse or engaged in conduct directly perpetrated on J," as he contends is required by *State* v. *Schriver*, 207 Conn. 456, 466–67, 542 A.2d 686 (1988). To that end, he argues that "[t]here is no evidence that the defendant ever approached J, nonetheless physically touched or committed blatant physical abuse upon her . . . ." (Citation omitted.) He

further argues that the state presented insufficient evidence to prove that the defendant's "act" was "likely" to be injurious to J's health. For the reasons discussed herein, we disagree with the defendant.

We begin our analysis by setting forth the well established legal principles for assessing an insufficiency of the evidence claim. "In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Petersen*, 196 Conn. App. 646, 655, 230 A.3d 696, cert. denied, 335 Conn. 921, 232 A.3d 1104 (2020). "In particular, before this court may overturn a jury verdict for insufficient evidence, it must conclude that no reasonable jury could arrive at the conclusion the jury did. . . . Although the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense . . . each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt." (Citation omitted; internal quotation marks omitted.) *State* v. *Rhodes*, 335 Conn. 226, 233, 249 A.3d 683 (2020).

The defendant argues that the evidence was insufficient to support his conviction because there was no evidence that he engaged in "blatant physical abuse." Specifically, he claims that, in order to be convicted under the act prong of § 53-21 (a) (1) for conduct likely to impair the health of a child, there must be evidence that the defendant physically touched the child. He further argues that, even if the statute does not require a defendant to physically touch a child, his conduct was

not sufficiently egregious for the jury to have concluded that he engaged in "blatant physical abuse" of a child.

We begin our discussion with a brief overview of § 53-21 (a) (1). Section 53-21 (a) provides in relevant part: "Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, *or does any act likely to impair the health or morals of any such child* . . . shall be guilty of . . . a class C felony . . . ." (Emphasis added.) Our courts "have [long] recognized that subdivision (1) of § 53-21 [now § 53-21 (a) (1)] prohibits two different types of behavior: (1) deliberate indifference to, acquiescence in, or the creation of situations inimical to the [child's] moral or physical welfare . . . and (2) acts directly perpetrated on the person of the [child] and injurious to his [or her] moral or physical well-being. . . . Cases construing § 53-21 have emphasized this clear separation between the two parts of the statute . . . ." (Citation omitted; emphasis omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Robert H.*, 273 Conn. 56, 65, 866 A.2d 1255 (2005).

Since its passage, a judicial gloss has been imposed on § 53-21. Pertinent to the issues raised in this appeal, our Supreme Court in *State* v. *Schriver*, supra, 207 Conn. 461, distinguished between acts likely to impair the "morals" of a child and acts likely to impair the "health" of a child. It stated that an act likely to impair the morals of a child involves "deliberate touching of the private parts of a child under the age of sixteen in a sexual and indecent manner . . . ." (Internal quotation marks omitted.) Id., 463. The court found that the defendant had not engaged in such conduct and, thus, "had no reasonable opportunity to know that his conduct was prohibited by the impairment of morals clause

of § 53-21." Id., 466. As for acts likely to impair the health of a child, the court found that prior cases had "provide[d] an authoritative judicial gloss that limits the type of physical harm prohibited by § 53-21 to instances of deliberate, blatant abuse"; id.; and concluded that "the irreducible minimum of any prosecution under the [act prong] of § 53-21 is an act directly perpetrated on the person of a minor." Id., 467.

Following oral arguments in the present appeal, our Supreme Court decided *State* v. *Ares*, 345 Conn. 290, 284 A.3d 967 (2022). In *Ares*, the defendant, using a book of matches, set fire to a mattress on the front porch of the first floor of a three-family residence where he lived after an argument with his stepfather. Id., 293. By the time police arrived at the scene, "all three stories of the building were already engulfed in flames . . . ." Id., 294. "All twelve occupants who were at the scene at the time of the incident were evacuated from the building," including "the four minor children who were inside of the building's second floor apartment." Id. None of the children were injured. Id.

The defendant was subsequently charged and convicted of various crimes, including four counts of risk of injury to a child in violation of § 53-21 (a) (1). Id., 295. On appeal before our Supreme Court, he argued that the evidence against him was insufficient to convict him under the act prong of § 53-21 (a) (1). Id., 296. Specifically, he argued "that, because the evidence introduced at trial demonstrated only that he lit fire to a mattress on the building's front porch, the state [could not] establish that he ever took any act directly on the person of a minor." Id., 300–301. Our Supreme Court stated that "[t]he fact that the defendant's actions were motivated by his fight with the occupants on the first floor, rather than being specifically directed at the four children themselves, is not categorically dispositive . . . ." Id., 301–302. The court further stated that "[t]he

fact that the children escaped from the building without being harmed by the resulting flames or smoke is, likewise, not dispositive [because] proof of actual injury is not required." Id., 302. The court concluded that "[a] reasonable finder of fact could have concluded, on the basis of the totality of the circumstances present [on that] particular record, that such conduct was sufficiently egregious to rise to the level of blatant abuse." Id., 303. The court reasoned that, "[a]lthough the initial distance between the four children and the fire's origin, together with their eventual escape from the structure, may well have been relevant to the question of whether such physical injuries were sufficiently probable to warrant conviction, ample evidence about the speed of the blaze—together with the intensity of both the heat and smoke it produced—undisputedly supports the trial court's factual finding in that regard." Id. It therefore rejected the defendant's claim of evidentiary insufficiency. Id.

In *Ares*, the court observed that, "[o]ver the decades following *Schriver*, two particularly relevant legal principles have embedded themselves in our state's risk of injury jurisprudence. The first is that the state need not prove specific intent in order to establish a violation under either the situation or act prong. See, e.g., *State* v. *Maurice M.*, 303 Conn. 18, 28, 31 A.3d 1063 (2011) (specific intent is not required to establish violation of situation prong); *State* v. *March*, 39 Conn. App. 267, 274–75, 664 A.2d 1157 (specific intent is not required to establish violation of act prong), cert. denied, 235 Conn. 930, 667 A.2d 801 (1995). Evidence sufficient to support a finding of general intent will suffice. See, e.g., *State* v. *McClary*, [207 Conn. 233, 240, 541 A.2d 96 (1988)]; *State* v. *Euclides L.*, 189 Conn. App. 151, 161–62, 207 A.3d 93 (2019).

"The second well established legal principle is that the state need not prove actual injury in order to secure

a conviction under either the situation prong or the act prong of § 53-21 (a) (1). See, e.g., *State* v. *Burton*, 258 Conn. 153, 161, 778 A.2d 955 (2001) ('[Section] 53-21 does not require a finding that the victim's [health or] morals were actually impaired. On the contrary, § 53-21 provides [in relevant part] that anyone "who . . . wilfully or unlawfully . . . does any act *likely to impair* the health or morals of any such child" may be found guilty.' (Emphasis added.)); see also *State* v. *Gewily*, 280 Conn. 660, 669, 911 A.2d 293 (2006); *State* v. *Padua*, [273 Conn. 138, 148, 869 A.2d 192 (2005)]; *State* v. *Samms*, 139 Conn. App. 553, 559, 56 A.3d 755 (2012), cert. denied, 308 Conn. 902, 60 A.3d 287 (2013). Although *Schriver* requires that the defendant commit an act of 'deliberate, blatant abuse'; *State* v. *Schriver*, supra, 207 Conn. 466; it does not require that the defendant cause an actual injury. *It remains possible for a defendant's conduct to be sufficiently egregious in nature that it rises to the level of deliberate, blatant abuse, even in the absence of a defendant's direct physical contact with a child.* See, e.g., *State* v. *Owens*, 100 Conn. App. 619, 622–23, 638, 918 A.2d 1041 (concluding that 'the mere fact that the defendant did not physically touch [the child] while pursuing her should not relieve him of criminal liability under the act prong' when defendant chased child with knife after stabbing child's mother), cert. denied, 282 Conn. 927, 926 A.2d 668 (2007). Although proof of physical contact has been required to sustain a conviction under the act prong of § 53-21 in certain other contexts; see *State* v. *Pickering*, [180 Conn. 54, 64, 428 A.2d 322 (1980)] (statutory proscription of acts likely to impair morals of children required 'deliberate touching of the private parts of a child under the age of sixteen in a sexual and indecent manner'); neither the statute's plain text nor the case law applying it requires proof of such contact in all cases." (Emphasis added.) *State* v. *Ares*, supra, 345 Conn. 299–300.

Our Supreme Court's decision in *Ares* makes clear that a defendant need not touch or have "direct physical contact with" a child in order to be convicted under the act prong of § 53-21 (a) (1) for engaging in conduct likely to impair the *health* of a child. Id., 300. We therefore reject the defendant's contention that evidence of physical contact with J was required to sustain his conviction.

The defendant nevertheless contends that, even if § 53-21 (a) (1) does not require a defendant to physically touch a child, there was insufficient evidence for the jury to conclude that his conduct constituted " 'deliberate, blatant abuse' " for purposes of the statute. In support of that claim, he cites to a number of cases in which a defendant was convicted for conduct that he argues was more egregious in nature insofar as the defendants in those cases either directly handed alcohol to a victim; *State* v. *Hector M.*, 148 Conn. App. 378, 392, 85 A.3d 1188, cert. denied, 311 Conn. 936, 88 A.3d 550 (2014); *State* v. *March*, supra, 39 Conn. App. 276; or physically pursued a child with a dangerous weapon. *State* v. *Owens*, supra, 100 Conn. App. 622–23. We are not persuaded. Although the defendant attempts to distinguish those cases from the facts of this case, we find those cases instructive.

In *Owens*, which our Supreme Court cited to approvingly in *Ares*; see *State* v. *Ares*, supra, 345 Conn. 300; the defendant stabbed a woman, and, when the woman's child entered the room and told the defendant to leave her mother alone, he told the child to "get the fuck out of here" and ran two or three steps toward her with the knife, chasing the child out of the room. *State* v. *Owens*, supra, 100 Conn. App. 622–23. This court upheld the defendant's conviction under § 53-21 (a) (1) for committing an act likely to impair the health of a child, concluding that "the mere fact that the defendant did not physically touch [the child] while pursuing

her should not relieve him of criminal liability under the act prong of § 53-21 (a) (1)." Id., 638. This court reasoned that, "[i]f we were to hold otherwise and adopt the defendant's arguments that a physical touching is required to convict the defendant, it would make the language of § 53-21 (a) (1) meaningless and frustrate its purpose. For example, pursuant to the defendant's interpretation, if one threw a knife at a victim or attempted to stab a victim while in pursuit, his or her culpability would depend on the accuracy of his or her arm or on his or her speed in relation to that of the intended victim. Such an interpretation of § 53-21 (a) (1) would render the statute an absurdity." Id., 638–39.

In *Hector M.*, the defendant was convicted of risk of injury to a child after providing alcohol to his daughter. *State* v. *Hector M.*, supra, 148 Conn. App. 388. The evidence revealed that the daughter had only "a couple of sips" of the alcoholic beverage before she decided not to continue drinking. (Internal quotation marks omitted.) Id., 383. The defendant argued that the state failed to prove that he violated § 53-21 because his daughter did not drink enough to become intoxicated. Id., 390. In rejecting the defendant's argument, this court reasoned that, "[p]ursuant to the defendant's interpretation, one's culpability would depend on whether a child under the age of sixteen was actually intoxicated or impaired in order for a defendant to be found in violation of the statute." Id., 390–91. We explained that "[s]uch a view is at odds with the stated purpose of § 53-21 (a) (1), which is to protect the health and morals of children." Id., 391. Citing *Owens*, we stated that the defendant's argument "also fail[ed] to provide a proper focus on the behavior of the defendant, as our precedent requires." Id. In concluding that the evidence was sufficient to support his conviction, this court reasoned that "[t]he fact that [the daughter] had only a few sips of the alcohol is irrelevant because she decided, on her

own, not to continue drinking. Allowing a defendant to circumvent a charge of risk of injury to a child when the [child] chooses not to drink would render § 53-21 an absurdity." Id., 391–92. We observed that the facts of that case were "akin to *State* v. *March*, [supra] 39 Conn. App. 267 . . . where a defendant was convicted of risk of injury to a child for giving a four year old a cup containing rum and soda" and "the child was not impaired after drinking the alcohol." *State* v. *Hector M.*, supra, 392. We emphasized in *Hector M.* that "[t]here is no requirement . . . that the state prove an actual injury to the child. Rather, courts are required to focus on the acts committed by the defendant in order to determine whether those acts were likely to endanger the life of the child." Id.

With this as our backdrop, and on the basis of our review of the evidence presented at trial, we conclude that the jury reasonably could have concluded that the defendant's conduct was sufficiently egregious to rise to the level of deliberate, blatant abuse. D and B testified that the defendant, who was visibly angry, stated that he intended to take his and J's lives[3] and then retrieved J's cup and a cup for himself. The jury also heard testimony that, after pouring the cleaning solution into the cups, the defendant told J, his three year old daughter who stood nearby, to come to him and drink it. D further testified that, to the best of her knowledge, the cleaning solution that the defendant poured into the cup was poisonous and would be harmful if ingested and that the defendant was sincere in his efforts to entice J to drink the cleaning solution. Although there was no direct physical contact with J, this evidence, and the

[3] We note again that, in prosecutions pursuant to § 53-21 (a) (1), "the state need not prove specific intent in order to establish a violation under either the situation or act prong. . . . Evidence sufficient to support a finding of general intent will suffice." (Citations omitted.) *State* v. *Ares*, supra, 345 Conn. 299.

reasonable inferences that the jury could have drawn from it, was sufficient for the jury reasonably to conclude that the defendant violated the act prong of § 53-21 (a) (1) through acts that constituted deliberate, blatant abuse.

Our discussion does not end there, however. The defendant also argues that the evidence was insufficient to support a finding that his actions were "likely" to impair J's health because D was present throughout the incident and prevented J from ingesting the cleaning solution. We are not persuaded.

Construing the evidence in the record in a light most favorable to sustaining the verdict, as we must when considering evidentiary sufficiency; see *State* v. *Petersen*, supra, 196 Conn. App. 655; we conclude that the evidence was sufficient for the jury reasonably to conclude that the consumption of a toxic cleaning solution would be injurious to J and that it was likely that J, who was only three years old and standing close to the defendant at the time, would follow her father's instruction to consume the toxic substance. See *State* v. *Owens*, supra, 100 Conn. App. 639–40 (reviewing meaning of "likely"). The fact that, subsequent to the defendant's actions, D ultimately intervened to protect J does not render unreasonable the jury's conclusion that the defendant's conduct was likely to impair J's health. See *State* v. *Ares*, supra, 345 Conn. 302 (evidence was sufficient to support conviction despite adult intervening and safely removing children from building before fire spread). We reiterate that "[t]here is no requirement . . . that the state prove an actual injury to the child. Rather, courts are required to focus on the acts *committed by the defendant* in order to determine whether those acts were likely to endanger the life of the child." (Emphasis added.) *State* v. *Hector M.*, supra, 148 Conn. App. 392. Accordingly, we conclude that the jury heard sufficient evidence that, if credited, would

support its finding that the defendant's act of enticing J to drink cleaning solution was likely to impair J's health.

II

The defendant also claims that his conviction violates due process because § 53-21 (a) (1) is unconstitutionally vague as applied to the facts of this case.[4] Specifically, the defendant argues that there was inadequate notice that § 53-21 (a) (1) prohibited the conduct here because the defendant never physically touched J. We disagree.

"The determination of whether a statutory provision is unconstitutionally vague is a question of law over which we exercise de novo review. . . . In undertaking such review, we are mindful that [a] statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity. . . . To demonstrate that [a statute] is unconstitutionally vague as applied to [him], the [defendant] therefore must . . . demonstrate beyond a reasonable doubt that [he] had inadequate notice of what was prohibited or that [he was] the victim of arbitrary and discriminatory enforcement. . . .

"[T]he void for vagueness doctrine embodies two central precepts: the right to fair warning of the effect

[4] The defendant did not raise this issue at trial but argues that it is nonetheless reviewable pursuant to *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989). *Golding* allows review when "(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 a reasonable doubt." (Footnote omitted.) Id., 239–40; see also *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015) (modifying third prong of *Golding*). The state does not challenge the reviewability of the vagueness claim under *Golding*. Because the record is adequate for review and the claim is of constitutional magnitude, we will review the void for vagueness claim under *Golding* "to determine whether a constitutional violation . . . existed and, if so, whether it caused harm to the defendant." *State* v. *Ortiz*, 83 Conn. App. 142, 157, 848 A.2d 1246, cert. denied, 270 Conn. 915, 853 A.2d 530 (2004).

of a governing statute . . . and the guarantee against standardless law enforcement. . . . If the meaning of a statute can be fairly ascertained a statute will not be void for vagueness [because] [m]any statutes will have some inherent vagueness, for [i]n most English words and phrases there lurk uncertainties." (Internal quotation marks omitted.) *State* v. *Lori T.*, 345 Conn. 44, 54, 282 A.3d 1233 (2022). Moreover, "[a] facially vague law may nonetheless comport with due process if prior judicial decisions have provided the necessary fair warning and ascertainable enforcement standards." (Internal quotation marks omitted.) *State* v. *Robert H.*, supra, 273 Conn. 67; see also *State* v. *Scruggs*, 279 Conn. 698, 710, 905 A.2d 24 (2006) ("[r]eferences to judicial opinions involving the statute, the common law, legal dictionaries, or treatises may be necessary to ascertain a statute's meaning to determine if it gives fair warning" (internal quotation marks omitted)).

Count one of the operative long form information accused the defendant of "committ[ing] an act likely to impair the health and morals of [a] child, to wit: attempting to entice a three year old minor child to ingest a cup of cleaning solution . . . ." (Citation omitted.) Because prior judicial decisions provided fair warning that § 53-21 (a) (1) prohibited such conduct, we conclude that the statute is not unconstitutionally vague as applied to the defendant.

Our decision in *March* is particularly instructive. In that case, we affirmed a § 53-21 (a) conviction based on a defendant "hand[ing] a cup containing rum to the four year old victim who had requested something to drink." *State* v. *March*, supra, 39 Conn. App. 276. The defendant argued that this conduct was insufficient to support a conviction under the act prong of § 53-21 (a) (1) and, instead, was only prohibited under the situation prong. Id. We disagreed, concluding that, "due to the age of the victim, this [was] an act directly perpetrated

upon a child that [was] likely to impair the health or morals of the child." (Footnote omitted.) Id. With that decision, we made clear that providing a harmful substance to a young child is an act likely to impair the health of that child pursuant to § 53-21 (a) (1). See id.; see also *State* v. *Hector M.*, supra, 148 Conn. App. 391–92 (providing alcohol to fourteen year old who took only few sips was act likely to impair child's health); *State* v. *Ritrovato*, 85 Conn. App. 575, 588–90, 858 A.2d 296 (2004) (providing LSD to fifteen year old was act likely to impair child's health), rev'd on other grounds, 280 Conn. 36, 905 A.2d 1079 (2006).

Furthermore, although the defendant argues that he was not sufficiently on notice that his conduct was prohibited by the statute because he did not physically touch the victim, as described in part I of this opinion, cases decided well before the defendant committed the criminal act in question in this case made clear that no such contact was necessary for a conviction under the act prong of § 53-21 (a) (1). See, e.g., *State* v. *Owens*, supra, 100 Conn. App. 638; *State* v. *March*, supra, 39 Conn. App. 276. Although the defendant takes issue with this court's reasoning in *Owens*, he cannot claim that the decision did not put him on notice that his conduct violated § 53-21 (a) (1). Moreover, as noted earlier in this opinion, our Supreme Court has since cited *Owens* approvingly for the proposition that a defendant may be convicted under the statute even in the absence of physical contact with the victim. *State* v. *Ares*, supra, 345 Conn. 300.

Accordingly, because the defendant had sufficient notice that his conduct was prohibited by § 53-21 (a) (1), the statute is not unconstitutionally vague as applied to him.

The judgment is affirmed.

In this opinion the other judges concurred.