IN RE JANELEAH I.*
(AC 48460)

Seeley, Westbrook and Norcott, Js.

Syllabus

The respondent mother appealed from the trial court's judgment terminating her parental rights with respect to her minor child. The mother claimed, inter alia, that the court violated her right to procedural due process under the fourteenth amendment to the United States constitution by conducting the trial on the termination petition filed by the petitioner, the Commissioner of Children and Families, in her absence. *Held*:

The trial court did not violate the respondent mother's right to procedural due process by conducting the termination of parental rights trial in her

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

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

absence, this court having concluded that the trial court's action was not fundamentally unfair under the balancing test set forth in *Mathews* v. *Eldridge* (424 U.S. 319) and, thus, that the mother's unpreserved constitutional claim failed to satisfy the third requirement of *State* v. *Golding* (213 Conn. 233).

This court determined that the trial court's failure to make the statutorily (§ 17a-112 (k) (7)) mandated written findings, by clear and convincing evidence, as to whether the unreasonable conduct of another person or the respondent mother's economic circumstances prevented the mother from maintaining a meaningful relationship with the child required reversal of the judgment with respect to the trial court's determination in the dispositional phase of the proceeding that it was in the child's best interest to terminate the mother's parental rights, as the criteria set forth in § 17a-112 (k) must be strictly complied with because the mother's fundamental right to parent the child was at stake.

Argued May 27—officially released July 9, 2025**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and tried to the court, *Dawson*, *J.*; judgment terminating the respondents' parental rights; thereafter, the court denied the respondent mother's motion to open the judgment terminating her parental rights, and the respondent mother appealed to this court. *Reversed in part*; *further proceedings*.

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

Nisa J. Khan, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellee (petitioner).

Opinion

WESTBROOK, J. The respondent mother, Desiree I., appeals from the judgment of the trial court rendered

** July 9, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her minor child, Janeleah.[1] On appeal, the respondent claims that the court (1) violated her rights to procedural due process under the fourteenth amendment to the United States constitution by conducting the termination of parental rights trial in her absence and (2) improperly failed to make written, mandatory findings as to the seven best interest factors set forth in General Statutes § 17a-112 (k).[2] We disagree with the respondent's first claim but agree with her second claim.[3] Accordingly, we reverse the court's judgment with respect to its dispositional determination that termination of the respondent's parental rights was in Janeleah's best interest and remand the case for a new dispositional hearing.

The following facts, which either were found by the trial court or are undisputed in the record, are relevant to the respondent's appeal. The Department of Children and Families (department) first became involved with Janeleah when she was born in August, 2018.[4] On July 14, 2020, the respondent's then boyfriend called the police and reported that there had been a physical altercation between him and the respondent. When an offi-

[1] The court also terminated the parental rights of the respondent father, Joshua V., who is not involved in this appeal. Accordingly, all references to the respondent in this opinion are to the mother.

[2] Although the respondent, in her principal appellate brief, addresses her procedural due process claim second, we will address that claim first because, if she prevails, she would be entitled to a new trial rather than a new dispositional proceeding.

[3] The attorney for the minor child filed a statement adopting the brief of the petitioner.

[4] The record reveals the following: "[The respondent] [has] a history with the [d]epartment dating back to 2018 for concerns of physical neglect, emotional neglect and sexual abuse [and exploitation] [by a] parent. There have been six prior reports involving [the respondent] with no substantiations and three reports involving [the father] with two substantiations of sexual abuse [and exploitation]. The family received ongoing services from [August, 2018, until February, 2019]."

cer arrived at the scene, the respondent was not there, but her boyfriend reported that she had punched him twice in the back of the head while he was holding Janeleah. Afterward, the trial court granted a full no contact order with respect to the respondent and her boyfriend. On October 5, 2021, the police received a report from a bystander that a physical altercation was taking place on the street. When the police arrived, they observed that the respondent was "out of control and trying to fight everyone outside of her then boyfriend" in the presence of Janeleah. The respondent was arrested and charged with violation of a protective order and breach of the peace. The respondent was ultimately released on probation.

On March 2, 2023, the department received a call from the respondent's probation officer, alleging that the respondent had violated the terms of her probation by testing positive for fentanyl. On March 10, 2023, the petitioner filed a neglect petition and sought an order of temporary custody on Janeleah's behalf, which the court granted ex parte that same day. The court also ordered that the respondent comply with certain specific steps to facilitate her reunification with Janeleah. The court subsequently sustained the order of temporary custody. On August 22, 2023, the court adjudicated Janeleah neglected, committed her to the care and custody of the petitioner, and ordered final specific steps for the respondent.[5]

[5] The trial court ordered the respondent, inter alia, to keep all appointments with the department, take part in counseling and make progress toward identified treatment goals, submit to a substance abuse evaluation and follow recommendations for treatment, submit to random drug testing, abstain from using illegal drugs, cooperate with court-ordered evaluations and testing, maintain adequate housing and income, cooperate with protective orders, complete a domestic violence program, cooperate with the child's therapy, visit the child as often as permitted, sign releases allowing the department to communicate with service providers, and sign releases allowing the attorney for the minor child and the guardian ad litem to review the child's medical and educational records.

On February 8, 2024, the court approved a permanency plan that called for the termination of parental rights. On May 16, 2024, the petitioner filed the underlying petition for termination of the respondent's parental rights, alleging that the respondent had failed to achieve a sufficient degree of personal rehabilitation within the meaning of § 17a-112 (j) (3) (B). On August 1, 2024, the respondent was present at a preliminary hearing during which the court scheduled a trial on the petition to take place on November 6 and 13, 2024.

On November 6, 2024, the court, *Dawson*, *J.*, commenced the trial on the petition for the termination of the respondent's parental rights. The respondent, who was represented by counsel, was not present. The respondent's counsel, Attorney Peter K. Manko, was present, as well as the petitioner's counsel, Attorney Renee Bevacqua-Bollier; the father's counsel, Attorney Jennifer M. Celentano; and the petitioner's witnesses, Melissa Hodges, a social worker for the department, and Ines Schroeder, an expert in clinical and forensic psychology. The following colloquy took place at the beginning of trial:

"[Attorney Bevacqua-Bollier]: I would ask that the court . . . note the absence of [the respondent], and I will be proceeding in absentia.

"[The Court]: Okay. So, the [respondent] [was] . . . served and advised, I believe, on June [11, 2024]. Do we know that [she] had notice of today's date?

"[Hodges]: Yes. . . . I reached out to [the respondent] on Monday reminding her about today [and] the time, and I also reached out again this morning. No response either time. I reached out to the foster parent, because [she's] a fictive kin, asking if she's heard from [the respondent], and she said she hadn't heard from [the respondent] since Monday and all she talked about was getting . . . the child's school picture . . . .

"[The Court]: Okay. Can I see the file? I . . . want to make sure that [she] . . . [was] served. Counsel was appointed for [the respondent]. . . . [The respondent] was present on August [1, 2024] . . . [a]nd this date was sent or at least confirmed at that time. Anyone else want to be heard on the [petitioner's] request to default the [respondent]?

"[Attorney Celentano]: No, Your Honor.

"[Attorney Manko]: No, Your Honor. . . .

"[Attorney Bevacqua-Bollier]: I'm actually not asking for a default, Your Honor. I'm just asking that Your Honor note [the respondent's] absence, and I intend to proceed with evidence in absentia.

"[The Court]: Okay. All right. So, it's clear to the court that the [respondent] knew that this was happening. [She] [was] present in August . . . [when] this date was set. So, the [petitioner] may proceed."[6]

The court thereafter heard testimony from Schroeder and Hodges. The court admitted six exhibits into evidence, including the August 22, 2023 specific steps ordered by the court with respect to the respondent, the August 22, 2023 specific steps ordered by the court

[6] In addition, the following colloquy occurred during Bevacqua-Bollier's direct examination of Hodges concerning the respondent's absence at trial:

"[Attorney Bevacqua-Bollier]: Miss Hodges, can you tell the court the efforts that you made to notify [the respondent] of today's proceedings?

"[Hodges]: I reached out to [the respondent] on Monday . . . telling her about today's court date, the time, the address, to be on time, [and] that court started sharply at 9 in the morning. I did not get a response from her. I reached out to her again this morning with no response. I reached out to the foster parent because it's a fictive kin placement, and she sometimes has contact with [the respondent], and she said she last . . . talked to her on Monday, but it was not about court; it was just about school pictures. . . .

"[Attorney Bevacqua-Bollier]: Did you check to see whether [the respondent] was incarcerated?

"[Hodges]: Yes. I did a [Department of Correction] check this morning, and neither one of [the parents] are incarcerated."

with respect to the father, a social study conducted by the department in support of the termination of parental rights, Schroeder's curriculum vitae, a psychological consultation report prepared by Schroeder, and a narrative prepared by Hodges.

On November 26, 2024, the court issued a memorandum of decision and rendered judgment terminating the respondent's parental rights. In the adjudicatory portion of its decision,[7] the court found by clear and convincing evidence that (1) the department had made reasonable efforts to locate the respondent and to reunify her with Janeleah, (2) the respondent was unwilling or unable to benefit from reunification services, and (3) the respondent had failed to achieve a sufficient degree of personal rehabilitation within the meaning of § 17a-112 (j) (3) (B).[8]

In the dispositional portion of its decision, the court noted the seven mandatory written findings set forth

[7] "A hearing on a petition to terminate parental rights consists of two phases, adjudication and disposition. . . . If the trial court determines that a statutory ground for termination exists, it proceeds to the dispositional phase. In the dispositional phase, the trial court determines whether termination is in the best interest of the child." (Internal quotation marks omitted.) *In re Matthew W.*, 231 Conn. App. 21, 30 n.4, 331 A.3d 1239 (2025).

[8] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing . . . may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent . . . unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts . . . (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding, or (ii) is found to be neglected, abused or uncared for and has been in the custody of the commissioner for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent . . . 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 § 17a-112 (k)[9] that it was required to make but did not indicate what, if any, facts satisfied this requirement. The court found, by clear and convincing evidence, that the termination of the respondent's parental rights was in the best interest of the child. The court rendered judgment terminating the respondent's parental rights and appointed the petitioner as Janeleah's statutory parent.

On December 13, 2024, the respondent filed a motion to open the judgment terminating her parental rights. In her motion, the respondent alleged that the termination of her parental rights was not in Janeleah's best interest and that she had been absent from trial because (1) she did not have notice of the trial date, (2) she had

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

a work conflict on the day of trial, and (3) she lacked transportation from Hartford, where she resides, to New Haven, where the trial was held. On January 2, 2025, the court held a hearing on the respondent's motion. At the hearing, the respondent stated: "I had work and an appointment [the day of trial]. . . . I totally forgot that I had court. I received a text message . . . the morning of court when I was already at my appointment." The court subsequently denied the respondent's motion on the record. It stated in relevant part: "[T]here was a hearing on August [1, 2024]. At that time . . . there were two trial dates scheduled: November [6], and November [13]. [The respondent] was present. She received that date on August [1]. . . . There were three months between when the trial date was selected and when the trial date occurred. [The respondent] had plenty of time to make arrangements to get out of work and to find transportation if that was an issue. Additionally, if [the respondent] could not make arrangements to get out of work, she could have filed a request for a continuance. That was not done. . . . I'm going to deny this motion." This appeal followed. Additional facts will be set forth as necessary.

I

The respondent first claims that the trial court violated her rights to procedural due process under the fourteenth amendment to the United States constitution[10] by conducting the termination of parental rights trial in her absence. We disagree.

The respondent acknowledges that this claim is unpreserved and seeks review pursuant to in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120

[10] The fourteenth amendment to the United States constitution provides in relevant part that no state shall "deprive any person of life, liberty or property, without due process of law . . . ." U.S. Const., amend. XIV, § 1.

A.3d 1188 (2015). "Under *Golding* review, which applies in both criminal and civil cases . . . [a respondent] can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the [party claiming error] may prevail." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Skye B.*, 230 Conn. App. 725, 737, 331 A.3d 769, cert. denied, 351 Conn. 922, 333 A.3d 105 (2025). We agree with the respondent that the record is adequate to review her claim and that it is of constitutional magnitude, alleging the deprivation of her procedural due process rights. For the reasons that follow, however, we disagree with the respondent that a constitutional violation exists that deprived her of her right to a fair trial.

The following legal principles are relevant to our analysis under the third prong of *Golding*. "The United States Supreme Court established a three-pronged balancing test in *Mathews* [v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)] to determine what safeguards the federal constitution requires to satisfy procedural due process. Courts apply that balancing test when the state seeks to terminate parental rights. . . . The three factors to be considered are (1) the private interest that will be affected by the state action, (2) the risk of an erroneous deprivation of such interest, given the existing procedures, and the value of any

additional or alternate procedural safeguards, and (3) the government's interest, including the fiscal and administrative burdens attendant to increased or substitute procedural requirements. . . . The bottom-line question is whether the denial rendered the [proceeding] fundamentally unfair in view of the *Mathews* factors." (Citation omitted; internal quotation marks omitted.) *In re Na-Ki J.*, 222 Conn. App. 1, 8, 303 A.3d 1206, cert. denied, 348 Conn. 929, 304 A.3d 860 (2023). Our balancing of the three *Mathews* factors in the present case leads us to conclude that the court's decision to proceed with trial in the respondent's absence did not render the termination proceeding fundamentally unfair.

As to the first factor of the *Mathews* balancing test, "the respondent has an important, constitutionally protected interest in preserving [her] parental rights." (Internal quotation marks omitted.) Id. Accordingly, the first *Mathews* factor weighs in favor of the respondent.

"The second factor of *Mathews* addresses the risk of an erroneous deprivation and the probable value of additional or substitute procedural safeguards." Id., 9. The respondent argues that the trial court created a substantial risk of an erroneous deprivation because she was not afforded " 'the benefit of the safeguards already in place in our statutes . . . .' " Specifically, she argues that (1) she did not receive adequate notice of the trial date, and (2) the court improperly proceeded with trial in her absence. We are not persuaded.

We first consider whether the respondent was provided with adequate notice of the trial date. "[T]he essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and [an] opportunity to meet it. . . . It is equally fundamental that the right to notice . . . must be granted at a meaningful time and in a meaningful

manner. . . . Due process requires notice that would be deemed constitutionally adequate in a civil or criminal proceeding. . . . Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded . . . .” (Citations omitted; internal quotation marks omitted.) *In re Jason M.*, 140 Conn. App. 708, 716–17, 59 A.3d 902, cert. denied, 308 Conn. 931, 64 A.3d 330, cert. denied sub nom. *Charline P.* v. *Connecticut Dept. of Children & Families*, 571 U.S. 1079, 134 S. Ct. 701, 187 L. Ed. 2d 564 (2013).

In the present case, the record reveals that the respondent had notice of the trial date because she was present at the August 1, 2024 hearing when the court scheduled trial to begin on November 6, 2024. See id., 718 (respondent had notice where “the respondent and her attorney were present in court when the court established the dates of trial”). The respondent does not dispute that she was informed of the trial date at the August 1, 2024 hearing. Rather, she stated at the hearing on her motion to open the judgment terminating her parental rights that she merely *forgot* about the trial date. Additionally, Hodges attempted to contact the respondent twice to remind her of the date, time, and location of the trial. Hodges also contacted the foster family in a further attempt to reach the respondent regarding the trial date. The respondent did not respond to Hodges nor did she inform her counsel or the court that she would not be present on November 6, 2024. The respondent, therefore, had adequate notice of the trial date.

We next consider whether conducting the trial in the respondent’s absence created a risk of erroneous deprivation. We first note that the trial court did not render a default judgment against the respondent in her absence. Rather, the court held a trial on the merits,

requiring the petitioner to prove by clear and convincing evidence not only the ground for termination but that it was in Janeleah's best interest for the respondent's parental rights to be terminated. See *In re Na-Ki J.*, supra, 222 Conn. App. 9 (court provided procedural safeguards in respondent's absence by, inter alia, holding trial on merits rather than rendering default judgment).

Additionally, "[t]his court has stated that [i]t is in the interest of justice to ensure that any parent caught in the throes of a termination proceeding be present, *or at least represented by counsel*, from the beginning of the hearing. . . . There can be, however, circumstances in a termination hearing in which the mere presence, alone, of a respondent's counsel, is not sufficient for a court to proceed in the respondent's absence." (Citation omitted; emphasis in original; internal quotation marks omitted.) *In re Candids E.*, 111 Conn. App. 210, 217, 958 A.2d 229 (2008).

In the present case, the respondent was represented by counsel during the entirety of the trial, and she has not pointed to any circumstances indicating that her counsel failed to adequately represent her interests in her absence. Indeed, the respondent's counsel cross-examined Hodges, eliciting testimony that the respondent consistently had visited Janeleah, was engaged during the visits, and had positive interactions with Janeleah. The respondent's counsel also delivered a closing argument in which he highlighted positive aspects of the respondent's parenting efforts. Although the respondent contends that, if she had been present, she would have testified about her "compliance with her specific steps," she was absent "on the basis of matters solely within [her] control . . . ." *In re Lukas K.*, 120 Conn. App. 465, 476, 992 A.2d 1142 (2010); see id. (court did not deprive respondent of right to procedural due process by conducting trial in his absence because

he was aware "that he would not physically be able to attend the trial . . . [and] failed to notify the court, failed to request another continuance in advance of trial and failed to pursue any pretrial discovery options"), aff'd, 300 Conn. 463, 14 A.3d 990 (2011). Moreover, the respondent does not "explain with any specificity what additional evidence or testimony she would have introduced," had the court not proceeded with trial in her absence, "that would have *rebutted the petitioner's evidence*." (Emphasis added.) *In re Na-Ki J.*, supra, 222 Conn. App. 10. Nor does the respondent claim on appeal that the court's findings of fact were clearly erroneous.

The respondent relies on this court's decision in *In re Jonathan P.*, 23 Conn. App. 207, 579 A.2d 587 (1990), to support her argument that the trial court should not have proceeded with trial in her absence. In that case, at the beginning of trial, the respondent's counsel left the courtroom to call the respondent, who was absent. Id., 209. While the respondent's counsel was out of the courtroom, the court proceeded with trial by calling an expert witness to testify. Id., 209–10. When the respondent's counsel returned to the courtroom to advise the court that the respondent was on his way, the expert had already begun testifying. Id., 210. Trial continued in the respondent's absence, and, when he arrived, his counsel had already extensively cross-examined the expert witness. Id. On appeal, this court concluded that the trial court had violated the respondent's procedural due process rights "when it commenced the termination proceeding in the absence of the respondent *and his counsel*. . . . Furthermore . . . *under the circumstances of this case*, it would have been improper for the court to proceed before the respondent arrived at court, even if his counsel had been in the courtroom at the time." (Emphasis added.) Id., 212. This court has explained that "[t]he respondent's due process rights

were violated in [*In re Jonathan P.*] because the respondent, who was incarcerated, *was prevented from participating in the termination of parental rights trial on the basis of state sanctioned action*. . . . [T]he respondent had not been transported by the [D]epartment of [C]orrection to court even though a habeas writ had been issued for him to be present that morning." (Citation omitted; emphasis added.) *In re Tremaine C.*, 117 Conn. App. 521, 532, 980 A.2d 317, cert. denied, 294 Conn. 920, 984 A.2d 69 (2009).

The present case is distinguishable from *In re Jonathan P.* Here, as we have previously stated, the respondent was represented by counsel during the entirety of the trial. Additionally, in *In re Jonathan P.*, the *state* was responsible for the respondent's absence at the start of trial, and the trial court was aware that the respondent was on his way when it proceeded with trial in his absence. In the present case, however, the respondent was responsible for her own absence at trial. Moreover, Hodges had attempted to contact the respondent on the morning of trial and received no response from her. The court, therefore, had no indication that the respondent intended to be present for trial or when she would be available. Thus, because the respondent had notice of the trial date, received a trial on the merits, and was adequately represented by counsel during the trial, we conclude that the court adhered to all applicable procedural safeguards in conducting trial in the respondent's absence.[11]

[11] We note that the trial court provided a hearing on the respondent's motion to open the judgment terminating her parental rights. "It is well settled that a party who has filed a motion to open has the burden of showing (1) reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment [she seeks to open] and (2) that [she] was prevented by mistake, accident or other reasonable cause from . . . making the defense. General Statutes § 52-212 (a). It is thus clear that to prevail on a motion to open, two things must occur. There must be a showing that (1) a good defense, the nature of which must be set forth, existed at the time judgment was rendered, and (2) the party seeking to set aside the judgment was prevented from making that

In light of the foregoing, we conclude that the trial court did not create an unreasonable risk of an erroneous deprivation of the respondent's parental rights.[12] Thus, the second *Mathews* factor weighs in favor of the petitioner.

The final *Mathews* factor is "the government's interest in the termination proceeding, which is twofold. First, the state has a fiscal and administrative interest in lessening the cost involved in termination proceedings. . . . Second, as parens patriae, the state is also

defense because of mistake, accident or other reasonable cause. . . . Since the conjunctive and meaning in addition to is employed between the parts of the two prong test, both tests must be met. . . . The manifest purpose of a motion to open . . . is to provide a mechanism by which a defaulted party has an opportunity to be heard." (Citation omitted; internal quotation marks omitted.) *In re Jaelynn K.-M.*, 229 Conn. App. 371, 385, 327 A.3d 1013 (2024), cert. denied, 351 Conn. 904, 329 A.3d 239 (2025).

On appeal, the respondent does not challenge the trial court's denial of her motion to open. Nevertheless, even if the respondent could establish the first prong of § 52-212 (a), she cannot establish that she was prevented by mistake, accident, or other reasonable cause from making a defense because, despite having actual notice of the trial date, she failed to inform her counsel, the department, or the court that she was unable to be present that day. See *In re Skylar F.*, 191 Conn. App. 200, 212, 215 A.3d 750 (2019) (court properly denied motion to open judgment terminating parental rights because "it is the burden of the respondent to keep the court, his attorney and the department informed of his whereabouts and his intentions with respect to exercising responsibility for his child"); *In re Ilyssa G.*, 105 Conn. App. 41, 49, 936 A.2d 674 (2007) ("[r]egardless of whether it was intentional or the result of negligence, the respondent's failure to keep the court, the department and his attorney informed of his whereabouts does not qualify for purposes of opening a default judgment as a mistake, accident or other reasonable cause that prevented the respondent from presenting a defense"), cert. denied, 285 Conn. 918, 943 A.2d 475 (2008). Thus, the respondent had an additional opportunity to be heard at the motion to open hearing, thereby reducing the risk of an erroneous deprivation of her interests, but she failed to meet her burden of establishing that the judgment against her should be opened.

[12] To the extent the respondent argues that the trial court should have provided "the *additional safeguard* of a short continuance of the trial until [she] was able to attend"; (emphasis added); we decline to consider whether a continuance would have been a valuable additional procedural safeguard because the respondent failed to request a continuance and we have concluded that the court properly proceeded with trial in her absence.

interested in the accurate and speedy resolution of termination litigation in order to promote the welfare of the affected child." (Internal quotation marks omitted.) *In re Na-Ki J.*, supra, 222 Conn. App. 11–12. The respondent argues that the third *Mathews* factor "does not weigh heavily in the [petitioner's] favor" because continuing the trial "until [she] was able to attend would not materially or substantially increase the government's fiscal and administrative burdens. Nor would such a delay compromise the government's interest in the well-being of the child." We are not persuaded.

In the present case, a continuance would have caused greater fiscal and administrative burdens on both the court system and the parties, as the trial on the petition to terminate the respondent's parental rights would have been delayed, despite the fact that the parties were present and ready to proceed with trial on the day the respondent was absent. See *In re Elena M.*, 232 Conn. App. 221, 238, A.3d (2025) (continuance "would have caused greater fiscal and administrative burdens" because trial "would have been extended, despite the fact that the parties were present and ready to proceed with trial on the day the respondent moved for the continuance"). Delaying the trial, therefore, would have resulted in "the very economic and administrative burdens on resources considered by [the third *Mathews*] prong . . . ." (Internal quotation marks omitted.) *In re Na-Ki J.*, supra, 222 Conn. App. 12; see also *In re Matthew P.*, 153 Conn. App. 667, 680, 102 A.3d 1127 ("[i]n light of the fact that all party representatives and the petitioner's witnesses were present on the first day of trial, we conclude that delaying the proceeding by granting the continuance would have resulted in the very economic and administrative burdens on resources considered by this prong" of *Mathews* test), cert. denied, 315 Conn. 902, 104 A.3d 106 (2014).

Additionally, the state's interest would have been adversely impacted by a continuance due to the nature of the proceeding, namely, the termination of parental rights with respect to a child. "[I]t is in the government's interest, as parens patriae, to resolve this case as expeditiously as possible, as the well-being of [Janeleah] is left in limbo by ongoing proceedings." *In re Elena M.*, supra, 232 Conn. App. 239. This court has explained that, "because of the psychological effects of prolonged termination proceedings on young children, time is of the essence. Any significant delay would undermine the state's important interest in protecting the welfare of children." (Internal quotation marks omitted.) *In re Na-Ki J.*, supra, 222 Conn. App. 12–13. Delaying the matter by continuing the trial for an unspecified amount of time, therefore, "would have placed an unnecessary burden on the state's interest in providing permanency and stability" to Janeleah. (Internal quotation marks omitted.) Id., 14. Accordingly, the third *Mathews* factor weighs in favor of the petitioner.

In balancing the three *Mathews* factors, we conclude that the respondent has failed to demonstrate that the alleged procedural due process violation exists and that it deprived her of a fair trial. Thus, her claim fails under the third prong of *Golding*.

II

The respondent next claims that the trial court, in the dispositional phase of the termination of parental rights proceeding, failed to make the requisite written, mandatory findings as to the seven best interest factors set forth in § 17a-112 (k). Specifically, the respondent argues that the court failed to make any written findings regarding the factor set forth in § 17a-112 (k) (7)[13] and,

[13] The respondent additionally argues, in her principal appellate brief, that the trial court failed to make written findings regarding the factors set forth in § 17a-112 (k) (3), (4) and (5). In her reply brief, however, the respondent concedes that the court made written findings regarding Janeleah's age, as required by § 17a-112 (k) (5). Furthermore, we agree with the petitioner

therefore, that the court's best interest determination must be reversed. In response, the petitioner concedes that the court failed to make explicit findings regarding § 17a-112 (k) (7) but argues that reversal of the best interest determination is not required, pursuant to *In re Nevaeh W.*, 317 Conn. 723, 120 A.3d 1177 (2015), because the court's best interest determination is supported by the evidence. We agree with the respondent.

The following legal principles are relevant to our resolution of this claim. "In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the respondent's parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven factors delineated in" § 17a-112 (k). (Internal quotation marks omitted.) *In re Dorrell R.*, 64 Conn. App. 455, 467, 780 A.2d 944 (2001). Section 17a-112 (k) provides in relevant part: "Except in the case where termination of parental rights is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding . . . (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

Resolving the respondent's claim requires us to interpret the trial court's judgment. "The interpretation of

that, reading the court's memorandum of decision as a whole, the court made at least some written findings concerning the factors set forth in § 17a-112 (k) (3) and (4). In light of our conclusion with respect to the factor set forth in § 17a-112 (k) (7) and our remand for a new dispositional hearing, we need not analyze whether the court's written findings with respect to § 17a-112 (k) (3) and (4) require reversal of the court's best interest determination.

a trial court's judgment presents a question of law over which our review is plenary. . . . As a general rule, judgments are to be construed in the same fashion as other written instruments. . . . The determinative factor is the intention of the court as gathered from all parts of the judgment. . . . Effect must be given to that which is clearly implied as well as to that which is expressed. . . . The judgment should admit of a consistent construction as a whole . . . without particular portions read in isolation, to discern the parameters of its holding." (Internal quotation marks omitted.) *In re Ryshan N.*, 230 Conn. App. 678, 681–82, 330 A.3d 646, cert. denied, 351 Conn. 922, 333 A.3d 104 (2025). "Furthermore, we read an ambiguous trial court record so as to support, rather than contradict, its judgment." (Internal quotation marks omitted.) *In re Nevaeh W.*, supra, 317 Conn. 733.

Additionally, "[t]o the extent that the [respondent's] claim requires us to interpret the requirements of § 17a-112 (k), our review is plenary. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to

implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .” (Citation omitted; internal quotation marks omitted.) Id., 729–30.

In the present case, the trial court titled part of its memorandum of decision “Best Interest Considerations.” In this part of the decision, the court listed each of the seven best interest factors enumerated in § 17a-112 (k) but did not include any written findings regarding the factors. The court titled the next part of its memorandum of decision “ADJUDICATORY FINDINGS” (adjudicatory findings section). In the adjudicatory findings section, the court made sixteen written findings. Four of those findings explicitly refer to the “best interest of Janeleah.” The court’s sixteenth finding, in particular, provides: “It is in the best interest of Janeleah for the parental rights of [the respondent] . . . to be terminated.” Although the court refers to this part of its decision as *adjudicatory* findings, it is the only part in which the court explicitly found facts, and the court related those findings to both the statutory ground for termination and the best interest of Janeleah. Accordingly, we read the adjudicatory findings section as containing the court’s factual findings for both the adjudicatory phase and the dispositional phase of its decision.

Additionally, the trial court titled an earlier part of its memorandum of decision “EVIDENCE PRESENTED” (evidence presented section). In the evidence presented section, the court described portions of the testimony and exhibits presented at trial. Although the court did not explicitly make credibility determinations or find facts in this section, we read the evidence presented section as setting forth the evidence that the court credited and relied on in making the findings in the adjudicatory findings section.[14] This reading of the decision is

[14] We note that, in the trial court’s memorandum of decision, the evidence presented section primarily recounts testimony and exhibits without clearly

supported by the opening paragraph of the adjudicatory findings section, which provides: "The court has carefully considered the verified petitions and exhibits . . . as well as the testimony presented, according to the standards required by law. Based upon the evidence submitted by the department, the court finds the following by clear and convincing evidence . . . ." The adjudicatory findings section, therefore, must be read in conjunction with the evidence presented section. We now consider whether, reading the decision as a whole, the trial court did consider and make written findings regarding the factor set forth in § 17a-112 (k) (7).

Section 17a-112 (k) (7) requires the trial court to make written findings concerning the extent to which

identifying which portions of the evidence the court found to be credible or persuasive and, in the adjudicatory findings section, the court lists a series of conclusory statements without an explicit narrative linking those conclusions to the evidence or resolving contested issues of fact. The trial court did not use best practices in structuring its memorandum of decision this way. The court was the sole fact finder in this case, and "[i]t is the quintessential function of the fact finder to reject or accept certain evidence, and to believe or disbelieve any expert testimony. . . . The trier may accept or reject, in whole or in part, the testimony of an expert offered by one party or the other." (Internal quotation marks omitted.) *In re Davonta V.*, 285 Conn. 483, 489, 940 A.2d 733 (2008). We, therefore, take this opportunity to emphasize that, under well established appellate standards, an appellate court reviews findings of fact for clear error and does not reweigh evidence or make its own credibility determinations. As such, it is essential that the trial court set forth its factual findings with clarity, distinguishing between a summary of the evidence presented and the court's own determinations of what occurred.

A mere recital of testimony, even if extensive, does not satisfy the trial court's obligation to make factual findings, particularly in juvenile matters where the court serves as the finder of fact on critical issues of adjudication. When the evidence is conflicting or when credibility is at issue, the court must make express findings indicating what it believes. This is especially important in juvenile proceedings, where the stakes are significant and appellate review must be tethered to discernible, reviewable findings. Accordingly, to facilitate appellate review of its decision, a trial court, in making written factual findings, should refrain from reciting portions of testimony or referencing other evidence presented without indicating whether it credited that evidence.

the unreasonable conduct of another person or the economic circumstances of the respondent prevented the respondent from maintaining a meaningful relationship with Janeleah. The petitioner concedes that "[t]he trial court did not expressly make this finding." The petitioner argues, however, that the court "made factual findings that otherwise support the finding that [the respondent was] not prevented from maintaining a meaningful relationship with Janeleah." Specifically, the petitioner points to the portion of the adjudicatory findings section in which the court found that "[t]he department has provided both parents with regular visitation." Although this finding demonstrates that the department had made efforts to reunite the respondent with Janeleah by offering visitation, nowhere in the court's decision does it state whether the department, the father, or any other person engaged in unreasonable conduct that hindered the respondent's ability to maintain a relationship with Janeleah. Nor does the court's decision state whether the respondent's economic circumstances hindered that ability. No findings of fact indicate that the court considered the extent to which the unreasonable conduct of another person or the economic circumstances of the respondent prevented her from maintaining a meaningful relationship with Janeleah. Thus, the court failed to make the written findings mandated by § 17a-112 (k) (7).

The petitioner nevertheless maintains that reversal of the judgment terminating the respondent's parental rights is not warranted because the trial court's best interest determination is "otherwise factually and legally sound." The petitioner relies on *In re Eden F.*, 250 Conn. 674, 741 A.2d 873 (1999), and *In re Nevaeh W.*, supra, 317 Conn. 740, for the proposition that a trial court's failure to make written findings regarding one of the seven best interest factors set forth in § 17a-112 (k) does not require reversal of the judgment if the

court's best interest determination survives "a harmless error review" in light of the evidence presented. We disagree with the petitioner's interpretation of and reliance on the language of our Supreme Court in *In re Nevaeh W.*, supra, 740.

In *In re Eden F.*, our Supreme Court addressed the respondent mother's claim that General Statutes (Rev. to 1999) § 17a-112 (d),[15] which set forth the seven best interest factors, required the petitioner to "prove, by clear and convincing evidence, that reasonable efforts were made to reunify [the respondent] with her children." *In re Eden F.*, supra, 250 Conn. 687. In rejecting the respondent's claim, the court determined that the statute did not require the trial court to find by clear and convincing evidence that the department's reunification efforts were *reasonable*. See id., 694–95. It stated: "Although [General Statutes (Rev. to 1999)] § 17a-112 (d) (1) and (2) mandated that the trial court make written findings regarding the timeliness, nature, extent and reasonableness of the efforts made to reunify parent and child, [at the time that the petitions were filed] § 17a-112 contained nothing to indicate that any such finding was a prerequisite to the termination of parental rights.[16] Thus, when the petitions in this case were filed, the factors to be considered under § 17a-112 (d) served only to guide the trial court in making its ultimate decision whether to grant the termination petition. . . .

[15] "[S]ubsection (d) of § 17a-112 was redesignated as subsection (k) in 2000. See Public Acts 2000, No. 00-137, § 1." *In re Nevaeh W.*, 317 Conn. 739 n.10.

[16] "When the petitions in [*In re Eden F.*] were filed, § 17a-112 (d) required that the trial court, in determining whether to terminate parental rights, 'consider and . . . make written findings regarding' seven separate factors, including: '(1) [t]he timeliness, nature and extent of services offered or provided to the parent and the child by an agency to facilitate the reunion of the child with the parent; [and] (2) whether the department . . . has made reasonable efforts to reunite the family pursuant to the federal [Adoption Assistance and] Child Welfare Act of 1980, as amended . . . .' " *In re Eden F.*, supra, 250 Conn. 689–90.

[T]he fact that the legislature [had interpolated] objective guidelines into the open-ended fact-oriented statutes which govern [parental termination] disputes . . . should not be construed as a predetermined weighing of evidence . . . by the legislature. Where . . . the record reveals that the trial court's ultimate conclusions [regarding termination of parental rights] are supported by clear and convincing evidence, we will not reach an opposite conclusion on the basis of any one *segment* of the many factors considered in a termination proceeding . . . ." (Citations omitted; emphasis added; footnote added; internal quotation marks omitted.) Id., 690–91. Our Supreme Court concluded: "Under [General Statutes (Rev. to 1999) § 17a-112 (d)], the trial court was required to *consider* the efforts the department made to reunify [the respondent with her children], and to *make written findings* regarding those efforts, and *the trial court did so*. For petitions filed before the effective date of the 1995 amendment [to § 17a-112 in No. 95-238, § 3, of the 1995 Public Acts], however, the commissioner was not required to establish the *reasonableness* of those efforts." (Emphasis altered.) Id., 694–95.

Later, in *In re Nevaeh W.*, our Supreme Court addressed a claim by the respondent mother that the trial court had failed to comply with § 17a-112 (k) (4) because it made written findings as to the children's relationship with their foster parents rather than with the respondent. See *In re Nevaeh W.*, supra, 317 Conn. 728, 730. In rejecting this claim, our Supreme Court stated: "The plain language of § 17a-112 (k) (4) directs the trial court to consider the children's emotional ties with a long list of people in determining whether the termination of the respondent's parental rights is in their best interest. Nothing in that statute, however, required the trial court to consider only the children's emotional ties with the respondent. . . . Therefore, it

was appropriate for the trial court to consider the children's emotional ties to the preadoptive foster family in considering whether termination of the respondent's parental rights was in the children's best interest." Id., 731. The court further stated: "Furthermore . . . [r]eading the trial court's memorandum of decision . . . as a whole, we conclude that the trial court did consider the factor set forth in § 17a-112 (k) (4), including the children's emotional ties to the respondent. Specifically, the trial court explained at the beginning of the memorandum that [the child had been removed from the respondent's custody three times before being placed in a preadoptive foster home, where she had been placed for more than one year]. These findings by the trial court demonstrate that the trial court did consider the children's relationship with the respondent." (Citation omitted.) Id., 733–34.

Our Supreme Court, after concluding that the trial court had properly made written findings pursuant to § 17a-112 (k) (4), stated: "Although we have not had the occasion to explicitly address whether a trial court is obligated to make explicit written findings as to each *aspect* of the seven factors enumerated in § 17a-112 (k) since *In re Eden F.*, we take the opportunity to do so herein. . . . [A]s this court has previously explained, [t]he balancing of interests in a case involving termination of parental rights is a delicate task and, when supporting evidence is not lacking, the trial court's ultimate determination as to a child's best interest is entitled to the utmost deference. . . . Accordingly, we reaffirm our holding in *In re Eden F.* that, although a trial court shall consider and make written findings regarding the factors enumerated in § 17a-112 (k), a trial court's determination of the best interests of a child will not be overturned on the basis of one factor if that determination is otherwise factually supported and legally sound."

(Citations omitted; emphasis added; internal quotation marks omitted.) Id., 739–40.

In the present case, the petitioner asserts that "*In re Nevaeh W.* and *In re Eden F.* require affirming [the judgment terminating the respondent's parental rights] here because the trial court's best interest finding is factually supported and legally sound." The petitioner relies on the language in *In re Nevaeh W.* that states: "[A] trial court's determination of the best interests of a child will not be overturned on the basis of one factor if that determination is otherwise factually supported and legally sound." *In re Nevaeh W.*, supra, 317 Conn. 740. Contrary to the petitioner's assertion, however, our Supreme Court has never held that a best interest determination may be upheld when a trial court fails to make *any* written findings regarding one of the seven best interest factors set forth in § 17a-112 (k). *In re Nevaeh W.* instructs that "a trial court *shall consider and make written findings* regarding the factors enumerated in § 17a-112 (k)" but, to the extent that a trial court fails to make written findings concerning "each *aspect* of the seven factors," a reviewing court should not reverse the trial court's best interest determination if that determination is "otherwise factually supported and legally sound." (Emphasis added.) Id., 739–40. Furthermore, *In re Nevaeh W.* reaffirmed *In re Eden F.*, which similarly stated that a reviewing court should not reverse a trial court's best interest determination "on the basis of any one *segment* of the [best interest] factors . . . ." (Emphasis added; internal quotation marks omitted.) *In re Eden F.*, supra, 250 Conn. 691. The court's decisions in these cases seem to apply to circumstances in which a trial court makes at least *some* written findings with respect to each factor set forth in § 17a-112 (k) but such findings are insufficient to address all considerations listed within each of the seven factors. We do not read the court's decisions to

mean that we should decline to reverse a trial court's best interest determination in a case in which the trial court fails to make *any* written findings with respect to one or more of the best interest factors.

Moreover, the present case is distinguishable from *In re Nevaeh W.* and *In re Eden F.* In those cases, the respondents had challenged the trial courts' written findings regarding certain best interest factors, and our Supreme Court concluded that the trial courts had made sufficient written findings to demonstrate that they considered the factors at issue. See *In re Nevaeh W.*, supra, 317 Conn. 733–34 (holding that trial court's written findings demonstrated consideration of children's relationship with respondent pursuant to § 17a-112 (k) (4)); *In re Eden F.*, supra, 250 Conn. 695 (holding that trial court satisfied 1999 revision of § 17a-112 (k) by making written findings concerning department's efforts to reunify respondent with children). In the present case, however, the trial court did not make *any* written findings to demonstrate that it considered whether the unreasonable conduct of another person or the economic circumstances of the respondent prevented her from maintaining a meaningful relationship with Janeleah. Thus, we cannot conclude that the trial court satisfied the requirements of § 17a-112 (k) (7).

To uphold the trial court's best interest determination in the complete absence of written findings concerning one of the statutory factors would contradict the plain language of § 17a-112 (k), which provides in relevant part that "the court . . . *shall make written findings* regarding" each of the seven factors. (Emphasis added.) The legislature's use of the word "shall" indicates that the written findings are mandatory. See *1st Alliance Lending, LLC* v. *Dept. of Banking*, 342 Conn. 273, 282, 269 A.3d 764 (2022) ("use of the word shall generally evidences an intent that the statute be interpreted as mandatory" (internal quotation marks omitted)); *Silver*

v. *Holtman*, 149 Conn. App. 239, 252–53, 90 A.3d 203 ("[a]bsent an indication to the contrary, the legislature's choice of the mandatory term *shall* rather than the permissive term *may* indicates that the legislative directive is mandatory" (emphasis added; internal quotation marks omitted)), cert. denied, 312 Conn. 904, 91 A.3d 906 (2014). Indeed, this court has previously stated that trial courts are "mandated" to make written findings concerning the seven best interest factors; *In re Dorrell R.*, supra, 64 Conn. App. 467 (applying 1999 revision of § 17a-112 (k)); and *In re Navaeh W.* does not analyze whether § 17a-112 (k) is mandatory or directory. See *In re Nevaeh W.*, supra, 317 Conn. 731 (noting that court has characterized written findings pursuant to § 17a-112 (k) as "mandatory statutory requirement" but not discussing issue further (internal quotation marks omitted)). "[W]hen a statute sets forth a mandatory requirement in plain and unambiguous terms . . . we are not free to ignore patent violations of that requirement under the banner of substantial compliance. To do so would be to substitute our judgment for that of the legislature and to determine that certain statutes are not important enough to demand compliance." *Airey* v. *Feliciano*, 350 Conn. 162, 180, 323 A.3d 1037 (2024). More importantly, "[b]ecause a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria [set forth in § 17a-112] must be strictly complied with before termination can be accomplished and adoption proceedings begun." (Internal quotation marks omitted.) *In re J. D.*, 232 Conn. App. 714, 723 n.12, A.3d , cert. denied, 352 Conn. 942, A.3d (2025). We, therefore, conclude that the court's failure to make any discernible written findings regarding the factor set forth in § 17a-112 (k) (7) requires reversal of the court's best interest determination.

The judgment terminating the respondent's parental rights is reversed only with respect to the trial court's

dispositional determination that termination of the respondent's parental rights was in the minor child's best interest and the case is remanded for a new dispositional hearing at which the trial court must make written findings as to all factors set forth in § 17a-112 (k) to determine if termination of the respondent's parental rights is in the minor child's best interest; the trial court's determination as to the adjudication phase of the respondent's termination of parental rights trial is affirmed.

In this opinion the other judges concurred.

IN RE DYNASTIE D.*
(AC 48218)

Alvord, Westbrook and Wilson, Js.

Syllabus

The minor child, who had been adjudicated neglected and committed to the custody of the petitioner, the Commissioner of Children and Families, appealed from the trial court's judgment granting the petitioner's motion for the out-of-state placement of the child. The child claimed, inter alia, that the court failed to follow the requirements of the statute ((Rev. to 2023) § 46b-129 (j) (4)) governing out-of-state placements by the petitioner. *Held*:

This court concluded that, in determining whether the petitioner has demonstrated good cause for the out-of-state placement of a child pursuant to § 46b-129 (j) (4), the trial court should balance the expected well-being of the child in the proposed out-of-state placement with that of the child were he or she to remain in Connecticut, which is an independent determination from the best interest of the child.

The trial court did not abuse its discretion in concluding that the petitioner demonstrated good cause pursuant to § 46b-129 (j) (4) for the child's placement in Florida, as the court properly weighed relevant factors in its good cause determination and the determination was adequately supported by evidence in the record.

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

The trial court properly placed the burden of proof for good cause on the petitioner as, despite the court's isolated use of imprecise language in its oral decision, the challenged language merely reflected the court's assessment of the evidence offered by the child to the court as part of its determination of whether the petitioner had met its burden with respect to good cause, and the single challenged sentence was not enough to overcome the presumption that the court knows and has applied the law correctly.

The trial court's factual findings challenged by the child were not clearly erroneous, as they were supported by evidence in the record, and there was ample evidence in the record, not challenged by the child, supporting the court's ultimate conclusion that there was good cause to place the child outside the state.

Argued April 14—officially released July 10, 2025**

Procedural History

Petition by the Commissioner of Children and Families to adjudicate the respondent parents' minor child neglected, brought to the Superior Court in the judicial district of Stamford-Norwalk, Juvenile Matters, and transferred to the Superior Court in the judicial district of Fairfield, Juvenile Matters, where the respondent parents were defaulted; thereafter, the court, *Skyers*, *J.*, rendered judgment adjudicating the minor child neglected and committing the minor child to the custody of the petitioner; subsequently, the court granted the petitioner's motion for the out-of-state placement of the minor child, and the minor child appealed to this court. *Affirmed.*

Karen Oliver Damboise, assistant public defender, for the appellant (minor child).

Nisa Khan, assistant attorney general, with whom were *Patrick Kelly-Hauser*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (petitioner).

** July 10, 2025, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Opinion

WILSON, J. This appeal, brought by the minor child, Dynastie D., arises from the trial court's judgment rendered in favor of the petitioner, the Commissioner of Children and Families, granting her motion for out-of-state placement of the child.[1] On appeal, the child claims that (1) the trial court failed to follow the statutory requirements of General Statutes (Rev. to 2023) § 46b-129 (j) (4),[2] and (2) the trial court's determination that there was good cause to place the child outside the state was not supported by the evidence. We disagree and, accordingly, affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to the resolution of this appeal. The child was born in February, 2023. On the same day, the Department of Children and Families (department), which had a prior history with the respondent mother (mother), invoked a ninety-six hour hold on behalf of the child. Soon after, the petitioner filed a neglect petition, as well as a motion for an ex parte order of temporary custody, which was granted by the court, *Maronich, J.*, and the child was placed with maternal relative

[1] Although counsel for both the respondent mother and the respondent father have appearances in this matter, neither has filed a brief or otherwise participated in the present appeal.

[2] General Statutes (Rev. to 2023) § 46b-129 (j) (4) provides in relevant part: "The commissioner may place any child or youth so committed to the commissioner in a suitable foster home or in the home of a fictive kin caregiver, relative caregiver, or in a licensed child-caring institution or in the care and custody of any accredited, licensed or approved child-caring agency, within or without the state, provided a child shall not be placed outside the state except for good cause and unless the parents or guardian of such child are notified in advance of such placement and given an opportunity to be heard, or in a receiving home maintained and operated by the commissioner. . . ."

The legislature has amended § 46b-129 since the events at issue and the contents of what had been § 46b-129 (j) (4) are now located in General Statutes § 46b-129 (j) (5). See Public Acts 2024, No. 24-126, § 5. All references to § 46b-129 in this opinion are to the 2023 revision of the statute, which was in effect when the motion for out-of-state placement was filed.

foster parents (foster parents). The court, *McLaughlin*, *J.*, sustained the order of temporary custody on February 24, 2023.

Paternity was established on April 20, 2023. Following the establishment of paternity, in October, 2023, the petitioner submitted an application pursuant to the Interstate Compact on the Placement of Children (compact)[3] and General Statutes § 17a-175[4] for review of the

[3] "As background, Connecticut adopted the [compact] in 1967 and codified it as § 17a-175. All fifty states, the District of Columbia and the U.S. Virgin Islands have enacted the compact. . . . Article I of the compact provides in relevant part that [i]t is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that . . . (a) [e]ach child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care. . . . General Statutes § 17a-175, art. I (a)." (Citation omitted; internal quotation marks omitted.) *In re Amanda C.*, 218 Conn. App. 731, 741–42, 292 A.3d 1269, cert. denied, 347 Conn. 904, 297 A.3d 567 (2023).

[4] General Statutes § 17a-175, article III, provides: "(a) No sending state shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

"(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

"(1) The name, date and place of birth of the child.

"(2) The identity and address or addresses of the parents or legal guardian.

"(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

"(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

"(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

"(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the

child's paternal grandparents,[5] who reside in Florida, as a long-term placement resource for the child. On November 30, 2023, the respondent parents (parents) were defaulted with respect to the neglect petition and the court, *Skyers*, *J.*, adjudicated the child neglected and committed her to the custody of the petitioner.

On December 8, 2023, the petitioner filed a permanency plan recommending termination of parental rights and adoption or permanent transfer of guardianship to the paternal grandparents. In the study in support of the permanency plan,[6] the petitioner represented that both parents agreed to the child being placed in Florida with the paternal grandparents and stated that they will eventually relocate to Florida. On December 21, 2023, the child filed an objection to the permanency plan. At a case status conference held on January 23, 2024, the attorney for the minor child advocated that the child remain in her current placement. On January 30, 2024, the child withdrew her objection to the permanency plan. On February 6, 2024, the attorney for the minor child submitted a position letter in which she represented that "an agreement has been reached in that [the department] will amend the permanency plan

proposed placement does not appear to be contrary to the interests of the child."

[5] The record reflects that the paternal grandmother's husband is the stepfather of the child's father. We refer to these individuals as the child's paternal grandparents, as did the trial court.

[6] We note that the study in support of the permanency plan dated October 24, 2023, was admitted as exhibit B at the hearing on the motion for out-of-state placement. This study corresponds with the permanency plan filed on December 8, 2023, by the petitioner recommending termination of parental rights and adoption or permanent transfer of guardianship to the paternal grandparents. The permanency plan was later amended to reflect termination of parental rights and an adoption with no placement source identified in the plan. An amended study in support of the permanency plan, dated January 29, 2024, was also filed with the court. The two plans are nearly identical, with the key difference being the lack of a specific placement source in the amended study. We continue to refer to exhibit B, the study in support of the permanency plan dated October 24, 2023, in our discussion of the child's claim herein.

to reflect a [termination of parental rights] and an adoption with no placement source identified in the plan." Thereafter, on February 7, 2024, the petitioner filed a motion to amend the permanency plan to reflect termination of parental rights and adoption.

At the hearing on the permanency plan on February 9, 2024, the court, *McLaughlin, J.*, approved the amended permanency plan and ordered the petitioner to file a petition for termination of parental rights within sixty days.[7] On April 23, 2024, the petitioner notified the court that the application pursuant to the compact for an evaluation of the paternal grandparents as a placement option was approved, the Florida Department of Social Services was ready to accept placement of the child, and the paternal grandparents agreed to accept placement of the child and provide her with permanency via adoption.

On April 30, 2024, the petitioner, pursuant to § 46b-129 (j) (4), filed a motion for the out-of-state placement of the child with the paternal grandparents in Florida, asserting that there were no other appropriate relative resources for the child in Connecticut and that the out-of-state placement was in the best interest of the child. The child objected to the motion, arguing that placement in Florida with the paternal grandparents was not in her best interest. The child stated that she had been in the care of the foster parents since birth and was thriving in her current placement. Regarding the proposed placement, the child argued that she had "not bonded with the paternal grandparents, [did] not have a relationship with the paternal grandparents and, moreover, moving [her] to a new environment and with new caretakers with whom she has only met in person during two supervised visitation sessions with the

[7] On February 3, 2025, after the filing of this appeal, the petitioner filed a petition for the termination of parental rights as to both parents. The petition remains pending.

[respondent] father [(father)] would cause [her] emotional and psychological damage . . . .'' On June 6, 2024, the child filed a motion for an interactional evaluation, requesting the court to order ''that the child and her foster parents participate in a foster parent-child interactional evaluation with a clinical interview performed by a clinical psychologist for purposes of assessing the attachment bond between the foster parents and the child.'' The petitioner objected to the child's motion as an untimely request for expert discovery. Thereafter, the court denied the child's motion as untimely.

A hearing on the motion for out-of-state placement was held over three days: June 7 and September 13 and 20, 2024. Both the petitioner and the child introduced several exhibits that were admitted into evidence, and the court heard testimony from Tania Mayen, the family's social worker; the child's paternal grandmother; the child's foster mother; and the child's foster father.

On October 18, 2024, the court, *Skyers*, *J.*, granted the motion for out-of-state placement. In its oral decision, the court made the following relevant findings: ''[The mother] has not addressed her mental health needs, her physical health, [intimate partner violence] and parenting needs, all factors that contributed to her inability to parent the [child]. [The father] reportedly was unemployed and transient between New York and Connecticut. He further reported that he was not in a position to care for his child. [The father] identified [the paternal grandmother] as a potential placement resource for [the child]. At the beginning of this case, paternity had not yet been established. Therefore, any assessment as to the suitability of [the] paternal grandparents as a resource was deferred until after paternity had been confirmed. As stated above, paternity was confirmed April 20th, 2023. . . .

"During the trial, [Mayen] testified that early in the process the case plan was for [the child] to be placed with the paternal grandparents in Florida. The parents acknowledg[ed] that they were unable to care for [the child], agreed with the department on the proposed placement and did not object to the plan. They also indicated that they eventually intended to relocate to Florida to be closer to [the child] and the paternal family. [The paternal grandmother] credibly testified that shortly after being made aware of [the child's] paternity, she contacted [the department] so she could be considered as a resource for long-term placement. [The paternal grandmother] works as a registered nurse and lives with [the paternal grandfather] and two sons . . . in . . . Florida. Her home was assessed by the state of Florida, and she began the process for approval. [The paternal grandmother] testified that she would be able to provide [the child's] needs and give her permanency. And she communicated that she wanted to adopt [the child]. . . .

"[The paternal grandmother] testified that her main concern would be to provide a stable home for [the child's] safety and well-being. She testified that [she is] willing to have [the child] get to know [the father], but [the father] would not be living with them. [The paternal grandmother] had regular and consistent weekly video calls with [the child] that were facilitated by [the father] during his visitation time. [The paternal grandmother] and [the paternal grandfather], along with [the paternal grandmother's] two sons, her sister-in-law and [the father] visited with [the child] in Connecticut in July, 2023. Her last visit with [the child] was in September, 2024, with [the paternal grandfather], her sons and other extended family in New York. She clearly loves [the child] and wishes to assume care for her in her home. [The paternal grandmother] had planned to take [the child] for a visit in Florida in July . . . 2024. However,

that visit did not take place due to the [court's] procedural process.

"[The foster mother] credibly testified that she and her family love [the child]. They have a clear bond with her. And she and [the foster father] would be willing to adopt [the child]. The [compact] process began in July, 2023, and ended April, 2024. The court recognizes the length of time in the approval process. In addition, the lengthy court procedural process added to the delay in decisions regarding [the child's] permanency.

"[The child] is very fortunate to have two possible placements. Generally, questions of custodial placement are resolved by determination of what is in the best interest of the child as shown by a fair preponderance of the evidence. . . . To determine whether a custodial placement is in the best interest of the child, the court uses its broad discretion to choose a place that will foster the child's best interest and sustain growth, development, well-being, and the continuity and stability of his environment. . . .

"The court finds that placement with [the] paternal grandparents is in [the child's] best interest and will allow [the child] to maintain a connection with her paternal family while still hav[ing] the opportunity to maintain a connection with her [father] and [mother]. [The child] has offered insufficient evidence for the court to conclude that the decision to place [the child] with her [paternal] grandparents in Florida is inconsistent with her best interests, nor to conclude that to do so would be detrimental to her best interest.

"The court would be remiss in not acknowledging the care the foster parents had given to [the child]. The . . . foster parents have a loving bond with [the child] and [it] is clear from the testimony that they have nurtured and cared for her during the time of her placement. Indeed, the court notes that it is this loving and

sustaining care that will help [the child] transition more easily to her paternal . . . grandparents in Florida. The court therefore grants the [petitioner's] motion for out-of-state placement." (Citations omitted.)[8]

On November 13, 2024, the petitioner filed a motion requesting the trial court to articulate whether it made a finding, when it granted the motion for out-of-state placement, that there was good cause to place the child outside the state, as required by § 46b-129 (j) (4). In its articulation, issued November 13, 2024, the court further found that "[t]he foster parents were aware that the paternal grandmother was being evaluated as a placement resource. Both parents . . . were in agreement with placing [the child] in Florida with the paternal grandmother. The [compact] application was approved April 23, 2024. [The child] has met the paternal grandmother and the extended family. [The child] has had in person visits with the paternal grandmother, [the paternal] grandfather and their two sons. In addition, [the child] has weekly virtual visits with the paternal grandmother." The court then stated that "[t]he same facts that the court used in its finding of best interests do hereby support the finding of good cause. The court finds there is good cause for placing the child outside

[8] On November 5, 2024, the child filed a motion for a discretionary stay of the trial court's order granting the motion for out-of-state placement. The court denied the motion on November 7, 2024. On November 8, 2024, the child filed a motion for review of the trial court's order denying her motion for a discretionary stay with this court. On November 12, 2024, this court, sua sponte, ordered that the trial court's order granting the petitioner's motion for out-of-state placement be stayed pending this court's resolution of the child's motion for review of the trial court's order denying her motion for a discretionary stay. On November 15, 2024, this court granted the motion for review but denied the relief requested and lifted the temporary stay. One judge dissented from the lifting of the temporary stay pending appeal. On November 25, 2024, the child filed a motion for reconsideration en banc of this court's decision denying her requested relief of an appellate stay of the trial court's order granting the motion for out-of-state placement. On December 18, 2024, this court, with one judge dissenting, denied the motion for reconsideration en banc.

the state of Connecticut to be with her paternal grandparents in the state of Florida because it will allow [the child] the opportunity to maintain a connection with her [paternal] grandparents and extended paternal family." This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

The child first claims that the court failed to follow the statutory requirements of § 46b-129 (j) (4). In connection with this claim, the child raises two distinct subclaims: that the court (1) failed to apply the proper standard in determining good cause because "[t]he court did not discuss, nor apparently consider, [the child's] attachment to her . . . foster parents, the possible harm that the change in placement would cause, or any other factors, other than maintaining a connection with the parents, whose approved permanency plan was termination of parental rights" and (2) impermissibly shifted the burden of proof from the petitioner to her.[9] For the reasons that follow, we disagree.

A

We first address the child's claim that the court improperly applied the good cause standard under § 46b-129 (j) (4). Before we reach the merits of the child's claim, we must first interpret the phrase "good cause" as used in § 46b-129 (j) (4), as doing so is necessary to our resolution of the child's claim. The interpretation of "good cause" in this context is an issue of first impression for this court.

[9] The child additionally claims that the court impermissibly made findings without the benefit of expert testimony. This claim appears in her principal appellate brief as part of her primary claim that the court failed to follow the statutory requirements of § 46b-129 (j) (4). We address this claim in part II of this opinion, as it is intertwined with the child's claim that the court's determination as to good cause was not supported by the evidence.

As this involves an issue of statutory interpretation, our review is plenary. See *Reverse Mortgage Solutions, Inc.* v. *Widow(er), Heir(s) and/or Creditors of the Estate of Beryl E. Rowland*, 231 Conn. App. 761, 770, 334 A.3d 1054 (2025). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Sicignano* v. *Pearce*, 228 Conn. App. 664, 682, 325 A.3d 1127 (2024), cert. denied, 351 Conn. 908, 330 A.3d 881 (2025).

Our analysis begins with the text of § 46b-129 (j) (4), which provides in relevant part: "The commissioner may place any child or youth so committed to the commissioner in a suitable foster home or in the home of a fictive kin caregiver, relative caregiver, or in a licensed child-caring institution or in the care and custody of any accredited, licensed or approved child-caring agency, within or without the state, provided a child shall not be placed outside the state *except for good cause* and unless the parents or guardian of such child are notified in advance of such placement and given an opportunity to be heard, or in a receiving home maintained and operated by the commissioner. . . ." (Emphasis added.) General Statutes (Rev. to 2023) § 46b-129 (j) (4).

The phrase "good cause" is not defined in § 46b-129 (j) (4), nor anywhere in title 46b of the General Statutes.

In the absence of any statutory definition, we construe the term "good cause" in accordance with the commonly approved usage of the language. See *Pasquariello* v. *Stop & Shop Cos.*, 281 Conn. 656, 665, 916 A.2d 803 (2007). At the time that § 46b-129 (j) (4) was amended to include a requirement of "good cause" for out-of-state placements, "good cause" was defined to mean a "[s]ubstantial reason, one that affords legal excuse" or a "[l]egally sufficient ground or reason." Black's Law Dictionary (4th Ed. 1968) p. 822. Thus, the statute prescribes that the petitioner must demonstrate a "[l]egally sufficient ground or reason" to warrant the out-of-state placement of the child. This definition, however, provides little guidance as to its application in this context.

In seeking to clarify what may constitute good cause as the term is used in § 46b-129 (j) (4), we are mindful that the silence of the statute itself provides some interpretive guidance. For example, in the context of visitation orders pursuant to General Statutes § 46b-56 (b), this court has construed the lack of a statutory definition to indicate that the term implicates the discretion of the trial court. See *Cardona* v. *Padilla*, 230 Conn. App. 534, 552, 330 A.3d 912 (2025). In so concluding, this court observed that "child custody determination[s] [are] dependent on the factual circumstances of a given case" as well as the established principle that "decision-making in family disputes requires flexible, individualized adjudication of the particular facts of each case without the constraint of objective guidelines." (Internal quotation marks omitted.) Id., 551–52. Likewise, whether to place a child outside the state is a fact intensive inquiry for the trial court, "which has the parties before it and is in the best position to analyze all of the factors which go into the ultimate conclusion that [there is good cause to support the out-of-state placement]." (Internal quotation marks omitted.) *In re*

Ava W., 336 Conn. 545, 589, 248 A.3d 675 (2020); see id. (discussing posttermination visitation orders). Thus, we conclude that the lack of a specific statutory definition of "good cause" here suggests that the legislature intended for the court to exercise its broad discretion in determining, when considering the particular factual circumstances of each case, what "[l]egally sufficient ground or reason" or good cause warrants the out-of-state placement of a child.[10] See, e.g., *Kelsey* v. *Commissioner of Correction*, 329 Conn. 711, 723, 189 A.3d 578 (2018) (in context of habeas proceeding, concluding that lack of specific statutory contours as to statutory phrase suggests that legislature intended for court to exercise its discretion).

The discretion of the trial court, however, must be exercised within the context of the applicable statutory provision. See, e.g., *Kelsey* v. *Commissioner of Correction*, 202 Conn. App. 21, 33, 244 A.3d 171 (2020) ("[i]n attempting to synthesize a more fulsome definition of good cause as that term is used [in the statute], we are mindful that the statute itself provides some interpretive guidance"), aff'd, 343 Conn. 424, 274 A.3d 85 (2022). Section 46b-129 (j) (4) applies in the narrow circumstance where the *Commissioner of Children and Families* seeks to place a child *committed to the commissioner's care and custody* outside of the state. In other words, although "[g]enerally, questions of custodial placement are resolved by a determination of what is in the best interest of the child . . . as shown by a fair preponderance of the evidence"; (internal quotation marks omitted) *In re Haley B.*, 81 Conn. App. 62, 65, 838 A.2d 1006 (2004); § 46b-129 (j) (4) imposes an additional requirement of "good cause" where a child has been

[10] Therefore, to the extent that the child invites this court to articulate mandatory factors the trial court must consider in determining good cause, we decline to do so. See *In re D'Andre T.*, 201 Conn. App. 396, 408–409, 242 A.3d 766, cert. denied, 336 Conn. 902, 242 A.3d 480 (2020).

removed from the care of her parent or guardian and committed to the petitioner, who then seeks to place the child outside the state.

The parties agree, as do we, that good cause and best interest of the child are *not* synonymous. See *Felician Sisters of St. Francis of Connecticut, Inc.* v. *Historic District Commission*, 284 Conn. 838, 850, 937 A.2d 39 (2008) ("[t]he use of the different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" (internal quotation marks omitted)). Although the factual basis of a good cause determination may overlap with that of the best interest determination, we recommend that trial courts evaluate these issues independently. See, e.g., *In re Joel H.*, Docket No. CP-18-023577-A, 2024 WL 575942, *12 (Conn. Super. January 24, 2024). By requiring a showing of a good cause for justification of an out-of-state placement, which is distinct from the typical best interest of the child determination associated with custody placements, the legislative intent behind the words "good cause" suggests that such a determination would involve a weighing of the well-being of the child if placed outside the state with that of the child if she remained in Connecticut.

Several trial courts have had occasion to make a good cause determination in this context, which we find instructive. In *In re Joel H.*, supra, 2024 WL 575942, the trial court considered the petitioner's petitions for termination of parental rights for two children, Saria and her half-sibling Joel, as well as the petitioner's motion for out-of-state placement of Saria. Id., *1. In that case, Joel had been adjudicated neglected in 2018 and removed from his mother's care in 2019. Id. Saria, who shared the same mother as Joel, was born in 2021. Id. Soon after her birth, an order of temporary custody was granted, and she was adjudicated neglected and

committed to the custody of the petitioner. Id. In 2023, Joel moved to a new, out-of-state placement in Florida, with his paternal half-sibling's mother, S. Id., *5. The trial court granted the termination of the parental rights of the children's mother, as well as the parental rights of the children's respective fathers. Id., *1. The court then addressed the petitioner's motion for out-of-state placement, which sought to place Saria with S in Florida. Id., *12. The court observed that this placement would permit Joel and Saria to be together. Id. In concluding that the petitioner had shown good cause for the out-of-state placement, the court considered whether S was a suitable and worthy guardian, that Saria had visited with and was comfortable with S, that Saria would be placed with Joel and his half-siblings, and that S was willing to foster bonds between the children and their biological and prior foster families. Id. The court also acknowledged the position of the nonparty foster parents, who submitted a letter in opposition to the motion for out-of-state placement and expressed their wish for Saria to remain in their care, but concluded that "[t]heir love and care for Saria, however, do not override the statutory analysis set forth above." Id., *12 n.3.

In *In re Caydence B.*, Docket No. CP-16-011676-A, 2016 WL 7975675 (Conn. Super. November 28, 2016), the court considered, in addition to the petitioner's neglect petition, a motion for out-of-state placement filed by the intervening paternal aunt. Id., *2. In considering the motion, the court evaluated the quality of the child's relationships in Connecticut as well as in the proposed placement state, finding that "[p]lacing the child with [the paternal aunt], however, would make contact with her parents and all of her Connecticut relatives more difficult. The child has lived all her life in Connecticut and in the home of maternal grandparents from birth until the [order of temporary custody]. She has many

paternal and maternal relatives in this state, and the connectivity of family and kin would thus seem to be strongest in this state." Id., *6. This was outweighed, however, by the suitability of the paternal aunt, who had "consistently shown herself to be ready to care for the child and committed to providing her with permanency if necessary" and had a strong bond with the child. Id., *7. The court weighed the suitability of the paternal aunt against that of the only possible Connecticut placement option, the maternal great-grandmother, who "show[ed] significantly less commitment to the child in comparison to the [paternal aunt], as well as raising substantial doubt about her readiness, willingness, and desire to provide a permanent home for the child . . . ." Id. In finding good cause to place the child outside the state with the paternal aunt, the court necessarily referred to its own findings and credibility determinations from witness testimony. Id., *8.

Finally, in *In re Christopher C.*, Docket No. CP-23-013514-A, 2024 WL 3665347 (Conn. Super. July 2, 2024), aff'd, 232 Conn. App. 104, cert. denied, 352 Conn. 903 (2025), the trial court denied a father's motion for out-of-state placement of his child with the child's paternal grandmother. The court found that no good cause existed to place the child outside the state nor was the placement in the child's best interest. Id., *3. In reaching its conclusion as to good cause, the court weighed the testimony and evidence presented before it, which demonstrated several concerns raised as to the suitability of the proposed placement, such as the paternal grandmother's judgment, level of collaboration with the department, and ability to protect the child, and that the placement would separate the child from his half-sibling. Id., *2–3.

In each of these cases, the court balanced the well-being of the child if placed outside the state with that

of the child if the child were to have remained in Connecticut.[11] In doing so, the court appropriately considered different, case specific facts. Essential to the court's good cause analysis in each case were the court's own assessments of the child's current and/or proposed placements, which required credibility determinations and a weighing of the evidence before it.

On the basis of the authorities we have discussed and the legal principles arising therefrom, we conclude that, in determining whether the petitioner has demonstrated good cause pursuant to § 46b-129 (j) (4), the trial court should balance the expected well-being of the child in the proposed out-of-state placement with that of the child were she to remain in Connecticut. Although it is impossible to provide a comprehensive list of circumstances that could satisfy the good cause standard, a trial court properly may elect to consider a number of factors in determining whether a petitioner has met its evidentiary burden of establishing good cause to place the child outside the state. As examples, which are neither exclusive nor all-inclusive, a trial court may wish to consider the suitability of the proposed out-of-state placement; the quality of the child's relationships with individuals in Connecticut or geographically close to Connecticut and within the proposed out-of-state placement; the child's or the parent's preferences where appropriate; the strength of the emotional bond between the child and the current in-state placement; the opportunity for the child to form a bond with the proposed placement; and the impact the out-of-state placement may have on the child. Trial courts

[11] We note that in *In re Christopher C.*, supra, 2024 WL 3665347, and *In re Caydence B.*, supra, 2016 WL 7975675, the party moving for out-of-state placement pursuant to § 46b-129 (j) (4) was one other than the petitioner. As the moving party here is the petitioner, as contemplated by the statute, that difference has no bearing on the merits of this appeal.

should, of course, evaluate these considerations *independently* from their best interest of the child determination.[12]

B

Having addressed the parties' arguments as to the good cause standard, we now address the merits of the child's claim that the court improperly applied the good cause standard under § 46b-129 (j) (4) when it "utiliz[ed] the factor of establishing and maintaining a connection with the paternal family, over and above the maternal family." Specifically, the child argues that the court improperly failed to consider "[the child's] attachment to her Connecticut relative foster parents, the possible harm that the change in placement would cause, or any

[12] The child argues that, in this case, "[r]emand is appropriate because this court is setting forth, for the first time, the standard and potential considerations for trial courts to consider when evaluating good cause in a motion for out-of-state placement. See *In re Ava W.*, [supra] 336 Conn. [588–89]." The petitioner argues that, should this court set forth further guidance for trial courts in considering a motion for out-of-state placement, remand is not necessary because, unlike in *In re Ava W.*, this court is not setting forth a new standard but, rather, only providing additional, permissive considerations under the pre-existing standard of good cause pursuant to § 46b-129 (j) (4). We agree with the petitioner. In *In re Ava W.*, supra, 545, our Supreme Court held, for the first time, that a trial court has the authority to consider a motion for posttermination visitation when the court considers termination of parental rights. Id., 572–73. The court also set forth the applicable legal standard, derived from the authority granted to trial courts by statute, and potential factors for trial courts to consider when evaluating these motions. Id., 588–89. The court further concluded that "remand is appropriate in the present case because we are setting forth, for the first time, the standard and potential considerations for trial courts to consider when evaluating whether posttermination visitation should be ordered within the context of a termination proceeding. See *Cefaratti* v. *Aranow*, 321 Conn. 593, 625, 141 A.3d 752 (2016) (remanding case after adopting new standard to afford plaintiff opportunity to present evidence)." *In re Ava W.*, supra, 588–89. Here, unlike the court in *In re Ava W.*, we are not setting forth a new legal standard; rather, we are clarifying the existing good cause standard by providing permissive factors for trial courts to consider in their good cause determination. Accordingly, we need not remand for further consideration in accordance with the potential considerations we set forth herein.

other factors, other than maintaining a connection with the parents, whose approved permanency plan was termination of parental rights."

We begin with our standard of review. This claim challenges a trial court's determination of whether the petitioner has satisfied good cause which, as discussed previously, requires a weighing of various facts and circumstances offered to justify the out-of-state placement, including an evaluation of any witness testimony. Because such determination invokes the discretion of the trial court, it is reversible only for an abuse of discretion. "In determining whether there has been an abuse of discretion, the ultimate issue is whether the court could reasonably conclude as it did. . . . [G]reat weight is given to the judgment of the trial court because of [the court's] opportunity to observe the parties and the evidence. . . . [Appellate courts] are not in a position to second-guess the opinions of witnesses, professional or otherwise, nor the observations and conclusions of the [trial court] when they are based on reliable evidence." (Internal quotation marks omitted.) *In re Marie J.*, 219 Conn. App. 792, 820, 296 A.3d 308 (2023).

We first address the child's interpretation of the court's judgment; namely, that in determining good cause, the court solely relied on the fact that placing the child outside the state would provide her with the opportunity to know her parents.[13] We disagree.

[13] We address the child's claim that this finding by the court was speculative and clearly erroneous in part II of this opinion.

Further, to the extent that the child argues that it was improper for the court to consider whether the out-of-state placement would afford the child the opportunity to maintain a connection with her parents, we disagree. In arguing such, the child asserts that the "[t]ermination of parental rights is the complete severance by the court of the legal relationship, with all its rights and responsibilities, between the child and the child's parent[s]." Indeed, our Supreme Court has held such in the context of ascertaining the standing of a respondent parent appealing from a posttermination visitation order. See *In re Ava W.*, supra, 336 Conn. 558 (concluding that respondent mother whose parental rights had been terminated and who filed request for posttermination visitation during course of termination proceeding did

In its oral ruling, the court made findings as to the suitability of the paternal grandmother as a guardian, including her ability to provide for the child and to give her permanency; the opportunity for the child to form a bond with the paternal grandmother over virtual and in person visits; and the quality of relationships in either state when determining that the out-of-state placement would afford the child better opportunity to stay in contact with her parents and paternal family. The court also acknowledged the strength of the emotional ties between the foster parents and the child, as well as their willingness to provide permanency for the child. Moreover, the court found that the foster parents' "loving and sustaining care . . . will help [the child] transition more easily to her paternal . . . grandparents in Florida," implicitly considering the impact the out-of-state placement would have on the child. In sum, it is evident from the court's findings that it carefully weighed the relevant characteristics of each placement option, thereby balancing the well-being of the child if placed outside the state with that of the child if she remained in Connecticut.

Having concluded that the court properly weighed relevant factors in its determination, and given our declination to set forth mandatory factors herein; see footnote 10 of this opinion; we construe the child's remaining

have standing to challenge court's posttermination visitation order). The court's consideration of the child's opportunity to maintain a connection with her parents here, however, was "not premised on an individual's constitutional or statutory rights as a parent"; id., 565; but, rather, focused on "the child's welfare, protection, proper care and suitable support" as part of its determination of good cause. (Internal quotation marks omitted.) Id., 564. Although the petitioner sought to end the legal relationship between the child and her parents, as demonstrated by the permanency plan and the recent filing of the petition for termination of parental rights, the record indicates that both the parents and the petitioner expect supervised visitation to occur, following the child's placement with the paternal grandparents. See part II of this opinion. Thus, where the termination of parental rights has not yet occurred, or the issue of posttermination visitation has not yet been reached, we cannot conclude that the court erred in considering the opportunity for the child to maintain a connection with her parents.

claim as a claim that the court abused its discretion when making its good cause determination by failing to credit certain evidence over other evidence it did credit in making its good cause determination.[14] Specifically, the child claims that the trial court "*utiliz*[*ed*] *the factor of establishing and maintaining a connection with the paternal family, over and above the maternal family.*" (Emphasis added.)

"It is well established that a decision to credit certain evidence over other evidence is exclusively within the province of the trial court. . . . *Weaver* v. *Sena*, 199 Conn. App. 852, 860, 238 A.3d 103 (2020); see also *Woodbridge Crossing Condominium Assn., Inc.* v. *Ferguson*, 229 Conn. App. 99, 104, 325 A.3d 1205 (2024) ([i]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony . . .); *M. C.* v. *A. W.*, 226 Conn. App. 444, 466, 319 A.3d 183 (2024) (Insofar as the defendant invites us to reconsider the evidence that was before the court, [w]e note that it is not the function of this court to review the evidence to determine whether a conclusion different from the one reached could have been reached. . . . Thus, [a] mere difference of opinion or judgment cannot justify our

[14] The child also argues that the court should have considered factors such as "the possible harm that the change in placement would cause . . . ." We have previously declined to set forth mandatory factors pursuant to a good cause determination in this context. See footnote 10 of this opinion. Further, consistent with our conclusion herein, our review of the record demonstrates that the trial court properly weighed relevant factors in its determination of good cause *based on the evidence before it.* Although evidence was presented about the child's transition to the paternal grandparents, implicating the impact the placement may have on the child, the child fails to point to any evidence in the record as to the "possible harm" arising from this out-of-state placement. In the absence of such evidence, the court would have had to resort to speculation. See *In re Selena O.*, 104 Conn. App. 635, 644–45, 934 A.2d 860 (2007) ("[i]f the court's conclusions or findings of fact rest on speculation rather than on sufficient evidence, they are clearly erroneous").

intervention.). Likewise, it is not the province of this court to reweigh the evidence before the court or to substitute our judgment in this matter. *F. S.* v. *J. S.*, 223 Conn. App. 763, 794, 310 A.3d 961, cert. denied, 350 Conn. 903, 323 A.3d 344 (2024); see also *In re Blake P.*, 222 Conn. App. 693, 707, 306 A.3d 1130 (2023) ([a]lthough there may be evidence in the record that would support the [plaintiff's] position, it is not the role of [an appellate] court to examine that evidence and substitute our judgment for that of the trial court)." (Internal quotation marks omitted.) *Cardona v. Padilla*, supra, 230 Conn. App. 547–48.

We, therefore, will not substitute our judgment for that of the trial court relating to its good cause determination in this matter.

In the present case, we conclude from our review of the record that the trial court properly weighed relevant factors in reaching its good cause determination. We recognize that the trial court's explanation of that finding was somewhat abbreviated in comparison with its best interest finding. When ruling on a motion for out-of-state placement, the better practice is for the trial court to make specific and independent findings related to best interest and good cause respectively. Here, in making its good cause finding, the court referred to findings it had made in connection with the issue of best interest, which, as we stated previously in this opinion, may involve similar subordinate findings, but are nonetheless legally distinct. We are satisfied that the findings set forth in the court's oral ruling and its articulation of that ruling not only find support in the record but adequately support a determination that there was good cause for granting the motion. See part II of this opinion. Accordingly, we cannot say that the court abused its discretion by concluding that the petitioner demonstrated good cause.

C

We next address the child's claim that the court impermissibly shifted the burden of proof on the issue of good cause from the petitioner to her. In support of this claim, the child relies on an isolated sentence in the court's oral decision: "[The child] has offered insufficient evidence for the court to conclude that the decision to place [the child] with her [paternal] grandparents in Florida is inconsistent with her best interests." The child argues that this one sentence, coupled with the court's failure to explicitly state that the burden of proof rested on the petitioner, demonstrates that the court improperly shifted the burden from the petitioner to her.[15] The petitioner counters that, "[w]hen read as a whole, the trial court's oral decision and articulation demonstrate that it held the [petitioner] to [her] burden." We agree with the petitioner.

We begin our analysis with the standard of review for claims that the court has misallocated the burden of proof. "The question of whether a trial court has held a party to a less exacting standard of proof than the law requires is a legal one. . . . Accordingly, our review is plenary. . . . Similarly, plenary review applies to a question of misallocation of a burden of proof. . . . Furthermore, if it is not otherwise clear from the record that an improper standard was applied,

[15] In its analysis of this claim, the child makes several arguments concerning the evidence before the court. Specifically, the child argues that she attempted to introduce evidence establishing that there was no good cause to support the out-of-state placement of the child and attempted to elicit relevant testimony regarding, inter alia, the attachment of the child to her foster parents and the criminal charges of the father. We observe that the child does not claim that the court erred in any of its evidentiary rulings. On the contrary, in the child's reply brief, she states that she "does not appeal whether the trial court abused its discretion in denying the motion for evaluation or sustaining objections to the questions regarding attachment." Therefore, we view these arguments to pertain solely to the alleged harm that flowed from the court's alleged improper burden shifting. In light of our rejection of that claim, we need not address these arguments further.

the appellant's claim will fail on the basis of inadequate support in the record." (Internal quotation marks omitted.) *In re J.R.*, 161 Conn. App. 563, 569–70, 127 A.3d 1155 (2015).

We are mindful that "an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding. . . . Furthermore, [w]e read an ambiguous trial court record so as to support, rather than contradict, its judgment." (Citation omitted; internal quotation marks omitted.) *In re Jason R.*, 306 Conn. 438, 453, 51 A.3d 334 (2012).

The following details, as set forth in the court's oral decision and articulation, inform our resolution of the child's claim. At the outset of its oral decision, the court stated that "[b]efore the court is the [petitioner's] motion pursuant to § 46b-129 (j) (4) seeking an order to approve an out-of-state placement for [the child] . . . ." Similarly, at the beginning of its articulation, the court identified the motion as the petitioner's and referenced the same statute. Thus, the court correctly identified the moving party as well as the statute that applies to children committed to the care and custody of the petitioner and governs their placement by the petitioner. The plain language of the statute is explicit in identifying which party carries the burden of proof. Section 46b-129 (j) (4) expressly states that "[*t*]*he commissioner may place* any child or youth so committed to the commissioner . . . within or without the state, *provided a child shall not be placed* outside the state except for good cause . . . ." (Emphasis added.) General Statutes (Rev. to 2023) § 46b-129 (j) (4). The court's explicit reference to the applicable statute undermines the child's argument. See *In re Denzel W.*, 225 Conn. App. 354, 376, 315 A.3d 346 (considering court's citation to controlling authority as support for conclusion that court placed burden on proper party), cert. denied, 349 Conn. 918, 317 A.3d 1 (2024). Although the court did

not recite the allocation of the burden of proof in its oral decision or subsequent articulation, its citation to the statute implicitly indicated that it was aware of and applied the proper burden of proof here. See *In re M. S.*, 226 Conn. App. 857, 865, 319 A.3d 833 ("our Supreme Court has never required the talismanic recital of specific words or phrases if a review of the entire record supports the conclusion that the trial court properly applied the law" (internal quotation marks omitted)), cert. denied, 349 Conn. 920, 320 A.3d 978 (2024).

After referencing the relevant statute, the court made several findings relating to its determination of the best interest of the child. These findings primarily referred to evidence offered by the petitioner, including testimony from Mayen and the paternal grandmother; exhibit C, the unified home study prepared by the state of Florida evaluating the paternal grandparents' home; and information reflected in both exhibit A, the social study in support of the neglect petition, and exhibit B, the social study in support of the permanency plan. The court then acknowledged the appropriate standard of proof that applies to determinations of the best interest of the child and concluded that the child's out-of-state placement with the paternal grandparents was in her best interest. In concluding such, the court considered that the out-of-state placement "will allow [the child] to maintain a connection with her paternal family while still hav[ing] the opportunity to maintain a connection with her [parents]." Here, the court referenced the petitioner's theory of good cause that it sought to establish at the hearing on the motion for out-of-state placement.[16] Thus, "[t]he court's decision . . . relate[d] the

[16] During the petitioner's closing argument at the hearing, it argued before the court that "there is good cause to place the child outside the state with the paternal grandparents." Specifically, the petitioner referred to the evidence demonstrating that the paternal grandparents will allow the child to maintain a connection with her parents, such as testimony regarding the parents' agreement to the child's out-of-state placement, the intention of the paternal grandmother to allow supervised visitation between the child and the parents, and the father's consistent visitation with the child.

petitioner's evidence to the legal grounds that the petitioner sought to establish, implying that it was the petitioner who bore the burden of establishing those grounds." See *In re J.R.*, supra, 161 Conn. App. 570. The court then stated: "*The minor child has offered insufficient evidence for the court to conclude that the decision to place* [*the child*] *with her* [*paternal*] *grandparents in Florida is inconsistent with her best interests, nor to conclude that to do so would be detrimental to her best interest.*" (Emphasis added.) In its subsequent articulation addressing whether it made a good cause finding in accordance with § 46b-129 (j) (4), the court concluded that "[t]he same facts that the court used in its finding of best interests do hereby support the finding of good cause. The court finds there is good cause for placing the child outside the state of Connecticut to be with her paternal grandparents in the state of Florida because it will allow [the child] the opportunity to maintain a connection with her [paternal] grandparents and extended paternal family."

After our careful review of the record, we are satisfied that, despite the court's isolated use of the imprecise language that forms the basis for the child's claim, the court properly placed the burden of proof on the petitioner. The challenged language merely reflects the court's assessment of the evidence offered by the child to the court as part of its determination of whether the petitioner had met its burden with respect to good cause. See *In re Denzel W.*, supra, 225 Conn. App. 378 ("[t]he challenged language reflects the trial court's rejection of the respondent's evidence of personal rehabilitation after it had determined that the petitioner had met her burden with respect to this issue"). Moreover, this single sentence is not enough to overcome the presumption "that the trial court knows and has applied the law correctly . . . ." *Havis-Carbone* v. *Carbone*, 155 Conn. App. 848, 867, 112 A.3d 779 (2015); see also

Reinke v. *Sing*, 186 Conn. App. 665, 700, 201 A.3d 404 (2018) ("[O]ur appellate courts do not presume error on the part of the trial court. . . . Rather, we presume that the trial court, in rendering its judgment . . . undertook the proper analysis of the law and the facts." (Internal quotation marks omitted.)). The child's claim of improper burden-shifting, therefore, fails.

II

The child also claims that the court's determination of good cause was not supported by the evidence.[17] We disagree.

We begin by setting forth the applicable standard of review and relevant legal principles. It is well established that appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. See *In re Davonta V.*, 285 Conn. 483, 488, 940 A.2d 733 (2008). "A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made. . . .

"On appeal, our function is to determine whether the trial court's conclusion was factually supported and

[17] In the context of arguing that the court improperly applied § 46b-129 (j) (4) in determining whether there was good cause, the child asserts an alternative argument that, to the extent that the finding of good cause is based on a best interest of the child finding, the trial court failed to analyze any of the relevant factors that are part of a best interest determination and that the best interest finding was not supported by the evidence. We view this as an argument in support of her claim that the court improperly applied § 46b-129 (j) (4) in determining whether there was good cause, as opposed to raising a new, separate claim. See *Curley* v. *Phoenix Ins. Co.*, 220 Conn. App. 732, 744, 299 A.3d 1133 ("[a] claim is an entirely new legal issue, whereas, [g]enerally speaking, an argument is a point or line of reasoning made in support of or in opposition to a particular claim" (internal quotation marks omitted)), cert. denied, 348 Conn. 914, 303 A.3d 260 (2023). Because of our conclusion herein that good cause and best interest of the child are separate inquiries, although they may share a factual basis, we need not reach this argument. Nonetheless, upon review of the record and relevant legal principles, we are not persuaded that the court's best interest determination was legally inadequate or unsupported by the evidence.

legally correct. . . . In doing so, however, [g]reat weight is given to the judgment of the trial court because of [the court's] opportunity to observe the parties and the evidence. . . . We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . [Rather] every reasonable presumption is made in favor of the trial court's ruling." (Internal quotation marks omitted.) Id.

We refer to the factual findings made by the trial court discussed previously in this opinion. In support of its findings, the court had before it the following testimony and documentary evidence relevant to our resolution of this appeal. At the hearing on the petitioner's motion for out-of-state placement, Mayen testified as to the child's relationship with her paternal grandparents. She testified that the paternal grandparents had been in "consistent communication" with the department, had visited the child in person three times, and had maintained weekly virtual visits. Mayen testified that, when visiting in person with the paternal grandmother, the child was "very friendly, very comfortable, [and] she would extend her arms to be carried. [The paternal grandmother] walked around with her, and she welcomed that . . . they embraced each other. Her children were also participating in the visit, and they were very affectionate toward [the child]. [The child] responded very well to the family." Exhibit H, a court update prepared by the department and dated April 23, 2024, provides that the child had "become familiar and now developed and maintained a relationship with" the paternal grandparents. Mayen testified that the way the child responded to her paternal grandmother formed the basis of her assessment that the child and the paternal grandmother have a relationship and a bond.

The paternal grandmother similarly testified as to the visits between her and the child, both virtually and

in person in Connecticut. The paternal grandmother testified to her parenting plan for the child, childcare arrangements, and her intention regarding contact with the child's parents. The paternal grandmother stated that, if it was permitted, she would consent to the parents having supervised visits with the child. The paternal grandmother also testified that she had been in communication with the foster mother about the child and had received photos of her. The paternal grandmother indicated a willingness to continue communication with the foster parents, testifying that she would be open to staying in communication with the foster parents to learn things about the child, such as her favorite foods, that may be useful to know if the child is placed with her.

Mayen testified that the department believed that it was in the child's best interest to be placed with the paternal grandparents because they have "been nothing but forthcoming, very consistent with providing documentation, anything we need they've gone above and beyond, even to the point where if I can't give [the paternal grandmother] information, she will go out of her way to look for that with higher ups. Also to maintain the relationship between the parents, [the paternal grandmother] would like for [the child] to get to know her biological parents, and both parents have notified the department that they are willing to move to Florida, obtain jobs, and be a part of their family, of course, while [the paternal grandmother] is always supervising their visits and interactions." Exhibit C, the unified home study prepared by the Florida Department of Children and Families, provides that the paternal grandparents "anticipate [that] [the child's] father may also move down to Florida once the baby is placed down here, giving them the support of the biological father as well." Exhibit D, the running narrative document, includes Mayen's observations during a supervised visit

between the child, the father, the paternal grandmother, and her two sons. The document provides that, during the visit, the paternal grandmother inquired about a program to assist the father in securing a job, to which the father agreed and would "start making calls to see about an apprentice job that can lead to bigger and better and ultimately transfer [and/or] do that job in Florida and be closer to [the child] and his family."

The court also heard testimony regarding the current foster parents, with whom the child had been living since shortly after her birth. Mayen testified that, from her visits with the child in her current foster placement, she has assessed that there were no concerns with the placement, that the child was thriving, and that all her needs were being met. The foster mother testified to her daily routine with the child and the quality time that the child spends with the foster parents. Exhibit A, the study in support of the neglect petition prepared by the department and dated April 26, 2023, described the foster parents as "nurturing towards [the child]" and indicated that they "ensure that all of her needs are met." Similarly, exhibit B, the study in support of the permanency plan, further provides that "[t]he foster parents love and care for [the child] deeply. [The child] always appears happy and dressed appropriately during home visits. [The] foster parents are willing to [be] a long-term resource for [the child] if reunification does not occur or in the event that placement with [the] paternal grandmother is not viable."

The foster mother testified to her history of interactions with the parents, based on her having had the child in her care since birth. She described her relationship with the father as "a little tense" and the circumstances generally as "a tense situation." The foster mother stated that there was "a lot of miscommunication back and forth" between her and the father. The foster mother testified that the father questioned her

about whether she and the foster father were taking care of the child and doing the right thing for her. When asked what her plan would be regarding maintaining a relationship with the parents and extended families if she continued to be a long-term resource for the child, the foster mother testified that she thinks "we need to . . . sit down and come to an agreement. I have no problem with them. [The child] deserves to know all her family. . . . We wouldn't even mind . . . taking a trip down to Florida so that she can spend time with her [paternal] grandmother."

The foster mother further testified that she communicated with the paternal grandmother on occasion and had spoken to Mayen about "trying to build that relationship so that [the paternal grandmother] can get to know [the child]." The foster mother stated that she had previously had FaceTime calls with the paternal grandmother and would send her pictures from various events in the child's life, such as birthdays and holidays.

When asked why, if the child is stable and thriving in her current placement, the child needs to be moved, Mayen testified that "[t]he department would like for [the child] to maintain a relationship with her biological parents, and [the paternal grandmother] wants that for [the child]. The parents want that for [the child]. And it would just be a lot easier if, when [the parents] move, that [the child] is already placed with . . . [the] paternal grandparents and be able to carry on that relationship. As of right now, [the parents] do not feel comfortable with the current foster parent, which creates a barrier between their relationships." When asked what her concerns are regarding the child remaining with the foster parents, Mayen testified that "[m]y only concern is [that] she will not be able to have the same relationship with her biological parents as she would if she was with [the paternal grandmother]."

Notwithstanding all of that evidence, the child challenges two subsidiary findings of fact made by the court as clearly erroneous and contends that these erroneous findings undermine its ultimate conclusion that there was good cause to place the child outside the state. We address each of the child's contentions in turn.

First, the child argues that the court's finding that the foster parents' "loving and sustaining care . . . will help [the child] transition more easily to her paternal . . . grandparents in Florida" is clearly erroneous as "[t]here [is] no evidence in the record, either elicited through testimony or in the exhibits entered at trial, that because of the care [the child] had received, it would be an easy transition to the paternal grandparents." We disagree with the child's interpretation of the court's finding. The court did not find that the transition would be easy but rather it would be *made easier* by the foster parents' loving and sustaining care. Indeed, the court had ample testimony before it to support this finding. The paternal grandmother and the foster mother both testified to the ongoing communication between the two of them to build the relationship between the paternal grandmother and the child. The paternal grandmother testified that, should the child be placed in Florida, she would be open to the foster parents visiting and staying in contact with the child. She also testified that she would be open to staying in communication with the foster parents to learn things about the child, such as her favorite foods, that may be useful to know if the child is placed with her. This evidence supports the reasonable inference that the foster parents' love and care will facilitate the child's transition to living with the paternal grandparents. See *Camozzi* v. *Pierce*, 230 Conn. App. 616, 625, 331 A.3d 159 ("[u]nder the clearly erroneous standard of review, a finding of fact must stand if, on the basis of the evidence before the court and the reasonable inferences to be

drawn from that evidence, a trier of fact reasonably could have found as it did" (internal quotation marks omitted)), cert. denied, 351 Conn. 921, 333 A.3d 103 (2025). Consequently, we do not conclude that the court's finding is clearly erroneous.

Second, the child argues that the court's finding "that the parents would actually move to Florida and/or would maintain a relationship with [the child]" is clearly erroneous as it was not based on any evidence in the record but rather was "pure speculation." We again disagree with the child's interpretation of the court's finding. Specifically, the court found that the parents "indicated that they eventually intended to relocate to Florida to be closer to [the child] and the paternal family." The court's finding was confined to the parents' *intentions* to move to Florida. There was ample evidence in the record supporting this finding. At trial, Mayen testified that "both parents have notified the department that they are willing to move to Florida, obtain jobs, and be a part of their family, of course, while [the paternal grandmother] is always supervising their visits and interactions." Similarly, when asked whether her son would move to Florida with the intention of being closer to the child, the paternal grandmother testified, "[p]ossibly. Yes." Much of the documentary evidence before the court reflects that same intention. Exhibit B, the study in support of the permanency plan, and similar language in exhibit D, the running narrative document, provides that the parents "are both in agreement with [the child] being placed in Florida with her paternal grandparents." Exhibit B further states that the parents "continue to state [that] they will eventually relocate to Florida and would like to be closer to [the child] and [the paternal] family." Exhibit C, the unified home study prepared by the Florida Department of Children and Families, similarly states that "[the] father has stated [that] he will move down

to Florida once the child is placed with his parents, in order to get his life together" and that the paternal grandparents "anticipate [the child's] father may also move down to Florida once the baby is placed down there, giving them the support of the biological father as well." Without engaging in speculation, the court was free to draw reasonable and logical inferences from the evidence and facts proven. In light of the ample evidence supporting the court's finding that the parents have "indicated that they eventually intended" to move to Florida, we cannot conclude that the court's finding is clearly erroneous.

In sum, we conclude that the specific factual findings challenged by the child are not clearly erroneous. Further, as discussed previously, there was ample evidence in the record, unchallenged by the child, supporting the trial court's ultimate conclusion that there was good cause to place the child outside the state.[18]

Although, as we have stated previously in this opinion, the child also challenges the court's good cause finding because it was made in the absence of expert testimony, we are not persuaded that expert testimony was necessary. See footnote 9 of this opinion. The trial court would have been free to accept, reject, or partially rely on any relevant expert testimony had it been offered and admitted; see *In re Niya B.*, 223 Conn. App. 471, 497, 308 A.3d 604, cert. denied, 348 Conn. 958, 310 A.3d 960 (2024); however, such expert testimony is not a precondition to the court's own evaluation of the factual record before it. Section 46b-129 (j) (4) does

[18] We reiterate that our review here is governed by the clearly erroneous standard and, as such, we "do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached." (Internal quotation marks omitted.) *In re Davonta V.*, supra, 285 Conn. 488. Notwithstanding our conclusion herein, we echo the acknowledgement by the trial court in its oral decision of the admirable efforts by the foster parents in caring for the child.

not impose any such requirement nor does the child cite to any binding authority supporting her proposition that, as a matter of law, expert testimony was needed to support the court's judgment in granting the motion for out-of-state placement. The appellate courts of this state have repeatedly held that, in the context of termination of parental rights cases and in considering custodial placements, expert testimony is not required to support a trial court's determination as to the child's best interest. See *In re Jeisean M.*, 270 Conn. 382, 400, 852 A.2d 643 (2004); *In re Santiago G.*, 154 Conn. App. 835, 857 n.19, 108 A.3d 1184, cert. denied, 315 Conn. 927, 109 A.3d 922, aff'd, 318 Conn. 449, 121 A.3d 708 (2015). Like a best interest finding, a good cause finding is a highly fact specific inquiry, and we reject the notion that our trial court judges lack the ability to weigh the evidence and make correct determinations in this regard. "Expert testimony is necessary when the subject in question is beyond the field of ordinary knowledge and experience for a judge." *In re Alexander T.*, 81 Conn. App. 668, 676, 841 A.2d 274, cert. denied, 268 Conn. 924, 848 A.2d 472 (2004). Our review of the court's findings supports our conclusion that they were all within the province of the fact finder. Although the child raises several arguments as to the court's findings regarding the child's transition,[19] the record in this case was sufficient to support the court's findings without testimony from an expert. Accordingly, we conclude

[19] We note that the child briefly mentions in her appellate brief that "[w]hether [the child] should continue to have a relationship with her parents is also clearly within the province of an expert." The child provides no analysis beyond this conclusory assertion, nor does she cite any relevant authority to support this claim. Accordingly, the child's claim is inadequately briefed. "Claims 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.) *Estate of Rock* v. *University of Connecticut*, 323 Conn. 26, 33, 144 A.3d 420 (2016).

that the court did not err when it found that the petitioner demonstrated good cause.

The judgment is affirmed.

In this opinion the other judges concurred.

PATRICIA BUCHANAN *v.* TOWN OF EAST HARTFORD (AC 47085)

Moll, Suarez and Clark, Js.

Syllabus

The defendant town appealed from the decision of the Compensation Review Board reversing the decision of the administrative law judge, who had dismissed the plaintiff's claim for survivorship benefits pursuant to statute (§ 31-306) following the death of her husband, a town police officer. The defendant claimed, inter alia, that the board improperly substituted its own factual findings for those of the administrative law judge. *Held*:

The board improperly substituted its judgment on causation for that of the administrative law judge, whose factual findings were not clearly erroneous and which found support in the record, as it was not the role of the board to retry the issue of causation.

The board's decision could not be affirmed on the plaintiff's alternative ground that, when the decedent suffered a physical injury responding to an apartment complex fire, it aggravated a preexisting mental health condition, which, in turn, caused him to die by suicide, as the administrative law judge, faced with conflicting evidence on the question of causation, comprehensively summarized the evidence presented, weighed that evidence, and made appropriate credibility determinations in making its factual findings on the essential issues in the case.

Argued January 8—officially released July 15, 2025

Procedural History

Appeal from the decision of the administrative law judge for the First District of the Workers' Compensation Commission dismissing the plaintiff's claim for survivor's benefits, brought to the Compensation Review Board, which reversed the decision of the administra-

tive law judge, and the defendant appealed to this court. *Reversed*; *judgment directed.*

Timothy D. Ward, for the appellant (defendant).

James M. Quinn, with whom was *Joseph P. Quinn, Jr.*, for the appellee (plaintiff).

Opinion

SUAREZ, J. In this workers' compensation matter, the defendant, the town of East Hartford, appeals from the decision of the Compensation Review Board (board), which reversed the decision of the administrative law judge for the First District of the Workers' Compensation Commission (commission), dismissing the claim for survivorship benefits under General Statutes § 31-306[1] filed by the plaintiff, Patricia Buchanan, the surviving spouse of the deceased employee, Paul Buchanan (decedent). On appeal, the defendant claims, inter alia, that the board (1) improperly substituted its own factual findings for those of the administrative law judge, which were not clearly erroneous, and (2) misapplied General Statutes (Rev. to 2013) § 31-275 (16) (A) and (B)[2] by including post-traumatic stress disorder

[1] General Statutes § 31-306 (a) provides in relevant part: "Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease . . . ."

[2] General Statutes (Rev. to 2013) § 31-275 (16) provides in relevant part: "(A) 'Personal injury' or 'injury' includes, in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee's employment and is the direct result of repetitive trauma or repetitive acts incident to such employment, and occupational disease.

"(B) 'Personal injury' or 'injury' shall not be construed to include . . . (ii) A mental or emotional impairment, unless such impairment (I) arises from a physical injury or occupational disease . . . ."

After the decedent's death, § 31-275 (16) (B) (ii) was amended to provide that a mental or emotional impairment may qualify as a "personal injury" if such impairment, "in the case of an eligible individual as defined in section 31-294k, is a diagnosis of post-traumatic stress injury as defined in section 31-294k that meets all the requirements of section 31-294k." General Statutes § 31-275 (16) (B) (ii); see also Public Acts 2021, No. 21-107, § 1. The legislature

and/or depression as qualified injuries under the Workers' Compensation Act (act), General Statutes § 31-275 et seq. The plaintiff raises four alternative grounds on which she claims we may affirm the board's decision. See footnote 8 of this opinion. We agree with the defendant's first claim and disagree with the alternative grounds for affirmance raised by the plaintiff. Accordingly, we reverse the decision of the board and remand the case to the board with direction to affirm the decision of the administrative law judge.

The following facts, as found by the administrative law judge or otherwise undisputed in the record, and procedural history are relevant to our resolution of this appeal. The decedent began working as a police officer for the East Hartford Police Department (department) in 1989. Although he served with distinction, the stress of the work weighed on him. The administrative law judge found that the decedent had experienced a great deal of emotional trauma as a police officer and outlined several traumatic incidents, including responding to a murder/suicide in 2006, and having to comfort a teenager who had been stabbed and who subsequently died in his arms. The plaintiff testified before the administrative law judge that, after he had been working for the department for about ten years, the decedent began to experience restless sleep and he often woke up in the middle of the night from a nightmare.

The decedent began sharing with his primary care physician, Raymond Kurker, that he was feeling anxious and depressed. As early as 2003, and for many years thereafter, Kurker prescribed the decedent medications for depression and anxiety. The plaintiff testified that, despite these medications, the decedent's condition did

further enacted General Statutes § 31-294k in 2019, which provides benefits for police officers, parole officers, and firefighters for post-traumatic stress disorder under certain situations. Accordingly, all references in this opinion, unless otherwise stated, are to the 2013 revision of the statute.

not improve. The decedent began to lose interest in activities that he formerly enjoyed and complained of chronic back and knee pain. He would talk about past cases or traumas that were upsetting to him and would appear uncomfortable and "panicky" when going out to places such as restaurants.

As time passed, the decedent's condition continued to worsen. He eventually began to perform administrative duties inside the department because his patrol duties were overwhelming him. The decedent subsequently became dissatisfied with his administrative work because his duties over time had continually increased, which caused him further stress. As a result, the decedent requested to return to patrol duties in September, 2012. The plaintiff noticed that the decedent once again experienced sleeplessness, loss of appetite and weight loss upon his return to patrol duties. The plaintiff testified that the decedent was afraid to reach out for help because he thought that, if he shared his struggles with the department, his service weapon would be taken away.

On December 18, 2012, the decedent sought assistance through the Employee Assistance Program at the department, but the plaintiff testified that this appointment did not help him. On December 24, 2012, the decedent was seen at Eastern Connecticut Health Network at Manchester Memorial Hospital. The medical records on that date indicate that the decedent had been suffering from depression and anxiety.

The decedent followed up in early January, 2013, with Kari A. Jones, a board-certified psychiatrist. In his deposition, a transcript of which was admitted into evidence, Jones testified that the decedent had reported that his anxiety and depression were worsening over the previous month, a change that the decedent attributed to his job as a police officer. Jones diagnosed

the decedent at that time with panic disorder without agoraphobia. Although he did not definitively diagnose the decedent with depression, he did provisionally diagnose depression, indicating that "[there were] some symptoms that seem to be present but [the decedent did not] meet the full criteria for a definitive diagnosis . . . ." Jones prescribed Effexor for the decedent's anxiety and depression, discontinued his prescription for Xanax, an antianxiety medication that had been prescribed by Kurker, and started him on clonazepam, also known as Klonopin, another antianxiety medication.[3] Jones noted that the decedent had a history of depression that dated back to his early adulthood. Jones testified that the medications he prescribed the decedent were for his panic disorder and depression, not for posttraumatic stress disorder.

On January 15, 2013, the decedent, who was working an overnight shift, responded to a fire (January, 2013 fire) at an apartment complex in East Hartford. The decedent later told the plaintiff that residents were jumping from windows and children were being thrown to safety. Todd Hanlon, a lieutenant with the department, encountered the decedent at the scene, describing him as "babbling." Hanlon decided to send the decedent, accompanied by another officer, to Hartford Hospital by ambulance. The emergency room records from Hartford Hospital noted that the decedent complained of feeling lightheaded and weak, and that he had recently been prescribed Metoprolol. Michael Morelli, a fellow officer, drove the decedent home from the hospital and the decedent told him he "wasn't doing well." Another officer, Nestor Caraballo, responded to

[3] We note that, although the administrative law judge found that Jones prescribed Viibryd, Jones' uncontradicted testimony, which is consistent with Jones' contemporaneous medical records, was that he had discontinued the decedent's Viibryd prescription for depression and anxiety. Thus, this finding appears to reflect a scrivener's error.

the fire and spoke with the decedent, who told him that his doctor had increased his dosage of prescribed medications. A first report of injury relating to the January, 2013 fire noted that the decedent had been "[o]vercome by smoke . . . ."

After the January, 2013 fire, the decedent called Jones. The plaintiff testified that she encouraged the decedent to contact Jones because the decedent was panicking and confided that he had suicidal thoughts. On January 30, 2013, the decedent saw Jones, and it was decided that the decedent would take some time off from work due to his panic disorder. Jones also referred the decedent to a therapist, whom he saw on one occasion. In February, 2013, the decedent spoke with Officer Morelli and told him that he was "having some issues . . . there were some things going on, with seeing doctors, and some medication issues." Jones recommended that he take some time off. By February 28, 2013, the decedent and Jones discussed his return to work. Jones testified that, at that point, he thought the decedent could potentially suffer from post-traumatic stress disorder "as a possible comorbidity" but that this diagnosis was neither confirmed nor excluded by him.

The decedent returned to work on March 4, 2013, and was assigned administrative duties. It is undisputed that, on March 12, 2013, the decedent died of a "self-inflicted gunshot wound which occurred at work, during office hours and with the use of his service revolver." Timothy McConville, another fellow officer, testified that he saw the decedent minutes before his death and stated that "[the decedent] just wasn't himself . . . I think some of it was the medicine."

The decedent left a suicide note in which he wrote: "I am so sorry but when the depression hit this time,

I knew it was different." He explained that he had "struggled with depression most of my early life" and wanted his death to be a catalyst for others to get help. He added that he "can't relax anymore no matter where I am, I can't take this torture and torment anymore . . . ." In another handwritten note, the decedent wrote: "I wish I could tell people every time I think of work I get stressed out and anxious. . . . Something in my mind has not been right for a few years now."

In 2013, the plaintiff commenced this action for survivorship benefits. In November, 2013, the plaintiff filed a form 30D[4] with the commission listing the date of injury as March 12, 2013, and the description of the injury as a "[g]unshot wound." In December, 2015, the plaintiff filed another form 30D describing the injury as "PTSD" with the date of injury listed as January 15, 2013, and, in the description of the injury it was noted, "[r]esponse to [a]partment [f]ire."

Between 2020 and 2022, the administrative law judge held several formal hearings on the plaintiff's claim, hearing testimony from lay witnesses, including the plaintiff and officers from the department, as well as medical expert witnesses. Several exhibits were offered into evidence, including medical records of the decedent, deposition transcripts and the decedent's personnel file with the department.

Robin Grant-Hall, a clinical psychologist, testified as one of the plaintiff's expert witnesses. She noted the decedent's relevant family history, including a history of depression with his mother and alcohol use disorder with his father, as well as some abuse history. She reviewed the decedent's medical records and noted that

[4] Form 30D is titled "Dependent's Notice of Claim (To Administrative Law Judge and to Employer)." See *Estate of Haburey* v. *Winchester*, 150 Conn. App. 699, 704–705, 92 A.3d 265, cert. denied, 312 Conn. 922, 94 A.3d 1201 (2014).

they showed chronic depressive symptoms. On the basis of her review of the records, her training and experience, Grant-Hall opined that the decedent developed post-traumatic stress disorder from his career as a police officer, which was exacerbated by the January, 2013 fire and which directly caused the decedent to take his own life.

Kenneth Selig, a psychiatrist, also testified for the plaintiff. Selig based his expert opinions on the decedent's medical records, personnel records, deposition transcripts, and interviews with people who knew the decedent, including the plaintiff. He also diagnosed the decedent with post-traumatic stress disorder and opined that the decedent committed suicide because he was "emotionally overwhelmed" from his post-traumatic stress disorder, which Selig opined had developed as a result of working as a police officer for almost twenty-five years and, during that time, experiencing traumatic incidents. (Emphasis omitted.) Selig further opined that the decedent's smoke inhalation from the January, 2013 fire aggravated his post-traumatic stress disorder, which led to his suicide. Selig, however, conceded that he could not conclude that the decedent had sustained a physical injury during the January, 2013 fire.

Catherine Lewis, a forensic psychiatrist, testified for the defendant. Lewis reviewed the decedent's personnel file and medical records, as well as certain deposition testimony. Lewis testified as to the decedent's history of depression, noting that this had been an ongoing issue for him. Lewis opined that the decedent's symptoms were consistent with a major depressive episode and anxious distress in the weeks leading to his death. She further opined that a variety of variables exacerbated the decedent's depression, including chronic pain, various changes to his psychiatric medications, and a recent change to his shift schedule. In her report, which was entered into evidence as a full exhibit, she

opined that she could not conclude that the decedent suffered from post-traumatic stress disorder. Rather, she believed that he suffered from "lifetime" episodes of major depression and anxiety that were not related to his work as a police officer. Lewis also testified that it was her opinion that the decedent had suffered from panic disorder in the past, which confers a risk of suicide. Lewis testified that the January, 2013 fire had coincided with recent changes to the decedent's psychiatric medications and that he was having side effects from the medications at that time. She ultimately opined that the decedent's major depressive episode, combined with anxious distress, sleep disturbance, and the management of the decedent's medications, were substantial contributing factors in the decedent's suicide.

The parties submitted proposed findings and briefs after the formal hearings. The plaintiff argued before the administrative law judge that, "as of January 15, 2013, the decedent suffered from [post-traumatic stress disorder], which condition was aggravated by his responding to a complex fire on that date, at which time he inhaled smoke and was administered oxygen, taken from the scene via ambulance, and was diagnosed with smoke inhalation. The aggravation of this condition caused his death on March 12, 2013." The plaintiff's proposed findings of fact referred to both the form 30D that alleged that a "[g]unshot wound" was the decedent's injury and to the form 30D that referred to the decedent's post-traumatic stress disorder. The defendant argued before the administrative law judge, inter alia, that "[t]he threshold issue in this case is whether or not [the decedent] ha[d] actually sustained a post-traumatic stress disorder versus a long-term depression. If the court rules that he sustained a long-term depression . . . the claim is not compensable and should be dismissed."

On October 5, 2022, the administrative law judge issued a finding and dismissal. In so doing, the administrative law judge found that (1) Selig's opinion that the decedent suffered from post-traumatic stress disorder was credible but "the weight of the medical evidence does not support the contention that the [decedent's post-traumatic stress disorder] arose from, or was caused by, any physical injury that he sustained as a police officer," (2) the decedent's post-traumatic stress disorder was an occupational disease, (3) the opinion of Lewis that the decedent "did not suffer a physical injury on January 15, 2013, that aggravated his underlying mental health condition which then caused him to take his own life" was credible and persuasive, (4) the decedent suffered a physical injury on January 15, 2013, and (5) Lewis' opinion that the decedent suffered from "major depressive disorder and that this, coupled with medication management issues and sleep disturbance, was the reason for his tragically taking his own life and that this was not caused by the decedent's employment," was credible and persuasive. The administrative law judge subsequently denied the plaintiff's motion to correct certain findings and orders.

Thereafter, the plaintiff filed a petition for review of the administrative law judge's finding and dismissal. On appeal to the board, the plaintiff argued that the administrative law judge erroneously relied on Lewis' opinions, which the plaintiff asserted were not credible because "[they were] based upon misstatement[s] of facts and manufactured facts not found in the record." She further argued that the administrative law judge made subordinate findings that were "either inconsistent with the evidence, or simply not in the record," and drew unreasonable inferences and reached conclusions contrary to the law. She claimed that the only reasonable conclusion that could be drawn from the facts was that the "injuries suffered by [the decedent] at the

[January, 2013] fire were the proximate cause of his suicide . . . .'' The defendant filed a brief before the board arguing that the administrative law judge made appropriate factual findings regarding each of the medical experts, and that his conclusion that the decedent's post-traumatic stress disorder did not cause his suicide was supported by evidence in the record.

On November 3, 2023, the board issued a memorandum of decision in which it reversed the administrative law judge's dismissal of the plaintiff's claim. The board concluded that the administrative law judge's decision was clearly erroneous and that he misapplied the law to the underlying facts. The board determined that, contrary to the parties' arguments, the ''question was whether the decedent's death on March 12, 2013, constituted a compensable *physical injury* such that the [plaintiff] would be entitled to survivor's benefits.'' (Emphasis added.) The board stated that there were ''inherent contradictions'' in the administrative law judge's decision because, although the administrative law judge found that the decedent suffered from post-traumatic stress disorder, he ''disregarded'' that diagnosis when considering the reason for the decedent's suicide. The board determined that it was ''reasonable to find that [the] decedent's death, regardless of the fact that it was the result of a mental impairment, constituted a *physical injury* that occurred in the course of his employment.'' (Emphasis added.) As the November, 2013 form 30D alleged a physical injury, namely, a gunshot wound, the board reasoned that no analysis of § 31-275 (16) (B) was necessary. The board concluded that, ''[o]nce it was established . . . that the decedent sustained a physical injury that stemmed from a self-inflicted gunshot wound at work that arose out of and [was] in the course of his employment, and that his employment was a significant contributing factor to his physical injury, it was unreasonable to conclude that

this was not a compensable claim." This appeal followed. Additional facts will be set forth as necessary.

We first set forth the standard of review and legal principles applicable to workers' compensation appeals. "[T]he principles [governing] our standard of review in workers' compensation appeals are well established. . . . The board sits as an appellate tribunal reviewing the decision of the [administrative law judge]. . . . [T]he review . . . of an appeal from the [administrative law judge] is not a de novo hearing of the facts. . . . [Rather, the] power and duty of determining the facts rests on the [administrative law judge and] . . . [t]he [administrative law judge] is the sole arbiter of the weight of the evidence and the credibility of witnesses . . . . [When] the subordinate facts allow for diverse inferences, the [administrative law judge's] selection of the inference to be drawn must stand unless it is based on an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . It matters not that the basic facts from which the [administrative law judge] draws this inference are undisputed rather than controverted. . . . It is likewise immaterial that the facts permit the drawing of diverse inferences. The [administrative law judge] alone is charged with the duty of initially selecting the inference [that] seems most reasonable and [the administrative law judge's] choice, if otherwise sustainable, may not be disturbed by a reviewing court. . . . This court's review of [the board's] decisions . . . is similarly limited. . . . [W]e must interpret [the administrative law judge's finding] with the goal of sustaining that conclusion in light of all of the other supporting evidence. . . . Once the [administrative law judge] makes a factual finding, [we are] bound by that finding if there is evidence in the record to support it. . . .

"Furthermore, [i]t is well settled that, because the purpose of the . . . [act] . . . is to compensate

employees for injuries without fault by imposing a form of strict liability on employers, to recover for an injury under the act a plaintiff must prove that the injury is causally connected to the employment. To establish a causal connection, a plaintiff must demonstrate that the claimed injury (1) arose out of the employment, and (2) [arose] in the course of the employment. . . .

"[I]n Connecticut traditional concepts of proximate cause constitute the rule for determining . . . causation [in workers' compensation cases]. . . . [T]he test of proximate cause is whether the [employer's] conduct is a substantial factor in bringing about the [employee's] injuries. . . . Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied [the employee's] injuries to the [employer's conduct]. . . .

"As [our Supreme Court] previously [has] indicated, [the] court has defined proximate cause as [a]n actual cause that is a substantial factor in the resulting harm . . . . The fundamental inquiry of proximate cause is whether the harm that occurred was within the scope of foreseeable risk created by the defendant's negligent conduct. . . . The question of proximate causation . . . belongs to the trier of fact because causation is essentially a factual issue. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Citations omitted; internal quotation marks omitted.) *Orzech* v. *Giacco Oil Co.*, 208 Conn. App. 275, 281–83, 264 A.3d 608 (2021); see also, e.g., *Funaioli* v. *New London*, 61 Conn. App. 131, 136, 763 A.2d 22 (2000) ("a[n] [administrative law judge's] conclusion that a [decedent's] employment was not a substantial factor in causing the [decedent's injury] is conclusive, provided

it is supported by competent evidence and is otherwise consistent with the law").

"To establish [causation], the plaintiff must prove that the injury (1) arose out of the employment, and (2) occurred in the course of the employment. . . . This two part test derives from § 31-275, which provides in relevant part: (1) Arising out of and in the course of his employment means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer . . . .

"An injury is said to arise out of the employment when (a) it occurs in the course of the employment and (b) is the result of a risk involved in the employment or incident to it or to the conditions under which it is required to be performed. . . . The . . . requirement [that the injury must arise out of the employment] relates to the origin and cause of the accident, [whereas] the . . . requirement [that the injury must occur in the course of employment] relates to the time, place and [circumstance] of the accident. . . . [W]hether a [decedent's] injuries resulted from an incident that occurred in the course of the employment [therefore presents] a separate and distinct question from whether [those] . . . injuries arose out of [the] employment." (Citations omitted; internal quotation marks omitted.) *Clements* v. *Aramark Corp.*, 339 Conn. 402, 411–12, 261 A.3d 665 (2021).

Section 31-275 (16) (A) provides in relevant part that " '[p]ersonal injury' " includes, "in addition to accidental injury that may be definitely located as to the time when and the place where the accident occurred, an injury to an employee that is causally connected with the employee's employment and is the direct result of repetitive trauma or repetitive acts incident to such

employment, and occupational disease." General Statutes (Rev. to 2013) § 31-275 (16) (A). Section 31-275 (16) (B) further provides in relevant part that " '[p]ersonal injury' " shall not be construed to include "(ii) [a] mental or emotional impairment, unless such impairment . . . arises from a physical injury or occupational disease . . . ." General Statutes (Rev. to 2013) § 31-275 (16) (B).

I

On appeal to this court, the defendant claims that the board incorrectly substituted the administrative law judge's findings with its own factual findings and conclusions on the issue of causation. The plaintiff counters that the board relied on existing law in correcting the erroneous legal conclusions drawn from the facts found by the administrative law judge. We agree with the defendant.[5]

[5] The defendant also argues that the board improperly redefined the issues of the case in violation of its due process rights. Our conclusion that the board improperly substituted its own judgment on the issue of causation for that of the administrative law judge is dispositive of this appeal and, therefore, we need not address this additional argument. For the same reason, we need not address the defendant's second claim, namely, that the board improperly included a "mental-physical" claim within the definition of personal injury under § 31-275 (16) (A) and (B).

We note that, in the present case, the board stated that the "focus of the parties, and, in turn, the [administrative law judge], regarding [post-traumatic stress disorder] versus major depression being the compensable injury was . . . a 'red herring.' " The board grounded this statement on the fact that the plaintiff filed a form 30D asserting a "[g]unshot wound" as the compensable injury and concluded that an analysis of § 31-275 (16) (B) was not necessary. Although the main issue presented to the administrative law judge was which of the decedent's mental conditions caused his suicide, we note that, from the commencement of this case, the plaintiff had filed two form 30D claims: one asserted a gunshot wound as the compensable injury, and the other asserted post-traumatic stress disorder, as aggravated by physical injuries from the January, 2013 fire. In response to the form 30D that claimed a gunshot wound as the compensable injury, the defendant filed a form 43 to dispute liability in which it asserted that the "[decedent's] death did not arise in or out of [the] course of employment as per . . . § 31-306." See, e.g., *Woodbury-Correa* v. *Reflexite Corp.*, 190 Conn. App. 623, 626 n.3, 212 A.3d 252 (2019).

In assessing a workers' compensation claim, "[i]t is the [administrative law judge's] duty to evaluate the weight of the medical evidence and the credibility of the witnesses . . . and the [administrative law judge's] conclusions cannot be reversed simply because the plaintiff's own evaluations of the findings causes him to reach a contrary conclusion. Unless the factual findings on which the [administrative law judge] bases his conclusion are clearly erroneous, or there is no evidence in the record to support the conclusion, the conclusion must stand. . . . [I]t is proper to consider medical evidence along with all other evidence to determine whether an injury is related to the employment." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Brooks* v. *Electric Boat Corp.*, 133 Conn. App. 377, 383, 35 A.3d 404 (2012).

As stated previously in this opinion, the administrative law judge's findings outlined the decedent's history of mental health issues, including anxiety and depression. These findings noted Lewis' opinions that the decedent's symptoms were consistent with major depressive disorder and anxious distress in the weeks leading to his death, and that a major depressive episode is characterized by decreased concentration, diminished energy, and suicidal thoughts, all of which were documented in the present case. The administrative law judge also relied in its findings on Lewis' opinion that, in the days leading up to his death, the side effects of the decedent's medications were " 'torturing' " him. The administrative law judge found that the decedent suffered from "major depressive disorder and that this, coupled with medication management issues and sleep disturbance, was the reason for his tragically taking his own life and that this was not caused by [the decedent's] employment . . . ." In so doing, the administrative law judge expressly credited Lewis' testimony, which he found to be "credible and persuasive . . . ."

The board rejected the administrative law judge's findings, stating that, although the administrative law judge found that the decedent suffered from the occupational disease of post-traumatic stress disorder, "he disregarded that diagnosis when considering the reason for the decedent's suicide." The board further stated that it was "unreasonable and clearly erroneous [for the administrative law judge] to find that the decedent's work-related mental health issues were not a substantial contributing factor in his suicide." The board noted that "even [Lewis], whose opinions . . . were credited by the [administrative law judge] acknowledged that the [decedent's] working conditions and the events of [the January, 2013 fire] were factors that contributed to the aggravation of his underlying mental health condition and that the decedent's major depressive episode and anxious distress 'absolutely' contributed to his suicide. The focus of the parties and, in turn, the [administrative law judge] regarding [post-traumatic stress disorder] versus major depression being the compensable injury was, therefore, a 'red herring.' "

For the reasons that follow, we conclude that the board improperly substituted its own factual findings on causation for those of the administrative law judge, which were not clearly erroneous and which found support in the record. It was not the role of the board to retry the issue of causation. "[O]n review of the [administrative law judge's] findings, the [board] does not retry the facts nor hear evidence. It considers no evidence other than that certified to it by the [administrative law judge], and then for the limited purpose of determining whether or not the finding should be corrected, or whether there was any evidence to support in law the conclusions reached. It cannot review the conclusions of the [administrative law judge] when these depend [on] the weight of the evidence and the credibility of witnesses." (Internal quotation marks

omitted.) *Arrico* v. *Board of Education*, 212 Conn. App. 1, 18, 274 A.3d 148 (2022).

Indeed, the board recognized that it "cannot retry the facts of the case and may only overturn the findings of the administrative law judge if they are without evidentiary support, contrary to the law, or based on unreasonable or impermissible factual inferences." In its analysis on the issue of causation, however, the board overturned the administrative law judge's factual findings. The board summarized the administrative law judge's findings, including that (1) the decedent suffered from post-traumatic stress disorder, despite finding that this disorder did not arise from a physical injury, (2) the decedent's post-traumatic stress disorder was an occupational disease, and (3) Lewis' opinions were credible and persuasive that the decedent's underlying major depressive disorder, coupled with medication management issues and sleep disturbance stemming from recent shift changes, caused his suicide. The board then stated, in cursory fashion, that there were "inherent contradictions" in the administrative law judge's decision and concluded that the administrative law judge "disregarded [the decedent's post-traumatic stress disorder] when considering the reason for the decedent's suicide."

The board acknowledged that Lewis testified that the decedent's underlying depressive disorder caused his suicide. The board, however, did not point to any error or speculation in Lewis' opinions, or refer to any evidence on which she had relied that was shown to be unreliable. Instead, it improperly substituted its own finding that the decedent's post-traumatic stress disorder was a substantial factor in causing his death, stating that, "[g]iven the [administrative law] judge's and [Lewis'] opinions, we find that it is unreasonable and clearly erroneous to find that the decedent's work-related mental health issues were not a substantial contributing

factor in his suicide." See, e.g., *Fair* v. *People's Savings Bank*, 207 Conn. 535, 546, 542 A.2d 1118 (1988) ("it was improper for the [board] to substitute its findings for the findings of the [administrative law judge]"); *Frantzen* v. *Davenport Electric*, 206 Conn. App. 359, 368, 261 A.3d 41 (concluding that, despite apparently understanding legal standard, board "improperly reversed the [administrative law judge's] ruling by substituting its own judgment for the conclusion of the [administrative law judge]"), cert. denied, 339 Conn. 914, 262 A.3d 134 (2021); see also Regs., Conn. State Agencies § 31-301-8.

As previously stated, to prove that an injury is compensable, the plaintiff must demonstrate that the injury (1) arose out of the employment and (2) occurred in the course of the employment. See *Clements* v. *Aramark Corp.*, supra, 339 Conn. 411. In the present case, the board reasoned that "[i]t is undisputed that the decedent's injury occurred in the course of his employment since he was at work, during his assigned shift, at the time that he committed suicide using his service revolver."[6] Apart from stating its own finding that the decedent's suicide was caused by his post-traumatic stress disorder, however, the board did not fully analyze the evidence to determine whether the administrative law judge incorrectly concluded that the decedent's death was not proximately caused by his employment.

The board relied on this court's decision in *Chesler* v. *Derby*, 96 Conn. App. 207, 899 A.2d 624, cert. denied, 280 Conn. 909, 907 A.2d 88 (2006), to conclude that it

[6] We note that the defendant argues that the "gunshot wound was not one inflicted within the course and scope of the [decedent's] employment." The defendant, however, has not offered any case law or analysis in support of that argument, which occupies only one paragraph of its brief. To the extent that the defendant intended to dispute the board's determination that the decedent's death occurred within the scope of his employment, we decline to address that argument because it is inadequately briefed. See, e.g., *Smith* v. *H. Pearce Real Estate Co.*, 232 Conn. App. 82, 90–91, 335 A.3d 81, cert. denied, 352 Conn. 906, A.3d (2025).

was "reasonable to find that [the] decedent's death, regardless of the fact that it was the result of a mental impairment, constituted a physical injury that occurred in the course of his employment."[7] *Chesler*, however, is distinguishable because, in that case, this court affirmed the board's conclusion that a physical injury "precipitated by *work-related* stress [was] a compensable injury" because § 31-275 (16) (B) (ii) and (iii) does not exclude physical injuries brought on by work-related mental or emotional stress. (Emphasis added.) *Chesler* v. *Derby*, supra, 211, 216. Thus, in *Chesler*, it was not disputed that the decedent's stress, which led to a physical injury, namely, a fatal cardiac event, was work-related. Id., 211. In the present case, by contrast, the parties presented voluminous evidence, including evidence from conflicting medical experts, over the course of formal hearings that spanned several days on the crucial issues of (1) whether the decedent had post-traumatic stress disorder related to his employment, and (2) if he did, whether his suicide was caused by his work-related post-traumatic stress disorder, or his underlying major depressive disorder. Although the board characterized it as a "red herring," the issue of which mental health condition and/or conditions proximately caused the decedent's suicide was properly the major focus of the formal hearings before the administrative law judge, regardless of whether the claimed "injury" was a gunshot wound or the aggravation of

[7] The plaintiff argues that the board's reliance on *Chesler* was consistent with our Supreme Court's decision in *Gartrell* v. *Dept. of Correction*, 259 Conn. 29, 787 A.2d 541 (2002). In *Gartrell*, our Supreme Court concluded that the plaintiff was entitled to workers' compensation benefits when the plaintiff's "nonwork-related psychiatric condition . . . was aggravated by a work-related physical injury . . . ." (Footnote omitted; internal quotation marks omitted.) Id., 30–31. That case is also distinguishable because, in the present case, the administrative law judge specifically found that the decedent did not sustain a physical injury from the January, 2013 fire "that aggravated his underlying mental health condition . . . ."

post-traumatic stress disorder that stemmed from physical injuries the decedent sustained during the January, 2013 fire.

The board also stated that the present case can be "easily . . . analogized" to two prior decisions of this court, *Dixon* v. *United Illuminating Co.*, 57 Conn. App. 51, 748 A.2d 300, cert. denied, 253 Conn. 908, 753 A.2d 940 (2000), and *Orzech* v. *Giacco Oil Co.*, supra, 208 Conn. App. 275. In *Dixon*, this court affirmed the board's decision, which affirmed the workers' compensation commissioner's *dismissal* of the plaintiff's claim for survivorship benefits, on the ground that the decedent's suicide "was the result of his alcoholism and depression, rather than his [work-related] injury." *Dixon* v. *United Illuminating Co.*, supra, 52, 64. In *Dixon*, like in the present case, the workers' compensation commissioner relied on expert testimony concerning the cause of the decedent's suicide, and this court held that it was "within the [workers' compensation] commissioner's discretion to credit all, part or none of the expert testimony presented at the hearing." Id., 59. Thus, rather than supporting the board's position, *Dixon* is consistent with our determination that the administrative law judge's reliance on Lewis' expert testimony was not clearly erroneous. With respect to *Orzech*, although this court stated that suicide may be a compensable injury, *Orzech* is distinguishable because, in that case, the decedent's suicide stemmed from his depression, which had developed after he had sustained compensable *physical* injuries. *Orzech* v. *Giacco Oil Co.*, supra, 300–303. In the present case, by contrast, the administrative law judge found that, although the decedent sustained physical injuries during the January, 2013 fire, those injuries did not "[aggravate] his underlying mental health condition which then caused him to take his own life." See part II of this opinion. Thus, unlike in *Orzech*, the administrative law judge in the

present case found that there was not an unbroken chain of causation "linking the decedent's compensable injuries to his death." *Orzech* v. *Giacco Oil Co.*, supra, 286.

Moreover, on the basis of our review of the record, we conclude that there was sufficient evidence from which the administrative law judge reasonably could have determined that the decedent's death was caused by his underlying major depressive disorder, rather than his work-related post-traumatic stress disorder.[8] The plaintiff concedes that the board did not discuss the propriety of the administrative law judge's reliance on Lewis' opinions, which it should have done in assessing whether his findings were clearly erroneous. Upon our review, we conclude that Lewis' opinions were not unreasonable or based on conjecture. Lewis relied on the decedent's medical records, certain testimony, and an interview that she conducted with the plaintiff in rendering her opinions. See, e.g., *Weaver* v. *McKnight*, 313 Conn. 393, 411, 97 A.2d 920 (2014) ("[a] nontreating physician may base [her] opinion on medical records, test results, laboratory reports, and [a] party's statements"). The administrative law judge found that Lewis had diagnosed the decedent with major depressive disorder with recurrent anxiety and distress and referred

[8] The plaintiff asserted four alternative grounds for affirmance, none of which formed a basis for the board's decision but were properly raised pursuant to Practice Book § 63-4. Specifically, the plaintiff claims that (1) mental impairments are physical injuries under the act, challenging our Supreme Court's decision in *Biasetti* v. *Stamford*, 250 Conn. 65, 79–80, 735 A.2d 321 (1999), and its interpretation of § 31-275 (16) (B) (ii), (2) post-traumatic stress disorder is an occupational disease that causes injury to the brain, (3) post-traumatic stress disorder caused the decedent to die by suicide, and (4) the physical injuries suffered by the decedent during the January, 2013 fire aggravated his preexisting condition and caused him to die by suicide. Our determination that the administrative law judge's finding that the decedent's post-traumatic stress disorder did not cause his suicide was not clearly erroneous is dispositive of the first three alternative grounds for affirmance. We address the plaintiff's fourth alternative ground for affirmance in part II of this opinion.

to her testimony in which she stated, based on a reasonable degree of medical probability, that these underlying issues and the management of his medications for those conditions were substantial contributing factors in the decedent's suicide. Thus, this case is distinguishable from *DiNuzzo* v. *Dan Perkins Chevrolet Geo, Inc.*, 99 Conn. App. 336, 913 A.2d 483 (2007), aff'd, 294 Conn. 132, 982 A.2d 157 (2009), in which this court concluded, and our Supreme Court later affirmed, that a medical expert's testimony was improperly grounded in conjecture and speculation because the expert conceded that there was "no way to know the exact cause of the decedent's death." Id., 345–47. Although Grant-Hall, Selig, and Lewis all acknowledged that the issue of the decedent's state of mind was difficult to determine because the decedent had died, they all offered their opinions on causation with a reasonable degree of psychological and/or medical probability, respectively. Moreover, none of the evidence on which Lewis relied was discredited by the administrative law judge. Cf., e.g., *Jones* v. *Connecticut Children's Medical Center Faculty Practice Plan*, 131 Conn. App. 415, 429–30, 28 A.3d 347 (2011) (workers' compensation commissioner improperly relied on expert's opinion when expert's report relied on plaintiff and another expert for fact that traumatic brain injury occurred, despite fact that workers' compensation commissioner had discredited both plaintiff and other expert).

The board readily stated that the administrative law judge "clearly had the right to choose to credit one physician over another and/or to accept portions of those opinions as worthy of greater credibility."[9] The

[9] We note that the plaintiff argues that Lewis' testimony should be discounted because she misquoted one of the decedent's suicide notes. Specifically, Lewis testified: "So, here he writes, I can't relax, I feel like I'm coming out of my skin." (Internal quotation marks omitted.) Lewis' reference to the suicide note was in the context of her testimony that the decedent's psychiatric medications had been "abruptly" changed by Jones, and that the decedent's symptoms, as described in the note, were consistent with

board correctly noted that the administrative law judge did not choose to credit all of Lewis' opinions, as it credited Selig's opinion that the decedent did suffer from work-related post-traumatic stress disorder, rather than Lewis' opinion that he did not. See, e.g., *State* v. *LeRoya M.*, 340 Conn. 590, 615, 264 A.3d 983 (2021) ("[t]he [fact finder] is free to accept or reject each expert's opinion in whole or in part" (internal quotation marks omitted)). Contrary to the board's determination, however, it was not necessarily inconsistent for the administrative law judge to find that, although the decedent had post-traumatic stress disorder, that disorder did not cause the decedent's suicide. That finding was based on the administrative law judge's decision to credit Lewis' opinions on causation. The administrative law judge noted that Lewis had performed a "psychiatric autopsy," which is an evaluation of a deceased person using collateral sources to determine that person's state of mind.[10] The administrative

such a change. The note in question, which was admitted into evidence, indicates in a handwritten portion that he "can't relax," but does not indicate that he felt like he was "coming out of [his] skin."

The board did not make any determination as to this alleged error, as the plaintiff concedes in her brief to this court. Although the administrative law judge repeated this misquoted portion of the note in its conclusions relating to Lewis, he *correctly* quoted from the note when he summarized it elsewhere in his findings. Moreover, even if Lewis' interpretation of the note, and the administrative law judge's finding that repeated that interpretation, was clearly erroneous, any error was not harmful in light of all the other evidence that Lewis relied on in rendering her opinions. See, e.g., *Circulent, Inc.* v. *Hatch & Bailey Co.*, 217 Conn. App. 622, 630, 289 A.3d 609 (2023) ("[When] . . . some of the facts found [by the fact finder] are clearly erroneous and others are supported by the evidence, we must examine the clearly erroneous findings to see whether they were harmless, not only in isolation, but also taken as a whole. . . . If, when taken as a whole, they undermine appellate confidence in the [trier's fact-finding] process, a new hearing is required." (Internal quotation marks omitted.)). Further, Lewis testified correctly that the decedent wrote that he "can't relax anymore," and it has not been disputed that she was qualified to opine on the import of *that* statement on the issue of causation.

[10] Selig also referred to his evaluation as a "psychiatric autopsy." Lewis testified that a psychiatric autopsy is a tool typically used by fellowship

law judge found, relying on Lewis' testimony, that, when a person has an episode of major depression, they are 50 percent more likely to have a second episode, and, after two episodes, they are 75 percent more likely to have a third episode. The administrative law judge noted Lewis' opinion that the decedent's depression had been an ongoing issue since his young adulthood.

Ultimately, Lewis opined that "the major depressive episode with anxious distress, sleep disturbance and the management of [the decedent's] medications were a substantial contributing factor in [the decedent's] death." The plaintiff offered contrary evidence by presenting her own experts, Selig and Grant-Hall, both of whom had opined that the decedent's work-related post-traumatic stress disorder caused his suicide. The administrative law judge, however, in the face of such conflicting expert testimony, found Lewis' opinions on causation to be credible and persuasive. In so doing, the administrative law judge specifically cited to Lewis' credentials as a board-certified forensic psychiatrist.[11] Once the experts' reports and testimony were admitted into evidence, the administrative law judge was "entitled to determine the weight to give that evidence." *Story* v. *Woodbury*, 159 Conn. App. 631, 647, 124 A.3d 907 (2015).

Moreover, "it is proper to consider medical evidence along with all other evidence to determine whether an

trained forensic psychiatrists. The administrative law judge found that Lewis, unlike Selig, was a fellowship trained forensic psychiatrist.

[11] With respect to the credentials of the medical expert witnesses, the administrative law judge found that Grant-Hall holds a doctoral degree in clinical psychology, and that Selig is a psychiatrist. The administrative law judge found that neither Grant-Hall nor Selig was a board-certified forensic psychiatrist. The administrative law judge further noted that Grant-Hall acknowledged that she was unable to opine concerning the decedent's medications. The administrative law judge further noted that, although Grant-Hall described herself as an "acute long-term trauma specialist," that is not a subspecialty recognized by the American Psychological Association.

injury is related to the employment." (Emphasis omitted; internal quotation marks omitted.) Id. In the present case, the record before the administrative law judge contained other evidence that supported Lewis' conclusions. As the plaintiff stated in her brief to this court, by the time of the January, 2013 fire, the "undisputed evidence [was] that [the decedent] was severely troubled" and had been diagnosed with depression and anxiety, as well as panic disorder. These diagnoses appear in the decedent's medical records from Jones, and the administrative law judge referred to those records in his findings. The administrative law judge also referred to Kurker's records, which document the decedent's preexisting history of anxiety and depression over many years.

To be sure, the administrative law judge noted that the decedent's medical records revealed his complaints to Jones that his job as a police officer caused him significant stress. Jones testified that he believed the decedent's work contributed to his symptoms of panic disorder, but he could not opine on the nature of the decedent's suicide. Moreover, the plaintiff testified at length before the administrative law judge regarding the traumas that the decedent had been exposed to as a police officer. This evidence is consistent with the administrative law judge's finding that the decedent suffered from work-related post-traumatic stress disorder. The decedent indicated in one suicide note that, every time he thinks about work, he becomes anxious; in another note, however, he revealed that he had struggled with depression for "most of [his] early life," and that, "when the depression hit this time I knew it was different." The administrative law judge was entitled to find that the weight of the evidence demonstrated that the decedent's underlying depression, rather than his post-traumatic stress disorder, caused his death.

Although we agree with the plaintiff that the act should be interpreted to effectuate its remedial purpose to promote compensability, the plaintiff still must meet the essential elements of her claim. As we have previously explained, "[t]he determination of whether an injury arose out of and in the course of employment is a question of fact for the [administrative law judge]. . . . The purpose of the [workers'] compensation statute is to compensate the worker for injuries arising out of and in the course of employment, without regard to fault, by imposing a form of strict liability on the employer. . . . A[n] [administrative law judge] may exercise jurisdiction to hear a claim only under the precise circumstances and in the manner particularly prescribed by the enabling legislation. . . . The [act] is not triggered by a claimant until he brings himself within its statutory ambit. . . . Although the [act] should be broadly construed to accomplish its humanitarian purpose . . . its remedial purpose cannot transcend its statutorily defined jurisdictional boundaries." (Citation omitted; internal quotation marks omitted.) *Kuehl* v. *Koskoff*, 182 Conn. App. 505, 524, 190 A.3d 82, cert. denied, 330 Conn. 919, 194 A.3d 289 (2018).

On the basis of the foregoing, we conclude that the board improperly substituted its judgment on causation for that of the administrative law judge.

II

We next address the plaintiff's claim that the board's decision may be affirmed on the alternative ground that the decedent suffered a physical injury during the January, 2013 fire that aggravated a preexisting mental health condition, which, in turn, caused him to die by suicide. See footnote 8 of this opinion. The defendant counters that the administrative law judge properly rejected the plaintiff's theory of proximate causation in the present case. We agree with the defendant.

In support of this alternative ground for affirmance, the plaintiff relies on *Biasetti* v. *Stamford*, 123 Conn. App. 372, 383 n.6, 1 A.3d 1231, cert. denied, 298 Conn. 929, 5 A.3d 489 (2010), in which this court stated that the "exacerbation of [a] preexisting disorder may qualify as a compensable mental impairment under the act, provided the exacerbation arose from a physical injury or occupational disease." In *Biasetti*, however, we declined to address the plaintiff's claim that the workers' compensation commissioner improperly failed to conclude that his preexisting post-traumatic stress disorder was compensable because the workers' compensation commissioner did not make any findings regarding any alleged exacerbation of that preexisting condition. Id.

In the present case, the administrative law judge explicitly found that, although the decedent did suffer a physical injury on January 15, 2013, "the opinion of [Lewis] [was] credible and persuasive that [the decedent] did *not* suffer a physical injury on January 15, 2013, *that aggravated his underlying mental health condition* which then caused him to take his own life." (Emphasis added.) This finding was supported by competent evidence and was not clearly erroneous.

The administrative law judge relied on Lewis' testimony in finding that, on the night of the January, 2013 fire, the decedent was suffering from side effects of his antidepressant medication. Lewis relied on not only the decedent's medical records that showed the recent changes in his medications but also on Officer Caraballo's deposition testimony that he spoke to the decedent at the scene of the January, 2013 fire, and the decedent mentioned his doctor increasing his medications. Although the plaintiff argues that Lewis conceded that the decedent had suffered smoke inhalation during the January, 2013 fire, Lewis did not make a causal connection between the decedent's smoke inhalation

and the aggravation of his prior mental impairments. Rather, Lewis testified: "[I]t's the medication side effects, standing there, feeling lousy and . . . in my opinion, it's *not* smoke inhalation or seeing people, it's feeling . . . physically awful, not being able to perform on your job at a fire when you have a major depression and [are] melting down." (Emphasis added.) Lewis' testimony regarding the side effects of the decedent's medications was consistent with her report, which the administrative law judge also relied on in finding that "[a] variety of variables . . . exacerbated [the decedent's] depression including . . . chronic back pain and the initiation of the medication Metoprolol, which can worsen depressive/anxiety symptoms and the initiation of Effexor, which can exacerbate anxiety and the use of an opiate for pain."

The plaintiff has pointed to the contrary expert testimony from Selig and Grant-Hall that the January, 2013 fire, including the decedent's smoke inhalation, aggravated his mental health conditions and were substantial factors in his suicide. Specifically, she relies on Selig's testimony that the decedent experienced "direct harm" from smoke inhalation and that the fire was, essentially, the "straw that broke the camel's back" and was a substantial factor in his suicide. As previously stated, however, Lewis testified that the January, 2013 fire aggravated his underlying depression but that aggravation did not stem from the physical injury of smoke inhalation but, rather, from the decedent's "inability to perform because of medication side effects . . . ."

As previously stated, the administrative law judge was entitled to credit Lewis' opinions in making his findings, which were based on the evidence, and we are "compelled to defer to those findings." *Hart* v. *Federal Express Corp.*, 321 Conn. 1, 23, 135 A.3d 38 (2016); see also, e.g., *Marandino* v. *Prometheus Pharmacy*, 294 Conn. 564, 594, 986 A.2d 1023 (2010). A finding reached

by an administrative law judge by "comparison and examination of conflicting professional opinion . . . can rarely be found erroneous." (Internal quotation marks omitted.) *Hart* v. *Federal Express Corp.*, supra, 28; see also, e.g., *Hummel* v. *Marten Transport, Ltd.*, 114 Conn. App. 822, 845–46, 970 A.2d 834 (concluding that evidence supported workers' compensation commissioner's findings relating to causation), cert. denied, 293 Conn. 907, 978 A.2d 1109 (2009).

In sum, the administrative law judge in the present case was faced with conflicting evidence on the question of causation. The administrative law judge comprehensively summarized the evidence presented, weighed that evidence, and made appropriate credibility determinations in making its factual findings on the essential issues in the case. The question of proximate causation "is essentially a factual issue. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier as a matter of fact." (Internal quotation marks omitted.) *Sapko* v. *State*, 305 Conn. 360, 373, 44 A.3d 827 (2012). Thus, even if, as in the present case, reasonable minds may disagree as to whether the plaintiff established proximate cause, we will not disturb the administrative law judge's finding even if we might have reached a different conclusion if we were the trier of fact. See, e.g., id., 392. It is not the role of the board or this court to disturb the administrative law judge's credibility determinations when those determinations are supported by evidence in the record. See *Orzech* v. *Giacco Oil Co.*, supra, 208 Conn. App. 281–82.

The decision of the Compensation Review Board is reversed and the case is remanded to the board with direction to affirm the decision of the administrative law judge.

In this opinion the other judges concurred.

HOUSING AUTHORITY OF THE CITY OF STAMFORD *v.* PAULINE SINGLETON ET AL.
(AC 47982)

Cradle, C. J., and Alvord and Westbrook, Js.

Syllabus

The plaintiff appealed from the trial court's judgment of possession for the defendant tenant on count one of the seven count complaint in the plaintiff's summary process action. The plaintiff claimed, inter alia, that the court failed to render a decision with respect to the remaining counts of the complaint, which contained independent grounds for eviction. *Held*:

This court dismissed the appeal for lack of subject matter jurisdiction, as the trial court rendered an express judgment only as to count one of the complaint and, pursuant to *Meribear Productions, Inc.* v. *Frank* (328 Conn. 709), the trial court's ruling on count one did not implicitly resolve the remaining counts of the complaint, all of which alleged legally consistent theories that, if proven, would support eviction of the defendant, and, thus, the appeal was not taken from a final judgment.

Argued April 15—officially released July 15, 2025

Procedural History

Summary process action, brought to the Superior Court in the judicial district of Stamford-Norwalk, Housing Session at Norwalk, where the defendant Jason John Faust was defaulted for failure to appear; thereafter, the case was tried to the court, *Cirello, J.*; judgment of possession for the named defendant; subsequently, the court, *Cirello, J.*, denied the plaintiff's motion to reargue, and the plaintiff appealed to this court. *Appeal dismissed.*

John A. Farnsworth, with whom were *Robert L. Rispoli* and *G. Adam Schweickert*, for the appellant (plaintiff).

Jane Kelleher, with whom were *Madeleine Anderson* and, on the brief, *Matthew Haine*, for the appellee (named defendant).

Opinion

WESTBROOK, J. In this summary process eviction action, the plaintiff, the Housing Authority of the city of Stamford doing business as Charter Oak Communities, appeals from the judgment of possession rendered by the trial court in favor of the defendant Pauline Singleton on the basis of her special defense of equitable nonforfeiture.[1] The plaintiff claims that the court improperly (1) failed to render a decision with respect to counts two through seven of its complaint, which contained independent grounds for eviction;[2] (2) determined with respect to count one that the defendant had proven her special defense of equitable nonforfeiture; (3) failed to recognize that equitable nonforfeiture was inapplicable as a matter of law because "federal law is controlling regarding the relevant portions of the subject lease"; and (4) concluded that the defendant had proven her special defense of equitable nonforfeiture "as a factual matter." Because we conclude that the court failed to dispose of all counts of the complaint brought against the defendant and, thus, that the appeal was not taken from a final judgment, we dismiss the appeal for lack of subject matter jurisdiction.

[1] Jason John Faust, an additional occupant of the subject premises, was also named as a defendant in the underlying action. Faust was defaulted for failure to appear and is not a participant in the present appeal. Accordingly, all references to the defendant throughout this opinion are to Singleton.

[2] The court's purported failure to dispose of all counts of the complaint directed at the defendant raises "jurisdictional alarm bells" as to whether the court rendered an appealable final judgment and, thus, whether the present appeal is jurisdictionally defective. *Clinton* v. *Aspinwall*, 344 Conn. 696, 698, 281 A.3d 1174 (2022); see also Practice Book §§ 61-2 through 61-4. Accordingly, prior to oral argument, we asked the parties to file supplemental briefs addressing whether the court's judgment of possession in favor of the defendant on count one of the complaint implicitly also disposed of the remaining counts brought against the defendant pursuant to *Meribear Productions, Inc.* v. *Frank*, 328 Conn. 709, 723–24, 183 A.3d 1164 (2018). See id. (holding that court's disposition of one count may implicitly dispose of other counts premised on "legally inconsistent, but not legally consistent, alternative theories").

The following facts, which either were found by the trial court or are undisputed in the record, and procedural history are relevant to our disposition of this appeal. In October, 2012, the defendant entered into a lease with the plaintiff for an apartment at Stamford Manor, a federally subsidized low income public housing complex in Stamford. The defendant subsequently allowed her nephew, Jason John Faust, to live with her in the apartment.[3] Faust was not a party to the lease nor was he listed on the lease as a family member of the defendant who would be occupying the premises.[4]

In December, 2022, Faust sold drugs to undercover Stamford police officers.[5] As a result, the police searched the defendant's apartment and discovered various illegal drugs,[6] a scale, packaging materials and cash. Faust was arrested and charged with possession of a controlled substance, sale of narcotics, possession of narcotics with intent to sell, and operation of a drug factory. Shortly thereafter, he was arrested a second time for selling narcotics.[7] The defendant was unaware

[3] Faust told the police that he was the defendant's nephew, and the court refers to Faust as the defendant's nephew in its decision. We note, however, that, in the defendant's posttrial brief to the court, she stated that Faust is "not blood related" but nonetheless was "considered . . . part of her family."

[4] Section 1 of the lease identifies the parties to the lease and provides in relevant part: "It is agreed and understood that occupancy under the terms of this lease is limited to the Tenant and his or her family as named above. Unauthorized occupancy of the leased premises or any portion thereof is a serious breach of this lease, which may lead to Tenant's eviction."

[5] According to the plaintiff, a police investigation into Faust had "started due to a fentanyl overdose death by another resident of Stamford Manor . . . and the police had credible information tying that death to [Faust]."

[6] The police recovered powder cocaine, crack cocaine, fentanyl, alprazolam pills, and oxycodone pills.

[7] Faust pleaded guilty in August, 2024, to operating a drug factory in violation of General Statutes § 21a-277 (c). See *State* v. *Faust*, Superior Court, judicial district of Stamford, Docket No. CR-22-0249158-S. Faust was sentenced to six years of incarceration, and his maximum release date is November 22, 2028.

that Faust was selling illegal drugs out of her apartment or storing them there.

On March 27, 2023, following Faust's arrests, the plaintiff served the defendant and Faust with notices to quit possession of the apartment. On May 4, 2023, the plaintiff commenced the underlying eviction action. The complaint contained seven counts alleging the following grounds for eviction. Count one alleged that the defendant breached the lease by allowing Faust to reside in the apartment without the permission of the plaintiff and by allowing Faust "to engage in criminal activity on the premises involving suspected drug use and sales . . . ." Count two alleged that the defendant and Faust "have conducted themselves in a manner that violated General Statutes § 47a-11 (g) by . . . disturb[ing] the neighbors' peaceful enjoyment of the premises."[8] Count three alleged that the defendant and Faust violated § 47a-11 (g) because their conduct constituted a nuisance pursuant to General Statutes § 47a-32[9] in that their conduct substantially interfered with the comfort or safety of other tenants or occupants of Stamford Manor. Count four alleged that the defendant and Faust violated § 47a-11 (g) because their conduct amounted to a "serious nuisance" under General Statutes § 47a-15 (C) in that it "present[ed] an immediate and serious danger to [others'] safety." Count five alleged that the defendant and Faust "have conducted themselves in a manner that constitutes a serious nuisance" under §§ 47a-11 (g) and 47a-15 (D) by allowing

[8] General Statutes § 47a-11 (g) provides in relevant part that "[a] tenant shall . . . conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises or constitute a nuisance, as defined in section 47a-32, or a serious nuisance, as defined in section 47a-15 . . . ."

[9] General Statutes § 47a-32 defines "nuisance" as including, but not limited to, "any conduct [that] interferes substantially with the comfort or safety of other tenants or occupants of the same or adjacent buildings or structures."

the apartment "to be used for . . . the illegal sale of drugs or, in the case of a housing authority, using any area within 1500 feet of any housing authority property in which the tenant resides for the illegal sale of drugs."[10] Counts six and seven were directed against Faust only and alleged, respectively, that he took possession of the apartment "without lease, permission, right or privilege to occupy the same" and that any possessory right or privilege he may have acquired under an agreement with the defendant had terminated.

The defendant filed an answer to the complaint on May 30, 2023. She raised three special defenses. Her first and second special defenses invoked the doctrine of equitable nonforfeiture pursuant to which "[e]quitable principles" can prevent an eviction if "(1) the tenant's breach was not [wilful] or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord's injury is reparable." (Internal quotation marks omitted.) *Boccanfuso* v. *Daghoghi*, 337 Conn. 228, 239–40, 253 A.3d 1 (2020); see also *Presidential Village, LLC* v. *Phillips*, 325 Conn. 394, 407, 158 A.3d 772 (2017) (although originally articulated as defense to evictions for nonpayment of rent, doctrine of equitable nonforfeiture may be applicable in eviction actions arising from violations of other lease terms). The defendant's third special defense provided that "[a]ny alleged breach of the lease or tenant obligations under Connecticut General Statutes has been timely cured."

After a number of continuances, the matter was tried in June, 2024. In her posttrial brief, the defendant argued

[10] General Statutes § 47a-15 defines "serious nuisance" as, inter alia, "conduct which presents an immediate and serious danger to the safety of other tenants or the landlord, or . . . using the premises or allowing the premises to be used for . . . the illegal sale of drugs or, in the case of a housing authority, using any area within fifteen hundred feet of any housing authority property in which the tenant resides for the illegal sale of drugs."

that Faust's drug sales were not connected to her apartment because Faust had "walk[ed] to the adjacent park" in order to carry them out.[11] Moreover, she asserted that she "was unaware that [Faust] was involved in illegal drug related criminal activity" and that "she thought [Faust] was going to the store for her to buy Epsom salts" when he left the apartment to conduct one of the sales to the undercover police officer. Finally, the defendant argued that, if evicted, she would lose her federally subsidized apartment and become homeless and that such results "would be wholly disproportiona[te] to the harm sustained by the plaintiff . . . ." Specifically, she asserted that any harm suffered by the plaintiff was no more than the "general adverse effect [that] drugs have on our communities" and, therefore, the "enormous loss she would suffer is wholly disproportionate to the injury to the plaintiff" such that the court should render a judgment of possession in her favor.

In its posttrial brief, the plaintiff argued that the defendant's ignorance of Faust's activities was irrelevant to whether she had violated the terms of her lease and, also, that the doctrine of "equitable nonforfeiture is inapplicable [in this case] and an end run around federal law." Furthermore, the plaintiff argued that the harm to it, the greater community, its residents, and its employees would far outweigh any harm to the defendant.

The plaintiff also highlighted that, as part of settlement negotiations with the defendant, it had offered her the opportunity to transfer to one of the plaintiff's other properties and agreed to withdraw the eviction action if she moved. The defendant, however, purportedly rejected this offer, and, according to the plaintiff,

[11] There was testimony that the park was within 1500 feet of the apartment complex.

she should not be able "to reject an incredibly reasonable compromise aimed at keeping her in subsidized housing and then complain [in support of her equitable nonforfeiture defense] that she is inequitably being ejected from public housing . . . ." According to the plaintiff, the sale of narcotics, especially fentanyl, posed a very grave risk to the public, including death, and "[e]ven a single instance of unauthorized occupancy or drug related criminal activity is enough to cause irreversible and lasting harm to a community . . . . Significant and lasting harm has been visited on [the plaintiff] and its staff and other residents at Stamford Manor as a result of the defendant's actions (or inactions) and those of [Faust]." Finally, the plaintiff reiterated that "[t]he defense of equitable nonforfeiture is inapplicable" because "it is preempted by federal law" and because, in light of the federal government's public policy "prohibit[ing] . . . the manufacture, sale, distribution, use, or possession of controlled substances in public housing . . . [t]here can be no countervailing equities when [that] cardinal offense in housing has taken place in a government subsidized community . . . ."

On August 22, 2024, the court, *Cirello*, *J.*, issued a decision rendering a judgment of possession in favor of the defendant with respect to count one of the complaint. The court initially found "that the defendant violated the terms of her lease agreement and, as such, the plaintiff has *proved the allegations in count one of its complaint* by a preponderance of the evidence."[12] (Emphasis added.) In particular, the court specified that the defendant had breached §§ 7 (a) and 9 (a) (1) and (2) of the lease prohibiting unauthorized persons

[12] The court expressly stated that Faust's illegal activities violated § 1; § 7 (a), (b), (c), (d) and (f); § 9 (a) (1), (2), (3), (5), (10), (11) (i) and (ii) and (13); and § 13 (b) (1) and (2) (i) and (ii) of the lease, as well as §§ 2 and 20 of the plaintiff's Rules and Regulations of Tenancy.

from occupying the premises as well as violating the plaintiff's regulations, the prohibition on use of the premises for any illegal purpose, and the plaintiff's "zero tolerance" policy for "drug related criminal activity" as set forth in §§ 7 (c) and (d) and 9 (a) (11) of the lease. The court also found that the defendant had breached §§ 7 (c) and 9 (a) (10) of the lease requiring her and her guests not to impair the safety or quiet enjoyment of other tenants. Without mentioning or discussing the remaining counts of the complaint, the court stated that it would "turn to the defendant's second special defense, which makes equitable arguments."

The court went on to describe the defendant as "a four foot, eleven inch, sixty-seven year old frail woman who is on Social Security disability. She has severe arthritis and cannot walk without assistance. She needs a double hip replacement and is currently receiving housing assistance, which would be put in jeopardy if evicted from these premises." The court found that the defendant's breach of the lease "was not wilful or grossly negligent" and that she "had no idea her nephew Faust was selling drugs out of her apartment or storing drugs in her apartment." The court further found that, "[u]pon eviction, the [defendant] will suffer a loss wholly disproportionate to the injury to the [plaintiff]" because she was, essentially, facing potential homelessness, "which would be devastating to [her] in her current physical condition." In contrast, the court found that the plaintiff "demonstrated no ascertainable loss if the defendant is allowed to remain" because it presented no evidence that "occupancy rates will decrease or that [the plaintiff] suffered a monetary loss." The court concluded: "For the above noted reasons, the court finds that the plaintiff proved each and every element of count one of its complaint, but the defendant also proved her second special defense for equitable

relief. As such, judgment of possession shall enter in favor of the defendant."

The plaintiff filed a timely motion to reargue in which it raised essentially the same claims it now raises on appeal, including that the court ruled only on count one of the complaint. It requested, inter alia, that "the court rule on the second through seventh counts of the complaint." The court denied the motion, stating in its brief order that the plaintiff had failed to demonstrate that the original decision contained any alleged inconsistencies or misapprehension of the facts, or overlooked a claim that should have been addressed or a principle of law that would have controlling effect. This appeal followed.

The plaintiff's first claim on appeal is that the court improperly rendered a judgment of possession in favor of the defendant without considering and rendering a decision with respect to counts two through seven of its complaint, which contained independent grounds for eviction.[13] This claim, by implication, raises whether

[13] To the extent that the plaintiff maintains that no judgment was rendered on the sixth and seventh counts of the complaint, which were directed against Faust only, we conclude that the court effectively rendered judgment in favor of the plaintiff on all counts brought against Faust when it unconditionally granted the plaintiff's motion that asked the court to default Faust for failure to appear and for a judgment of possession against him. In other words, no further adjudication of counts six and seven is necessary. Even if that were not the case, Faust is incarcerated and no longer in possession of the property, and therefore no practical relief can flow from any remand for adjudication of the sixth and seventh counts. See *U.S. Bank National Assn.* v. *Doe*, 203 Conn. App. 218, 219, 247 A.3d 672 (2021) ("[b]ecause the record reveals that the defendants are no longer in possession of the property, this appeal is moot"); see also *Housing Authority* v. *Lamothe*, 225 Conn. 757, 763–64, 627 A.2d 367 (1993) ("[s]ummary process appeals are particularly susceptible to becoming moot . . . [in light of the] well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction" (citation omitted; internal quotation marks omitted)). Accordingly, our discussion regarding the final judgment issue is limited to counts two through five, the only remaining counts brought by the plaintiff against the defendant.

the present appeal was taken from an appealable final judgment due to the court's having purportedly rendered an express judgment only as to count one of the complaint, which, in turn, implicates the subject matter jurisdiction of this court. See *Meribear Productions, Inc.* v. *Frank*, 328 Conn. 709, 717, 183 A.3d 1164 (2018) (*Meribear*) ("the lack of a final judgment is a jurisdictional defect that [necessitates] . . . dismissal of the appeal" (internal quotation marks omitted)); see also footnote 2 of this opinion.

In response to our request for supplemental briefing on this threshold jurisdictional issue, the defendant argues that the court's judgment in her favor on count one implicitly also disposed of counts two through five because she had raised her defense of equitable nonforfeiture, on which the court found she had prevailed with respect to count one, as to all counts against her. Therefore, the defendant asserts, the underlying judgment of possession in her favor constitutes an appealable judgment from which the plaintiff was entitled to appeal. The plaintiff counters that, because all counts of the complaint asserted against the defendant were not adjudicated, including as to the applicability of any equitable defense raised by the defendant with respect to those counts, the court did not render an appealable final judgment. Because we agree with the plaintiff that there are as yet unresolved counts of the complaint, we dismiss the appeal for lack of a final judgment.[14]

[14] Because we dismiss the appeal for lack of subject matter jurisdiction, we cannot and do not reach the merits of the remaining issues raised by the parties on appeal, including whether the doctrine of equitable nonforfeiture is applicable to and should bar eviction with respect to the unresolved counts of the complaint. See *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 799, 124 A.3d 920 (2015) ("[i]f there is no final judgment, we cannot reach the merits of the appeal" (internal quotation marks omitted)); *Jay* v. *A & A Ventures, LLC*, 118 Conn. App. 506, 517, 984 A.2d 784 (2009) ("equitable determinations that depend on the balancing of many factors are committed to the sound discretion of the trial court" (internal quotation marks omitted)). Nothing in this opinion should be construed as suggesting any particular outcome with respect to the unresolved counts.

We begin our discussion with well settled legal principles. "The jurisdiction of the appellate courts is restricted to appeals from judgments that are final. . . . The policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear. . . .

"A judgment that disposes of only a part of a complaint is not a final judgment . . . unless the partial judgment disposes of all causes of action against a particular party or parties . . . or if the trial court makes a written determination regarding the significance of the issues resolved by the judgment and the chief justice or chief judge of the court having appellate jurisdiction concurs. . . .

"Alternatively, the courts may deem interlocutory orders or rulings to have the attributes of a final judgment if they fit within either of the two prongs of the test set forth in *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). . . . Under *Curcio* . . . interlocutory orders are immediately appealable if the order or ruling (1) terminates a separate and distinct proceeding or (2) so concludes the rights of the parties that further proceedings cannot affect them. . . . The first prong of the *Curcio* test . . . requires that the order being appealed from be severable from the central cause of action so that the main action can proceed independent of the ancillary proceeding. . . . If the interlocutory ruling is merely a step along the road to final judgment then it does not satisfy the first prong of *Curcio*. . . . The second prong of the *Curcio* test focuses on the nature of the right involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost

and the [parties] irreparably harmed unless they may immediately appeal. . . . Thus, a bald assertion that [the appellant] will be irreparably harmed if appellate review is delayed until final adjudication . . . is insufficient to make an otherwise interlocutory order a final judgment. One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Citations omitted; internal quotation marks omitted.) *Heyward* v. *Judicial Dept.*, 159 Conn. App. 794, 799–801, 124 A.3d 920 (2015).

It is well established that, "[u]nder Connecticut law, a judgment that disposes of only a part of a complaint is not final, unless it disposes of all of the causes of action against the appellant." (Internal quotation marks omitted.) *Clinton* v. *Aspinwall*, 344 Conn. 696, 704, 281 A.3d 1174 (2022); see also Practice Book §§ 61-2 and 61-3. In certain situations, however, a trial court's *express* disposition of one count can also *implicitly* dispose of other counts not directly addressed by the court in rendering the judgment on appeal. In such cases, a final judgment problem does not exist because all counts effectively have been resolved.

The leading case discussing this aspect of our final judgment jurisprudence is *Meribear Productions, Inc.* v. *Frank*, supra, 328 Conn. 709. In *Meribear*, our Supreme Court stated that, "[i]n assessing whether a judgment disposes of all of the causes of action against a party, this court has recognized that the trial court's failure to *expressly* dispose of all of the counts in the judgment itself will not necessarily render the judgment not final. Rather, the reviewing court looks to the complaint and the memorandum of decision to determine whether the trial court explicitly *or implicitly* disposed of each count." (Emphasis in original.) Id., 718. Our Supreme Court recognized that cases in which a plaintiff has raised alternative theories of recovery by way of multiple counts generally fall within two distinct categories.

Id., 721. The first category "involves counts alleging claims that are legally inconsistent, also referred to as mutually exclusive, such that establishing the elements of one precludes liability on the other[15] . . . . In such cases, it is fair to infer that a judgment in favor of the plaintiff on one count *legally* implies a judgment in favor of the defendant on the other count." (Citations omitted; emphasis in original; footnote added.) Id., 721–22. "The second category involves claims that present alternative theories of recovery for the same injury, but are not legally inconsistent. In such cases, there is no legal impediment to the trier of fact finding that the plaintiff has established both claims, although the plaintiff can recover only once for the same injury. . . . In such cases, when the court has found in favor of the plaintiff on one count, this ruling does not imply as a matter of fact or law whether the plaintiff has established the defendant's liability under the other count." (Citations omitted.) Id., 722–23.

After discussing relevant case law and the purpose and policy considerations underlying our final judgment rule, our Supreme Court concluded: "[W]hen the trial court disposes of one count in the plaintiff's favor, such a determination implicitly disposes of legally inconsistent, but not legally consistent, alternative theories. *When a legally consistent theory of recovery has been litigated and has not been ruled on, there is no final judgment.*" (Emphasis added.) Id., 723–24.[16]

[15] By way of example, counts sounding in breach of contract and promissory estoppel are legally inconsistent or mutually exclusive. This is because, whereas a plaintiff must prove the formation of a contract to recover on a theory of breach of contract, recovery for promissory estoppel is limited to circumstances in which an otherwise enforceable contract was not formed, often due to lack of consideration. See *Meadowbrook Center, Inc.* v. *Buchman*, 149 Conn. App. 177, 194, 90 A.3d 219 (2014).

[16] It is worth repeating our Supreme Court's admonition in *Meribear* that "whenever feasible, the far better practice would be for the trial court to fully address the merits of all theories litigated, even those that are legally inconsistent." *Meribear Productions, Inc.* v. *Frank*, supra, 328 Conn. 724.

Applying *Meribear* to the present case, we conclude that the court's judgment was not final for purposes of appellate review. The court concluded that the plaintiff had proven its allegations in count one by a preponderance of the evidence. The plaintiff's complaint, however, raised four additional counts directed at the defendant, each alleging a legally distinct ground for eviction, albeit relying largely on the same underlying set of operative facts. Prevailing or not prevailing on any one count would not necessarily preclude recovery on another. Whereas count one alleged violations of the terms of the lease, counts two through five alleged various statutory violations pursuant to §§ 47a-11 (g), 47a-15 and 47a-32. These additional counts fall squarely within the second category discussed in *Meribear* because they involve legally consistent theories of recovery that, although litigated by the parties, were not ruled on by the court.

Moreover, we do not agree with the defendant that we can infer from the trial court's conclusion that the defendant's equitable forfeiture defense barred the plaintiff from prevailing on count one of the complaint that it necessarily means that the court implicitly found against the plaintiff on the remaining counts. "In determining whether a defendant is entitled to equitable relief from forfeiture of a tenancy . . . courts should look to the test . . . in *Fellows* v. *Martin*, 217 Conn. 57, 66–67, 584 A.2d 458 (1991). . . . In *Fellows*, the [Supreme Court] clarified that, under Connecticut law, equitable defenses and counterclaims implicating the right to possession are available in a summary process proceeding. . . . The court in *Fellows* also made clear, however, that [a] court of equity will apply the doctrine of clean hands to a tenant seeking such equitable relief; thus, *a tenant whose breach was wilful or grossly negligent will not be entitled to relief*. . . . Accordingly, *Fellows* established that an equitable nonforfeiture

defense can succeed only if (1) the tenant's breach was not [wilful] or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord's injury is reparable. . . . This enumerated test, formulated from the holding in *Fellows*, is stated in the conjunctive, and, therefore, the failure of any prong of that test means that equitable relief is unavailable. . . . The burden of establishing an equitable defense in a summary process action falls on the party asserting that defense." (Citations omitted; emphasis altered; footnote omitted; internal quotation marks omitted.) *Cathedral Green, Inc.* v. *Hughes*, 174 Conn. App. 608, 620–21, 166 A.3d 873 (2017).

The court's analysis under the second and third prongs of the *Fellows* test, which requires the court to weigh the defendant's potential losses against those of the plaintiff and determine whether any loss to the plaintiff is reparable, arguably would be substantially the same regardless of the precise nature of the violation alleged as the basis for eviction. Even if we were to assume this to be true, however, the court still would need to analyze as to each of the unresolved counts whether the plaintiff had proven the statutory violation asserted and, if so, whether such violation was wilful or grossly negligent. In addition, the court would need to consider and resolve the plaintiff's arguments regarding whether equitable nonforfeiture is available as a defense as to the statutory counts.

Finally, we note that the court's partial judgment does not fit within either of the two prongs of the test set forth in *State* v. *Curcio*, supra, 191 Conn. 31. As to the first prong, in light of our conclusion that there are unresolved counts, the court's judgment cannot be viewed as terminating a separate and distinct proceeding. As to the second prong, because the issue of possession remains unresolved, the court's judgment did not

so conclude any rights of the parties that further proceedings cannot affect them. Additionally, neither party has argued that they will suffer irreparable harm if appellate review is delayed until there is a final adjudication of all counts.

In short, we agree with the plaintiff that, in accordance with *Meribear*, the court's ruling on count one of the complaint, including its acceptance of the defendant's equitable defense, did not implicitly resolve counts two through five, all of which alleged legally consistent theories that, if proven, would support eviction of the defendant.

The appeal is dismissed.

In this opinion the other judges concurred.

CYNTHIA GIGLIO *v.* JANINE ARDOHAIN ET AL. (AC 46379)

Elgo, Suarez and Seeley, Js.

Syllabus

The plaintiff, who owned real property adjacent to that owned by the defendant A and on which the defendant M resided, appealed from the trial court's judgment, rendered in favor of the defendants, A, M, and M's business entity, E Co. The plaintiff claimed, inter alia, that the court improperly determined that the defendants' conduct had not created a private nuisance by unreasonably interfering with her use and enjoyment of her property. *Held*:

The trial court's conclusion that the plaintiff had failed to establish her claim of private nuisance was not clearly erroneous, as the court considered all relevant factors in determining that intermittent noise from vehicles at M's residence and smoke from a woodstove there, which occasionally drifted toward the plaintiff's home, did not constitute an unreasonable interference with the plaintiff's use and enjoyment of her property.

The trial court did not abuse its discretion in denying the plaintiff's request for injunctive relief as part of her claim for private enforcement of city zoning regulations against the defendants, the court having found that the

plaintiff failed to demonstrate a sufficient causal connection between her claims of harm and the defendants' conduct.

Argued November 14, 2024—officially released July 15, 2025

Procedural History

Action to recover damages for, inter alia, nuisance, and for other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk, where American Marine Electronics, LLC, was added as a defendant; thereafter, the case was tried to the court, *Kavanewsky, J.*; judgment for the defendants, from which the plaintiff appealed to this court. *Affirmed.*

Robert D. Russo, for the appellant (plaintiff).

Igor G. Kuperman and *Stephan E. Seeger*, for the appellees (defendants).

Opinion

ELGO, J. The plaintiff, Cynthia Giglio, appeals from the judgment of the trial court rendered in favor of the defendants, Janine Ardohain, Sean McAleer, and American Marine Electronics, LLC (AME).[1] On appeal, the plaintiff contends that the court improperly (1) determined that the defendants' conduct did not constitute a private nuisance and (2) declined to grant injunctive relief due to the defendants' violation of certain municipal zoning regulations. We affirm the judgment of the trial court.

The following facts, either as found by the trial court or as undisputed in the record, and procedural history are relevant to our resolution of this appeal. At all relevant times, the plaintiff owned real property known as 11 Rising Road in Norwalk, which is adjacent to the

[1] Ardohain owns certain real property at 9 Rising Road in Norwalk. Her grandson, McAleer, resides at that property. McAleer operates and is the sole member of AME. We refer to the defendants collectively throughout this opinion, except when necessary to describe the actions of specific persons or entities.

property located at 9 Rising Road owned by Ardohain and occupied by McAleer.[2] In December, 2018, the plaintiff commenced the present action against the defendants. Her operative second amended complaint contained two counts seeking monetary damages and injunctive relief as to each count. The first count, sounding in private nuisance, alleged that smoke from a woodstove installed in a garage on the 9 Rising Road property, as well as noise created by various trucks and commercial activity, created a private nuisance that interfered with the plaintiff's ability to use and enjoy her property. The second count, in which the plaintiff sought to enforce certain city of Norwalk (city) zoning regulations, alleged that McAleer's activity in operating a commercial business on the 9 Rising Road property and installing a noncompliant woodstove constituted a violation of the regulations that necessitated injunctive relief and damages.

A court trial was held over six days in 2021 and 2022, at which the plaintiff, Ardohain, and McAleer testified.[3] The plaintiff's testimony spanned the first four days of the trial. The plaintiff testified that she first complained about the woodstove on December 31, 2017, and first smelled smoke in her house on November 15, 2018. The plaintiff claimed that "significant amounts" of smoke entered her home as a result of the operation of the woodstove on the 9 Rising Road property, causing "physical harm," including respiratory issues that required medical treatment. The plaintiff testified that

[2] The plaintiff purchased the property at 11 Rising Road in 2007. In 2017, Ardohain purchased the adjacent property for the purpose of providing a home for McAleer, her grandson. McAleer has been the sole occupant of the property since that time. Both of the subject properties are zoned for residential use.

[3] We note that the plaintiff's real estate appraiser testified as well. The trial court did not credit the appraiser's testimony as to the impact of the defendants' conduct on the value of the plaintiff's property, and the plaintiff does not challenge that factual finding on appeal.

she was forced to rent a motel room at times to avoid the smoke. The plaintiff also testified that she has "long-standing allergic asthma" and is highly allergic to dust, smoke, and mold. The plaintiff further testified that the last time McAleer used the woodstove was in March, 2019. In addition, the plaintiff testified as to the noise created by McAleer's vehicles and the alleged commercial activity taking place at the 9 Rising Road property.[4] More than fifty exhibits were admitted into evidence, including medical records, photographs and video recordings of the smoke from the woodstove, and photographs and video recordings of McAleer's various vehicles.

McAleer testified that he is a volunteer officer with two local fire departments and that he responds to calls at all times of the day and night. McAleer further testified that he does not use the woodstove because he wants to be a good neighbor. McAleer also testified that, after he learned about the plaintiff's being bothered by the noise his truck created, he spent $1000 to add mufflers to the exhaust system.

In its memorandum of decision, the trial court concluded that the plaintiff had not sustained her burden to prove "that [McAleer's] activities or conduct were unreasonable." As to the private nuisance claim, the court found that any interference with the plaintiff's use and enjoyment of her property was such that it was not in excess of " 'what a normal person of ordinary habits and sensibilities' " would have been able to

[4] In her testimony, the plaintiff acknowledged that noise from machine tools on the 9 Rising Road property had "not been happening" recently. The trial court was presented with evidence that the city had issued Ardohain a citation for zoning violations on the 9 Rising Road property in June, 2018, due to the storage of a commercial vehicle on the property. The court found that the noise related to business equipment and the repairing of vehicles "eventually ceased in response to zoning enforcement activity against [McAleer]." The noise created by McAleer's vehicle, which is the result of his activity as a volunteer firefighter, is the only noise at issue in this appeal.

endure. The court also concluded that the plaintiff could not sustain her private zoning enforcement claim because she had not shown any "credible, true harm" resulting from any zoning violations. The court determined that, "while the plaintiff testified and offered evidence at great length concerning many maladies which she claimed to have suffered because of the violations, the court does not find such testimony and evidence to be reliable and believable. There is a lack of sufficient causal connection between any violations and the plaintiff's medical conditions." The court thus rendered judgment in favor of the defendants on both counts, and this appeal followed.[5]

I

The plaintiff first claims that the trial court erred in concluding that the defendants' conduct did not constitute a private nuisance. The plaintiff argues that the evidence adduced at trial established that McAleer's woodstove, which was installed in a garage at the rear of the 9 Rising Road property and adjacent to the plaintiff's home, produced excessive smoke that invaded her home, which made it impossible for her to sleep in her bedroom and exacerbated her environmental allergies. She alleges that the smoke had reached such an intensity that she was admitted to the emergency department of Norwalk Hospital for acute bronchospasm, and that, at times, the smoke also caused her to flee her home and rent a motel room. The plaintiff also argues that the operation of commercial vehicles on the 9 Rising Road property created noise that disturbs her sleep.[6]

[5] We note that the plaintiff filed a motion for articulation during the pendency of this appeal. The trial court denied that motion, and the plaintiff sought our review of that denial. We subsequently granted the plaintiff's request for review of that denial but denied the relief requested.

[6] The plaintiff alleges that, by her estimate, she has been awakened hundreds of times since McAleer moved into the house next door in 2017 as a result of his use of his vehicles when responding to fire alarms and alerts.

The defendants counter that the court properly weighed all the relevant factors in denying the plaintiff's claim, and that the plaintiff simply "disagrees with the trial court's ultimate conclusions as to the reasonableness of [McAleer's] use and the extent of harm (or lack thereof) suffered by the plaintiff." We agree with the defendants.

The following additional facts are relevant to this claim. The trial court found that the plaintiff had established that the smoke from the woodstove as well as the noise from the "conditions or activities taking place on the defendants' premises" caused "some measure of interference with the plaintiff's use and enjoyment of her own property." The court then considered whether and to what extent such interference with the plaintiff's use and enjoyment of her property was unreasonable. The court found that, although McAleer was using the woodstove without a permit "at first," he "promptly complied with zoning enforcement [by the city] to remedy the condition." The court also found that, as a result of prevailing wind conditions, smoke from the woodstove would occasionally drift toward the plaintiff's property. The court noted that this drift was "hardly a foreseeable event" and was not within the defendants' control. The smoke was not an intensive, pervasive and unsuitable intrusion into the plaintiff's property, especially given the character of the neighborhood."

With respect to the noises McAleer's vehicles created, the trial court found that these were "intermittent bursts of noises" that would "primarily occur when [McAleer] responded to his volunteer firefighter duties . . . ."[7]

[7] The trial court also found that the noise arising from the fact that McAleer would entertain guests at his home was "not of any persistent, irregular or excessive character to deem it unreasonable." The court, similarly, noted that noise related to the repair of vehicles and/or caused by equipment used for commercial activity was cause for concern, but "that noise eventually ceased in response to zoning enforcement activity against [McAleer]."

Although the court acknowledged that these incidents, which were caused by McAleer's "hurried exits" from the driveway, occurred at "odd hours of the day and night," it concluded, nonetheless, that McAleer had not acted in "any manner calculated to vex or unduly annoy the plaintiff." The court further found that the noise from commercial activity had ceased due to the city's zoning enforcement. See footnote 4 of this opinion. The court concluded that, after considering all relevant factors as to the claim of private nuisance, the plaintiff, who was "acutely" sensitive, had not sustained her burden of proof to demonstrate that the defendants' activities or conduct were unreasonable.[8] Due to the fact that the plaintiff had not met her burden of establishing that she had been subjected to an unreasonable interference with the use and enjoyment of her property, the court rendered judgment in favor of the defendants on count one.

We next set forth the legal principles and standard of review relevant to our resolution of this claim. "A private nuisance is a nontrespassory invasion of another's interest in the private use and enjoyment of land." 4 Restatement (Second), Torts § 821D, p. 100 (1979). The law of private nuisance springs from the general principle that "[i]t is the duty of every person to make a reasonable use of his [or her] own property so as to occasion no unnecessary damage or annoyance to his neighbor." *Nailor* v. *C. W. Blakeslee & Sons, Inc.*, 117 Conn. 241, 245, 167 A. 548 (1933). "Determining unreasonableness is essentially a weighing process, involving a comparative evaluation of conflicting interests . . . . Unreasonableness cannot be determined in the abstract, but, rather, must be judged under the circumstances of

[8] We note that the trial court also found that the plaintiff had not sufficiently demonstrated harm such that she could seek injunctive relief through private zoning enforcement—a finding that clearly is related to her private nuisance claim as well. See part II of this opinion.

the particular case." (Citations omitted; internal quotation marks omitted.) *Pestey* v. *Cushman*, 259 Conn. 345, 352–53, 788 A.2d 496 (2002).

To recover damages in a private nuisance cause of action, a plaintiff must demonstrate that a defendant's conduct was the proximate cause of an unreasonable interference with the plaintiff's use and enjoyment of his or her property. Id., 361. Such interference may be either intentional or the result of a defendant's negligence. Id.; see also *Gregorio* v. *Naugatuck*, 89 Conn. App. 147, 151–52 n.8, 871 A.2d 1087 (2005) ("[A] plaintiff must show that the defendant's conduct was the proximate cause of an unreasonable interference with the plaintiff's use and enjoyment of property. The interference may be intentional or negligent, but it must be unreasonable."). "Ultimately, the question of reasonableness is whether the interference is beyond that which the plaintiff should bear, under all of the circumstances of the particular case, without being compensated." *Pestey* v. *Cushman*, supra, 259 Conn. 362.

"Whether the interference is unreasonable depends upon a balancing of the interests involved under the circumstances of each individual case. In balancing the interests, the fact finder must take into consideration all relevant factors, including the nature of both the interfering use and the use and enjoyment invaded, the nature, extent and duration of the interference, the suitability for the locality of both the interfering conduct and the particular use and enjoyment invaded, whether the defendant is taking all feasible precautions to avoid any unnecessary interference with the plaintiff's use and enjoyment of his or her property, and any other factors that the fact finder deems relevant to the question of whether the interference is unreasonable. No one factor should dominate this balancing of interests; all relevant factors must be considered in determining

whether the interference is unreasonable."[9] Id., 361. Further, "[t]he determination of whether the interference is unreasonable should be made in light of the fact that some level of interference is inherent in modern society. There are few, if any, places remaining where an individual may rest assured that he [or she] will be able to use and enjoy his [or her] property free from all interference. Accordingly, the interference *must be substantial* to be unreasonable." (Emphasis added.) Id. Moreover, "while the reasonableness of a defendant's conduct is a factor in determining whether an interference is unreasonable, it is *not* an independent element that must be proven in order to prevail in all private nuisance causes of action. The inquiry is cast more appropriately as whether the defendant's conduct

[9] The plaintiff, for the first time on appeal, argues that McAleer's status as a licensee occupying the property at 9 Rising Road is a " 'relevant factor' " in determining whether his interference with her use and enjoyment of her property was reasonable because, as an occupant at will, "[h]e has no interest in the property he occupies." This argument was not presented to the trial court, and the defendants did not have an opportunity to address it before the trial court. Nonetheless, citing to authority from other jurisdictions, the plaintiff now argues that, because a licensee's interest is slight, any balancing of the interests should weigh in favor of any opposing party who is an actual owner of property, meaning that "[a]ny infringement [on the plaintiff's enjoyment] should be actionable." Although we acknowledge that the plaintiff raised the issue of McAleer's status as a licensee in her posttrial reply brief, she made this argument *only* in response to the defendants' argument that Ardohain had no liability for McAleer's actions, not with respect to the relevant analysis undertaken by the court to determine whether the interference created by McAleer's actions was unreasonable. Under these circumstances, we decline to address this argument, as it would constitute trial by ambuscade. See *Martin* v. *Todd Arthurs Co.*, 225 Conn. App. 844, 854–55, 317 A.3d 98 (2024) ("It is well established that an appellate court is under no obligation to consider a claim that is not distinctly raised at the trial level. . . . The requirement that [a] claim be raised distinctly means that it must be so stated as to bring to the attention of the court the *precise* matter on which its decision is being asked. . . . The reason for this rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Emphasis in original; internal quotation marks omitted.)).

unreasonably interfered with the plaintiff's use and enjoyment of his or her land rather than whether the defendant's conduct was itself unreasonable." (Emphasis in original.) Id., 360.

"Whether an interference is unreasonable is a question of fact for the fact finder." *Boyne* v. *Glastonbury*, 110 Conn. App. 591, 604, 955 A.2d 645, cert. denied, 289 Conn. 947, 959 A.2d 1011 (2008). "The trier of fact's determination of a question of fact will not be overturned unless it is clearly erroneous." *Berube* v. *Nagle*, 81 Conn. App. 681, 696, 841 A.2d 724 (2004). "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. . . . Under the clearly erroneous standard of review, a finding of fact must stand if, on the basis of the evidence before the court and the reasonable inferences to be drawn from that evidence, a trier of fact reasonably could have found as it did. . . . In reviewing factual findings, [w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached. . . . Instead, we make every reasonable presumption . . . in favor of the trial court's ruling." (Citation omitted; internal quotation marks omitted.) *Circulent, Inc.* v. *Hatch & Bailey Co.*, 217 Conn. App. 622, 630, 289 A.3d 609 (2023).

The plaintiff argues that the trial court erroneously focused on the foreseeability of the fact that smoke from McAleer's woodstove would invade her property.[10]

[10] More specifically, the plaintiff argues that, because the "primary focus" in a private nuisance action is on the "impact" on the affected property, "logic leads to the conclusion that foreseeability should not be a 'relevant factor.' " The defendants respond that "[t]he relevant inquiry before the court was whether it was foreseeable that the smoke would be blown in the direction of the plaintiff's home" and that the court's commentary regarding the foreseeability of the wind's effect on the smoke emanating from the

According to the plaintiff's understanding of the court's reasoning, the court put undue emphasis on McAleer's intentions, as well as the foreseeability of the impact of his actions on the plaintiff. The plaintiff argues that the concepts of unreasonable use and unreasonable interference are distinct, in that a reasonable use can, nonetheless, constitute a private nuisance when it unreasonably interferes with the use or enjoyment of another person's property. In essence, the plaintiff contends that the court elided the distinction, resulting in factual findings that were clearly erroneous.

We conclude that the trial court's finding that the plaintiff had not established her claim of private nuisance was not clearly erroneous. The court considered all the relevant factors, including the nature of the interfering use as well as the use and enjoyment of her property that was being invaded. As the court noted, the woodstove was a permitted use, and the prevailing wind patterns were out of the defendants' control. The plaintiff was also in control of the location of her bedroom relative to the source of the smoke. The court also considered the duration as well as the suitability of the defendants' conduct for the "character" of the residential neighborhood, noting that the smoke would "occasionally" drift toward the plaintiff's residence and that the noise was "intermittent . . . ."

The trial court further considered whether McAleer took all feasible precautions to avoid any unnecessary interference with the plaintiff's use and enjoyment of her property. The court's observation that "prevailing wind conditions" caused the smoke from the woodstove to "occasionally drift" toward the plaintiff's property is "hardly a foreseeable event" related to its understanding of the character of the residential neighborhood

woodstove was "a recognition that [McAleer] was not intentionally trying to 'smoke out' the plaintiff from her home."

and that McAleer was not able to take any further, feasible precaution to ensure that smoke would not drift toward the plaintiff's property. Although foreseeability is not an element of a cause of action for private nuisance, we do not agree with the plaintiff that the court's mere use of the word "foreseeable" was improper under the circumstances. We conclude that the court's reference to foreseeability, rather than being an improper factor, was simply part and parcel of its overall deliberation in balancing the equities.

Moreover, the trial court considered the applicable zoning ordinances—as well as McAleer's violations of those ordinances—in determining that there was no private nuisance. The court noted that, although the woodstove had been installed without the required permit and McAleer "had not installed some features necessary" to obtain the required permit, he had nonetheless "promptly complied with [the city's] zoning enforcement orders to remedy the condition." The court similarly noted that, although it was "concerned about noise complaints" resulting from McAleer's actions in repairing vehicles or other business equipment on the property, which was "not a permitted use in [the] zone," that noise eventually ceased in response to the city's zoning enforcement.[11] See footnote 4 of this opinion.

[11] The plaintiff devotes nearly ten pages of her principal appellate brief in support of her argument that the woodstove "enlarged" or "changed" the use of the garage at the 9 Rising Road property, in violation of applicable zoning regulations. In attempting to prove these violations, the plaintiff also filed a motion asking this court to take judicial notice of various local zoning regulations. According to the plaintiff, "use and structure zoning violations should be as a matter of law (per se) unreasonable (private nuisance)." The plaintiff also argues that, even if we do not accept the theory that a zoning violation constitutes per se a private nuisance, the existence of a zoning violation should "reduce the [plaintiff's] burden for establishing unreasonable interference" in that "mere annoyance, discomfort and agitation should suffice."

This court has firmly rejected the theory that zoning violations constitute per se private nuisance. See *Day* v. *Perkins Properties, LLC*, 190 Conn. App. 33, 34, 209 A.3d 718 (2019). The proper emphasis—in any analysis of a claim sounding in private nuisance—is on the *interference* that the conduct

Although the trial court did find that there was some interference with the plaintiff's use and enjoyment of her property, it did not find that interference to be substantial enough to warrant an award of damages. Put differently, the court concluded that the interference with the plaintiff's use and enjoyment of her property caused by the defendants' conduct was not unreasonable. Therefore, because the record before us contains ample support for this finding by the court, it is not clearly erroneous. The plaintiff's assertion that the court erred in concluding that the defendants' conduct did not constitute a private nuisance must therefore fail.

II

The plaintiff's second claim is that the trial court improperly failed to grant her injunctive relief to privately enforce certain zoning regulations due to the zoning violations created by the operation of the woodstove on the 9 Rising Road property as well as the noise allegedly created by ongoing commercial deliveries.[12]

creates, rather than the nature of the activity itself. To hold that zoning violations constitute per se private nuisance would upend our Supreme Court's determination that the proper emphasis in these cases is on interference rather than conduct—something we cannot do. Private nuisance "is concerned with conduct that interferes with an individual's private right to the use and enjoyment of his or her land." *Pestey* v. *Cushman*, supra, 259 Conn. 357. A court may consider, however, local zoning regulations, along with other factors, in determining whether a private nuisance exists. See, e.g., *Cummings* v. *Tripp*, 204 Conn. 67, 79, 527 A.2d 230 (1987) ("[i]n deciding whether a nuisance exists, a court will often find it necessary to interpret the pertinent zoning regulations because the nuisance issue is intertwined with the lawfulness of the conduct involved"). We, therefore, also decline the plaintiff's invitation to conclude that "mere annoyance, discomfort and agitation" should suffice, in *any* private nuisance action, to demonstrate unreasonable interference. Put differently, the mere existence of a zoning violation should not reduce the plaintiff's burden of proof in an action sounding in private nuisance—to demonstrate a substantial interference in the use and enjoyment of the plaintiff's property.

[12] The plaintiff's complaint alleged that the city's inaction had caused her to suffer irreparable damage and loss which could not be measured in damages. She sought an order enforcing numerous zoning regulations related

Although the woodstove was originally installed without the required permit from the city, the Norwalk Building Department issued a certificate of compliance in November, 2018 (almost one year after the installation of the woodstove), which approved the use of the woodstove in the defendants' "workshop" and specified that the structure was not to be used as a garage. Nevertheless, the plaintiff claims that she is entitled to injunctive relief because this is an expansion of the nonconforming structure and, hence, a zoning violation. The defendants contend that, regardless of whether there were zoning violations, the plaintiff never demonstrated harm such that relief was warranted. According to the defendants, the court properly exercised its discretion in denying the plaintiff's demand for injunctive relief, in that the court did not credit the plaintiff's testimony regarding the harm she allegedly suffered. We agree with the defendants.

The following legal principles guide our analysis. "The issuance of an injunction is the exercise of an extraordinary power which rests within the sound discretion of the court, and the justiciable interest which entitles one to seek redress in an action for injunctive relief is . . . founded on the imminence of substantial and irreparable injury." (Internal quotation marks omitted.) *Karls* v. *Alexandra Realty Corp.*, 179 Conn. 390, 401, 426 A.2d 784 (1980). To be granted injunctive relief, the plaintiff must establish "(1) that injury from failure

to the following alleged activity on the part of the defendants and the city: (1) the storage of noncompliant commercial vehicles on the property; (2) the operation of an illegal business on the property; (3) the operation of a boat marina on the property; (4) the operation of a woodstove installed in noncompliance with the manufacturer's installation instructions; (5) the Norwalk Building Department's improper issuance of the certificate of compliance granted with respect to the woodstove; (6) the classification of the structure where the woodstove is installed as a "workshop" without the proper exemption having been granted; and (7) the alteration of the nonconforming garage structure via the installation of the woodstove.

to grant an injunction is imminent; (2) the injury is substantial; (3) the injury is irreparable and there is a substantial probability that unless an injunction is issued the party seeking it will suffer irreparable harm." (Internal quotation marks omitted.) *Steroco, Inc.* v. *Szymanski*, 166 Conn. App. 75, 89, 140 A.3d 1014 (2016). Moreover, "[e]ven where the danger of irreparable injury is shown, the granting of an injunction is not mandatory but within the sound discretion of the court. Until it is shown that the court's discretion was abused, there can be no reversal of the court's action in denying the injunction." *Koepper* v. *Emanuele*, 164 Conn. 175, 178, 319 A.2d 411 (1972).

The trial court, in its memorandum of decision, grounded its rejection of the plaintiff's claim on her failure to demonstrate substantial and irreparable harm. The court found: "[T]he plaintiff has not shown any credible, true harm as a result of any violations. . . . [W]hile the plaintiff testified and offered evidence at great length concerning many maladies which she claimed to have suffered because of the violations, the court does not find such testimony and evidence to be reliable and believable. There is a lack of sufficient causal connection between any violations and the plaintiff's medical conditions."[13] The court also did not credit

[13] We note that the plaintiff argues that "[t]he court erred when it ruled that [the plaintiff's] . . . use and enjoyment of her property and personal well-being were materially not damaged, compromised, nor invaded by McAleer's conduct." According to the plaintiff, there "is no support in the evidence for that finding . . . ." The plaintiff, who bears the burden of proof, testified and introduced medical records in support of her claim that she suffered harm. The court heard her testimony over four days and did not find it to be credible as to the issue of causation. The plaintiff's argument that the record does not support the court's finding that her testimony was not credible is therefore misplaced. We reiterate "what has become a tired refrain: Because it is the sole province of the trier of fact to assess the credibility of witnesses, it is not our role to second-guess such credibility determinations." (Internal quotation marks omitted.) *Downing* v. *Dragone*, 216 Conn. App. 306, 333, 285 A.3d 59 (2022), cert. denied, 346 Conn. 903, 287 A.3d 601 (2023).

the plaintiff's evidence as to the diminution of the value of her property allegedly caused by the defendants' activities. In so doing, the court concluded that, even if zoning violations existed on the 9 Rising Road property, the plaintiff had not satisfied her burden of establishing the requisite harm to maintain a private zoning enforcement action against the defendants.[14]

On our review of the record, we conclude that the trial court did not abuse its discretion in denying the plaintiff's request for injunctive relief. As stated previously in this opinion, the issuance of an injunction is the exercise of extraordinary power. In the present case, the court found that the plaintiff had failed to demonstrate that she had suffered "any credible, true harm as a result of any [zoning] violations." Given these factual findings, which are supported by evidence in the record, we conclude that the court properly determined that the plaintiff has failed to demonstrate a sufficient causal connection between her claims of harm, including her medical conditions, and the defendants' con-

[14] We note that the trial court also considered that the plaintiff had notified the appropriate city zoning officials, who substantiated some of her complaints and took enforcement action against the defendants. A plaintiff, however, is not required to seek enforcement by proper authorities before commencing an action to privately enforce zoning regulations. As the court noted correctly, private zoning enforcement actions are an exception to the doctrine of administrative exhaustion. This court has observed, "property owners specifically and materially damaged by the violation of zoning regulations may bring private zoning enforcement actions directly to the Superior Court, without first applying to municipal zoning authorities, as an exception to the exhaustion of administrative remedies doctrine." *Reichenbach* v. *Kraska Enterprises, LLC*, 105 Conn. App. 461, 468, 938 A.2d 1238 (2008). The reason for this exception to the doctrine of administrative exhaustion, which grants courts subject matter jurisdiction to hear private zoning enforcement claims, is precisely because, where specific and material harm is being perpetrated upon a party, that party should be able to seek equitable relief. See, e.g., *Cummings* v. *Tripp*, 204 Conn. 67, 76, 527 A.2d 230 (1987) (concluding that subject matter jurisdiction existed where administrative remedies had not been exhausted but that such exception requires "the necessity for clear and precise allegations of specific and material claims of damage in order to establish the threshold requirement for this exception to the exhaustion doctrine").

duct. The court, therefore, did not abuse its discretion in denying the plaintiff's request for injunctive relief.

The judgment is affirmed.

In this opinion the other judges concurred.

STEVEN K. STANLEY *v.* COMMISSIONER OF CORRECTION ET AL.
(AC 47706)

Moll, Seeley and Wilson, Js.

Syllabus

The plaintiff appealed from the trial court's judgment dismissing his civil action against the defendants, employees of the Department of Correction, following the court's grant of their motion to dismiss. The court concluded that the action was barred by the doctrine of res judicata and was frivolous pursuant to the rule of practice (§ 1-25). *Held*:

This court affirmed the trial court's judgment, as it was unable to undertake appellate review of any claim of error due to the inadequacy of the plaintiff's briefs, which were incomprehensible.

Argued April 23—officially released July 15, 2025

Procedural History

Action to recover damages for the alleged deprivation of the plaintiff's civil rights, brought to the Superior Court in the judicial district of Tolland, where the court, *Macierowski*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed*.

Steven K. Stanley, self-represented, the appellant (plaintiff).

Stephen R. Finucane, assistant attorney general, with whom were *Isabel Wagner*, legal intern, and, on the brief, *William Tong*, attorney general, for the appellees (defendants).

Opinion

PER CURIAM. The plaintiff, Steven K. Stanley, appeals following the judgment of the trial court dismissing his civil action against the defendants, whom he identified as the "Commissioner of Correction," "Moore Lisaison," "Dep. Warden Ogaindo," and "C.O. Hesse."[1] The plaintiff sought damages from the defendants resulting from a prison disciplinary report that was issued for his misconduct while incarcerated, which resulted in sanctions.[2] Due to the inadequacy of the briefs filed by the plaintiff in this appeal, we are unable to undertake appellate review of any claim of error. Accordingly, we affirm the judgment of the trial court.

The plaintiff, in his principal appellate brief and his reply brief, neither sets forth a cogent claim of error by the trial court nor adequately analyzes such a claim by reference to the court's rulings, the record developed at the underlying proceeding, the relevant facts at issue, or the applicable legal principles. In short, the briefs are incomprehensible. As this court has often observed, "[w]e are not required to review issues that have been improperly presented to this court through an inadequate brief . . . . Analysis, rather than mere abstract

[1] We have taken the names of the defendants directly from the plaintiff's summons, which is part of the record. It is undisputed that the defendants, who were sued in their individual capacities, are employees of the Department of Correction. The plaintiff is incarcerated as a result of a conviction of 100 counts of criminal violation of a protective order, stalking in the first degree, and threatening in the second degree. See *State* v. *Stanley*, 161 Conn. App. 10, 12, 125 A.3d 1078 (2015), cert. denied, 320 Conn. 918, 131 A.3d 1154 (2016). The plaintiff appeared as a self-represented litigant in the action underlying this appeal. The plaintiff appears before this court as a self-represented litigant.

[2] The legal grounds for the plaintiff's action are not readily apparent. The trial court concluded that the pleadings were "best read as an action pursuant to 42 U.S.C. § 1983, claiming that the defendants violated his federal fourteenth amendment right to due process." Following a hearing, the court granted the defendants' motion to dismiss the action with prejudice. The court concluded that the action was (1) barred by the doctrine of res judicata and (2) frivolous pursuant to Practice Book § 1-25.

assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited." (Internal quotation marks omitted.) *Pascual* v. *Perry*, 230 Conn. App. 483, 502–503, 330 A.3d 161 (2025); see also *Seaport Capital Partners, LLC* v. *Speer*, 202 Conn. App. 487, 490, 246 A.3d 77 (writ of error dismissed due to significant deficiencies in appellate brief that made meaningful comprehension or review of claims raised virtually impossible), cert. denied, 336 Conn. 942, 250 A.3d 40 (2021).

The plaintiff's status as a self-represented litigant does not permit us to overlook the fatal deficiencies in his briefs. "Although we recognize and adhere to the well-founded policy to accord leeway to self-represented parties in the appeal process, our deference is not unlimited; nor is a litigant on appeal relieved of the obligation to sufficiently articulate a claim so that it is recognizable to a reviewing court." *Deutsche Bank National Trust Co.* v. *Pollard*, 182 Conn. App. 483, 487, 189 A.3d 1232 (2018).

The judgment is affirmed.

STEVEN K. STANLEY *v.* ADAM B. SCOTT ET AL.
(AC 47829)

Moll, Seeley and Wilson, Js.

Syllabus

The plaintiff appealed from the trial court's judgment dismissing his civil action against the defendants, assistant state's attorneys, who had successfully prosecuted him. In the underlying action, the plaintiff had sought

damages from the defendants related to their use of his cell phone records in connection with his criminal trial. *Held*:

This court affirmed the trial court's judgment, as the deficiencies in the plaintiff's briefs left this court unable to undertake any appellate review of any claim.

Argued April 23—officially released July 15, 2025

Procedural History

Action to recover damages for the defendants' alleged violation of the plaintiff's federal constitutional privacy rights, brought to the Superior Court in the judicial district of Tolland, where the court, *Macierowski*, *J.*, granted the defendants' motion to dismiss and rendered judgment thereon, from which the plaintiff appealed to this court. *Affirmed.*

Steven K. Stanley, self-represented, the appellant (plaintiff).

Stephen R. Finucane, assistant attorney general, with whom were *Isabel Wagner*, legal intern, and, on the brief, *William Tong*, attorney general, for the appellees (defendants).

Opinion

PER CURIAM. The plaintiff, Steven K. Stanley, appeals following the judgment of the trial court dismissing his civil action against the defendants, Adam B. Scott and Anthony Spinella.[1] The defendants, in their capacities as assistant state's attorneys, were involved in a successful prosecution of the plaintiff, which resulted in his conviction of multiple crimes and imprisonment.[2] Thereafter, in the underlying action, the plaintiff sought damages from the defendants related to their use of his

[1] The plaintiff, who is currently incarcerated, appeared as a self-represented litigant before the trial court in the underlying action and he appears before this court as a self-represented litigant.

[2] See *State* v. *Stanley*, 161 Conn. App. 10, 125 A.3d 1078 (2015), cert. denied, 320 Conn. 918, 131 A.3d 1154 (2016).

cell phone records as evidence in connection with his criminal trial.[3]

The plaintiff's principal appellate brief and his reply brief are incomprehensible; the plaintiff neither identifies a cogent claim of error nor adequately analyzes such a claim.[4] This appeal is governed by our analysis in another appeal that was brought by the plaintiff, *Stanley* v. *Commissioner of Correction*, 233 Conn. App. 759, , A.3d (2025), which we resolve today. The deficiencies in the plaintiff's briefs leave us unable to undertake appellate review of any claim and, thus, we affirm the judgment of the trial court.

The judgment is affirmed.

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[3] The trial court concluded that the plaintiff's action was brought pursuant to 42 U.S.C. § 1983. The court stated that the plaintiff, who was seeking damages of fifty million dollars, had alleged "that the defendants violated his constitutional privacy rights under the fourth and fourteenth amendments [to] the [United States] constitution by using his personal cell phone records against him in the course of their prosecution and at trial." Following a hearing, the court granted the defendants' motion to dismiss the action with prejudice. The court concluded that the action was (1) barred by the doctrine of res judicata and (2) frivolous pursuant to Practice Book § 1-25.

[4] We note that, beyond any attempt made by the plaintiff to challenge the legal grounds on which the court relied in dismissing his civil action, he baldly asserts in his principal appellate brief that the trial judge, *Macierowski*, *J.*, was "bias[ed]." The record reflects that the plaintiff moved to disqualify Judge Macierowski, who denied the motion to disqualify on its merits. Nevertheless, the plaintiff has not addressed the merits of that ruling in this appeal.