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IN RE ERIC M.*
(AC 45693)

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

Syllabus

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

1. The respondent father could not prevail on his claim that the trial court improperly determined that the interference exception to the lack of an ongoing parent-child relationship ground for termination did not apply to the circumstances of the present case: contrary to the father's claim, the conditions of his probation and any visitation decisions made by his probation officer were not attributable to the petitioner, and, assuming arguendo that the enforcement of the father's conditions of probation could be attributed to the petitioner, the interference exception would nevertheless not apply because the father was responsible for the lack of a parental relationship by failing to make any effort to establish a relationship with E either during his period of incarceration or after he was released, whether by asking his probation officer, the department, or the court for permission to visit with E or by seeking modification of the conditions of his probation; moreover, given that the initial lack of a parent-child relationship occurred because the father violated his probation by visiting E, which preceded any involvement by the petitioner, there was no basis on which to attribute any responsibility for the initial lack of a parental relationship to the petitioner.
2. The trial court found, by clear and convincing evidence, that the respondent father had failed to rehabilitate sufficiently to assume a responsible position in E's life within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i): the father had not engaged in individual therapy in almost three years, had refused the department's attempts to get him to reengage in treatment, had not participated in intimate partner violence treatment, and had made no effort to seek the permission of the department, his probation officer, or the court to visit E and build a relationship with him, and, accordingly, construing the evidence in a manner most favorable to sustaining the judgment, this court concluded that the trial court reasonably determined, upon the facts found and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its conclusion that the respondent failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i); moreover, the father's reliance on his progress in sex offender treatment to the exclusion of all other evidence of his rehabilitative efforts was misplaced because he provided no authority to support his argument that his compliance with the conditions of his probation obviated the need for him to engage

in the services ordered and required for reunification with E, and, given the limited evidence in the record regarding the father's progress in his sex offender treatment and his probation officer's testimony about the father's heightened risk assessment, this court was not persuaded that the trial court's finding that he was doing well in that treatment undermined its conclusion that he had failed to rehabilitate; furthermore, contrary to the father's claim, the court correctly stated the law regarding the legal standard with regard to failure to rehabilitate and applied it to the facts found, and there was no indication that the court applied an incorrect legal standard or improperly focused on the reunification aspect of § 17a-112 (j) (3) (B) (i).

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

Procedural History

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

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

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

Opinion

BRIGHT, C. J. The respondent father, Eric S., appeals from the judgment of the trial court rendered for the petitioner, the Commissioner of Children and Families, terminating his parental rights to his minor son, Eric M. (Eric),[1] on the grounds that he failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i) and that there is no ongoing parent-child relationship pursuant to § 17a-112 (j) (3) (D).[2] On appeal, the respondent claims that the court improperly (1) determined that the interference exception did not apply to preclude the petitioner from relying on the no ongoing parent-child relationship ground for termination and (2) found that the respondent had not rehabilitated such that he could assume a responsible position in the life of the child. We affirm the judgment of the trial court.

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

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

"As a result of that 2018 violation of probation, he was sentenced to eighty-one months in jail, suspended after fifteen months, followed by sixty-four months of probation. The original conditions of probation were

reimposed with the exception that unsupervised contact with his newborn child—Eric—would be at the discretion of [his] probation officer. This probation is scheduled to expire in February, 2025."

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

On October 11, 2019, the respondent was released from incarceration and began serving his period of probation with the additional condition that he have no unsupervised contact with Eric unless approved by his probation officer.

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

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

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

On January 31, 2021, the petitioner filed a petition to terminate the respondent's parental rights on the

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

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

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

"[Jones] could not recall whether he discussed his decision not to permit contact between [the respondent] and Eric with [Dike]. [Dike] testified that [the department] would also not be in support of [the respondent] visiting Eric, due to [the respondent's] criminal history and his noncompliance with individual therapy and anger management. [The respondent] is undergoing sexual offender treatment pursuant to the conditions

of his probation and is doing well in that treatment. Despite [the respondent] signing a release for [the department] to obtain information about his progress in that sex offender treatment, [the department] has been unable to obtain any information. . . .

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

During closing arguments, the court asked counsel for the respondent if he was relying on the interference exception, which precludes a petitioner from relying on the "no ongoing parent-child relationship" ground for termination "when the petitioner has engaged in conduct that inevitably has led to the lack of an ongoing parent-child relationship between the respondent parent and the child." (Internal quotation marks omitted.) *In re Tresin J.*, 334 Conn. 314, 327–28, 222 A.3d 83 (2019). Counsel for the respondent answered in the affirmative and argued: "My client's been prevented from having a relationship with his child due to the conditions imposed on him through probation. And even if the court were to find that he were to be allowed access with agreement through probation, the department has indicated that it would not have allowed access. So, he has been prevented from—from maintaining or developing a relationship with his child by action of others. And I would rely on [the interference] exception."

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

As to the grounds for termination, the court found that the petitioner had proven, by clear and convincing evidence, that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i) and that there was no ongoing parent-child relationship between the respondent and Eric pursuant to § 17a-112 (j) (3) (D). In so finding, the court rejected the respondent's invocation of the

interference exception. Finally, in the dispositional phase, the court considered the seven factors set forth in § 17a-112 (k)[4] before finding that it was in Eric's best interest to terminate the respondent's parental rights. This appeal followed. Additional facts will be set forth as necessary.

I

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

We begin by setting forth the applicable standard of review. "The applicability of the interference exception under the facts of this case presents a question of law over which we exercise plenary review." *In re November H.*, 202 Conn. App. 106, 132, 243 A.3d 839 (2020). "[T]o the extent that we are required to review the court's subordinate factual findings, we apply the clearly erroneous standard of review. . . . A [subordinate factual] finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made. . . . [G]reat weight is given to the judgment of the trial court because of [the trial court's] opportunity to observe the parties and the evidence. . . . [An appellate court does] not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached. . . . [Rather] every reasonable presumption is made in favor of the trial court's ruling." (Citation omitted; internal quotation marks omitted.) *In re Delilah G.*, 214 Conn. App. 604, 616, 280 A.3d 1168, cert. denied, 345 Conn. 911, 282 A.3d 1277 (2022).

We now turn to the relevant case law regarding the interference exception to the no ongoing parent-child relationship ground for termination. In *In re Jacob W.*, 330 Conn. 744, 758–63, 200 A.3d 1091 (2019), our Supreme Court discussed the evolution of the interference exception and set forth the following analytical framework to apply when a petitioner seeks to terminate parental rights based on no ongoing parent-child relationship: "[T]he inquiry is a two step process. In the first step, a petitioner must prove the lack of an ongoing parent-child relationship by clear and convincing evidence. In other words, the petitioner must prove by clear and convincing evidence that the child has no present memories or feelings for the natural parent that are positive in nature. If the petitioner is unable to prove a lack of an ongoing parent-child relationship by clear and convincing evidence, the petition must be denied, and there is no need to proceed to the second step of the inquiry. If, and only if, the petitioner has proven a lack of an ongoing parent-child relationship does the

inquiry proceed to the second step, whereby the petitioner must prove by clear and convincing evidence that to allow further time for the establishment or reestablishment of the relationship would be contrary to the best interests of the child. Only then may the court proceed to the disposition phase.

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

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

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

"Our cases involving the interference exception demonstrate that the exception does not apply if the actions of the petitioner do not inevitably lead to the lack of a relationship between the respondent and the child. Compare [id., 332 n.12] (interference exception was inapplicable where actions of petitioner did not render inevitable lack of relationship between incarcerated respondent father and child because lack of relationship occurred several years before alleged interference by

petitioner), and *In re November H.*, supra, 202 Conn. App. 134 (same), and *In re Alexander C.*, 67 Conn. App. 417, 424–25, 787 A.2d 608 (2001) (interference exception was inapplicable because, although child was placed in foster care within days of birth, incarcerated respondent father, rather than petitioner, created circumstances that caused and perpetuated lack of ongoing parent-child relationship and because respondent made no attempt to modify protective order barring contact with child, which did not require extraordinary and heroic efforts by respondent), aff'd, 262 Conn. 308, 813 A.2d 87 (2003), with *In re Valerie D.*, 223 Conn. 492, 531–35, 613 A.2d 748 (1992) (interference exception was applicable where department took temporary custody of child essentially upon birth and termination hearing took place only few months later because finding of lack of ongoing parent-child relationship was inevitable in absence of extraordinary and heroic efforts by incarcerated respondent mother), and *In re Carla C.*, [167 Conn. App. 248, 276, 143 A.3d 677 (2016)] (interference exception was applicable because, short of extraordinary and heroic efforts by incarcerated respondent father, who had filed numerous contempt motions in attempt to enforce visits with child, petitioner mother was able to completely deny father access to child by obtaining order from prison precluding him from initiating communication with her and child, discarding letters he sent to child and filing motion to suspend child's visitation with father). Consequently, the respondent has the burden of proving that the *petitioner's* interference and conduct *caused* her initial lack of relationship with her child." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Delilah G.*, supra, 214 Conn. App. 634–36; see also *In re Tresin J.*, supra, 334 Conn. 332 n.12 (emphasizing that interference exception "applies when the actions of the petitioner rendered inevitable the *initial* lack of a relationship" (emphasis in original)).

In the present case, the court determined that the petitioner had proven by clear and convincing evidence both prongs of the lack of an ongoing parent-child relationship ground for termination and that neither recognized exception to that ground applied to the facts involved here. The court explained that "Eric, nearly five years old, is not virtually an infant. Additionally, the petitioner has not interfered with [the respondent's] ability to develop a relationship with Eric. Rather, it is [the respondent's] conduct that has created that interference. His criminal conviction and the resultant conditions of his probation have interfered with his ability to develop a relationship with Eric. It is important to note that the evidence before this court establishes that [the respondent] has not asked [the department], his probation officer or the criminal court for their permission to visit Eric. Thus, the court finds by clear and convincing evidence that [the petitioner] has proven

this ground for termination . . . . Eric has no memories of [the respondent] . . . . There is no ongoing parent-child relationship. . . .

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

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

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

of any third party." (Citation omitted.) We agree with the petitioner and conclude that the court properly determined that the interference exception did not apply in the present circumstances.

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

Moreover, given that the initial lack of a parent-child relationship occurred because the respondent violated his probation by visiting Eric in 2018, which preceded any involvement by the petitioner, there is no basis on which to attribute any responsibility for the initial lack of a parental relationship to the petitioner. See *In re Tresin J.*, supra, 334 Conn. 332 n.12 (concluding that interference exception did not apply when department became involved with respondent and family several years after initial lack of relationship because "it was not the department's opposition to visitation on the recommendation of [the child's] clinicians, who deemed it potentially disruptive to the progress that he was making with his foster mother, which resulted in the separation that led to the lack of a parent-child relationship").

In addition, assuming arguendo that the enforcement of the respondent's conditions of probation could be attributed to the petitioner, which it cannot, we nevertheless conclude that the court properly determined that the interference exception did not apply because the respondent was responsible for the lack of a parental relationship by failing to make any effort to establish a relationship with Eric either during his period of incarceration or after he was released. See *In re Carla C.*, supra, 167 Conn. App. 272–73 ("parent's perpetuation of the lack of a relationship by failing to use available

resources to seek visitation or otherwise maintain contact with the child may establish the lack of an ongoing parent-child relationship"); see also *In re Alexander C.*, supra, 67 Conn. App. 424–25 (concluding that "the respondent, rather than the [petitioner], created the circumstances that caused and perpetuated the lack of an ongoing relationship between the respondent and [the child]" because, although respondent was prohibited from contacting minor child pursuant to protective order, he made no attempt to modify it). In particular, the respondent neither asked his probation officer for permission to visit with Eric nor sought to modify this condition of probation.

The respondent argues that he should not be faulted for not undertaking such actions given the circumstances confronting him. In his principal brief to this court, the respondent acknowledges that "our case law demands that the respondent show interest in his son and use what means are available to him to effectuate visitation" but claims that, "[i]n this case, the record demonstrates that any attempt by the respondent to modify the terms of his probation would have been futile." He first points to the confusion regarding the conditions of his probation and claims that "[Jones] was asserting that he no longer had discretion to permit the visits. This assertion was incorrect but the respondent should not be faulted for reasonably relying on the statements of the man charged with overseeing his probation." We are not persuaded.

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

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

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

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

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

Consequently, we conclude that the court properly determined that the interference exception did not apply in the present case. The petitioner did not engage in conduct that inevitably led to the respondent's lack of a parent-child relationship with Eric, and the respondent perpetuated the lack of such a relationship by failing to make any effort to develop or maintain a relationship with Eric.

II

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

We begin by setting forth the relevant legal principles and the applicable standard of review. "The trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely

when [he] will be able to assume a responsible position in [his] child's life. Nor does it require [him] to prove that [he] will be able to assume full responsibility for [his] child, unaided by available support systems. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [he] can assume a responsible position in [his] child's life. . . . Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [his] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his] ability to manage [his] own life, but rather whether [he] has gained the ability to care for the particular needs of the child at issue. . . .

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

"A conclusion of failure to rehabilitate is drawn from *both* the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . . We will not disturb the court's subordinate factual findings unless they are clearly erroneous." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Brian P.*, 195 Conn. App. 558, 568–69, 226 A.3d 159, cert. denied, 335 Conn. 907, 226 A.3d 151 (2020); see also *In re Ryder M.*, 211 Conn. App. 793, 814, 274 A.3d 218 ("court's determination that the respondent failed to rehabilitate sufficiently is subject to the evidentiary sufficiency standard of review, and we will not disturb the court's subordinate findings vis-à-vis that determination unless they are clearly erroneous"), cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).[6]

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

On appeal, the respondent attempts to minimize the court's findings that he refused to engage in individual therapy and IPV treatment and failed to make any effort to build a relationship with Eric since the adjudication date, but he does not claim that those findings are clearly erroneous. Instead, despite arguing that sufficiency of the evidence is not the proper standard of review, the respondent argues that not participating in such therapy and treatment was not a sufficient reason for the court to find that the respondent had failed to rehabilitate. He explains that he ceased engaging in individual therapy at Turning Leaves at the behest of the department and that "there is scant evidence in the record regarding the reasons IPV counseling was necessary for the respondent to successfully rehabilitate in terms of his ability to care for [Eric]."[7] The evidence in the record belies both assertions.

The court found that since the respondent stopped attending therapy at Turning Leaves in December, 2019, he "ha[d] not engaged in any individual therapy, despite being referred by [the department]. [The respondent] instead state[d] that he will find himself a program if he needs it." At trial, Dike testified that the department "advised [the respondent] to engage in a different treatment, as at the time, [Eric's mother] was also involved in the same treatment and she was already, you know, reporting some controlling behaviors with their relationship. [The respondent] declined and he also declined the IPV [counseling] and he said that [the department] cannot control him, that he's not a kid." Dike further testified that she continued to offer the respondent individual therapy during the years following his discharge from Turning Leaves, but the respondent refused to attend and "said that he was gonna

find something on his own, that he didn't need [the department's] help." The respondent, however, never provided the department with any documentation showing that he had complied with individual therapy. Accordingly, the evidence established that, although the department requested that the respondent cease treatment at Turning Leaves, it also referred him for individual therapy at a different facility, which he failed to attend.

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

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

The respondent nevertheless argues that the court's findings are insufficient to support its conclusion because he "has complied with [the] terms of [his] probation, including sex offender therapy and any other requests from the Office of Adult Probation, which would have included additional mental health treatment if it were deemed necessary." Therefore, according to the respondent, he "engaged in the process of rehabilitation through probation, and, thus, the evidence was insufficient to show by a clear and convincing standard that he had failed to rehabilitate such that he could, as soon as the restrictions of probation were removed,

assume care and custody of his son." We are not persuaded.

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

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

Finally, the respondent claims that the court applied an incorrect legal standard in finding that he failed

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

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

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

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

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

The judgment is affirmed.

In this opinion the other judges concurred.

* In 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.

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

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

[2] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child . . . ."

[3] "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under § 17a-112, a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. . . . If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence." (Citation omitted; internal quotation marks omitted.) *In re Shane M.*, 318 Conn. 569, 582 n.12, 122 A.3d 1247 (2015).

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

prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

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

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

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

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

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