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IN RE KYLIE P.*
(AC 45434)

Moll, Clark and DiPentima, Js.

Syllabus

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

1. Contrary to the respondent mother's claim, the evidence before the trial court was sufficient to support its factual finding, by clear and convincing evidence, that the department made reasonable efforts to reunify the mother with K: the evidence before the court included the department's referral of the mother to mental health services, the commencement of supervised, in-person visitation with K in Connecticut, referrals of the mother to agencies to assist her with housing, immigration and employment issues, the department's continual efforts to contact the mother after she had left the state, its offers to pay for mental health treatment outside of Connecticut, and encouragement to communicate with K's therapist; moreover, although some of the department's efforts to assist the mother with housing and employment were unsuccessful due to the mother's immigration status, the department was persistent in making referrals for the mother to assistive services and made reasonable efforts under the circumstances of this case; furthermore, it was reasonable, under the circumstances, for the department to defer providing psychoeducation services to the mother until she addressed her own mental health issues, and, when the department arranged for K's therapist to provide such services to the mother, she specifically declined.
2. This court declined to address the respondent mother's unpreserved claim that the trial court erred in finding that the department was not required to make reasonable efforts to reunify her with K pursuant to statute (§ 17a-111b (a) (2)), which she claimed was unconstitutional as applied in this case, as this court concluded that the trial court properly found that the department had made reasonable efforts to reunify the mother

with K, and Connecticut courts follow the basic judicial duty to eschew unnecessary determinations of constitutional questions.

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

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

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

4. The respondent mother could not prevail on her unpreserved claim that the trial court violated her rights to due process in asking K's attorney to call a witness at trial after she and the petitioner had rested their cases: the mother's counsel engaged in conduct clearly demonstrating agreement and assent to the court's conduct, as counsel did not object when the court requested K's attorney seek a witness to provide additional testimony, and counsel not only declined the court's invitation to withdraw its request but he actively participated in setting the parameters for the inquiry, thoroughly cross-examined the witness and made the strategic decision to call the witness as his own, thus, the mother waived her due process claim pursuant to *State* v. *Golding* (213 Conn. 233).

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

Procedural History

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

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

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

Opinion

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

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

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

In early 2018, Kylie came to the department's attention as a result of an application for temporary custody filed in Probate Court by Lennox and Karla, which stated that the respondent was living in Jamaica and unable to care for Kylie. The Probate Court asked the department to assess the application. While the department was conducting its assessment of the matter, Lennox's daughter, Shanice M. (Shanice), reported to the department that her stepmother, Karla, was physically abusing Kylie and provided photographs and specific examples of abuse, including an allegation that Karla slammed Kylie's head while the two of them were in the bathroom together, leaving a bruise above Kylie's eye.

The department was able to contact the respondent to inform her of Kylie's injuries. It learned that the

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

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

On February 7, 2018, the petitioner filed an application for an ex parte order of temporary custody, which the court granted, and a neglect petition. The court sustained the order of temporary custody following a preliminary hearing on the ex parte order.[3] On May 10, 2018, the court adjudicated Kylie as neglected and ordered specific final steps for the respondent.

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

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

In September, 2018, the respondent moved to Mississippi. She told the department that she was going there for a short time to work as a maid and planned to return to Connecticut. However, she stayed in Mississippi, not informing the department that she actually had lived there for several months. The respondent's move to Mississippi ended her in-person supervised visits with Kylie, but she continued to have regular video or tele-

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

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

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

On December 10, 2019, the petitioner filed a petition for termination of parental rights alleging failure to rehabilitate as to the respondent and abandonment and no ongoing parent-child relationship as to the putative father, Orlando F. An initial hearing on the termination petition was held on January 30, 2020, which the respondent attended in person. The respondent disclosed that, at some point in late 2019, she had left Mississippi and begun staying with relatives in Massachusetts. She told the department that she left Mississippi because of an incident between her and Davonte's father, but she was guarded in her statements to the department.

On February 11, 2020, the department learned that the respondent had moved to Nevada. She informed them that she was going to start college at the end of March and rejected any referrals for parenting services, mental health treatment, or legal aid. She emphasized that she did not want any help from the department and said that she was considering entering a shelter in Reno for herself and her son. The department experienced the same difficulty in maintaining contact with the respondent that it had in 2019, with the respondent not answering or responding to telephone calls and

communicating only by text message. At some point, the department learned that the respondent was living in a homeless shelter where she received the types of services that the department had previously implored her to seek: counseling from a licensed professional, case management services to help her adjust to living safely with her son in Nevada, and immigration counseling.[4] By the end of 2020, the respondent was employed, was residing in her own apartment in Nevada, and had her son in child care while she was working.

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

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

I

The respondent claims on appeal that the court erred in concluding that the department made reasonable efforts to reunify her with Kylie.[5] Specifically, she argues that the department identified several barriers to reunifying her with her daughter, including her (1) immigration status, (2) housing and employment, (3) mental health, and (4) parenting skills and relationship with Kylie. In the respondent's view, the department referred her to only a handful of services, such as in-person visitation and individual counseling. The respondent therefore contends that the evidence is insufficient to establish that the department made reasonable efforts to assist her in addressing her immigration status, housing and employment, or her parenting skills and relationship with Kylie. We are not persuaded.

Before addressing the respondent's claim, we pause to identify the pertinent legal principles and standard

of review. "Section 17a-112 (j) (1) requires that before terminating parental rights, the court must find by clear and convincing evidence that the department has made reasonable efforts to locate the parent and to reunify the child with the parent, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts provided such finding is not required if the court has determined at a hearing . . . that such efforts are not appropriate . . . . Thus, the department may meet its burden concerning reunification in one of three ways: (1) by showing that it made such efforts, (2) by showing that the parent was unable or unwilling to benefit from reunification efforts or (3) by a previous judicial determination that such efforts were not appropriate." (Internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 808, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022). "[I]n determining whether the department has made reasonable efforts to reunify a parent and a child . . . the court is required in the adjudicatory phase to make its assessment on the basis of events preceding the date on which the termination petition was filed. . . . This court has consistently held that the court, [w]hen making its reasonable efforts determination . . . is limited to considering only those facts preceding the filing of the termination petition or the most recent amendment to the petition . . . ." (Emphasis omitted; internal quotation marks omitted.) *In re Cameron W.*, 194 Conn. App. 633, 660, 221 A.3d 885 (2019), cert. denied, 334 Conn. 918, 222 A.3d 103 (2020).

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

Our review of the court's reasonable efforts determination is subject to the evidentiary sufficiency standard of review; see *In re Corey C.*, 198 Conn. App. 41, 59, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020); that is, "whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]." (Internal quotation marks omitted.) *In re Harmony Q.*, 171 Conn. App. 568, 575,

157 A.3d 137, cert. denied, 325 Conn. 915, 159 A.3d 232 (2017). In so doing, "we construe the evidence in a manner most favorable to sustaining the judgment of the trial court" and "will not disturb the court's subordinate factual findings unless they are clearly erroneous." (Internal quotation marks omitted.) *In re Leilah W.*, 166 Conn. App. 48, 68, 141 A.3d 1000 (2016).

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

Although the respondent claims that the "department only referred [her] to a handful of services, such as in-

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

To illustrate the extent of the department's involvement, we recite some of its efforts and the evidence that supports a finding of those efforts. The evidence shows that, at some point in early 2018, the respondent told the department that she had entered the country on a visitor's visa that was first issued to her in 2015. The respondent's testimony confirmed that she overstayed her visa and that she no longer had legal status in the United States, which made it difficult for her to receive certain governmental financial assistance, made her ineligible for certain housing and other programs, and limited her employment prospects and ability to support herself and Kylie. Testimony by Monica Gould, a social work supervisor with the department, confirms that, while the respondent was in Connecticut, the department referred her to Community Health Services for mental health services, where she began therapy with Daigle, a licensed clinical social worker. She was diagnosed with depression and prescribed medication, which she did not take because she found it unhelpful. Additionally, in order to help reestablish her relationship with Kylie, both documentary and testimonial evidence show that the department commenced supervised in-person visitation, which incorporated the Therapeutic Family Time parent coaching model. Although the respondent attended many of the visitation sessions, she also missed many of them for various reasons, including leaving the state to visit family in Nevada or going out of touch where the department could not reach her.

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

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

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

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

The department also encouraged the respondent to participate in a general equivalency diploma program at the Urban League, which the department believed might offer her the possibility of obtaining an education visa. She did enroll in that program in May, 2018, but dropped out soon afterward, telling the department that she could not concentrate.

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

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

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

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

social workers on possible ways to *assist* undocumented adult clients. Assistance, of course, will vary depending on the particular circumstances of a case. Third, our inquiry is not whether the department followed its own internal policy but whether the department satisfied its statutory obligation to make reasonable efforts to reunify the respondent with Kylie under the particular circumstances of this case.

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

The respondent next argues that the department "failed to provide services that were designed to provide assistance with housing or employment." This argument is also belied by the record. The department made numerous referrals to services for housing and employment. Although some of these efforts were unsuccessful because of the respondent's immigration status, the department was persistent in its efforts to assist the respondent on this front. While trying to help get the respondent's immigration situation in order, the respondent was referred to the 2-1-1 information line and a shelter placement, which could have been the means for establishing more permanent housing and employment. Indeed, testimony in the record confirmed that the undocumented immigration status and lack of a Social Security number typically would not impact the ability of a shelter resident or homeless person to access permanent supportive housing, which is affordable housing coupled with support services provided through case management. The respondent, however, refused the services because she was not willing to stay in a shelter.[8]

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

reasonable under the particular circumstances of this case.

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

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

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

II

The respondent next claims that the trial court erroneously found that the department was not required to make reasonable efforts pursuant to § 17a-111b (a) (2) because it already had approved a permanency plan for the termination of her parental rights. The respondent

claims that § 17a-111b (a) (2) "is unconstitutional as applied in this case because it relieves [the petitioner] of the obligation to prove that it made reasonable efforts to reunify under § 17a-112 (j) (1) if the trial court has already approved a permanency plan other than reunification by a preponderance of the evidence." The respondent claims that this court may address her new argument under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015).[11]

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

III

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

We begin by setting forth the established principles of law and the standard of review. "Section 17a-112 (j) (3) (B) requires the court to find by clear and convincing evidence that . . . the parent of [the] child has been provided specific steps to take to facilitate the return of the child to the parent . . . and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ." (Internal quotation marks omitted.) *In re Karter F.*, 207 Conn. App. 1, 20–21, 262 A.3d 195, cert. denied, 339 Conn. 912, 261 A.3d 745 (2021).

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B)] refers to the restoration of a parent to his or her former constructive and useful role as a parent. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. . . . Rather, [§ 17a-112] requires the trial court to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further, that such rehabilitation must be foreseeable within a reasonable time. . . . [The statute] requires the court to find,

by clear and convincing evidence, that the level of rehabilitation [the parent] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life." (Internal quotation marks omitted.) *In re Lillyanne D.*, 215 Conn. App. 61, 87, 281 A.3d 521, cert. denied, 345 Conn. 913, 283 A.3d 981 (2022).

The court's determination that a parent has failed to rehabilitate is subject to the evidentiary sufficiency standard of review. See *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015). We look to see "whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court." (Internal quotation marks omitted.) Id. The court's subordinate factual findings are reviewed for clear error. See id., 587.

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

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

"After she was placed with Gigi and Papa, Kylie initially appeared to thrive, and a social work supervisor

wrote in the running narrative in October, 2018, that the foster parents, [the respondent], and the department all had no concerns about her behaviors. . . . Early in the following year, however, she began having problems in her foster home and at the daycare, and there were more comments about her 'flat affect.' The foster parents took Kylie in March, 2019, to licensed professional counselor Laurie Landry, who worked with her and her foster family. . . . Landry testified that, in 2019, she helped address Kylie's issues by providing psychoeducation to the foster parent, and with that help the problems soon subsided. But the evidence shows that, after that, Kylie periodically again exhibited behavioral problems. By early 2021, the foster family had taken her back to Landry, who has been seeing Kylie and one of the foster family adults weekly ever since.

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

"Landry described her therapy with Kylie now as primarily 'symptom management.' Kylie's behaviors have improved since she resumed therapy, but Landry testified credibly that providing permanency to Kylie is the only way for her trauma to begin to be healed. She also testified that, despite the improvements, 'there's a lot of work that still needs to be done with Kylie.' " (Citations omitted; footnote omitted.) The court found that, "[b]ecause of her recurring behavioral problems that are symptoms of underlying anxiety and other mental health problems, [Kylie] needs continuing therapy to help her heal from the traumas she has experienced, as well as a parent or caregiver who will understand that these issues require professional help and who will work closely and collaboratively with those professionals."

The court went on to find that, "[a]s of the adjudicatory date, clear and convincing evidence offered at trial established that [the respondent] was not ready then or within a reasonable time thereafter to assume a responsible position in Kylie's life, in view of that child's age and needs. As of the date that the petition was amended and a new adjudicatory date created . . . [the respondent] remained without her own place to

live, income, or means to support or house her daughter, and she still had her own mental health issues affecting her well-being. She had left the Mississippi home where she had lived with her infant son's father but had not yet told [the department] about that departure. [The respondent] explained at trial that she then lived temporarily with relatives in Massachusetts but that she did not attempt to reunify with Kylie at that time because 'Massachusetts is not a place where . . . immigrants can get job.' . . . Sometime between November and February, she then relocated to Nevada, where she stayed for a few months with a friend, where she had to share a bed with her infant son and the friend. At that point, reunification was not feasible and she was not ready to assume a responsible position then in Kylie's life or in the reasonable future." (Citation omitted.)

The court, however, did find that a substantial change had occurred in many aspects of the respondent's situation between the adjudicatory date and the time of trial. It therefore exercised its discretion and considered developments after the adjudicatory date. It stated: "As of the time of trial, ending in August, 2021, the [respondent] had successfully attended and been discharged from mental health counseling, attended many hours of parenting education, found suitable housing, and obtained employment with which she can support herself and both children. Her immigration status has not changed but also has not prevented her from finding a job in Nevada and does not present itself as a child protection issue. This drastic turnaround in the [respondent's] situation resulted primarily from her willingness to do what [the department] had encouraged her but she had previously been [unwilling] to do: entering a shelter that could provide a segue to housing, employment and other services."

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

is foreseeable."

A

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

But what the respondent fails to recognize is that "[o]ur focus in conducting a review for evidentiary sufficiency is not on the question of whether there exists support for a different finding—the proper inquiry is whether there is enough evidence in the record to support the finding that the trial court made." (Emphasis omitted.) *In re Jayce O.*, 323 Conn. 690, 716, 150 A.3d 640 (2016). The respondent's arguments ignore the great deal of evidence in the record that supports the court's finding that she had failed to rehabilitate to a level required under the statute, including, inter alia, testimony from Landry, Kylie's therapist, about the respondent's limited involvement and participation in Kylie's treatment. The respondent is essentially inviting this court to reweigh the evidence that was presented to the trial court so that we might reach a conclusion that differs from the one reached by the trial court. We decline her invitation. See *Pennymac Corp.* v. *Tarzia*, 215 Conn. App. 190, 206, 281 A.3d 469 (2022) (declining to reweigh evidence on appeal).

In advancing her argument, the respondent also takes issue with a few of the trial court's subordinate factual findings, including the finding that Kylie has specialized and individualized needs, such as recovering from trauma and abuse; that Kylie's attachment with the respondent was an issue; and that the respondent does not show recognition of Kylie's needs. Her argument, however, simply highlights favorable evidence in challenging each finding while disregarding the unfavorable evidence. Our review confirms that there is evidence in the record to support the court's subordinate findings, and we are not left with a definite and firm conviction that a mistake has been committed. Landry's testimony, among other evidence, elucidated Kylie's particularized and individualized needs, including the respondent's shortcomings in addressing Kylie's attachment issues.[12]

These findings were also supported by the testimony of department staff who described in detail various visits between the respondent and Kylie and how there seemed to be a disconnect, as the respondent would become preoccupied with other distractions that prevented her from recognizing Kylie's interests and needs.

Construing the evidence in the manner most favorable to sustaining the court's judgment, as we must, we conclude that the evidence was sufficient to justify the court's ultimate conclusion that the respondent failed to reach the requisite degree of rehabilitation to assume a responsible position in Kylie's life.

B

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

In recent years, our Supreme Court has clarified the proper legal test to apply when a petitioner seeks to terminate a parent's rights on the basis of no ongoing parent-child relationship. See *In re Tresin J.*, 334 Conn. 314, 323, 222 A.3d 83 (2019); *In re Jacob W.*, 330 Conn. 744, 764, 200 A.3d 1091 (2019). In order to terminate parental rights on that basis, a petitioner must first "prove the lack of an ongoing parent-child relationship by clear and convincing evidence. In other words, the petitioner must prove by clear and convincing evidence that the child has no present memories or feelings for the natural parent that are positive in nature. If the petitioner is unable to prove a lack of an ongoing parent-child relationship by clear and convincing evidence, the petition must be denied and there is no need to proceed to the second step of the inquiry. If, and only if, the petitioner has proven a lack of an ongoing parent-child relationship, does the inquiry proceed to the second step, whereby the petitioner must prove by clear and convincing evidence that to allow further time for the establishment or reestablishment of the relationship would be contrary to the best interests of the child. Only then may the court proceed to the disposition phase." *In re Jacob W.*, supra, 762–63.

The court also has clarified the test's two attendant

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

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

The applicability of the so-called interference exception under the facts of this case presents a question of law over which we exercise plenary review. *In re November H.*, 202 Conn. App. 106, 132, 243 A.3d 839 (2020).

The respondent does not point to a single Connecticut case that has held that the interference exception applies to a case where the statutory ground for termination is failure to rehabilitate. Nor has she articulated why the rationale for the so-called interference exception, which is aimed at preventing a petitioning party from terminating a parent's rights on the basis of no ongoing relationship when the petitioning party engaged in conduct that caused the lack of relationship, should apply in failure to rehabilitate cases, where the focus is on whether the parent is in a position to responsibly care for the child within a reasonable time considering the age and needs of the child. It is unnecessary to resolve this question today, however, because, even assuming arguendo that the interference exception applies, as a matter of law, to the failure to rehabilitate ground for termination, we conclude that the exception is otherwise inapplicable under the facts of this case. See id. (even if interference exception applied to failure to rehabilitate ground, exception was inapplicable to facts of case).

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

"Q. I think [the respondent] expressed to you—and I think you testified to this on direct examination—that

[the respondent] was—she expressed to you that she was afraid to come to Connecticut because she thought the department might remove her son from her care. Do you remember that?

"A. Yes, I do remember that.

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

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

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

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

"A. No.

"Q. Sorry?

"A. No.

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

* * *

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

"Q. Sure. I said it is it reasonable—

"A. Okay.

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

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

"Q. Yes.

"A. Yeah."

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

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

"A. Yes.

"Q. You knew that you—actually, your team called

Mississippi [Child Protective Services] and sent them to [the respondent's] doorstep, yes?

"A. Yes.

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

"A. Yes.

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

"A. Yes.

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

"A. Yes, cautious—"

The respondent's claim that the department interfered with her ability to rehabilitate is misplaced. As an initial matter, we must address the respondent's allegation that the department "threatened" to take her newborn child away if she were to return to Connecticut. The evidence shows that Czerwinski's statements were not threats; they were simply honest responses to the respondent's queries. Indeed, the trial court found that Czerwinski's responses to the respondent's questions about her potential return to Connecticut were "probably . . . truthful and pragmatic," as the information known to the department at the time suggested legitimate child protection issues. In fact, when Czerwinski made this statement, "[the respondent] was unemployed, relying for housing and other necessities on an unidentified father of her newborn, refusing to participate in mental health services but had been teary to the point of being inaudible in a recent conversation . . . ."

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

had limited contact with Kylie. Additionally, after returning to Connecticut, it was the respondent who made the decision to move to Mississippi, effectively terminating the regular in-person visits that she had with Kylie.

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

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

IV

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

We begin by setting forth additional facts and procedural history relevant to the respondent's claim. At the termination of parental rights trial, the respondent testified that, when she was in Connecticut, she went to

Mercy House shelter for housing, but stated that Mercy House required a letter from the department in order for her to obtain housing there. She testified that the department did not provide her with such a letter, despite several requests.

The department offered rebuttal evidence to the contrary. It recalled social worker Czerwinski, who testified that, based on her experience with Mercy House, she has never been required to provide a letter in order for a client to obtain housing. The respondent's counsel objected numerous times throughout the testimony, stating that Czerwinski lacked the qualifications and personal knowledge to testify regarding Mercy House's policies. The respondent's counsel stated: "Unless Mercy [House] is here as a witness declaring what their qualifications are or not that would be the party appropriate to put on rebuttal evidence." He subsequently stated that "[r]ebuttal would have to come from Mercy House themselves, not from this witness," and that "[i]t would have to be the same time period, back in 2018."

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

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

After a brief colloquy between the parties and the court, the court requested Kylie's attorney to ask for the time frame of when the previous social worker was on the case; whether there were any circumstances at that time where Mercy House would ask an applicant for housing for documentation from the department that there was an active case; and ask what Mercy House would tell an individual who did not have legal immigration status, was undocumented, and did not

have a Social Security number.

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

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

During cross-examination by the respondent's counsel, the petitioner's attorney objected several times on the basis that the questioning by the respondent's counsel went beyond the scope of the direct examination. After those objections were sustained, the respondent's counsel then stated that he would call the witness as his own. He then called Capone on direct examination and questioned her about supportive housing and family reunification vouchers.

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

"[A] constitutional claim that has been waived does

not satisfy the third prong of the *Golding* test because, in such circumstances, we simply cannot conclude that injustice [has been] done to either party . . . .'' (Citations omitted; internal quotation marks omitted.) *State* v. *Grasso*, 189 Conn. App. 186, 226, 207 A.3d 33, cert. denied, 331 Conn. 928, 207 A.3d 519 (2019). ''[W]aiver is an intentional relinquishment or abandonment of a known right or privilege. . . . It involves the idea of assent, and assent is an act of understanding. . . . The rule is applicable that no one shall be permitted to deny that he intended the natural consequences of his acts and conduct. . . . In order to waive a claim of law . . . [i]t is enough if he knows of the existence of the claim and of its reasonably possible efficacy. . . . Connecticut courts have consistently held that when a party fails to raise in the trial court the constitutional claim presented on appeal and affirmatively acquiesces to the trial court's order, that party waives any such claim [under *Golding*].'' (Citation omitted; internal quotation marks omitted.) *State* v. *McClain*, 324 Conn. 802, 809, 155 A.3d 209 (2017).

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

In the present case, the respondent never objected when the court indicated that it wanted Kylie's attorney to investigate to see if there was a person at Mercy House who could testify about its policies and whether a letter was required from the department in order for the respondent to receive housing services. In fact, when the court indicated that it would withdraw its request if the respondent wished, the respondent's attorney made a strategic decision at that time to decline the court's invitation to withdraw its request and actively participated in setting the parameters for the inquiry. Nor did the respondent's counsel object when Kylie's attorney called Capone from Mercy House to testify. Instead, he thoroughly cross-examined Capone and made a strategic decision to call Capone as the respondent's own witness.

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

The judgment is affirmed.

In this opinion the other judges concurred.

* In 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.

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

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

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

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

[3] The court found that it was not entirely clear how much contact the respondent had with Kylie between the time Kylie returned to the United States and the order of temporary custody. Although the respondent told the department in 2018 that she had gone straight from Jamaica to Nevada, the respondent testified that, before going to Nevada, she first spent a few weeks in Connecticut and that, after moving to Nevada, her cousin Lennox let her have weekly video chats with Kylie. Kylie, who was quite young during this time, did not recognize the respondent early in 2018 after going into the petitioner's custody.

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

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

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

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

[8] We note that, although the respondent faults the department for encouraging her to obtain shelter placement while she was in Connecticut, shelter housing is precisely what led to her obtaining stable housing, immigration assistance, and mental health services after she moved to Nevada. The record reveals that, in mid-2020, after moving to Nevada, the respondent moved into a shelter with Davonte. The respondent worked closely with a

case manager while at the shelter, who ultimately helped her find day care for her son and stable housing and also made referrals for parenting classes, immigration assistance, and mental health treatment. This further supports the conclusion that the respondent's efforts were reasonable.

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

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

[11] The *Golding* doctrine provides that "a defendant can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." (Emphasis in original; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40, as modified by *In re Yasiel R.*, supra, 317 Conn. 781.

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

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

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

"[Assistant Attorney General]: Okay.

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

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

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