****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

****

IN RE TIMOTHY B. ET AL.*
(AC 46117)

Alvord, Clark and DiPentima, Js.

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to her two minor children. The children had been adjudicated neglected and committed to the custody of the petitioner, the Commissioner of Children and Families. The Department of Children and Families issued specific steps to the mother for reunification and offered her services addressing, inter alia, mental health, substance abuse, and housing. After the petitioner filed petitions to terminate the mother's parental rights, the department referred her for a psychological evaluation. A trial was held on the petitions, and the court found, inter alia, that termination was in the best interests of the children. *Held*:

1. The trial court properly found, by clear and convincing evidence, that the department made reasonable efforts as required by statute (§ 17a-112 (j) (1)) to reunify the respondent mother with her children: although the court referred to opinions contained in the psychological evaluation of the mother that was conducted after the petitioner filed the termination petitions, it was not clear that the court determined that the evaluation itself actually constituted a reunification effort or whether the court simply alluded to the portions of the evaluation that indicated the recommendations the psychologist had made in order to evaluate the reasonableness of the department's efforts as of the petition date; moreover, the mother could not prevail on her claim that the department should have referred her for a psychological evaluation before the petitioner filed the termination petitions, as the court found that the department's reunification efforts, including referring the mother to in-home services addressing substance abuse, mental health and parenting, funding housing for her and the children while the children were still in her care, referring the mother to additional mental health and substance abuse treatment after the children's removal, and making significant efforts to facilitate regular visitation, were reasonable; furthermore, because this court concluded that the trial court properly found that the department made reasonable efforts to reunify the mother with her children, it declined to reach the merits of her argument that the trial court improperly determined that she was unable or unwilling to benefit from those efforts.

2. The respondent mother could not prevail on her claim that the trial court improperly analyzed the best interests of the children in the adjudicatory portion of its decision; the court found that a statutory ground for termination existed because the mother had failed to achieve sufficient personal rehabilitation as required under § 17a-112 (j) (3) (B), including that she was largely noncompliant with the mental health services offered to her, had not fully addressed her issues with substance abuse, had outbursts during her visitation with the children, displayed limited parenting skills, became involved with the criminal justice system following the children's removal, did not have stable housing, and lacked insight into her deficiencies, and the two statements that the court referenced from the mother's psychological evaluation supported its determination regarding her failure to achieve sufficient personal rehabilitation rather than constituted findings regarding the best interests of the children.

Argued April 12—officially released June 7, 2023**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Haven, Juvenile

Matters, and tried to the court, *Gonzalez*, *J.*; judgments terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Affirmed.*

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

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

Opinion

DiPENTIMA, J. The respondent mother, T'Naja T., appeals from the judgments of the trial court terminating her parental rights with respect to her minor children, T and A.[1] On appeal, the respondent claims that the trial court improperly (1) concluded that the Department of Children and Families (department) made reasonable efforts to reunify her with the children and that she was unable or unwilling to benefit from those reunification efforts and (2) considered the best interests of the children during the adjudicatory phase of the termination proceeding. We affirm the judgments of the trial court.

The following facts, which were found by the court, and procedural history are relevant. The department became involved with the respondent in February, 2020, when T was one year old and the respondent was pregnant with A, who was born in May, 2020. The respondent tested positive for marijuana many times during her pregnancy and did not consistently attend prenatal medical appointments. In May, 2020, the department referred the respondent to Family Based Recovery, an intensive, in-home service that provides parenting education as well as counseling for substance abuse and mental health. In June, 2020, the department held a meeting with the respondent to address her "continued substance use and lack of follow-through with T's medical and developmental needs." The department also began funding a studio hotel apartment for the respondent and the children in June, 2020, but the respondent was discharged from the supportive housing program in November, 2020, for failure to comply with the program's drug and alcohol policy.

On November 13, 2020, both children were removed from the respondent's care pursuant to a ninety-six hour hold.[2] On November 17, 2020, the petitioner, the Commissioner of Children and Families, filed and the court, *Conway, J.*, granted motions for orders of temporary custody. On March 18, 2021, the court, *Marcus, J.*, adjudicated the children neglected, committed them to the care and custody of the petitioner and signed the final specific steps as to the respondent.[3]

After the children were removed from the respondent's care, the department arranged visitation and continued to offer the respondent mental health, substance abuse and housing services. The respondent refused to take any medications recommended for the treatment of her bipolar disorder and post-traumatic stress disorder. Her attendance at weekly parenting groups and individual therapy was inconsistent despite the department's engagement of a Multidisciplinary Family Recovery program to assist her in keeping track of appointments. The respondent's behavior during visits with the children was often erratic and sometimes explosive.

She failed to attend an intake session after the department referred her to a second housing program. The respondent was arrested in October, 2021, during a domestic violence incident.

On September 16, 2021, a permanency plan for termination of parental rights and adoption was approved by the court, *Marcus*, *J.*, as to both children. The petitioner filed termination of parental rights petitions on November 29, 2021. By agreement of all parties, a virtual trial over the Microsoft Teams platform took place in August, 2022. On October 25, 2022, the court, *Gonzalez*, *J.*, rendered judgment terminating the respondent's parental rights with respect to the children on the ground that the respondent had failed to achieve such degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the ages and needs of the children, she could assume a responsible position in their lives. In rendering judgment, it determined that there was clear and convincing evidence that the department made reasonable efforts to reunify the respondent with the children and that she was unable or unwilling to benefit from those reunification efforts. It further concluded that termination of the respondent's parental rights was in the children's best interests. This appeal followed.[4]

I

We first address the respondent's claim that the court improperly concluded that the department made reasonable efforts to reunify her with the minor children and that she was unable or unwilling to benefit from the department's reunification efforts.

"[General Statutes §] 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 Corey C.*, 198 Conn. App. 41, 58, 232 A.3d 1237, cert. denied, 335 Conn. 930, 236 A.3d 217 (2020).

A

The respondent argues that the court improperly determined that the department made reasonable efforts to reunify her with the children.[5] Specifically, the respondent contends that the court improperly relied

on the psychological evaluation conducted after the filing of the termination petitions as an effort the department made toward reunification and that the department's efforts were not reasonable because it failed to refer her for a psychological evaluation prior to the filing of the termination petitions. We disagree with both contentions.

"Our review of the court's reasonable efforts determination is subject to the evidentiary sufficiency standard of review. . . . Under this standard, the inquiry is whether the trial court could have reasonably concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . .

"[Section 17a-112] imposes on the department the duty, inter alia, to make reasonable efforts to reunite the child or children with the parents. The word reasonable is the linchpin on which the department's efforts in a particular set of circumstances are to be adjudged, using the clear and convincing standard of proof. Neither the word reasonable nor the word efforts is, however, defined by our legislature or by the federal act from which the requirement was drawn. . . . [R]easonableness is an objective standard . . . and whether reasonable efforts have been proven depends on the careful consideration of the circumstances of each individual case. . . . [O]ur courts are instructed to look to the totality of the facts and circumstances presented in each individual case in deciding whether reasonable efforts have been made." (Citations omitted; footnote omitted; internal quotation marks omitted.) *In re Ryder M.*, 211 Conn. App. 793, 809–11, 274 A.3d 218, cert. denied, 343 Conn. 931, 276 A.3d 433 (2022).

The respondent argues that, in making its reasonable efforts determination, the court improperly referred to and relied on a psychological examination, conducted after the filing of the termination petitions, by Ines Schroeder, a licensed psychologist. We are not persuaded. It is well established that, when making a reasonable efforts determination, a court generally is limited to considering only those facts that precede the filing of a termination petition. See id., 809; see also Practice Book § 35a-7 (a). Although the court referred to the opinions contained in Schroeder's psychological evaluation in its analysis of the department's efforts to reunify the respondent with her children, it is not clear that the court determined that the evaluation itself actually constituted a reunification effort or whether the court simply alluded to the portion of Schroeder's report indicating the recommendations she had made in order to evaluate the reasonableness of the department's efforts as of the petition date. Because "[w]e

read an ambiguous trial court record so as to support, rather than contradict, its judgment"; (internal quotation marks omitted) *In re Xavier H.*, 201 Conn. App. 81, 95, 240 A.3d 1087, cert. denied, 335 Conn. 981, 241 A.3d 705 (2020), and cert. denied, 335 Conn. 982, 241 A.3d 705 (2020); we conclude that the respondent has failed to demonstrate that the court improperly determined that Schroeder's report constituted an effort by the department at reunification.

We also are unpersuaded by the respondent's argument that the department's reunification efforts were unreasonable because it failed to refer her for an evaluation prior to the filing of the termination petitions. The findings of the court, which the respondent does not contest, establish that the department made reasonable efforts to reunify the respondent with the children prior to filing the termination petitions. The court noted that the department offered services to the respondent addressing mental health, substance abuse, housing, parenting education and visitation. Regarding mental health and substance abuse, the department referred the respondent in May, 2020, while the children were still in her care, to in-home services through Family Based Recovery, which addresses substance abuse, mental health and parenting. The court found that the respondent was "only minimally engaged in the program and continued to consume alcohol and marijuana," which ultimately led to the department's implementation of a ninety-six hour hold. Thereafter, the department referred the respondent to BH Care for mental health and substance abuse treatment. She completed an intake in December, 2020, and a psychological evaluation in January, 2021, the results of which evaluation recommended that she take medication to treat bipolar disorder and post-traumatic stress disorder. The respondent, however, refused to do so. The respondent's treatment providers at BH Care and her social worker, in consultation with Regional Resource Group, recommended that she first stabilize her mental health before beginning substance abuse treatment. The respondent was referred to a weekly parenting group and individual therapy at BH Care. As a result of the respondent's sporadic attendance at appointments, the department referred her to a case management service to assist her with keeping track of appointments, but she did not "engage meaningfully" in mental health treatment so as to transition to substance abuse treatment until approximately March, 2022.

To address the respondent's housing needs, the department, beginning in June, 2020, funded housing for her and the children at a hotel in New Haven. The department received several calls indicating that, while residing at the hotel, the respondent was using drugs and alcohol and was not supervising the children adequately. In November, 2020, the supportive housing program and the department warned the respondent that

illicit drug use was not allowed and that, if she wanted to continue living there, she needed to comply with the services provided by the department and Family Based Recovery. She tested positive for alcohol a few days later. Family Based Recovery providers recommended that the respondent be referred to inpatient substance abuse treatment, but she refused to attend. The department also referred the respondent to Youth Continuum, a case management service with a housing component, but the respondent never attended the intake session.

Regarding visitation and parenting education, the court found that the department "made significant efforts to coordinate regular visitation between [the respondent] and the children and to provide her with parenting services." Following the removal of the children from the respondent's care in November, 2020, the department facilitated both virtual and in-person visits between the respondent and the children.

Although the respondent contends that the department referred her for a psychological evaluation too late and should have referred her for such an evaluation before, instead of after, the filing of the termination petitions, she points to no authority for the proposition that a court-ordered psychological evaluation pursuant to General Statutes § 46b-129 (i) is required to be conducted prior to the filing of a termination petition. The respondent acknowledges in her appellate brief that no such requirement exists in all cases but, nonetheless, argues that, in the present case, the department was required to refer her for a psychological evaluation prior to the filing of the termination petitions. The respondent notes that Schroeder recommended that she continue with intensive outpatient treatment at BH Care and explore the use of medications to address emotional volatility and that Schroeder stated that she could benefit from a psychoeducational program to gain insight into the traumas that she and the children had experienced. She contends that, "[w]ithout the benefit of. . . Schroeder's expertise from the start of the case, when her recommendations could be reasonably relied upon by the department to provide the services that the respondent truly did need, the department offered its usual buffet of services that were not specifically tailored to the particular needs of this case."

The respondent's argument essentially amounts to a contention that she should have been offered additional services that were tailored to her needs, unlike the services that had been offered by the department, and that she might have engaged in and benefitted from such additional services. The services provided by the department, however, were tailored to the respondent's needs. The specific steps ordered for the respondent included cooperating with service providers recommended for parenting and individual counseling, submitting to drug and alcohol testing, avoiding illegal

drugs and alcohol abuse, and maintaining adequate housing. The department provided services to the respondent for mental health, substance abuse, housing, parenting education and visitation. Schroeder recommended that the respondent continue her intensive outpatient treatment at BH Care. Specifically, the department referred her to intensive outpatient treatment at BH Care prior to the filing of the termination petitions, and the court found that she had completed a psychological evaluation at BH Care in January, 2021, the results of which recommended that she take medication to address her diagnosed bipolar disorder and post-traumatic stress disorder, but she refused. Although the department referred the respondent in May, 2020, to in-home services through Family Based Recovery, which addresses substance abuse, mental health and parenting, the respondent contends that she also should have been offered a psychoeducational program, from which, as Schroeder had recommended, she may have benefited. The respondent, however, acknowledges that "[t]here is no dispute that [she] . . . failed to consistently engage in such services until early in 2022, after the termination petition[s] had been filed."

Moreover, even if the respondent, despite her lack of consistent engagement in the services offered by the department, would have benefitted from a psychoeducational program, the department's failure to offer it to the respondent does not defeat the court's reasonable efforts determination. See *In re Ryder M.*, supra, 211 Conn. App. 812 (assuming evidence existed that respondent would have benefitted from additional services, such evidence would not undermine court's reasonable efforts determination); see also *In re Melody L.*, 290 Conn. 131, 147, 962 A.2d 81 (2009), overruled in part on other grounds by *State* v. *Elson*, 311 Conn. 726, 91 A.3d 862 (2014); *In re Christopher L.*, 135 Conn. App. 232, 243, 41 A.3d 664 (2012). "[R]easonable efforts means doing everything reasonable, not everything possible." (Internal quotation marks omitted.) *In re Ryder M.*, supra, 811. For the foregoing reasons, we reject the respondent's claim that the court improperly determined that the department made reasonable efforts to reunify her with the children.

B

Next, the respondent argues that the court improperly determined that she was unable or unwilling to benefit from reunification efforts. "[T]he [petitioner] must prove [by clear and convincing evidence] *either* that [the department] has made reasonable efforts to reunify *or*, *alternatively*, that the [respondent] is unwilling or unable to benefit from the reunification efforts. Section 17a-112 (j) clearly provides that the [petitioner] is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis in original; internal quotation marks

omitted.) *In re Anvahnay S.*, 128 Conn. App. 186, 191, 16 A.3d 1244 (2011). Accordingly, because we have concluded that the court properly found that the department made reasonable efforts to reunify the respondent with the children, we decline to reach the merits of the respondent's argument that the court improperly determined that she was unable or unwilling to benefit from those reunification efforts.

II

The respondent next claims that the court improperly considered the best interests of the children in its determination in the adjudicatory phase that the respondent had failed to achieve sufficient rehabilitation as required by statute. We disagree.

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

"A hearing on a petition to terminate parental rights consists of two phases, adjudication and disposition. . . . If the trial court determines that a statutory ground for termination exists, it proceeds to the dispositional phase. In the dispositional phase, the trial court determines whether termination is in the best interest of the child." (Internal quotation marks omitted.) *In re Anthony H.*, 104 Conn. App. 744, 756, 936 A.2d 638 (2007), cert. denied, 285 Conn. 920, 943 A.2d 1100 (2008).

"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] requires the court to find, by clear and convincing evidence, that the level of rehabilitation [he or she] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [he or she] can assume a responsible position in [his or her] child's life. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [his or her] ability to manage [his or her] own life, but rather whether [he or she] has gained the ability to care for the particular needs of the child at issue." (Citation omitted; internal quotation marks omitted.) *In re Brian P.*, 195 Conn. App. 558, 568, 226 A.3d 159, cert. denied, 335 Conn. 907, 226 A.3d 151 (2020).

In the present case, the court found that a statutory

ground for termination existed because the respondent had failed to achieve sufficient personal rehabilitation as required under § 17a-112 (j) (3) (B). In the adjudicatory portion of its decision, the court referred to two statements made by Schroeder in her evaluation report of the respondent. These two statements form the bases of the respondent's claim that the court improperly considered the best interests of the children during the adjudicatory phase: (1) "given the minimal progress [the respondent] has made thus far, it is not in [the children's] best interests to wait further to assess if a relationship can be formed, as [the respondent] has made little progress in other areas" and (2) "[i]t is not beneficial for the children to wait longer for permanency." We disagree that the court's reference to these statements during its determination that the respondent had failed to rehabilitate "crosses over into a consideration of the best interests of the children."

At the beginning of its analysis concerning the respondent's failure to achieve sufficient personal rehabilitation, the court set forth the relevant law under which the court must analyze the respondent's rehabilitative status as it relates to the needs of the children. The court noted that the respondent was largely noncompliant with the mental health services offered to her, had not fully addressed her issues with substance abuse, had outbursts during visitation, displayed limited parenting skills, became involved with the criminal justice system, did not have stable housing and lacked insight into her deficiencies. The court detailed the opinions Schroeder expressed in her psychological evaluation, which the court found credible. The court noted that Schroeder opined that the respondent struggled to understand the impact of her substance abuse on the children, engaged more significantly with her current providers in the two months preceding her evaluation, gained little insight during the time the children have been out of her care, continued to struggle with the same issues that led to the removal of the children initially, had limited recognition of how the actions underlying her domestic violence charges impacted the children, referred to parenting classes as "additional garbage" requiring her attendance, displayed limited parenting skills and admitted to having used marijuana to manage her frustrations. The court determined that, "while [the respondent] has made progress with her treatment in the past six months, it is not enough to encourage the belief that within a reasonable amount of time, considering the age and needs of the children, [the respondent] could assume a responsible position in the life of the children."

"[A] judicial termination of parental rights may not be premised on a determination that it would be in the child's best interests to terminate the parent's rights in order to substitute another, more suitable set of adoptive parents. Our statutes and [case law] make it crystal

clear that the determination of the child's best interests comes into play only after statutory grounds for termination of parental rights have been established by clear and convincing evidence. . . . The court, however, is statutorily required to determine whether the parent has achieved 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 . . . ." (Emphasis omitted; footnote omitted; internal quotation marks omitted.) *In re Corey C.*, supra, 198 Conn. App. 80–81.

The court's thorough analysis of the respondent's rehabilitation properly focused on whether she had gained the ability to address the particular needs of the children and thus assume a responsible position in their lives. The court made no findings regarding the best interests of the children in the adjudicatory portion of its decision, and the two challenged statements were direct quotes from Schroeder's report. In the first challenged statement, Schroeder opined that the children cannot wait further given the respondent's minimal progress, and the second challenged statement that the children cannot wait longer for permanency was at the end of a block quote from Schroeder's report in which she also discussed the respondent's failure to gain insight in the time the children were out of her care and her struggles with the same issues that led to the removal of the children initially. Viewed in context, the challenged statements focused on the respondent's failure to rehabilitate within a reasonable time according to the children's needs. We interpret the court's reference to Schroeder's two challenged statements, which were part of a discussion regarding the respondent's ability to meet the needs of the children, as highlighting the children's need for permanence and the respondent's inability to provide that to the children within a reasonable time. See, e.g., *In re November H.*, 202 Conn. App. 106, 135–39, 243 A.3d 839 (2020) (when viewed in context of decision as whole, challenged statements were not construed as trial court having improperly compared respondent with foster parent in adjudicatory part of its decision terminating respondent's parental rights); see also *In re James O.*, supra, 322 Conn. 652–57 (same). In other words, we construe the challenged statements as evidence supporting the court's determination regarding the respondent's failure to achieve sufficient personal rehabilitation, in which it stated that the respondent "has made some progress with her treatment in recent months, but she still faces significant barriers to having the ability to care for her children. Notwithstanding that progress, the issues that existed at the outset of this case in February, 2020, continue to exist: [the respondent] has not fully addressed her substance abuse and mental health issues, she does not have stable housing, and she lacks

insight into the gravity of those deficiencies. The children have been in [the department's] care for nearly two years, during most of which time [the respondent] was noncompliant with [the department's] recommendations for mental health and substance abuse treatment and parenting education. Affording [the respondent] additional time to rehabilitate is not appropriate in this case." Accordingly, we conclude that the court did not improperly analyze the best interests of the children in the adjudicatory portion of its decision.

The judgments are 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.

** June 7, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The court also terminated the parental rights of the minor children's father, and he has not appealed from the judgments of the trial court. We refer in this opinion to the respondent mother as the respondent.

[2] See General Statutes § 17a-101g.

[3] The court initially signed specific steps on November 17, 2020.

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

[5] The respondent also challenges the constitutionality of General Statutes §§ 17a-111b (a) (2) and 17a-112 (j). Specifically, she argues that § 17a-111b (a) (2) is unconstitutional because that statute relieves the department of its obligation to make reasonable efforts at reunification if the court previously has approved a permanency plan other than reunification, as happened in the present case. Because the court here expressly found that the department made reasonable efforts at reunification and we affirm those findings, we need not address the respondent's constitutional 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 Kylie P.*, 218 Conn. App. 85, 107, 291 A.3d 158, cert. denied, 346 Conn. 926, A.3d (2023).