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IN RE SERENITY W.*
(AC 46183)

Alvord, Clark and Keller, 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, S. The petitioner, the Commissioner of Children and Families, had obtained an ex parte order of temporary custody of S after the mother was arrested in connection with an intimate partner violence incident. The mother thereafter agreed to the petitioner's motion to modify the disposition to commitment of S to the care and custody of the petitioner, and the trial court ordered specific steps for reunification. Several months later, the mother gave birth to T, who remained in the hospital for three months due to health issues. While T was hospitalized, the mother was arrested for various motor vehicle and drug related charges. The petitioner was not aware of T's birth until a social worker with the Department of Children and Families conducted a home visit and discovered baby supplies at the mother's residence. The petitioner thereafter filed the petition for termination of the mother's rights with respect to S. *Held* that the respondent mother could not prevail on her claim that the trial court incorrectly concluded that she had failed to rehabilitate sufficiently so as to encourage the belief that she could assume a responsible position in S's life, within a reasonable time, pursuant to statute (§ 17a-112 (j) (3) (B) (i) and (E)): contrary to the mother's claim that the court could not have reached its conclusion because T remained in her care, an argument premised on the contention that she has assumed a responsible position in T's life, a trial court's consideration of a respondent's parenting abilities with respect to her other child or children is not dispositive of the court's analysis, as the court is required to analyze the parent's rehabilitative status as it relates to the needs of the particular child for whom the petition had been filed, in this case, S, and a court may reasonably conclude that a parent is unable to assume a responsible position in the life of one child, even though another child remains in that parent's care; in the present case, the record contained sufficient evidence for the court to reasonably conclude that the mother failed to achieve sufficient rehabilitation so as to assume a responsible position in S's life and, although the petitioner had not sought the removal of T from the mother's care at the time of the termination trial, the petitioner had filed a neglect petition, which was granted, and T remained in the mother's care only under the protective supervision of the department; moreover, regardless of the petitioner's decision not to seek custody of T, the court expressed concern about the mother's ability to care for T in the long-term, finding that the mother, who had a history of substance use, had a pattern of relapsing after periods of sobriety, had not demonstrated an extended period of stable mental health, had admitted that she drank alcohol during T's pregnancy, had been arrested twice for drug related and intimate partner violence related charges just months before the termination trial and had tested positive for marijuana one month before the termination trial; furthermore, the court found credible the opinion of a psychologist who conducted a court-ordered evaluation of the mother, that the mother had failed to make significant progress toward personal rehabilitation given her continued issues with substance use, intimate partner violence, and involvement with the police; accordingly, because the mother's ongoing care of T was not free of concerning incidents, the trial court appropriately determined that the fact that T remained in her care did not outweigh all of the other significant evidence evincing her lack of progress, and this court declined to second-guess the court's weighing of the evidence.

Argued May 17—officially released July 5, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondent mother's parental rights with respect to her minor child, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and tried to the court, *Hon. Shelley A. Marcus*, judge trial referee; judgment terminating the mother's parental rights, from which the mother appealed to this court. *Affirmed*.

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

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

Opinion

KELLER, J. The respondent mother, Tanisha S.,[1] appeals from the judgment of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families (commissioner), terminating her parental rights with respect to her minor child, Serenity.[2] On appeal, the respondent claims that the trial court improperly concluded that she had failed to rehabilitate to such a degree as to reasonably encourage a belief that, within a reasonable time, she could assume a responsible position in Serenity's life. We affirm the judgment of the trial court.

The following facts, which were found by the trial court, and procedural history are relevant to this appeal. The Department of Children and Families (department) first became involved with the respondent in 2015, prior to Serenity's birth, in relation to the respondent's oldest child, Sanai. In 2016, Sanai was adjudicated neglected and committed to the care and custody of the commissioner as a result of the respondent's alcohol abuse, transience, and violation of a no contact protective order that was in place between herself and Serenity's father, Gerald W. The respondent's parental rights with respect to Sanai subsequently were terminated with the respondent's consent on March 9, 2021.

Serenity was born in August, 2019. The respondent was not forthcoming about her pregnancy and alerted the department by text message about Serenity's birth when she was discharged from the hospital. On September 19, 2019, the commissioner filed a neglect petition as to Serenity. The commissioner did not initially seek an order of temporary custody because, at that time, the respondent was not abusing substances and she was actively engaging in services with the department regarding Sanai. On November 12, 2019, Serenity was adjudicated neglected and placed under a six month period of protective supervision subject to the respondent's compliance with certain specific steps prescribed by the trial court.

Shortly thereafter, in December, 2019, the respondent was involved in an intimate partner violence incident with Gerald W., after which Gerald W. was arrested and charged with strangulation and disorderly conduct. In February, 2020, the commissioner filed a motion to modify the disposition from protective supervision to commitment on the basis of the respondent's failure to comply with the court-ordered specific steps, including her failure to cooperate and make progress with her individual therapy and treatment goals and her failure to maintain relationships free from violence. On March 5, 2020, the period of protective supervision was extended "until further order of the court until a hearing date could be set on the motion to modify."[3]

In April, 2020, the respondent was arrested for

operating a motor vehicle while under the influence of alcohol and operating a motor vehicle with a suspended license. The charges arose from an incident in which a police officer found the respondent unconscious in the driver's seat of a vehicle that contained open bottles of alcohol, with the engine running and the gearshift in drive. In May, 2020, the department referred the respondent to the Intimate Partner Violence-Family Assessment Intervention Response program, but she did not successfully complete the program.

The respondent was arrested again in August, 2020. At that time, the respondent permitted Gerald W. to use the bathroom inside her home, even though there was a protective order in place prohibiting him from being at her residence. They got into an argument and threw each other's belongings out of the home and into the driveway. The respondent was arrested for disorderly conduct, and Gerald W. was arrested for disorderly conduct and for violating the protective order.

In February, 2021, the respondent was involved in another intimate partner violence incident. When the police arrived at the respondent's home, they found that she was intoxicated and smelled of alcohol. The respondent admitted to striking her boyfriend, Michael G., with a cooking pot, which caused injuries to his face and forehead. Serenity was present during this incident. When the police informed the respondent that she was being arrested, she resisted and kicked an officer in the groin. The respondent was thereafter arrested on charges of disorderly conduct, assault in the third degree, risk of injury to a child, interfering with an officer, and assault of public safety personnel. The respondent left Serenity with Michael G., whom she had falsely identified to the police as Serenity's father. The department was unaware of Serenity's whereabouts that evening, as the respondent did not know where Michael G. took her. The department located Serenity, hours later, with Gerald W.

As a result of that incident, the commissioner sought and obtained an ex parte order of temporary custody with respect to Serenity on February 11, 2021. On February 19, 2021, at the preliminary hearing on the order of temporary custody, the respondent agreed to the commissioner's motion to modify the disposition to commitment. Serenity was committed to the care and custody of the commissioner and placed with the same foster family caring for Sanai. The court also ordered final specific steps to facilitate reunification between the respondent and Serenity,[4] in addition to a psychological examination of the respondent.

After Serenity was removed from the respondent's care, the department arranged visitation between the respondent and Serenity and continued to refer the respondent to services for mental health, substance

abuse, and intimate partner violence, as it had been doing since 2016 in relation to Sanai. The respondent consistently began attending individual counseling in February, 2021, but stopped participating later that year.[5] The respondent also was accepted into an intensive outpatient program at Midwestern Connecticut Council of Alcoholism, Inc. (MCCA) in March, 2021, and she initially did well in the program.

In May, 2021, however, the respondent's toxicology screens tested positive for alcohol and fentanyl, and, in July, 2021, her toxicology screens tested positive for fentanyl and norfentanyl. In addition, the respondent became noncompliant with her treatment at MCCA in July, 2021, which coincided with Gerald W.'s untimely death. On July 6, 2021, the respondent's neighbor heard yelling from inside the respondent's apartment and called the police. The police responded and found that the respondent was intoxicated and that Gerald W. had suffered from a fatal overdose. The respondent became physically violent toward the officers and broke a kitchen window. The police brought the respondent to the hospital for evaluation due to her "dysregulated presentation" and intoxicated state, and she remained hospitalized for two days due to mental health concerns.

The respondent's attendance with MCCA lapsed from July until October, 2021. The respondent's clinician at MCCA reported to the department that she was " 'very concerned about [the respondent] as she has definitely had a lot of trouble moving forward in her treatment. She seems to take [three] steps forward and then slides back due to her relationships with men, so I'm not surprised to hear about this recent relapse.' " Nevertheless, the respondent reengaged with the intensive outpatient program at MCCA in October, 2021, and was "successfully discharged" from the program in January, 2022.

Also in January, 2022, the respondent gave birth to her son, Tyshawn. Tyshawn was born prematurely, at twenty-six weeks of gestation, and remained in the hospital for three months due to the health issues he faced as a result of his prematurity. The commissioner was not aware of Tyshawn's birth, or that the respondent had been pregnant, until a social worker with the department conducted a home visit and discovered a crib and baby supplies at the respondent's residence. The respondent disclosed that she drank wine throughout her pregnancy with Tyshawn, but she believed that it was not problematic because she " 'didn't get drunk.' " As a result, a social worker with the department consulted with the department's regional resource group to determine the appropriate referral for services.

Approximately two months later, on March 15, 2022, while Tyshawn remained hospitalized, the respondent was arrested for various motor vehicle and drug related

charges. The police initially stopped the respondent's vehicle because it did not have a front license plate, and then they learned that the car was not registered and had improper insurance. When the police asked the respondent for her name, she initially provided her cousin's name rather than her own. After the police placed the respondent under arrest and were waiting for the car to be towed, they found a handbag inside of the vehicle containing marijuana, crack cocaine, suspected heroin, and fentanyl. The respondent was charged with criminal impersonation, interfering with an officer, possession of narcotics, possession of narcotics with intent to sell, operation of a motor vehicle with a suspended license, and operation of an unregistered and uninsured motor vehicle.

Shortly thereafter, on March 22, 2022, the commissioner filed a petition for termination of the respondent's parental rights as to Serenity, alleging that the respondent failed to achieve a sufficient degree of personal rehabilitation in accordance with General Statutes § 17a-112 (j) (3) (B) (i) and (E).[6] The commissioner subsequently filed a motion to amend the petition to include additional factual allegations, which the court granted without objection on May 12, 2022.

The respondent was arrested again on June 9, 2022, while the termination proceeding was pending. She was charged with assault in the third degree after an intimate partner violence incident involving Sanai's father.

Less than one week later, on June 14, 2022, the commissioner filed a neglect petition as to Tyshawn. The respondent had received training regarding how to care for Tyshawn's medical needs due to his prematurity, and the social worker for the department who was working with the respondent did not believe that Tyshawn was in imminent danger of physical injury at that time. Thus, the commissioner did not seek an order of temporary custody. Tyshawn was adjudicated neglected on September 20, 2022, two days before trial began in the present proceeding, but he remained with the respondent under the protective supervision of the department.

On June 29, 2022, the respondent became involved with an intimate partner violence program at Yale that the department had referred her to a couple of months earlier, which included a mental health component and assigned an individual therapist to each participant. The respondent consistently attended the program and engaged in both group and individual therapy. The department also previously contacted MCCA to determine whether the respondent should be referred to a more intensive substance abuse treatment program, and it made a referral to a substance abuse program at Griffin Hospital in July, 2022. Because the respondent reported that she had stopped drinking alcohol in February, 2022, however, she was not considered eligible

for the program at that time. The department made another referral to MCCA and the respondent's intake was scheduled for August 19, 2022, but the respondent missed her appointment. The respondent attended a second intake appointment on August 31, 2022, and received a recommendation to engage in a weekly relapse prevention program. The respondent tested negative for alcohol, but she tested positive for marijuana.

The respondent became involved in the weekly relapse prevention program at MCCA on September 12, 2022, and she consistently attended her sessions. Around this time, the department also referred the respondent to the Women's Recovery, Engagement, Access, Coaching & Healing program for case management services, and to Fostering Family Services (FFS) for supervised visitation and parenting education. The respondent was consistent in her visitation with Serenity, but there had been some lapses in attendance due to transportation issues once FFS began facilitating supervised visits in the community, rather than at the respondent's home.[7]

On September 22 and 29, 2022, a trial was held on the petition for termination of the respondent's parental rights as to Serenity. The commissioner presented the testimony of two social workers with the department, Erica Wright and Kelly Stratton, and a psychologist, Jessica Biren Caverly, who had conducted a court-ordered evaluation of the respondent. The commissioner also offered nine documents that were admitted into evidence as full exhibits. The respondent testified on her own behalf and called no other witnesses.

On November 18, 2022, the court issued a memorandum of decision in which it terminated the respondent's parental rights with respect to Serenity. In the adjudicatory phase, the court first determined by clear and convincing evidence that the department had made reasonable efforts to reunify the respondent with Serenity, as it had referred her to numerous services including substance abuse evaluation and treatment, drug screening, intimate partner violence programs, mental health services, individual counseling, supervised visitation, parenting education, and case management services. The court also found that the respondent was unable or unwilling to benefit from those efforts, explaining that, "[w]hile the court credits the [respondent] with her engagement in programs and her current ability to manage to parent Tyshawn under a period of protective supervision, [she] still has not achieved her goals pursuant to the specific steps," particularly in light of her admission to drinking alcohol during her pregnancy with Tyshawn, her marijuana use, and her recent arrests.

Next, with respect to the statutory grounds for termination alleged in the petition, the court found that the respondent had failed to achieve an appropriate degree

of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the age and needs of Serenity, she could assume a responsible position in Serenity's life. Specifically, the court found that "[t]he respondent has had issues with substance abuse and her mental health for a significant period of time, with [department] involvement beginning in 2016 regarding her daughter Sanai. There has been a pattern over time . . . where the [respondent] engages in services and programs and achieves sobriety for a period of time only to relapse within the year. The [respondent] was doing sufficiently well when Serenity was born that [the commissioner] did not seek an [order of temporary custody] and a period of protective supervision was granted instead of commitment. However, by February 25, 2020, a period of only three months later, [the commissioner] filed a motion to modify, seeking the commitment of Serenity for the [respondent's] failure to comply with her specific steps and her failure to benefit from the services in which she did engage."

The court recognized that the respondent was involved in several "concerning incident[s]," beginning only one month after Serenity was adjudicated neglected, including the intimate partner violence incidents with Gerald W., her separate arrests for driving while under the influence and possession of narcotics, and her recent positive test for marijuana. Regarding the respondent's March 15, 2022 arrest, the court found the respondent's denial of any knowledge of the narcotics in her car to be not credible "given the [respondent's] substance abuse history, her lack of being forthcoming about her pregnancy with Tyshawn, her previous positive toxicology results for fentanyl, and her lying to the police as to her identity."[8] The court similarly found the respondent not credible as to her explanations surrounding her positive test results for fentanyl and then marijuana.[9] Additionally, the court noted that, although the respondent had been "successfully discharge[d]" from the intensive outpatient program at MCCA, Stratton testified credibly that MCCA was not aware of the respondent's continued alcohol use during her pregnancy with Tyshawn.

The court continued: "This court acknowledges and appreciates that the [respondent] has made progress in completing programs to address her substance use and mental health and appears to have gained more stability over her mental health. The [respondent] also sought out and completed education as to how to appropriately meet Tyshawn's medical needs. As a result, [the commissioner], in [a] similar fashion to the circumstances that existed at the time Serenity was born, agreed to a neglect adjudication with a period of protective supervision for Tyshawn, which judgment was entered on September 20, 2022.

"Regardless of the recent disposition of Tyshawn's

case, the [respondent] still has not attained her goals of an extended period of sobriety and an extended period of stable mental health. While the last known use of alcohol was in February of 2022, the [respondent] tested positive for marijuana in August of 2022, only a few months ago. The [respondent] was arrested in a car full of illicit drugs in March of 2022. The credible testimony of [Stratton] was that the [respondent] never disclosed her pregnancy with Tyshawn and [the department] did not become aware of Tyshawn's existence until after his birth when [Stratton] was visiting the home and observed a crib and baby provisions. [Stratton] testified credibly that while there were no grounds for an [order of temporary custody] when Tyshawn was released from the hospital, had [the department] known of the pregnancy, she would have sought legal consultation as to whether to seek an [order of temporary custody] at Tyshawn's birth. Further, the [respondent's] clinician at MCCA . . . disclosed to [Biren Caverly] that the [respondent], during an individual therapy session in January of 2022, revealed her pregnancy and stated that she would probably be drinking if she were not pregnant. Thus, although the [respondent] is currently caring for Tyshawn, there are still grave concerns regarding the [respondent's] ability to maintain her sobriety according to the credible testimony of [Wright] and [Stratton]. [Biren Caverly] . . . testified credibly that given the [respondent's] continued positive toxicology, [intimate partner violence] and police involvement, that she has concerns about any child being in the [respondent's] care, including Tyshawn.[10] This court shares those concerns given the recent use of marijuana which is merely substituting one substance for another, the use of alcohol during her pregnancy with Tyshawn, the recent arrest for possession and the recent arrest for assault.

"Further, [Biren Caverly] conducted the court-ordered psychological evaluation and credibly opined that the [respondent] has failed to rehabilitate and cannot do so within a reasonable time. [Biren Caverly] first conducted an evaluation in 2019 in connection with Sanai and subsequently performed an updated evaluation in connection with Serenity on July 29, 2022. Thus, the [respondent] had given birth to Tyshawn at the time of the second evaluation and [Biren Caverly] was aware that Tyshawn was in the [respondent's] care when she tendered her opinions." (Footnote added.)

The court summarized some of Biren Caverly's findings set forth in her evaluation report, which was filed with the court on August 30, 2022, and admitted as a full exhibit at trial. Biren Caverly diagnosed the respondent with alcohol use disorder, depressive disorder, borderline personality disorder, and raised the possibility that the respondent might meet the criteria for a cannabis or opioid related diagnosis. Biren Caverly opined, among other things, that the respondent "has not made signifi-

cant progress in regards to her mental health, substance abuse, domestic violence or stability. . . . It is believed that [the respondent] cannot achieve a degree of rehabilitation that would make her capable of independently caring for a child. At this time, there are significant concerns about her untreated mental health and substance use. . . . While she has been able to engage in mental health and substance services for periods of time, it does not appear that she is effectively utilizing these services and demonstrating change." Biren Caverly cited to "significant concerns that [the respondent] continues to repeat the relationship patterns that have caused her to be involved with the [d]epartment for three different children," her belief that the respondent "appears to continue to be significantly impacted by [Gerald W.'s] death," despite being engaged in mental health services, and the respondent's several pending criminal charges.

The court found Biren Caverly's opinions to be "credible and persuasive," explaining that "[t]he [respondent] tested positive for marijuana, just recently in August of 2022, demonstrating her inability to refrain from substances for an extended period of time. The [respondent] has pending charges involving narcotics and [intimate partner violence], despite participating in treatment. Serenity does not have special needs, having been assessed by Birth to Three, given speech therapy, and discharged from services. However, Serenity is three years old and has been in care since she has been one and one-half years old, a period of almost two years. The [respondent] has not corrected these issues despite [department] involvement since 2016, a period of six years. The [respondent] has made some progress recently, but has a pattern of relapsing after six to nine months or sooner. She has not sustained sobriety or stable mental health and has not refrained from incidents of [intimate partner violence], having been arrested just this past June for assault. The same issues exist today as existed at the outset of this case." Accordingly, the court found that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i) and (E).

In the dispositional phase, the court made findings as to each of the criteria set forth in § 17a-112 (k) and concluded that the termination of the respondent's parental rights was in Serenity's best interest.[11] Accordingly, the court rendered judgment terminating the respondent's parental rights as to Serenity and appointing the commissioner as Serenity's statutory parent.[12] This appeal followed.

On appeal, the respondent claims that the court improperly found that she had failed to rehabilitate sufficiently to assume a responsible position in Serenity's life within a reasonable time pursuant to § 17a-112 (j) (3) (B) (i) and (E). Specifically, the respondent argues that the court could not reasonably have reached

this conclusion in light of the fact that Tyshawn remained in her care. She contends that the commissioner's decision not to seek the removal of Tyshawn is conclusive evidence that she adequately rehabilitated, and that the commissioner cannot seek termination of parental rights as to one child if the parent at issue has custody of another, unless that parent, "although capable of parenting one child, is incapable of parenting two." We disagree.

We begin by setting forth the relevant legal principles and the applicable standard of review. "The trial court is required, pursuant to § 17a-112, to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further . . . such rehabilitation must be foreseeable within a reasonable time. . . . The statute does not require [a parent] to prove precisely when [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. It requires the court to find, by clear and convincing evidence, that the level of rehabilitation [she] 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. . . . Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to [her] former constructive and useful role as a parent. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the child at issue. . . .

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

"A conclusion of failure to rehabilitate is drawn from both the trial court's factual findings and from its weighing of the facts in assessing whether those findings satisfy the failure to rehabilitate ground set forth in § 17a-112 (j) (3) (B). Accordingly . . . the appropriate standard of review is one of evidentiary sufficiency, that is, whether the trial court could have reasonably

concluded, upon the facts established and the reasonable inferences drawn therefrom, that the cumulative effect of the evidence was sufficient to justify its [ultimate conclusion]. . . . When applying this standard, we construe the evidence in a manner most favorable to sustaining the judgment of the trial court. . . . We will not disturb the court's subordinate factual findings unless they are clearly erroneous." (Emphasis omitted; internal quotation marks omitted.) *In re Eric M.*, 217 Conn. App. 809, 829–30, 290 A.3d 411, cert. denied, 346 Conn. 921, 291 A.3d 1040 (2023).[13]

Construing the record before us in the manner most favorable to sustaining the judgment of the trial court, as we are obligated to do; see *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015); we conclude that the record contains sufficient evidence for the court to reasonably conclude that the respondent failed to rehabilitate sufficiently to assume a responsible position in Serenity's life within a reasonable time, notwithstanding the fact that Tyshawn remained in her care.

At the outset, we emphasize that the relevant inquiry under § 17a-112 (j) requires the court "to analyze the [parent's] rehabilitative status as it relates to *the needs of the particular child* . . . ." (Emphasis added; internal quotation marks omitted.) *In re Shane M.*, supra, 318 Conn. 585. Thus, although a court may consider a respondent parent's history with her other children "to gain perspective on the respondent's child caring and parenting abilities to determine if she had achieved rehabilitation"; *In re Dylan C.*, 126 Conn. App. 71, 82, 10 A.3d 100 (2011); see also *In re Jennifer W.*, 75 Conn. App. 485, 499, 816 A.2d 697 (trial court must make "an inquiry into the *full* history of the respondent's parenting abilities" (emphasis in original)), cert. denied, 263 Conn. 917, 821 A.2d 770 (2003); such a consideration is not dispositive of the court's analysis. A court may reasonably conclude that a respondent parent is unable to assume a responsible position in the life of one child, even though another child remains in that parent's care. See, e.g., *In re G. H.*, 216 Conn. App. 671, 689 n.7, 286 A.3d 944 (2022) (rejecting respondent's challenge to court's conclusion that she was unable to assume responsible position in lives of her two children at issue, when she purportedly had " 'proven herself to be a capable caregiver' " to two other children who remained in her care); *In re Anthony H.*, 104 Conn. App. 744, 750, 759–60, 936 A.2d 638 (2007) (upholding determination that respondent failed to achieve sufficient degree of personal rehabilitation regarding two of her children, even though department was not concerned about third child in respondent's care while she remained in program at residential facility), cert. denied, 285 Conn. 920, 943 A.2d 1100 (2008); *In re Ashley M.*, 82 Conn. App. 66, 73, 842 A.2d 624 (2004) (upholding determination that respondent failed to achieve sufficient degree of personal rehabilitation, despite evidence

that respondent had been caring for another child, her newborn son).[14]

Moreover, the respondent's argument is premised on the contention that she, in fact, has assumed a "responsible position" in Tyshawn's life. In support of her argument, the respondent points to the commissioner's decision not to seek an order of temporary custody as to Tyshawn, and to Stratton's testimony explaining that there were no grounds for such an order because Tyshawn was not in imminent physical danger.[15] Although the commissioner did not seek custody of Tyshawn, she did file a neglect petition, which was granted, and Tyshawn only remained in the respondent's care because he was under the protective supervision of the department. In addition, at trial, Stratton testified that she typically would have sought a legal consultation to determine whether to seek an order of temporary custody at the time of Tyshawn's birth, but she was unable to do so in this case because the respondent had not disclosed that she was pregnant. Stratton further testified that, once she learned of Tyshawn's birth, there was no imminence to seek custody at that point because she knew that Tyshawn would remain in the hospital's care for several months. Although Wright testified that she had no "serious concerns" about the respondent's care of Tyshawn "[a]t this time," she attributed that to the fact that the respondent had remained compliant with all recommended services as to Tyshawn and received training as to his particular medical needs.

In addition, regardless of the commissioner's decision not to seek custody of Tyshawn, the court expressed concern about the respondent's ability to care for Tyshawn in the long-term.[16] See, e.g., *In re Tremaine C.*, 117 Conn. App. 590, 599, 980 A.2d 330 (respondent's care of her newborn child for few short months failed to establish degree of rehabilitation necessary to prove that she could provide adequate care for child at issue), cert. denied, 294 Conn. 920, 984 A.2d 69 (2009). Specifically, the court found that the respondent has been able to care for Tyshawn "thus far," given the training she had received regarding Tyshawn's medical needs. The court noted, however, that Tyshawn's neglect adjudication with an order of protective supervision was "a repeat of the commencement of this case, where [the respondent] presented as sober and capable after Serenity's birth," and that "[t]he [respondent] has made some progress recently, but has a pattern of relapsing after six to nine months or sooner."

The court also specifically found that, "[r]egardless of the recent disposition of Tyshawn's case, the [respondent] still has not attained her goals of an extended period of sobriety and an extended period of stable mental health" and, "although [the respondent] is currently caring for Tyshawn, there are still grave concerns regarding [her] ability to maintain her sobriety

according to the credible testimony of . . . [Wright] and [Stratton]." The court observed that, since giving birth to Tyshawn, the respondent had admitted to drinking alcohol during her pregnancy, she had been arrested twice for drug related and intimate partner violence related charges, and she had tested positive for marijuana only one month before trial.[17]

The court repeatedly emphasized and found credible the opinion of Biren Caverly that, even though Tyshawn remained in the respondent's care, the respondent had failed to make significant progress toward personal rehabilitation given her continued substance use, intimate partner violence, and involvement with the police. "The testimony of professionals is given great weight in parental termination proceedings. . . . It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony. . . . The credibility and the weight of expert testimony is judged by the same standard, and the trial court is privileged to adopt whatever testimony [it] reasonably believes to be credible. . . . On appeal, we do not retry the facts or pass on the credibility of witnesses. . . . It is the quintessential function of the fact finder to reject or accept certain evidence, and to believe or disbelieve any expert testimony. . . . The trier may accept or reject, in whole or in part, the testimony of an expert offered by one party or the other." (Internal quotation marks omitted.) *In re G. H.*, supra, 216 Conn. App. 688.

In her evaluation report, Biren Caverly opined that "[the respondent] cannot achieve a degree of rehabilitation that would make her capable of independently caring for a child." Biren Caverly reached this conclusion despite being aware that Tyshawn was in the respondent's care, as the court noted in its memorandum of decision. At trial, Biren Caverly explained, consistent with the findings set forth in her report, that she recommended termination of the respondent's parental rights due to "concerns about there not being significant progress, either in terms of her mental health, her substance abuse, or [intimate partner violence]." Biren Caverly testified that she was aware that the respondent was currently caring for Tyshawn but stated that this fact did not impact her recommendations regarding Serenity. She also testified that she had "significant concerns" about the respondent's ability to maintain Tyshawn in her care, particularly given the respondent's "continued [intimate partner violence] and significant police involvement since the birth of [Tyshawn]." Indeed, she testified: "I have concerns about [the respondent's] ability to have *any* child in her care . . . ." (Emphasis added.)

Accordingly, the evidence sufficiently supports the court's determination that the respondent was unable

to assume a responsible role in Serenity's life within a reasonable time, even considering the fact that Tyshawn remained in the respondent's care under a period of protective supervision. The fact that a parent retains custody of one child under the department's protective supervision is not conclusive evidence that the parent has rehabilitated as to another child previously removed from the parent's care. That fact is just one piece of evidence for the trial court to weigh and consider with all of the other evidence. In the present case, the respondent's ongoing care of Tyshawn was not free of concerning incidents and, thus, the trial court appropriately determined that the fact that Tyshawn remained in her care did not outweigh all of the other significant evidence evincing her lack of progress and insight on the issues that led to the removal of her first two children. We decline to second-guess the trial court's weighing of the evidence. See, e.g., *In re Kylie P.*, 218 Conn. App. 85, 113, 291 A.3d 158, cert. denied, 346 Conn. 926, 295 A.3d 419 (2023). Thus, we conclude that the court reasonably determined that the respondent failed to achieve a sufficient degree of personal rehabilitation.

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.

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

** July 5, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] Gerald W., Serenity's father, died on July 2, 2021, prior to the filing of the operative petition for termination of parental rights. We hereinafter refer to the respondent mother as the respondent and to Gerald W. by name.

[2] The attorney for the minor child filed a statement adopting the brief of the commissioner.

[3] Shortly thereafter, many in person court proceedings were suspended due to the COVID-19 pandemic.

[4] Among other things, the trial court ordered the respondent to keep appointments with and to cooperate with the department, to take part in counseling and to make progress toward the identified treatment goals of understanding the impact of intimate partner violence and drug or alcohol use on functioning/parenting, to submit to random toxicology testing, to refrain from the use of illegal drugs and the abuse of alcohol or medicine, to cooperate with service providers, to cooperate with any restraining or protective order or safety plan approved by the department to avoid intimate partner violence incidents, to attend and complete an appropriate intimate partner violence program, and to not get involved with the criminal justice system.

[5] The respondent returned for one session in March, 2022, and scheduled her next appointment but never returned.

[6] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court . . . may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve

such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . [or] (E) the parent of a child under the age of seven years who is neglected, abused or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families . . . ."

[7] The department initially offered virtual visitation between the respondent and Serenity, when protocols related to the COVID-19 pandemic were still in place, and then facilitated supervised visits in the community. When Tyshawn was discharged from the hospital, the department facilitated supervised visits at the respondent's home due to Tyshawn's medical concerns.

[8] The respondent reported that she had recently bought the car from a neighbor and that she was unaware that the handbag, or its contents, were in the vehicle.

[9] The respondent testified that she used marijuana by mistake when she used a vape pen someone had given her and learned, after the fact, that it contained THC. The court found this explanation not credible as the respondent had reported to her therapist that she was smoking marijuana throughout the course of her treatment with her. The respondent also suggested that she tested positive for fentanyl in connection with painkillers that she was prescribed after a Cesarean section surgical procedure during Tyshawn's birth, but the court found this explanation not credible, given that the respondent tested positive for fentanyl in May, 2021, and did not have the surgical procedure until Tyshawn was born in January, 2022.

[10] Biren Caverly also testified as to her concern about how the respondent would be able to manage the "stressor" of having two children in her care given her lack of a support system and her history of turning to substance use when faced with stressful situations. Wright and Stratton expressed similar concerns. Wright testified that it would be difficult for the respondent to meet the needs of the two children at the same time "just based on the energy level of Serenity and the medical needs of Tyshawn and for [the respondent] to attend the appointments that had been recommended for her as well," and Stratton testified regarding her concern that the respondent caring for "two very young children, one with significant needs . . . [would be] quite a lot for somebody who has a difficult time dealing with stress and often turns to substances during that time."

[11] The respondent does not challenge the court's finding that termination of her parental rights was in Serenity's best interest.

[12] The court also denied a motion to revoke commitment that the respondent had filed on September 21, 2022, for the same reasons that it terminated the respondent's parental rights. The respondent does not appeal from the court's denial of her motion.

[13] Although the respondent claims that evidentiary sufficiency is an improper standard of review in child protection cases and that it "should be replaced by the former clear error standard," the respondent's counsel conceded at oral argument before this court that, as an intermediate court of appeals, this court is bound by our Supreme Court's decision in *In re Shane M.*, 318 Conn. 569, 588, 122 A.3d 1247 (2015), in which the court held that "the appropriate standard of review is one of evidentiary sufficiency . . . ." See *State* v. *Yury G.*, 207 Conn. App. 686, 693–94 n.2, 262 A.3d 981 ("[I]t is axiomatic that, [a]s an intermediate appellate court, we are bound by Supreme Court precedent and are unable to modify it. . . . [W]e are not at liberty to overrule or discard the decisions of our Supreme Court but are bound by them. . . . [I]t is not within our province to reevaluate or replace those decisions." (Internal quotation marks omitted.)), cert. denied, 340 Conn. 909, 264 A.3d 95 (2021).

[14] As the commissioner points out, there are numerous other cases in which this court has upheld a trial court's determination that a respondent parent has failed to achieve a sufficient degree of personal rehabilitation, even where there was evidence that another child remained in the care of that same parent. See, e.g., *In re Kylie P.*, 218 Conn. App. 85, 121, 291 A.3d 158, cert. denied, 346 Conn. 926, 295 A.3d 419 (2023); *In re Ja'La L.*, 201 Conn. App. 586, 588, 243 A.3d 358 (2020), cert. denied, 336 Conn. 909, 244 A.3d 148 (2021); *In re Tremaine C.*, 117 Conn. App. 590, 599, 980 A.2d 330, cert. denied, 294 Conn. 920, 984 A.2d 69 (2009).

[15] "[General Statutes § 46b-129 (b)] authorizes courts to issue an order ex parte vesting in some suitable agency or person the child's or youth's temporary care and custody if it appears, on the basis of the petition and supporting affidavits, that there is reasonable cause to believe that (1) the child or youth is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the child's or youth's surroundings, and (2) that as a result of said conditions, the child's or youth's safety is endangered and immediate removal from such surroundings is necessary to ensure the child's or youth's safety . . . ." (Emphasis omitted; internal quotation marks omitted.) *In re Alizabeth L.-T.*, 213 Conn. App. 541, 551–52, 278 A.3d 547 (2022).

[16] The respondent acknowledges that "[t]he record supports at least an inference that the trial court was concerned both about the future trajectory of the respondent's ability to care for Tyshawn and the decision to allow him to remain in the home in the first place."

[17] The respondent does not challenge as clearly erroneous any of the court's findings regarding her substance abuse, intimate partner violence, and involvement with the police.