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IN RE RYAN C.*
(AC 45979)
(AC 46006)

Prescott, Suarez and Seeley, Js.

Syllabus

The respondent father and his minor child appealed separately to this court from the judgment of the trial court granting the motions filed by the child's foster parent to intervene in the dispositional phase of the neglect proceedings as to the child and to transfer guardianship of him to herself, and denying the motions filed by the father and the petitioner, the Commissioner of Children and Families, to revoke the child's commitment to the petitioner and to return him to the father's custody. The child and another of the father's minor children, the child's sister, had been removed from the father's home after the Department of Children and Families was informed that they were living in deplorable conditions. The petitioner filed neglect petitions on behalf of both children. The trial court adjudicated them neglected, and the department placed them with the foster parent. The court thereafter approved the petitioner's plan to reunify the child with the father, and the sister was later returned to the father's custody and cared for by the children's paternal grandparents while the father was at work. In moving to permissively intervene under the rule of practice (§ 35a-4) applicable to hearings concerning neglected children, the foster parent claimed that her intervention was in the child's best interest. The court granted the foster parent's motions, reasoning that cause to continue the child's commitment still existed as to the father and that revocation of commitment to the petitioner was not in the child's best interest. *Held*:

1. The trial court improperly granted the foster parent's motions to intervene and to transfer guardianship of the minor child to herself, which prejudiced the respondent father by tainting the court's consideration of his and the petitioner's motions to revoke the child's commitment and to return him to the father's custody: because the narrowly defined rights of foster parents to participate in neglect proceedings are limited pursuant to statute (§ 46b-129 (p)) to notice and the opportunity to be heard as to the child's best interest, the trial court improperly allowed the foster parent to intervene, to move to transfer guardianship and to object to the motions to revoke commitment, as the general language of the rule of practice applicable to hearings concerning neglected children could not be interpreted to enlarge the foster parent's rights under § 46b-129 (p), which protects the rights of biological parents by limiting foster parents' participation in neglect proceedings; moreover, by improperly failing to consider whether cause for commitment of the child still existed before considering whether revocation of commitment was in the child's best interest, the court altered that legal standard by considering the foster parent's motion to transfer guardianship prior to or in conjunction with the motions to revoke commitment and considered improper factors when determining whether to revoke commitment such as comparing the parenting abilities of the foster parent to those of the father; accordingly, the judgment was reversed and the case was remanded for a new hearing on the motions to revoke commitment.
2. The trial court abused its discretion by precluding evidence pertaining to the sister's mental health and behavior as well as the care provided to her by the respondent father and her paternal grandparents, as that evidence was relevant to the motions filed by the father and the petitioner to revoke the child's commitment:

   a. The sister's mental health and behavior were relevant to the trial court's determination of whether revocation of commitment would foster the child's sustained growth, development and well-being, as the court had heard testimony that the sister's mental health and behavior previously had been a barrier to the child's reunification with the father.

   b. The trial court improperly concluded that the respondent father's care of the sister was not relevant to the motions to revoke the child's commitment because the children had different needs; evidence per-

taining to whether the department had safety concerns relating to the father's care of the sister and whether he had demonstrated that he was a suitable guardian through his care for her were relevant to his abilities to be a parent and to care for the child, and the different needs of the two children affected the weight of that evidence and not its admissibility.

c. Testimony relating to the paternal grandparents' care of the sister while the respondent father was at work was relevant to the trial court's evaluation of whether granting the motions to revoke the child's commitment to the petitioner would be in the child's best interest: because it was reasonable to infer that the grandparents, who would be living with the child, would also care for him while the father was at work, the grandparents' ability to care for the sister was relevant to the court's determination of whether it was in the child's best interest to return him to the father's custody; moreover, in light of testimony by the psychologist who evaluated the child that he could not recommend reunification without assessing the grandparents' ability to care for the child, other evidence relating to the grandparents' abilities as caregivers was all the more relevant to the court's determination of the motions to revoke commitment.

3. This court terminated the stay of execution that ordinarily would take effect upon the release date of this decision, pursuant to the applicable rule of practice (§ 71-6), in light of the need to adjudicate child protection cases expeditiously, to achieve permanency and stability for children, and the unique procedural posture of the present case, in which no appellee participated in the appeal, and this court determined that the foster parent never should have been made a party.

Argued May 8—officially released July 20, 2023**

Procedural History

Petition by the Commissioner of Children and Families to adjudicate the respondents' minor child neglected, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, where the court, *Frazzini*, *J.*, granted the petitioner's motion for an order of temporary custody and removed the minor child from the respondents' care; thereafter, the order of temporary custody was sustained by agreement of the parties; subsequently, the case was tried to the court, *Hon. Barbara M. Quinn*, judge trial referee; judgment adjudicating the minor child neglected and committing the minor child to the custody of the petitioner; thereafter, the court, *C. Taylor*, *J.*, granted the motions filed by Jeanette P., the foster parent of the minor child, to intervene and to transfer guardianship of the minor child, and denied the motions filed by the petitioner and the respondent father to revoke the commitment of the minor child to the petitioner; subsequently, the respondent father and the minor child filed separate appeals with this court, which were consolidated. *Reversed*; *judgment directed in part*; *new trial.*

Benjamin M. Wattenmaker, assigned counsel, for the appellant in Docket No. AC 45979 (respondent father).

Joshua D. Michtom, senior assistant public defender, for the appellant in Docket No. AC 46006 (minor child).

Evan O'Roark, assistant attorney general, for the appellee in both cases (petitioner).

Opinion

PRESCOTT, J. The respondent father, Chester C., and his minor child, Ryan C., appeal from the judgment of the trial court[1] rendered in favor of Ryan C.'s intervening foster parent, Jeanette P.,[2] denying motions to revoke commitment filed by the respondent and the petitioner, the Commissioner of Children and Families,[3] and granting Jeanette P.'s motion to transfer guardianship of Ryan C. to herself. The dispositive issue in this appeal is whether the court properly allowed Jeanette P. to intervene in the dispositional phase of the neglect proceeding for the purposes of objecting to the motions to revoke commitment and filing the motion to transfer guardianship.[4] We conclude that, in the circumstances of the present case, the court improperly allowed Jeanette P. to intervene and to file a motion to transfer guardianship and that her intervention improperly tainted the court's adjudication of the motions to revoke commitment. Accordingly, we reverse the judgment of the court and remand the case for a new trial on the motions to revoke commitment.

In addition to the dispositive claim on appeal, we also review the respondent's and Ryan C.'s claim that the court improperly precluded on relevancy grounds evidence pertaining to Madison C., Ryan C.'s sister, as that evidentiary claim is likely to arise again on remand.[5] We conclude that evidence relating to Madison C. was relevant to the motions to revoke the commitment pertaining to Ryan C., and, thus, the court abused its discretion by precluding the evidence.

The record reveals the following facts and procedural history. Ryan C. was born in December, 2015. The respondent and Ryan C.'s mother, Patricia K., have two other children together: Madison C., who was born in 2013, and Andrew C., who was born in 2017.

On April 25, 2017, the Department of Children and Families (department) received a referral alleging that Patricia K. and the respondent were allowing Madison C. and Ryan C.[6] to live in deplorable conditions. On May 2, 2017, the petitioner sought and obtained an order of temporary custody for Madison C. and Ryan C., and the children were placed in foster care. On that same day, the petitioner filed neglect petitions on behalf of both children.

Later in 2017, Andrew C. was born. The department sought and obtained an order of temporary custody and filed a neglect petition on behalf of Andrew C. on November 20, 2017. At this time, the department placed Andrew C. in foster care.

On November 30, 2017, the respondent and Patricia K. entered written pleas of nolo contendere as to all three children's neglect petitions, and the children were adjudicated neglected. The court simultaneously issued specific steps to the respondent that he should take to

be reunified with his children. The department placed Ryan C. and Madison C. with Jeanette P., who was a licensed foster parent. Ryan C. has remained with Jeanette P. since November, 2017.[7]

On February 1, 2019, the petitioner filed petitions to terminate the respondent's and Patricia K.'s parental rights with respect to Madison C., Ryan C., and Andrew C. on the grounds that the children had previously been adjudicated neglected and that the respondent and Patricia K. had failed to achieve a sufficient degree of rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B). The trial on the petitions to terminate parental rights commenced on August 5, 2019. On August 16, 2019, while the trial was still ongoing, the petitioner withdrew the petitions as to the respondent for all three children because the department had failed to make reasonable efforts to reunify the respondent with his children. At this time, the court issued specific steps to the respondent to facilitate his reunification. The trial continued, however, as to Patricia K., and, on November 6, 2019, the court granted the petitions to terminate Patricia K.'s parental rights as to all three children.[8]

On October 30, 2019, the petitioner filed a motion to review the permanency plan relating to Ryan C. On January 2, 2020, the court approved the petitioner's motion and approved a permanency plan of reunification.

On July 8, 2020, Madison C.'s commitment to the petitioner was revoked. She was returned to the respondent's custody with a period of six months of protective supervision.[9]

After delaying Ryan C.'s reunification with the respondent to allow for additional time for Madison C. to adjust to her reunification, the petitioner planned to reunify Ryan C. with the respondent on July 30, 2020. On July 28, 2020, two days before the petitioner planned to reunify Ryan C. with the respondent, Jeanette P. filed an ex parte emergency motion to intervene for the sole purpose of seeking an emergency motion to stay, an ex parte emergency motion to stay the removal of Ryan C. from her home, a motion to intervene for purposes of seeking the transfer of guardianship of Ryan C. to her, and a motion to modify the current disposition of commitment and transfer guardianship to herself (motion to transfer guardianship). On that same day, the respondent filed an objection to Jeanette P.'s motion to transfer guardianship. Also on that same day, the court granted Jeanette P.'s ex parte emergency motion to intervene and ex parte emergency motion to stay. In granting the ex parte emergency motion to stay, the court required that the respondent's visitation with Ryan C. be supervised and prohibited overnight visitation with him until further notice.

On October 22, 2020, the respondent filed a motion to revoke the commitment of Ryan C., requesting that Ryan C. be returned to his custody. On June 22, 2021, Jeanette P. filed an "amended motion to intervene corrected," which sought intervention for the same purposes as the original motion in addition to seeking to object to the respondent's motion to revoke commitment. Subsequently, the petitioner also filed a motion to revoke commitment.[10] In her motion to revoke commitment, the petitioner stated that "[t]he respondent . . . has engaged and participated in services and has continued to develop a better understanding of his children's needs as the case progresses, and he continues to show growth and increased knowledge. . . . The cause for the commitment no longer exists and revocation of commitment is in the best interest of [Ryan C.]."

On June 25, 2021, the court held a hearing on Jeanette P.'s motions to intervene.[11] At the hearing, Jeanette P. argued that she should be allowed to permissively intervene in the matter pursuant to Practice Book § 35a-4, General Statutes § 46b-121, and our Supreme Court's decision in *In re Ava W.*, 336 Conn. 545, 248 A.3d 675 (2020). Jeanette P. argued that the court should, in its discretion, allow her to intervene because it was in the child's best interests. Jeanette P. also argued that the other factors set forth in Practice Book § 35a-4, including the timeliness of the motions, her interest in the case, whether her interest was adequately represented by the existing parties, and whether her intervention may cause delay or other prejudice, all weighed in favor of intervention.

The petitioner, the respondent, counsel for Ryan C., and the guardian ad litem for Ryan C. all opposed the court's granting Jeanette P.'s motions to intervene. The parties opposing the motions to intervene agreed that Jeanette P. had a right to be heard but argued that no legal authority permitted her to intervene and become a party to the proceedings.[12]

At the conclusion of the hearing, the court, in an oral ruling from the bench, granted Jeanette P.'s motions to intervene for the purposes of filing a motion to transfer guardianship and objecting to the motions to revoke commitment. In granting Jeanette P. intervention, the court stated: "The issue of intervention has gone many different ways, but, in the end, it is up to the discretion of the trial court. Despite what *Horton* v. [*Meskill*, 187 Conn. 187, 445 A.2d 579 (1982)],[13] says . . . *In re Ava W.* [supra, 336 Conn. 545] has quite frankly turned a lot of things into a free-for-all in juvenile court, and, quite frankly, I think has allowed a lot of things to happen that may not have happened in the past. I think, in the end, the motion to intervene certainly is a motion that would come under action based on the best interest of the child. I realize that this is probably going to delay the proceedings. Simply looking at what counsel is pre-

pared to do for today's hearing, it's probably enough to fill any judge with foreboding at the thought. However, I think my hands are fairly tied by *In re Ava W.*" (Footnote added.)

On October 29, 2021, trial commenced on Jeanette P.'s motion to transfer guardianship, the petitioner's motion to revoke commitment, and the respondent's motion to revoke commitment.[14] The trial continued on nonconsecutive days starting on November 1, 2021, and concluding on June 8, 2022. During the trial, Jeanette P. presented testimony from several witnesses, including the respondent; an office director for the department who oversaw Ryan C.'s case; and Derek Franklin, a forensic psychologist who had evaluated Ryan C., the respondent, and Jeanette P. The respondent testified on his own behalf and presented testimony from several witnesses, including social workers for the department who had worked on Ryan C.'s case, and the guardian ad litem, who testified that it was in Ryan C.'s best interests for the court to grant the motions to revoke commitment. The petitioner also presented testimony from several witnesses. Counsel for Ryan C. did not present any witnesses independently but did cross-examine witnesses called by the other parties.

On October 5, 2022, the court granted Jeanette P.'s motion to transfer guardianship and denied the respondent's and the petitioner's motions to revoke commitment. In its memorandum of decision, the court stated: "The court finds that it has been proven by a fair preponderance of the evidence that [the motion to transfer guardianship] is in [Ryan C.'s] best interests. The court will order that the guardianship of Ryan [C.] be transferred to . . . [Jeanette P.]. [Jeanette P.] has provided a loving, trusting and nurturing home for Ryan [C.]. [Jeanette P.] has agreed to serve as [his] legal guardian until he is an adult. The testimonial and documentary evidence presented demonstrates that [she] has been a very worthy and suitable person in caring for Ryan [C.] and attending to his needs. The court finds by clear and convincing evidence that [she] is a suitable and worthy guardian to assume the position as Ryan [C.'s] legal guardian . . . . The court will order a period of protective supervision for one year. The court will promulgate new orders to guide visitation of Ryan [C.] with . . . the respondent . . . . The respondent['s] . . . motion to revoke commitment is denied. The [petitioner's] motion to revoke commitment is denied."

On October 25, 2022, the petitioner filed a motion for articulation of the October 5, 2022 judgment. In particular, the petitioner requested that the court articulate its factual findings regarding the motions to revoke commitment, including whether the court found that a cause for commitment continued to exist as to the respondent and whether revocation of commitment was in Ryan C.'s best interests. On December 13, 2022, the

court articulated its October 5, 2022 decision granting the motion to transfer guardianship and denying the motions to revoke commitment. In its articulation, the court concluded that Jeanette P. had met her burden to demonstrate that she was a suitable and worthy guardian and that transferring guardianship to her was in Ryan C.'s best interests. In regard to the motions to revoke commitment, the court determined that a cause for commitment still existed as to the respondent and that revocation of commitment was not in Ryan C.'s best interests. This appeal followed. Additional facts and procedural history will be set forth as necessary.

I

We first consider whether the court improperly granted Jeanette P.'s motions to permissively intervene for the purposes of filing a motion to transfer guardianship and objecting to the motions to revoke commitment.[15] We conclude that, under the circumstances of the present case, the court improperly granted the motions to intervene and, consequently, improperly adjudicated the motion to transfer guardianship. We further conclude that Jeanette P.'s intervention tainted the court's consideration of the motions to revoke commitment by causing it to consider improper factors.

Because the court granted Jeanette P.'s motions to intervene for the purposes of filing a motion to transfer guardianship and objecting to the motions to revoke commitment, we begin with the legal principles relevant to those motions. A motion to revoke commitment and a motion to transfer guardianship are dispositional motions arising out of a prior adjudication that a child is uncared for, neglected or abused. See Practice Book §§ 35a-12A and 35a-14A. "A motion to revoke commitment is governed by [General Statutes] § 46b-129 (m) and Practice Book § 35a-14A. Section 46b-129 (m) provides: The commissioner, a parent or the child's attorney may file a motion to revoke a commitment, and, upon finding that cause for commitment no longer exists, and that such revocation is in the best interests of such child or youth, the court may revoke the commitment of such child or youth. . . . [T]he court, in determining whether cause for commitment no longer exists . . . look[s] to the original cause for commitment to see whether the conduct or circumstances that resulted in commitment continue to exist. . . . The party seeking revocation of commitment has the burden of proof that no cause for commitment exists. If the burden is met, the party opposing the revocation has the burden of proof that revocation would not be in the best interests of the child." (Citations omitted; internal quotation marks omitted.) *In re Marcquan C.*, 212 Conn. App. 564, 572–74, 275 A.3d 1248 (2022).

"The adjudication of a motion to transfer guardianship pursuant to [§ 46b-129 (j)] requires a two step analysis. [T]he court must first determine whether it would

be in the best interest[s] of the child for guardianship to be transferred from the petitioner to the proposed guardian. . . . [Second] [t]he court must then find that the third party is a suitable and worthy guardian. . . . This principle is echoed in Practice Book § 35a-12A (d), which provides that the moving party has the burden of proof that the proposed guardian is suitable and worthy and that transfer of guardianship is in the best interests of the child. . . .

"To determine whether a custodial placement is in the best interest of the child, the court uses its broad discretion to choose a place that will foster the child's interest in sustained growth, development, well-being, and in the continuity and stability of its environment." (Footnote omitted; internal quotation marks omitted.) *In re Marie J.*, 219 Conn. App. 792, 818–19, A.3d (2023).

We now turn to the legal principles relevant to a court's granting of a motion for permissive intervention in a neglect proceeding. Generally, "questions of permissive intervention are committed to the sound discretion of the trial court . . . . Our cases establish that, in determining whether to grant a request for permissive intervention, a court should consider several factors: the timeliness of the intervention, the proposed intervenor's interest in the controversy, the adequacy of representation of such interests by other parties, the delay in the proceedings or other prejudice to the existing parties the intervention may cause, and the necessity for or value of the intervention in resolving the controversy. . . . A ruling on a motion for permissive intervention would be erroneous only in the rare case where such factors weigh so heavily against the ruling that it would amount to an abuse of the trial court's discretion." (Citations omitted; internal quotation marks omitted.) *In re Baby Girl B.*, 224 Conn. 263, 277–78, 618 A.2d 1 (1992).

Similarly, Practice Book § 35a-4, which governs intervention in hearings concerning neglected, abused and uncared for children and hearings on petitions to terminate parental rights, sets forth factors that the court may consider when granting a motion to intervene filed by certain persons in these proceedings. Section 35a-4 provides in relevant part: "(c) Other persons unrelated to the child or youth by blood or marriage, or persons related to the child or youth by blood or marriage who are not seeking to serve as a placement, temporary custodian or guardian of the child may move to intervene in the dispositional phase of the case, and the judicial authority may grant said motion if it determines that such intervention is in the best interest of the child or youth or in the interests of justice.

"(d) In making a determination upon a motion to intervene, the judicial authority may consider: the timeliness of the motion as judged by the circumstances of

the case; whether the movant has a direct and immediate interest in the case; whether the movant's interest is not adequately represented by existing parties; whether the intervention may cause delay in the proceedings or other prejudice to the existing parties; the necessity for or value of the intervention in terms of resolving the controversy before the judicial authority; and the best interests of the child. . . ."

Section 46b-129 governs hearings on temporary custody matters, revocation of commitment, legal guardianship, and permanent legal guardianship. Section 46b-129 (d) authorizes "any person related to the child or youth by blood or marriage" to file a motion to intervene for the purpose of seeking temporary custody or guardianship of a child and that "granting of such motion shall be solely in the court's discretion . . . ."

The issue before this court, however, implicates the court's authority to grant a foster parent's motion to intervene in the dispositional phase of a neglect proceeding. Therefore, we must consider the motion to intervene within the limitations placed on the rights of foster parents.

"It is well established that [f]oster families do not have the same rights as biological families or adoptive families. . . . It is unquestioned that [b]iological and adoptive families have a liberty interest in the integrity of their family unit which is part of the fourteenth amendment's right to familial privacy. . . . Foster parents, on the other hand, do not enjoy a liberty interest in the integrity of their family unit. . . . Rather, [t]he rights of foster parents are defined and restricted by statute . . . [and] the expectations and entitlements of foster families can be limited by the state. . . . The statutory scheme provides to foster parents a limited and narrow set of rights regarding foster children. Such a limited and narrow set of rights is consistent with the premise that [f]oster parents are entrusted with foster children on a temporary basis only." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *In re Joshua S.*, 127 Conn. App. 723, 729–30, 14 A.3d 1076 (2011).

Section 46b-129 (p) and Practice Book § 35a-5 specifically limit the rights of foster parents to participate in neglect proceedings. Section 46b-129 (p) provides: "A foster parent, prospective adoptive parent or relative caregiver shall receive notice and *have the right to be heard* for the purposes of this section in Superior Court in any proceeding concerning a foster child living with such foster parent, prospective adoptive parent or relative caregiver. A foster parent, prospective adoptive parent or relative caregiver who has cared for a child or youth shall *have the right to be heard and comment on the best interests of such child or youth* in any proceeding under this section which is brought not more than one year after the last day the foster parent,

prospective adoptive parent or relative caregiver provided such care." (Emphasis added.)

Prior to the legislature's adoption of No. 01-142, § 8, of the 2001 Public Acts (P.A. 01-142), § 46b-129 stated that "[a] foster parent shall have standing for the purposes of this section in Superior Court in matters concerning the placement or revocation of commitment of a foster child living with such parent." General Statutes (Rev. to 2001) § 46b-129 (o). Significantly, in 2001, "standing" was replaced with "the right to be heard . . . ." P.A. 01-142, § 8.

The language of § 46b-129 (p) is reflected in Practice Book § 35a-5. Practice Book § 35a-5 provides in relevant part: "(a) Any foster parent, prospective adoptive parent or relative caregiver shall be notified of and have a *right to be heard* in any proceeding held concerning a child or youth living with such foster parent, prospective adoptive parent or relative caregiver . . . ."[16] (Emphasis added.) There is no language in § 46b-129 (p) or Practice Book § 35a-5 that authorizes a foster parent to intervene in the dispositional phase of neglect proceedings.

Finally, because the issue before us requires us to determine whether the applicable provisions of the General Statutes and rules of practice provided the trial court with the authority to allow Jeanette P. to intervene in the present case, we turn to the well settled legal principles pertaining to our interpretation of these provisions and to our standard of review. "[A]lthough [t]he Superior Court is empowered to adopt and promulgate rules regulating pleading, practice and procedure . . . [s]uch rules shall not abridge, enlarge or modify any substantive right . . . . Just as the general assembly lacks the power to enact rules governing procedure that is exclusively within the power of the courts . . . so do the courts lack the power to promulgate rules governing substantive rights and remedies. . . . Finally, the court rules themselves are expressly limited in scope to practice and procedure in the Superior Court . . . and do not purport to reach beyond such limits. . . . Accordingly, although the branches of government frequently overlap, and notwithstanding that the doctrine of the separation of powers cannot be applied rigidly . . . we are obliged to interpret [a section of the rules of practice] so as not to create a new right, but rather to delineate whatever rights may have existed, statutorily or otherwise, at the time of the proceedings . . . ." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *In re Samantha C.*, 268 Conn. 614, 639, 847 A.2d 883 (2004).

"The interpretive construction of the rules of practice is to be governed by the same principles as those regulating statutory interpretation. . . . The interpretation and application of a statute, and thus a Practice Book provision, involves a question of law over which our

review is plenary. . . . In seeking to determine [the] meaning [of a statute or a rule of practice, we] . . . first . . . consider the text of the statute [or rule] itself and its relationship to other statutes [or rules].'' (Internal quotation marks omitted.) *Meadowbrook Center, Inc.* v. *Buchman*, 328 Conn. 586, 594, 181 A.3d 550 (2018).

''[T]his tenet of statutory construction . . . requires [this court] to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction.'' (Internal quotation marks omitted.) *In re William D.*, 284 Conn. 305, 313, 933 A.2d 1147 (2007). Another principle of statutory construction applicable to the circumstances of the present case ''requires courts to apply the more specific statute relating to a particular subject matter in favor of the more general statute that otherwise might apply in the absence of the specific statute.'' (Internal quotation marks omitted.) *In re Ava W.*, supra, 336 Conn. 580–81.

In the present case, Jeanette P. filed motions to intervene pursuant to Practice Book § 35a-4. Considering the plain language of § 35a-4 alone, this provision could presumably grant the court the authority to, in its discretion, allow a foster parent to intervene in a neglect proceeding. Section 35a-4 (c) permits the intervention, at the court's discretion, of ''persons unrelated to the child or youth by blood or marriage'' in the dispositional phase of neglect proceedings, and this language may reasonably include a foster parent. The rights of foster parents are narrowly defined, however, and delineated by our statutes. See *Hunte* v. *Blumenthal*, 238 Conn. 146, 164, 680 A.2d 1231 (1996); see also *In re Joshua S.*, supra, 127 Conn. App. 730. When interpreting provisions of the rules of practice and statutes, we must consider the entire statutory scheme and read the relevant provisions together. Therefore, we must turn to the other relevant provisions of the General Statutes and rules of practice in determining the applicability of § 35a-4 to the circumstances of this case.

The General Statutes do not authorize the intervention of persons unrelated to a child or youth in neglect proceedings. See General Statutes § 46b-129. Rather, the General Statutes authorize only the intervention of persons related to a child or youth and, even then, this is a matter left to the court's discretion. See General Statutes § 46b-129. Section 46b-129 (p), which explicitly addresses the rights and extent of participation of foster parents in neglect proceedings, provides foster parents with the right to be heard on the best interests of the child—not the right to intervene. In fact, prior to 2001, foster parents historically had standing to intervene, but this ''standing'' was replaced with the ''right to be

heard . . . .” P.A. 01-142, § 8. “When the legislature amends the language of a statute, it is presumed that it intended to change the meaning of the statute and to accomplish some purpose.” *State* v. *Johnson*, 227 Conn. 534, 543, 630 A.2d 1059 (1993). Therefore, by enacting P.A. 01-142, § 8, the legislature purposefully limited a foster parent’s participation in neglect proceedings to “the right to be heard . . . .” Accordingly, we must determine the application of Practice Book § 35a-4 to the present case in light of the limitations the legislature has placed on a foster parent’s participation in neglect proceedings pursuant to § 46b-129 (p).

Moreover, the language of § 46b-129 (p) takes precedence over the more general language of Practice Book § 35a-4 because § 46b-129 (p) specifically addresses *foster parents’ rights* in neglect proceedings. See, e.g., *Studer* v. *Studer*, 320 Conn. 483, 498–99, 131 A.3d 240 (2016) (applying text of statute that was more specifically applicable to subject at issue in case). Indeed, provisions of the rules of practice “shall not abridge, enlarge or modify any substantive right,” and “we are obliged to interpret a [section of the rules of practice] so as not to create a new right, but rather to delineate whatever rights may have existed . . . .” *In re Samantha C.*, supra, 268 Conn. 639. Therefore, Practice Book § 35a-4 cannot be interpreted in a manner that enlarges a foster parent’s rights under § 46b-129 (p). We conclude that, in the present case, the court improperly allowed Jeanette P. to intervene because, by allowing her to file a motion to transfer guardianship to herself and to object to the otherwise uncontested motions to revoke commitment, it provided Jeanette P. with rights beyond an opportunity to be heard as to Ryan C.’s best interests.

Our case law is consistent with this conclusion. Nonrelatives who have a parent-like relationship with a child have been allowed to intervene in the dispositional phase of neglect proceedings pursuant to Practice Book § 35a-4. See, e.g., *In re Shanaira C.*, 297 Conn. 737, 750–53, 1 A.3d 5 (2010). Section 35a-4 has not, however, been applied to allow the permissive intervention of nonrelative foster parents in the dispositional phase of neglect proceedings. Instead, our case law has repeatedly limited the rights of foster parents, and even those of preadoptive parents, in child custody proceedings. See, e.g., *In re Joshua S.*, supra, 127 Conn. App. 728 (foster parents did not have colorable claim to intervene as matter of right in dispositional phase of neglect proceeding); see also *Eason* v. *Welfare Commissioner*, 171 Conn. 630, 635, 370 A.2d 1082 (1976) (foster parent did not have standing to file motion to revoke commitment), cert. denied sub nom. *Eason* v. *Maloney*, 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1079 (1977).

In *In re Baby Girl B.*, supra, 224 Conn. 278, our Supreme Court discussed the importance of restricting preadoptive parents’ intervention in child custody pro-

ceedings.[17] In that case, the preadoptive parents argued that the trial court improperly denied their motion to intervene as a matter of right or, alternatively, abused its discretion in denying them permissive intervention in the termination proceedings. Id., 274. Our Supreme Court affirmed the trial court's denial of the preadoptive parents' motion to intervene and held that the preadoptive parents were not entitled to intervene as a matter of right and that the court did not abuse its discretion in denying them permissive intention. Id.

In holding that the trial court did not abuse its discretion by denying the preadoptive parents' request for permissive intervention, the court in *In re Baby Girl B.* stated: "With respect to the intervention of foster parents in termination proceedings, this court has determined that [t]he intervention of foster parents as parties at the termination stage will permit them to shape the case in such a way as to introduce an impermissible ingredient into the termination proceedings. Petitions for termination of parental rights are particularly vulnerable to the risk that judges or social workers will be tempted, consciously or unconsciously, to compare unfavorably the material advantages of the child's natural parents with those of prospective adoptive parents and therefore to reach a result based on such comparisons rather than on the statutory criteria. . . . Similarly, the intervention of the preadoptive parents in the termination proceeding might have led to the introduction of impermissible and prejudicial factors. Moreover, because the termination proceeding was concerned only with the statutory criteria alleged as grounds for terminating the mother's parental rights, the preadoptive parents' intervention would have been of little or no value to the court's decision on whether the grounds for termination had been proved." (Citation omitted; internal quotation marks omitted.) Id., 278.

The policy considerations articulated in *In re Baby Girl B.* that weighed against allowing a preadoptive parent permissive intervention in the adjudicatory phase of a termination of parental rights proceeding are similarly relevant to a foster parents' permissive intervention in the dispositional phase of neglect proceedings. In both the adjudicatory phase of termination proceedings and the dispositional phase of neglect proceedings, the biological parents' rights to their children have not yet been terminated. Therefore, the biological parents' rights must be protected by limiting a foster parent's participation in neglect proceedings to ensure that improper and prejudicial factors are not considered by a court. This is especially important in instances in which the court must determine whether the causes that led to a child's commitment to the petitioner no longer exist and whether the child should be returned to the care and custody of the biological parent.

We have also recognized a distinction between a fos-

ter parent's right to be heard and right to intervene. In *In re Vincent D.*, 65 Conn. App. 658, 664, 783 A.2d 534 (2001), this court upheld the trial court's decision to permit foster parents to participate, in a limited manner, in the dispositional phase of a termination of parental rights proceeding. The trial court, rather than granting the foster parents' motion to intervene, recognized "that standing to comment 'is not the same thing as intervention' " and permitted the foster parents to "observe and . . . comment . . . on disposition." (Emphasis omitted.) Id., 667. This court upheld the trial court's decision and concluded that the trial court had properly protected the rights of the respondent parents by limiting the foster parents' participation in the proceedings. See id.

In *In re Joshua S.*, supra, 127 Conn. App. 730, this court held that a child's foster parents did not have a colorable claim to intervene as a matter of right in the dispositional phase of a neglect proceeding, and, therefore, the foster parents were not parties to the proceeding and were not entitled to appeal the court's denial of their motion to intervene. In coming to this conclusion, this court stated: "[F]oster parents have a right under . . . § 46b-129 [p] to receive notice and be heard in any proceeding concerning their foster child. Although this statute explicitly gives foster parents a right to be heard during a proceeding regarding the foster child, neither this statute, nor any other statute, confers on foster parents a right to intervene in a proceeding related to their foster child." (Footnotes omitted; internal quotation marks omitted.) Id.

In the present case, despite the statutory and case law limitations on the right of foster parents to intervene in neglect proceedings, the trial court relied on *In re Ava W.* and its application of § 46b-121 as the basis for its decision to grant Jeanette P.'s motions to intervene. This reliance was misplaced.

In *In re Ava W.*, our Supreme Court concluded that "trial courts have authority pursuant to § 46b-121 (b) (1)[18] to consider motions for posttermination visitation within the context of a termination proceeding and can order such visitation if necessary or appropriate to secure the welfare, protection, proper care and suitable support of the child." (Footnote added.) *In re Ava W.*, supra, 336 Conn. 549. In coming to this conclusion, our Supreme Court stated: "[Section 46b-121 (b) (1)] broadly enables the court to issue any order that it deems not only necessary but also necessary *or* appropriate . . . . The language also enables the court to issue orders directed at a broad range of actors and does not limit the scope of the statute to biological parents; rather, it extends it to any other adult persons owing some legal duty to a child . . . . Although § 46b-121 (b) (1) does not expressly mention orders for posttermination visitation, neither does it expressly pre-

clude that authority. In our view, a broad statutory grant of authority and a lack of limiting language . . . supports [a] conclusion that the Superior Court has the authority to issue . . . an order [granting a parent posttermination visitation]." (Citations omitted; emphasis in original; internal quotation marks omitted.) Id., 572–73.

In determining that there was a lack of language that abrogated a court's authority to issue posttermination visitation orders, our Supreme Court reviewed the related statutory provisions and relevant case law and concluded that there was no "clear intent by the legislature to abrogate the court's authority to issue posttermination visitation orders." Id., 580; see also id., 579–82. Unlike a court's authority to issue posttermination visitation orders, however, its authority to grant a motion to intervene in neglect proceedings is delineated in the General Statutes and rules of practice. As we previously stated, the General Statutes and rules of practice set forth when a motion to intervene must be filed, *who may file it*, and the factors the court should consider in granting it. See General Statutes § 46b-129; Practice Book §§ 35a-4 and 35a-5. If § 46b-121 (b) (1) were interpreted as authorizing a court to grant intervention to any party wholly on the basis of the child's best interests, the other factors set forth in Practice Book § 35a-4 (d) and § 46b-129 that pertain to who may intervene would be rendered meaningless. See, e.g., *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269 Conn. 120, 135, 848 A.2d 451 (2004) ("[s]tatutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant" (internal quotation marks omitted)). Consequently, a court's authority to issue posttermination visitation orders is clearly distinguishable from its authority to grant a foster parent's motion to intervene in a neglect proceeding. Therefore, our Supreme Court's application of § 46b-121 (b) (1), as articulated in *In re Ava W.*, cannot reasonably be extended to the circumstances of the present case.[19]

By improperly allowing Jeanette P. to intervene, the court improperly adjudicated the motion to transfer guardianship. We further conclude that, as a result of Jeanette P.'s improper intervention and the court's adjudication of the motion to transfer guardianship, the court applied an improper standard and evaluated improper factors in its consideration of the respondent's and the petitioner's otherwise unopposed motions to revoke commitment.

In determining whether to grant a motion to revoke commitment, the court should consider whether a cause for commitment still exists as to the respondent before considering whether revocation of commitment is in the best interests of the child. See *In re Marcquan C.*, supra, 212 Conn. App. 573. In the present case, the court altered this legal standard by considering the

motion to transfer guardianship prior to, or at least in conjunction with, the respondent's and the petitioner's motions to revoke commitment.[20] The court evaluated what placement was in Ryan C.'s best interests before, or together with, its analysis of whether a cause for commitment still existed as to the respondent. It also considered improper factors in its consideration of the motions to revoke commitment. The court improperly compared Jeanette P.'s parenting abilities against those of the respondent. For instance, in its articulation, the court stated: "The court is confident that [Jeanette P.] will comply with court orders and commonsense parenting in raising Ryan [C.] and will comply to the best of her abilities to have [him] maintain a relationship with [the respondent]. Based upon the evidence produced in this trial, the court lacks the same confidence in [the respondent]." This discussion highlights the prejudice caused to the respondent as a result of the motion to transfer guardianship being improperly before the court. For the foregoing reasons, the court's consideration of the motions to revoke commitment was improperly tainted by Jeanette P.'s intervention. Accordingly, we remand the case for a new trial on the motions to revoke commitment.

II

On appeal, the respondent and Ryan C. also claim that "the trial court repeatedly refused to allow any testimony or other evidence[21] regarding Madison [C.] . . . on the ground that it was not relevant to any material issues . . . ." Although our conclusion that the court improperly permitted Jeanette P. to intervene is dispositive of this appeal, we address this claim of evidentiary error because it is likely to arise again on remand.[22] See *Weaver* v. *McKnight*, 313 Conn. 393, 397, 97 A.3d 920 (2014) (appellate court will "also review certain evidentiary rulings of the trial court that are likely to arise again on remand").

The court's preclusion of testimony relating to Madison C. after she returned to the respondent's custody can be placed into three general categories: the court precluded testimony relating to (1) Madison C.'s mental health and behavior, (2) the respondent's care of Madison C., and (3) the paternal grandparents' care of Madison C.[23] We review the court's evidentiary ruling pertaining to each category of evidence in turn and conclude that the court improperly precluded evidence pertaining to each of these three categories.[24]

We begin, however, with the relevant legal principles and standard of review. Practice Book § 35a-9 provides in relevant part: "The judicial authority may admit into evidence any testimony relevant and material to the issue of the disposition . . . ." Section 4-1 of the Connecticut Code of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is material to the determination of the

proceeding more probable or less probable than it would be without the evidence."

"Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. . . . Evidence is not rendered inadmissible because it is not conclusive. All that is required is that the evidence tend to support a relevant fact even to a slight degree . . . ." (Internal quotation marks omitted.) *Reville* v. *Reville*, 312 Conn. 428, 461, 93 A.3d 1076 (2014). "[T]he proffering party bears the burden of establishing the relevance of the offered testimony. Unless a proper foundation is established, the evidence is irrelevant." (Internal quotation marks omitted.) *Perez* v. *D & L Tractor Trailer School*, 117 Conn. App. 680, 697, 981 A.2d 497 (2009), cert. denied, 294 Conn. 923, 985 A.2d 1062 (2010).

The court's "evidentiary rulings must be viewed in the context of the proceedings." *In re Natalie J.*, 148 Conn. App. 193, 205, 83 A.3d 1278, cert. denied, 311 Conn. 930, 86 A.3d 1056 (2014). "The trial court has broad discretion in ruling on the admissibility of evidence. The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion . . . ." Id., 209–10.

A

First, we review whether the court's preclusion of testimony regarding Madison C.'s mental health and behavior after returning to the respondent's custody was an abuse of its discretion. We conclude that it was.

The following facts and procedural history are necessary to our resolution of this claim. As previously indicated, Jeanette P. presented testimony from Franklin, a forensic psychologist. On direct examination, Franklin testified to "a concern with regards to Madison [C.] decompensating" after returning to the respondent's custody. On cross-examination of that witness, the following exchange occurred:

"[The Respondent's Counsel]: If there are no major issues with Madison [C.] . . . would that support an issue of reunification of Ryan [C.]?

"[Jeanette P.'s Counsel]: Objection. Assuming facts not in evidence.

"The Court: [Counsel for Jeanette P.]. . . . More specifically, what facts are you indicating are not in evidence?

"[Jeanette P.'s Counsel]: That there are no issues concerning Madison [C.]. I assume—unless the question is asking what he knew as of the time he did his report, but his report is almost—I think the work he saw with Madison [C.] was in December, which was . . . a long,

long time ago.

"[The Respondent's Counsel]: I'm hampered by the fact that I haven't begun to present my case yet, and I fully expect . . . to offer proof that Madison [C.] has been doing very well in the home. So, I can't jump to that and have [this witness] back, I presume. . . .

"The Court: Well, it also has to be put in the proper form as well when one questions an expert. I'm going to sustain the objection. First, it supposes that it would be helpful to me as the trier of fact that the fact that Madison [C.] is in the home is presently relevant as to whether Ryan [C.] should be there or not because that really has not been qualified, should we say, as a ground for me to draw that conclusion. Next question. . . .

"[The Respondent's Counsel]: . . . [D]o you know in relation to . . . the time of your 2021 evaluation how long Madison [C.] had been home?

"[The Witness]: I don't recall. I think it was something like a year.

"[The Respondent's Counsel]: She had been in the family home for a year, you're thinking?

"[The Witness]: No. I'm speculating. I don't recall, but it had been for some period of time. . . .

"[The Respondent's Counsel]: . . . Did you deal with or hear any concerns [regarding Madison C.] in preparing your evaluation for 2021?

"[The Witness]: I—based on [the department's] documentation, yeah. I want some clarity with regards to this because, in the [department's] documentation it indicated that, when I saw her, she was having some behavioral problems, and, later, in subsequent documents for subsequent reports it was noted that she was showing improvement, but nowhere have I been reading, as you've been indicating, that she is like significantly better when my impression is that she still was involved with services because she's not better. Am I mistaken?

"[The Respondent's Counsel]: I'm asking you.

"[The Witness]: Well, is my impression that she's not—

"[Jeanette P.'s Counsel]: I'm going to object. I'm going to object at this time, as I'm unsure of what the question [is] that is before [the witness].

"The Court: [Counsel for the respondent], this is getting a bit far afield because, number one, you haven't established the relevance of Madison [C.] being in the home to the appropriateness of Ryan [C.] being in the home. They are two different children.

"[The Respondent's Counsel]: Well, Your Honor, if we're talking about [the respondent's] work schedule, grandparents not being known to the evaluator as far

as caring for any child in the home, it would seem to me to involve Madison [C.] and the care of Madison [C.] since she's been there, according to [the witness], for about a year. As of that time, I think that's relevant. . . . [T]he . . . biological family has had a child in the home [the witness indicates] for about a year.

"The Court: Yes?

"[Jeanette P.'s Counsel]: Your Honor, I'm just going to object because what [counsel for the respondent] seems to be asking Your Honor to accept is that what work[s] for one child therefore works for another, and I don't know that the foundation has been laid to make any type of automatic conclusions.

"[The Respondent's Counsel]: Well, I'm not asking for an automatic conclusion. . . .

"The Court: I'm sustaining the objection because you haven't laid the foundation.

"[The Respondent's Counsel]: Okay."

The petitioner also called witnesses who testified to having some initial concerns with Madison C.'s mental health and behavior after her return to the respondent's custody. For instance, the supervisor of one of Ryan C.'s social workers testified to the department delaying the intended date of Ryan C.'s reunification with the respondent due to "Madison [C.'s] having a hard time adjusting."

It was established that Ryan C. would be living with Madison C. if the motions to revoke commitment were granted. Furthermore, the court had heard testimony that Madison C.'s mental health and behavior were, at least at one point in time, a barrier to Ryan C.'s reunification with the respondent. Given this evidentiary foundation, testimony relating to Madison C.'s mental health and behavior since returning to the respondent's care were relevant to the motions to revoke commitment. In considering whether it was in Ryan C.'s best interests to return to the respondent's custody and reside in the same home as Madison C., the court was required to use "its broad discretion to choose a place that [would] foster the child's interest in sustained growth, development, well-being, and in the continuity and stability of its environment." (Internal quotation marks omitted.) *In re Cameron C.*, 103 Conn. App. 746, 759, 930 A.2d 826 (2007), cert. denied, 285 Conn. 906, 942 A.2d 414 (2008). Madison C.'s mental health and behavior, including any improvement of her behavior, was relevant to the court's determination of whether revocation of commitment would foster Ryan C.'s sustained growth, development, and well-being. Accordingly, the court abused its discretion in excluding testimony relating to Madison C.'s mental health and behavior after she returned to the respondent's care.

B

We next address whether the court abused its discretion by precluding testimony relating to the respondent's care of Madison C. since she returned to his custody. We conclude that the court's preclusion of this testimony was an abuse of its discretion.

The following facts and procedural history are necessary to our resolution of this claim. The court repeatedly precluded testimony related to the respondent's care of Madison C. since she returned to his custody. For instance, on April 7, 2022, counsel for the respondent called as a witness a department social worker who had worked on Ryan C.'s case. The following exchange occurred:

"[The Respondent's Counsel]: . . . [H]ow many visits did you make over to the [respondent's] house since you've had the case?

"[The Witness]: I had about three since December.

"[The Respondent's Counsel]: Okay. On the occasions when you went inside, what did you see?

"[The Witness]: The home is very clean, organized, very inviting. It seems very homey. I've observed that Madison [C.] . . . has her own room.

"[Jeanette P.'s Counsel]: Objection. Relevance.

"The Court: Ma'am, there's an objection. Once there's an objection, please wait until I rule on it.

"[Jeanette P.'s Counsel]: Specifically, Your Honor, evidence concerning Madison [C.] and relevance to issuance the trier of fact is addressing.

"The Court: [Counsel for the respondent], do you claim the part concerning Madison [C.]?

"[The Respondent's Counsel]: I do, Your Honor. I'm not asking about the condition of Madison [C.], except, I'm asking about the house and what [the witness] saw in the house and whose rooms are which—

"The Court: What relevance does Madison [C.] have to this issue?

"[The Respondent's Counsel]: Simply that she has a room there that [the witness] saw.

"The Court: Objection sustained. Next question."

On May 19, 2022, the trial continued with the parties' cross-examination of the same department social worker:

"[Ryan C.'s Counsel]: Does the department feel [the respondent] is a suitable and worthy caretaker?

"[The Witness]: Yes.

"[Ryan C.'s Counsel]: Is that because he has Madison [C.] in his care?

"[The Witness]: Yes.

“[Jeanette P.’s Counsel]: Objection. Relevance.

“The Court: Sustained. Stricken. . . .

“[Ryan C.’s Counsel]: Why does the department feel that [the respondent] is a suitable and worthy caretaker?

“[The Witness]: He has shown that he has the ability to provide appropriate care for his child, he—

“[Jeanette P.’s Counsel]: Objection. Relevance, because the court, based on the evidence to date, knows that [the respondent] has not cared for Ryan [C.]. He has not been allowed to be unsupervised with Ryan [C.] since 2020. The answer, the basis for the answer, and, I guess, the objection, also foundation, that this is a roundabout way to introduce information concerning other children.

“The Court: Counselor.

“[Ryan C.’s Counsel]: I would argue that this is not eliciting any information about other children. This is about [the respondent’s] ability to care for a child and being a suitable and worthy caretaker, which is, of issue, because we’re talking about revoking commitment. . . .

“The Court: Thank you. Objections sustained, I would invite you, [counsel for Ryan C.] to lay an appropriate foundation to ask this question.

“[Ryan C.’s Counsel]: What are the factors that the department considers when revoking commitment and reunifying a child with their parent?

“[The Witness]: So, we look at many factors, including the parents’ ability to comply with court-ordered specific steps. We also do some [department] assessments as far as what the safety factors are in the home. Whether they are low, high. We also look at how the parent is compliant with the treatment goals at the [department] family case plan.

“I would agree that [the respondent] has definitely shown his ability to comply with court-ordered specific steps. He has engaged and completed successfully all recommended services that entail being ready for reunification. Court-ordered specific steps are typically put in place for a parent to comply with to prepare for reunification. When we do our [department] assessments, we assess for any issues in the home, safety and what the risk levels are, and the parents’ compliance with treatment goals. [The respondent] has been compliant with all of those factors.

“[Ryan C.’s Counsel]: You testified that [the department] assesses the home. Does [it] also assess who’s living in the home?

“[The Witness]: Yes.

"[Ryan C.'s Counsel]: Who's living in [the respondent's] home? If you can remind the court.

"[The Witness]: Paternal grandmother, paternal grandfather, [the respondent], as well as his daughter, Madison [C.].

"[Ryan C.'s Counsel]: How old is Madison [C.]?

"[The Witness]: She is eight.

"[Ryan C.'s Counsel]: Does the department look at safety factors with regard to if there are any children in the home where the child in question is going to be reunifying?

"[The Witness]: Yes.

"[Jeanette P.'s Counsel]: Objection. Relevance. Clearly, this is about Madison [C.].

"[Ryan C.'s Counsel]: Your Honor, it's about the safety factors in the home. It is not specifically about the care of Madison [C.].

"The Court: [Counsel for the petitioner].

"[Jeanette P.'s Counsel]: If the court is receiving the information that the answer has nothing to do with Madison [C.], then so be it, but I believe the question . . . posed as to the foundation was, who lives in the home, last answer Madison [C.], and then it was about safety factors. So, I think it's logical to believe that the witness is answering the next question considering safety factors and Madison [C.].

"The Court: I'll sustain the objection, subject to you laying a foundation . . . that this does not include Madison [C.]. . . .

"[Ryan C.'s Counsel]: So . . . is there a child in [the respondent's] home?

"[The Witness]: Yes.

"[Ryan C.'s Counsel]: How old is that child?

"[The Witness]: Eight.

"[Ryan C.'s Counsel]: Has the department assessed if there were any safety concerns with regard to that child living in [the respondent's] home?

"[Jeanette P.'s Counsel]: Objection. Relevance.

"The Court: Counselor.

"[Ryan C.'s Counsel]: Your Honor, it's relevant because [the respondent] has a child in his home, regardless of who that child is. It is important to the court to know if there are any safety factors with that child, in that home, because we are talking about adding another child to that home.

"The Court: Objections sustained. . . .

"[Ryan C.'s Counsel]: In the past year, have there

been any child protection concerns in [the respondent's] home?

"[The Witness]: No.

"[Jeanette P.'s Counsel]: Objection. Relevance.

"The Court: Sustained. Stricken."

The court concluded that, because Ryan C. and Madison C. are two different children with different needs, the respondent's care of Madison C. was not relevant to the motions to revoke the commitment of Ryan C. In order to render judgment on the motions to revoke commitment, however, the court needed to determine whether a cause for commitment still existed as to the respondent and whether revoking commitment was in Ryan C.'s best interests.

The respondent's care of Madison C., albeit not determinative, is relevant to both determinations. See *Champagne* v. *Champagne*, 85 Conn. App. 872, 881, 859 A.2d 942 (2004) ("[e]vidence is not rendered inadmissible because it is not conclusive" (internal quotation marks omitted)). Because Madison C. had been in the respondent's care and custody since March 24, 2020, evidence relating to the department's assessment of his care of Madison C. was clearly relevant to whether the respondent had successfully addressed any previous parenting deficiencies that were a cause for commitment. Specifically, evidence pertaining to whether the department had any safety concerns relating to the respondent's care of Madison C. and whether he had demonstrated that he was a suitable and worthy guardian through his care of Madison C. was relevant to his current abilities to be a parent and to care for Ryan C. Although we acknowledge that Madison C. and Ryan C. are two different children, and it reasonably follows that the parenting abilities that the respondent may need to care for Madison C. may be different from those he needs to care for Ryan C., these differences between the needs of the children affect the weight of this evidence and not its admissibility. Accordingly, we conclude that testimony relating to the respondent's care of Madison C. was relevant to the motions to revoke commitment and that the court abused its discretion by precluding it.

C

Finally, we consider whether the court abused its discretion by precluding testimony relating to the paternal grandparents' care of Madison C. since she returned to the respondent's custody. We conclude that the court's preclusion of this testimony was also an abuse of its discretion.

The following additional facts and procedural history are necessary to our resolution of this claim. Jeanette P. presented witnesses who testified to the respondent's long work hours and that the paternal grandparents were primarily caring for Madison C. when the respon-

dent was at work.[25] Jeanette P. also called Franklin to testify. He testified to his concerns with the respondent's long work hours and the amount of care he perceived the paternal grandparents to be providing to Madison C. On the basis of these facts, he testified to his inability to recommend that Ryan C. be reunified with the respondent because he would need to assess the paternal grandparents' ability to be appropriate caregivers to Ryan C. The court precluded other testimony, however, related to the paternal grandparents' care of Madison C., including the department's assessment of the quality of care the paternal grandparents have provided to Madison C.

For instance, on May 19, 2022, during the petitioner's cross-examination of a department social worker who had worked on Ryan C.'s case, the following exchange occurred:

"[The Petitioner's Counsel]: Okay. Currently, since you've had the case, have the grandparents been compliant with your request[s] of them?

"[The Witness]: Yes.

"[The Petitioner's Counsel]: Okay. So, when assessing their appropriateness as potential caregivers for Ryan [C.] specifically, do you take into account the changes in their perspective, or the changes in their attitude or presentation from 2017 [to] 2022?

"[The Witness]: Yes.

"[The Petitioner's Counsel]: So, when you say that there are no child protection concerns regarding the grandparents as caretakers. What goes into that assessment for you?

"[The Witness]: There have not been any reports made to [the department] regarding their caregiver role, I would say.

"[Jeanette P.'s Counsel]: Objection.

"The Court: Hold on for a second. Nature of the objection.

"[Jeanette P.'s Counsel]: Caregiver role as to whom, and if it's about Madison [C.], if the answer is sighting Madison [C.], then it's not relevant.

"[The Petitioner's Counsel]: Well, Your Honor, if there had been a Careline report regarding the grandparents as to Madison [C.], I think we would have a little bit of a different point of view from [counsel for Jeanette P.] on its relevance.

"The Court: [Counsel for the petitioner] are you trying to get in through the back door when you can't get in through the front door?

"[The Petitioner's Counsel]: I am not. I'm merely asking if there are any child protection concerns and what's that based on. I'm not asking about Madison's specific

needs in any way.

"The Court: I will allow only what has been responded to, that there have been no reports, and that's as far as it's going. Next question. I will both sustain and overrule the objection in part. Next question."

On the basis of the evidence before the court, we conclude that testimony relating to the paternal grandparents' care of Madison C. since she returned to the respondent's custody was relevant to the motions to revoke commitment. The evidence before the court established that the paternal grandparents aided the respondent by caring for Madison C. while he was at work. It was reasonable to infer from the evidence before the court that a similar arrangement would occur if Ryan C. was returned to the respondent's custody. Therefore, because the paternal grandparents would be living in the home with Ryan C., acting as a support for the respondent, and likely caring for Ryan C. while the respondent was at work, the paternal grandparents' ability to care for a child, as exemplified by their care of Madison C., was relevant to the court in determining whether returning to the respondent's custody was in Ryan C.'s best interests. Furthermore, after Franklin testified that, in his opinion, the paternal grandparents' care of Ryan C. was a barrier to his reunification with the respondent because he had not been able to assess their parenting abilities, other evidence relating to the grandparents' ability to appropriately care for a child was all the more relevant to the motions to revoke commitment. Accordingly, testimony pertaining to the paternal grandparents' care of Madison C. was relevant to the court's evaluation of whether granting the motions to revoke commitment would be in Ryan C.'s best interests.

III

Although no stay of proceedings was in effect during the pendency of this appeal and our decision changes the parties' positions, we also order that the stay of execution that would ordinarily go into effect upon the release date of this opinion pursuant to Practice Book § 71-6[26] is terminated in light of the need to adjudicate a child protection case expeditiously and to achieve permanency and stability for children. See Practice Book § 60-2; see also *In re Amias I.*, 343 Conn. 816, 842, 276 A.3d 955 (2022) (" '[t]ime is of the essence in child custody cases' "). This order is further justified in light of the unique procedural posture of this case in which no appellee has participated in this appeal and because we have concluded that Jeanette P. never should have been made a party to this case.

The judgment is reversed and the case is remanded with direction to deny the motions to intervene and to dismiss Jeannette P.'s motion to transfer guardianship and for a new trial on the motions to revoke commit-

ment.

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.

** July 20, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The minor child, who is represented by counsel, filed a motion to consolidate his appeal (Docket No. AC 46006) with the respondent's appeal (Docket No. AC 45979). The motion was consented to by all parties, and this court granted that motion on January 20, 2023. Subsequently, the respondent father and the minor child filed a joint appellate brief. All references herein to the respondent are to the respondent father.

[2] Jeanette P. has not participated in this appeal and did not file an appellee's brief. On March 31, 2023, this court issued an order, stating: "The intervenor-appellee Jeanette [P.], not having [timely] fil[ed] an appellee's brief on or before March 29, 2023, it is hereby ordered that the appeal shall be considered on the basis of the appellants' brief and the record, as defined by Practice Book § 60-4, only, and oral argument . . . by the appellee will not be permitted."

[3] The petitioner has not appealed from the court's judgment but submitted a letter, stating: "I write to advise the [c]ourt that the [petitioner] takes no position on the appeals filed by the respondent . . . [and] Ryan C. . . . At trial, the [petitioner] asked the court to reunify Ryan [C.] with [the respondent] because [she] believed that [he] had rehabilitated, and that reunification was in Ryan [C.'s] best interest. [The respondent] successfully completed his court-ordered specific steps and already had regained custody and guardianship of one of his other children. Not only was [the respondent] fit to care for Ryan [C.], but Ryan [C.'s] attorney and guardian ad litem supported reunification.

"In its original decision, issued on October 5, 2022, the trial court appeared to err as a matter of law by granting [Jeanette P.'s] motion to transfer guardianship before considering the motions to revoke commitment filed by the respondent father and the [petitioner]. In a custody competition between a biological parent and a foster parent, a court must first decide whether the biological parent is fit to care for their child and whether reunification is in the best interest of the child. See *In re Juvenile Appeal* [(*Anonymous*)], 177 Conn. 648, 662 [420 A.2d 875] (1979) ([i]n any controversy between a parent and a stranger the parent as such should have a strong initial advantage, to be lost only where it is shown that the child's welfare plainly requires custody to be placed in the [stranger] [footnote omitted]); cf. *Claffey* v. *Claffey*, 135 Conn. 374, 377 [64 A.2d 540] (1949). If the court determines the biological parent is unfit or that revoking commitment is not in the best interest of the child, only then may it consider whether transferring guardianship to a third party is in the best interest of the child.

"In its written articulation, issued on December 13, 2022, the trial court clarified that it considered the motions to revoke commitment on the merits, including the respondent['s] . . . fitness to care for Ryan [C.], before ultimately transferring guardianship of Ryan [C.] to [Jeanette P.]. The [petitioner] disagrees with how the trial court weighed the evidence and with its conclusions that cause for commitment continued to exist, revocation was not [in] Ryan [C.'s] best interest, and transferring guardianship was in Ryan [C.'s] best interest. But in light of the record as a whole, including the trial court's articulation, the [petitioner] chose not to appeal. The [petitioner] expresses no opinion about the claims [the respondent] and Ryan [C.] raise on appeal. The [petitioner] continues to support Ryan [C.] being reunified with [the respondent] and intends to continue advocating for reunification in the juvenile court." (Internal quotation marks omitted.)

[4] We do not reach two of the respondent's and Ryan C.'s claims on appeal. First, the respondent and Ryan C. claim that, by allowing Jeanette P. to intervene, the court violated their constitutional rights to due process. Second, they claim that the court's factual findings that Jeanette P. was a suitable and worthy guardian and that a cause for commitment still existed as to the respondent were clearly erroneous. Because we reverse the judgment and remand the case for a new trial only on the motions to revoke commitment, we do not reach these claims.

[5] As we will discuss in part II of this opinion, the evidence the court precluded relating to Madison C. since she returned to the respondent's custody falls into three categories: evidence regarding her mental health and behavior, evidence regarding the respondent's care of her, and evidence regarding the paternal grandparents' care of her.

[6] Andrew C. was not yet born.

[7] Madison C. was removed suddenly from Jeanette P.'s care in March, 2020. Jeanette P. refused to pick her up from school, despite the request of school administrators, and informed the department that she would not continue to foster Madison C. in light of her behavioral issues. Madison C. subsequently was reunified with the respondent.

[8] Patricia K. subsequently appealed from the court's judgments terminating her parental rights as to all three children. This court affirmed the trial court's judgments. See *In re Madison C.*, 201 Conn. App. 184, 196, 241 A.3d 756, cert. denied, 335 Conn. 985, 242 A.3d 480 (2020).

[9] This period of protective supervision expired on January 8, 2021.

[10] The petitioner's motion to revoke commitment was filed on June 25, 2021. On July 28, 2021, Jeanette P. filed a motion to intervene for the purpose of objecting to the petitioner's motion to revoke commitment.

[11] The court granted the petitioner's motion in limine to preclude Jeanette P.'s counsel from presenting evidence at the hearing on the motions to intervene. As a result, the court heard oral argument only on the motions to intervene.

[12] The petitioner, the respondent, counsel for Ryan C., and the guardian ad litem for Ryan C. further argued that, even if Jeanette P.'s intervention was a matter that was properly left to the trial court's discretion, the factors set forth in Practice Book § 35a-4 weighed against her intervention. In particular, the parties opposing the motions to intervene argued that it was not in Ryan C.'s best interests for the court to grant Jeanette P.'s motions to intervene.

[13] *Horton* v. *Meskill*, supra, 187 Conn. 197, sets forth factors similar to those articulated in Practice Book § 35a-4 that the court may consider in granting a party permissive intervention.

[14] Although the court consolidated the hearings on the motions to revoke commitment without formally consolidating the hearings on those motions with the hearing on the motion to transfer guardianship, it is apparent from the record that the parties understood that the court was hearing all three motions together. Moreover, in its October 5, 2022 decision following the evidentiary hearing, the court denied simultaneously the motions to revoke commitment and granted the motion to transfer guardianship.

[15] The respondent and Ryan C. claim on appeal that the court improperly relied on *In re Ava W.*, supra, 336 Conn. 545, as the basis for its decision to grant Jeanette P.'s motions to intervene and that, even if the court had properly considered the legal principles applicable to granting Jeanette P.'s motions to intervene, it improperly granted the motions. We treat this as one claim, which we restate for ease of discussion.

[16] Practice Book § 35a-5 was adopted in June, 2002, to take effect in January, 2003; see Practice Book (2003) § 35a-5; to reflect the legislature's 2001 amendment to § 46b-129, which replaced a foster parent's standing with a right to be heard. See P.A. 01-142, § 8.

[17] Preadoptive parents have a legal status similar to that of foster parents for the purposes of intervention. See *In re Baby Girl B.*, supra, 224 Conn. 276.

[18] General Statutes § 46b-121 (b) (1) provides in relevant part: "In juvenile matters, the Superior Court shall have authority to make and enforce such orders directed to parents, including any person who acknowledges before the court parentage of a child born to parents not married to each other, guardians, custodians or other adult persons owing some legal duty to a child therein, as the court deems necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child subject to the court's jurisdiction or otherwise committed to or in the custody of the Commissioner of Children and Families. . . ."

[19] We also are skeptical that orders issued to a foster parent fall within the language of § 46b-121 (b) (1). The statute applies to "orders directed to parents, including any person who acknowledges before the court parentage of a child born to parents not married to each other, guardians, custodians or other adult persons owing some legal duty to a child therein." General Statutes § 46b-121 (b) (1). A child in foster care is in the legal care and custody of the petitioner. Therefore, it is the petitioner who owes a legal duty to a child in foster care placement, rather than the foster parent. "As the guardian of foster children, the commissioner has the obligation of care

and control, the right to custody and the duty and authority to make major decisions affecting [the] minor's welfare . . . ." (Emphasis omitted; internal quotation marks omitted.) *Hunte* v. *Blumenthal*, supra, 238 Conn. 155.

[20] It is apparent that the court either considered the motion to transfer guardianship before or in conjunction with the motions to revoke commitment. The court consolidated the hearings on the motion to transfer guardianship with the motions to revoke commitment; see footnote 14 of this opinion; but agreed that it would consider the motion to transfer guardianship first because it was filed first. The court then, in its October 5, 2022 decision, found that Jeanette P. was a suitable and worthy guardian and that it was in Ryan C.'s best interests for guardianship to be transferred to her before it summarily denied the motions to revoke commitment without making further findings on whether a cause for commitment still existed or whether revocation was in Ryan C.'s best interests. The court later articulated its findings pertaining to the motions to revoke commitment on December 13, 2022, but the court again found that transferring guardianship to Jeanette P. was in Ryan C.'s best interests prior to explicitly considering the motions to revoke commitment. To the extent that, in its consideration of the motion to transfer guardianship, the court made findings that pertained to whether a cause for commitment still existed as it pertained to the motions to revoke commitment, this demonstrates that, at the very least, it is likely that the court blurred any distinction between its determinations on the motion to transfer guardianship and the motions to revoke commitment.

[21] Although the respondent and Ryan C. in their joint appellate brief state that "the trial court repeatedly refused to allow any testimony or other evidence," the brief refers only to testimony that the court precluded and does not claim that the court improperly excluded exhibits or other evidence related to Madison C. Therefore, we view this claim as solely challenging the court's preclusion of testimony relating to Madison C.

[22] In part I of this opinion, we concluded that the motion to transfer guardianship to Jeanette P. was improperly before the court and that we must remand the case for a new trial on the motions to revoke commitment. Therefore, because we are reviewing this claim as an issue likely to arise on remand, we review the relevancy of the testimony only as it relates to the motions to revoke commitment.

[23] Although we recognize that evidence of this nature also was offered by the petitioner, who did not appeal from the trial court's judgment; see footnote 3 of this opinion; the respondent and Ryan C. also offered evidence of this nature. It is clear from our careful review of the record that they objected to the court's preclusion of these categories of evidence and properly preserved their claim of evidentiary error.

[24] Ordinarily, an appellant has the burden to prove that an evidentiary ruling was an abuse of discretion and that this error was harmful in order to demonstrate reversible error. "Because we address this claim as an issue likely to arise on remand, we need not address whether the court's [ruling] was harmful." *Bialik* v. *Bialik*, 215 Conn. App. 559, 577 n.14, 283 A.3d 1062, cert. denied, 345 Conn. 965, 285 A.3d 390 (2022).

[25] For instance, when Jeanette P. called the respondent to testify, he testified to going into work on weekdays at 5 a.m. or 6 a.m. and returning home at 4 p.m. or 5 p.m. The respondent also worked approximately six overtime hours on the weekends, usually on Saturday morning. The respondent further testified that, while he was at work, the paternal grandparents helped him care for Madison C. and got her ready for school.

[26] Practice Book § 71-6 provides in relevant part: "If no stay of proceedings was in effect during the pendency of the appeal and the decision of the court having appellate jurisdiction would change the position of any party from its position during the pendency of the appeal, all proceedings to enforce or carry out the decision of the court having appellate jurisdiction shall be stayed until the time for filing a motion for reconsideration has expired, and, if a motion is filed, until twenty days after its disposition, and, if it is granted, until the appeal is finally determined."