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IN RE TARIK C.*
(AC 46142)

Alvord, Suarez and Seeley, Js.

Argued May 24—officially released September 29, 2023**

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. The trial court found, pursuant to statute (§ 17a-112 (j) (3) (B) (i)), that the mother had failed to achieve a sufficient degree of personal rehabilitation, considering the age and needs of the child, as would encourage the belief that, within a reasonable time, she could assume a responsible position in her child's life. The mother claimed on appeal, inter alia, that the trial court erroneously failed to rule on her oral motion for a directed verdict that she had raised at the close of the petitioner's case-in-chief, arguing that the trial court should have considered the motion a motion for a judgment of dismissal pursuant to the applicable rule of practice (§ 15-8), rather than a motion for a directed verdict pursuant to the rule of practice (§ 16-37) that permits the judicial authority to reserve decision on such a motion, and that, had the trial court properly considered the motion as a motion for a judgment of dismissal under Practice Book § 15-8, the trial court would have lacked the discretion to have reserved its ruling. *Held*:

1. The trial court did not err when it failed to rule on an oral motion for a directed verdict that counsel for the respondent mother raised at the close of the petitioner's case-in-chief: under the unique circumstances of the present case, because the remarks made by trial counsel for the mother, both initially when the motion was made, and later when the motion was renewed, articulated the motion with sufficient clarity to place the trial court and opposing trial counsel on notice that the mother's counsel was making a motion for a directed verdict, which led the trial court to evaluate the motion under Practice Book § 16-37, the invited error doctrine applied, and the mother could not be heard to complain that the trial court improperly treated the motion as one based on § 16-37, rather than Practice Book § 15-8, and reserved judgment in accordance with its authority under § 16-37; moreover, when the trial court aptly questioned the applicability of a motion for a directed verdict in juvenile matters, but, nevertheless, entertained the motion, the mother's counsel did not object to the trial court's response to the motion; furthermore, in concluding that the invited error doctrine applied, this court was not required to address the mother's related claim that the waiver rule should not apply to this case to bar appellate review of the court's decision to reserve judgment on the motion.
2. The trial court properly found by clear and convincing evidence, on the basis of its factual findings and reasonable inferences drawn therefrom, that the respondent mother failed to achieve a sufficient degree of rehabilitation necessary to have encouraged the belief that, within a reasonable time, considering the age and needs of the child, she could have assumed a responsible position in the child's life; the record demonstrated that the trial court considered all potentially relevant evidence in reaching its conclusion, including the testimony of two licensed psychologists and a family support specialist, as well as their written reports, which were admitted into evidence, that the mother remained vulnerable to psychosocial stressors, her continued use of alcohol socially made her a high risk for relapse of other drugs, that returning the child to the mother would set her up to fail as a parent because she was incapable of managing her child's needs, and that there were continued concerns with the mother's compliance with her prescribed mental health treatment, particularly in taking psychotropic medicine, as well as continued concerns with the mother's suicidal ideations and self-harming behaviors.

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of Tolland, Juvenile Matters at Rockville, and tried to the court, *Westbrook, J.*; judgment terminating the respondent mother's parental rights, from which the respondent mother appealed to this court. *Affirmed.*

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

Thadius L. Bochain, 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

SUAREZ, J. The respondent mother, Elizabeth C., appeals from the judgment of the trial court, rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights with respect to her minor child, Tarik C. (Tarik).[1] On appeal, the respondent claims that the court erred (1) when it failed to rule on an oral motion for a directed verdict that she raised at the close of the petitioner's case-in-chief, and (2) in concluding that she failed to rehabilitate.[2] We affirm the judgment of the court.

The following facts, as found by the court or otherwise undisputed, and procedural history are relevant to our resolution of the respondent's claims on appeal. Tarik, who was born in January, 2017, is the respondent's third child. "None of her children are in her care. [The respondent] was previously involved with the Florida [Department of Children and Families] because of intimate partner violence, substance use, suicidal ideation, and unaddressed mental health issues. [The respondent's] first child, born in January, 2008, was removed from her care due to unaddressed psychiatric conditions, substance use, and intimate partner violence. [The respondent's] parental rights to that child were terminated in January of 2009. [The respondent's] second child, born in May, 2012, has remained in the care of his father in Florida since [the respondent] left Florida in November, 2012.

"The [Connecticut Department of Children and Families (department)] became involved soon after Tarik's birth [in Connecticut] after a referral from the hospital reporting that [the respondent] gave birth to Tarik at thirty-five weeks due to a placenta abruption and that Tarik's meconium tested positive for marijuana. It was also noted that [the respondent] tested positive for marijuana on December 16, 2016, but was negative on January 4 and 8, 2017. The department received another referral on January 12, 2017, from an anonymous caller reporting that [the respondent] had a child protection history in the state of Florida. The department opened an investigation and discovered [the respondent's] extensive past child protection history in Florida. The department also learned of [the respondent's] previous diagnoses of bipolar disorder and schizoaffective behaviors. In response, [the respondent] reported that, once she moved to Connecticut, she no longer had these mental health issues and she ceased taking psychiatric medication.

"On January 27, 2017, the department requested an order of temporary custody [and filed a petition for neglect] due to [the respondent's] substance use, unaddressed mental health issues, lack of stable housing and her inability to care for the child. At the time of the original petition, the respondent father was not actively

involved in the legal case but he was involved in Tarik's life. At the time, the father had no plan for the care of Tarik." On February 3, 2017, the court, *Westbrook*, *J.*, sustained the order of temporary custody. On May 4, 2017, Tarik was adjudicated neglected and committed to the care and custody of the petitioner. On August 8, 2018, the court returned Tarik to the respondent's care under a six month order of protective supervision.

While Tarik was in the care of the respondent, her mental health deteriorated. "In September, 2018, [she] was charged with possession of a controlled substance. [She] refused to submit to urine screens as the court ordered in the [court's] specific steps. In October of 2018, [the respondent] informed the department that she had not paid rent since May of 2018, and that she was about to be evicted. [She] also disclosed that she did not know how to handle some of Tarik's behaviors. [The respondent] was referred for services to address each of the concerns she raised. In November, 2018, [she] told a department social worker that she had a plan to commit suicide. [The respondent] indicated that she would commit suicide similar to her own mother by taking an overdose of prescription medication. [She] was again referred to services to address her mental health concerns. Later in November, 2018, [she] again made suicidal statements during a session with a mental health provider . . . . Further, [the respondent] expressed that, in addition to killing herself, she also wanted to throw Tarik out of the window."

On November 26, 2018, the petitioner invoked a ninety-six hour administrative hold over Tarik. Two days later, the petitioner filed, and the court subsequently granted, a second request for an order of temporary custody. In its order, the court found that Tarik was in immediate physical danger from his surroundings, ordered that he be placed in the temporary care and custody of the petitioner, and issued new specific steps for the respondent. In an addendum to the specific steps, the court indicated that the respondent was to "[a]ddress mental health needs in individual counseling in order to maintain emotional stability and be a stable resource for Tarik." On January 31, 2019, Tarik was again committed to the care and custody of the petitioner.

"In November of 2019, [the respondent] moved out of the apartment the department assisted her with and . . . into a three bedroom home in Manchester owned by [Tarik's] father. [Tarik's] [f]ather indicated that he believed the neighborhood [the respondent had been] . . . living in was dangerous. . . . [The respondent] paid [Tarik's] father rent and [he] paid for [her] groceries and half of her bills. In January of 2020, [the respondent] informed the department that [Tarik's] father's wife recently became aware that [he] was having a sexual relationship with [the respondent] and that

[Tarik] was born as a result of the affair. [The respondent] also informed the department that she was so upset about this that she began cutting herself again. [The respondent] was referred to a new service near her new home to address her mental health needs. At this point, the department determined that Tarik had been in [its] care for over three years; Tarik had no permanency, and reunification with [the respondent] was not foreseeable."

On August 26, 2020, the petitioner filed a petition for the termination of the respondent's parental rights as to Tarik. The petition alleged that, pursuant to General Statutes § 17a-112 (j) (3) (B) (i), the respondent had failed to rehabilitate. On October 6, 2021, a trial commenced and continued on November 8, 2021, January 3 and 24, May 4 and 23, and September 28, 2022. Numerous exhibits were entered into the record and eighteen witnesses, including several experts, testified.

The trial concluded on September 28, 2022, and, on November 8, 2022, the court issued a memorandum of decision in which it terminated the parental rights of the respondent. In its memorandum of decision, the court found, by clear and convincing evidence, that Tarik previously had been adjudicated neglected, that the department had provided reasonable efforts to locate the respondent and reunify her with Tarik, that the respondent failed to rehabilitate, and that it was in the best interests of Tarik to terminate the respondent's parental rights.[3]

In its memorandum of decision, the court noted that, "[d]espite [the respondent's] economic and housing stability, the court's concerns are the stability of [her] mental health. [The respondent] has a long history of mental health issues that have led to three children being removed from her care. Tarik was reunified with [the respondent] on one occasion. [The respondent's] ruminating thoughts of harming her children are also concerning. The court-ordered psychological evaluator, Dr. Derek Franklin, raised similar concerns about [the respondent's] ability to parent Tarik long-term." The court found by clear and convincing evidence that the respondent was referred to three different services for individual counseling to address her mental health concerns. Despite the respondent's participation in these services, the court found that the respondent "has not addressed her mental health needs to maintain emotional stability as a resource for Tarik. [The respondent's] therapist reports that [the respondent] has a new diagnosis of anxiety disorder. In addition, Dr. Franklin opined in his psychological evaluation that [the respondent] continues to display symptoms of a mood disorder and anxiety, and that returning Tarik to [her] care would likely be a stressor." The court concluded that, "having considered all of the evidence and statutory considerations, and having found by clear and convincing evi-

dence that grounds exist for the termination of parent rights as to the respondent . . . the court further finds by clear and convincing evidence upon all the facts and circumstances presented that it is in the child's best interest to terminate the parental rights of the respondent . . . ." This appeal followed. Additional facts and procedural history will be provided as necessary.

I

The respondent first claims that the court erred when it failed to rule on an oral motion for a directed verdict that she raised at the close of the petitioner's case-in-chief. We disagree.

The following additional facts are relevant to this claim. On January 3, 2022, after the petitioner rested her case-in-chief, counsel for the respondent made an oral motion asking the court to deny the petition, but counsel did not specify the rule of practice, if any, on which he relied when raising the motion. The respondent's counsel argued: "I believe that with all of the evidence that has been put on with all the witnesses that have been called, I don't believe that the state has made their case, has put enough evidence to be able to sustain the grounds that they brought this termination under." In response, counsel for the petitioner argued that the motion was legally and factually inappropriate. Referring to *Curran* v. *Kroll*, 118 Conn. App. 401, 407, 984 A.2d 763, aff'd, 303 Conn. 845, 37 A.3d 700 (2012), the petitioner's counsel argued: "*Directed verdicts* are not favored. A trial court should only direct a verdict if a fact finder, a jury, cannot reasonably and legally reach any other conclusion."[4] (Emphasis added.) After listening to the arguments concerning the respondent's motion, the court reserved ruling on the motion, and neither party objected to that course of action.

On May 4, 2022, prior to presenting evidence, counsel for the respondent renewed the motion, which he now characterized as a motion for a directed verdict. Counsel for the respondent argued that "at the conclusion of the state's case, I had made a motion—an oral motion for a *directed verdict* based on the fact that I did not believe that [the petitioner] met [her] burden of proof to satisfy the granting of the [petition to terminate her parental rights]. I renew my motion at this point. I think . . . nothing has come to light to support their case." (Emphasis added.) Counsel for the petitioner renewed his objection to the motion. In considering the motion, the court asked the parties if they had "ever seen a directed verdict . . . in a [termination of parental rights case]." Counsel for the petitioner indicated that he had, and he stated that the standard "would basically be that . . . no judge would ever find that there would be grounds . . . to terminate, even based on construing all the evidence [in the light] most favorable to the [petitioner]." The court agreed with the petitioner's counsel but did not rule on the motion and indicated

that, "I think we're going to have to finish the trial." Neither party objected to this ruling.

In her appellate brief, the respondent acknowledges that a motion for a directed verdict is not procedurally proper in the context of a trial on a petition to terminate parental rights. The respondent argues, however, that, although "trial counsel appeared to be making a motion for directed verdict akin to a motion contemplated by Practice Book § 16-37,[5] it should have been deemed, as argued [subsequently], as a motion for . . . [judgment] of dismissal pursuant to Practice Book § 15-8."[6] Viewing the motion as a motion for a judgment of dismissal, rather than a motion for a directed verdict, the respondent argues that the court lacked the discretion to have reserved ruling on the motion. She argues that, "had the trial court recognized the motion as one that was more properly presented as a motion to dismiss for failure to make out a prima facie case, it would have been prohibited from reserving judgment because a motion for judgment of dismissal must be made by the defendant and decided by the court after the plaintiff has rested his case, but before the defendant presents evidence. *Cormier* v. *Fugere*, 185 Conn. 1, 2, [440 A.2d 820] (1981)."

Furthermore, the respondent seeks to avoid the application of the waiver rule, which applies following the denial of, or the functional equivalent of the denial of, a motion for a directed verdict.[7] By operation of the waiver rule, the respondent would be precluded from challenging on appeal the court's failure to grant her motion for a directed verdict. The respondent argues that the waiver rule is inapplicable in the present case because the court lacked the discretion to reserve the right to rule on a motion to dismiss under Practice Book § 15-8.

Beyond relying on the waiver rule, the petitioner argues that the present claim is unpreserved, and constitutes an improper ambush of the trial court, because the respondent claims, for the first time on appeal, that the court should have recognized that the motion, framed as a motion for a directed verdict, in fact sought a judgment of dismissal pursuant to Practice Book § 15-8. As the petitioner correctly asserts, at trial, the respondent's counsel explicitly referred to the motion at issue that was raised at the conclusion of the petitioner's case-in-chief as "an oral motion for a directed verdict." The petitioner also argues that "[the respondent's trial counsel] did not argue at trial that it was procedurally improper for the court to reserve judgment on his motion; rather, after moving for a directed verdict on January 3, [2022], he agreed to put on his case-in-chief and called several witnesses to testify on behalf of his client. [The respondent's counsel's] failure to argue distinctly that it was procedurally improper for the court to defer ruling on his motion, coupled with his decision

to put on a case-in-chief, failed to alert the court to the precise claim of procedural error raised on appeal and deprived the court of the ability to correct the claimed error while there was time to fix it." In arguing that the present claim constitutes an "ambush" of the trial court, the petitioner asserts that, "[r]egardless of whether a motion for directed verdict was procedurally proper, that was the sole claim that [the respondent's counsel] made [at the time of trial]."

The petitioner's reviewability argument goes beyond the simple issue of whether the respondent properly preserved the present claim for appellate review and has invoked the application of the invited error doctrine.[8] We conclude that, under the unique circumstances of the present case, the respondent cannot be heard to complain that the court improperly treated the motion as one based on Practice Book § 16-37, and then reserved judgment in accordance with its authority under that rule of practice, because the court plainly did so based on the representations of the respondent's trial counsel.

"Absent some indication to the contrary, a court is entitled to rely on counsel's representations on behalf of his or her client." (Internal quotation marks omitted.) *State* v. *Hall*, 303 Conn. 527, 536, 35 A.3d 237 (2012). "This court routinely has held that it will not afford review of claims of error when they have been induced. [T]he term induced error, or invited error, has been defined as [a]n error that a party cannot complain of on appeal because the party, through conduct, encouraged or prompted the trial court to make the erroneous ruling. . . . It is well established that a party who induces an error cannot be heard to later complain about that error. . . . This principle bars appellate review of induced nonconstitutional and induced constitutional error. . . . The invited error doctrine rests on the principles of fairness, both to the trial court and to the opposing party." (Internal quotation marks omitted.) *Snowdon* v. *Grillo*, 114 Conn. App. 131, 139, 968 A.2d 984 (2009).

Even though the present action was tried to the court and not to a jury, the remarks made by counsel for the respondent, both initially when the motion was made and later when the motion was renewed, articulated the motion with sufficient clarity to place the court and opposing counsel on notice that the respondent's counsel was making a motion for a directed verdict.[9] The record leads us to conclude that the respondent's counsel's representations led the court to evaluate the motion under Practice Book § 16-37. The court aptly questioned the applicability of a motion for a directed verdict in juvenile matters but, nevertheless, entertained the motion.[10] Relying on the arguments of the respondent's counsel that were raised at the time of trial, the court, treated the motion as one seeking a

directed verdict and exercised its discretion to reserve judgment on the motion, as permitted under § 16-37. The respondent's counsel did not object to the court's response to the motion. In light of the foregoing, we conclude that it would be unfair to permit the respondent to challenge the court's decision to reserve judgment on the motion for a directed verdict. Having reached the conclusion that the invited error doctrine applies, we need not address the respondent's related claim that the waiver rule should not apply in this case to bar appellate review of the court's decision to reserve judgment on the motion.

II

The respondent next claims that the court erred in concluding that she failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i). Specifically, she argues that the evidence on which the court based its decision was not sufficient to support a finding, by clear and convincing evidence, that she failed to rehabilitate. We are not persuaded.

We begin by setting forth the following relevant legal principles and standard of review that govern the resolution of this claim. "A hearing on a termination of parental rights petition consists of two phases, adjudication and disposition. . . . In the adjudicatory phase, the court must determine whether the [petitioner] has proven, by clear and convincing evidence, a proper ground for termination of parental rights. . . . In the dispositional phase, once a ground for termination has been proven, the court must determine whether termination is in the best interest of the child. . . .

"Although the trial court's subordinate factual findings are reviewable only for clear error, the court's ultimate conclusion that a ground for termination of parental rights has been proven presents a question of evidentiary sufficiency. . . . That conclusion is drawn from both the court's factual findings and its weighing of the facts in considering whether the statutory ground has been satisfied. . . . On review, we must determine 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. . . .

"In the adjudicatory phase of a termination of parental rights proceeding, the court must determine whether one of the six statutory grounds that may serve as a basis for the termination of parental rights exists. . . . Failure of a parent to achieve sufficient personal rehabilitation is one of six statutory grounds on which a court may terminate parental rights pursuant to § 17a-112. . . . That ground exists when a parent of a child

whom the court has found to be neglected fails to achieve such a degree of rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, the parent could assume a responsible position in the life of that child. . . .

"Personal rehabilitation as used in [§ 17a-112 (j) (3) (B) (i)] refers to the restoration of a parent to his or her former constructive and useful role as a parent. . . . The statute does not require [a parent] to prove precisely when [she] will be able to assume a responsible position in [her] child's life. Nor does it require [her] to prove that [she] will be able to assume full responsibility for [her] child, unaided by available support systems. . . . Rather, [§ 17a-112] requires the trial court to analyze the [parent's] rehabilitative status as it relates to the needs of the particular child, and further, that such rehabilitation must be foreseeable within a reasonable time. . . . [The statute] requires the court to find, by clear and convincing evidence, that the level of rehabilitation [the parent] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [she] can assume a responsible position in [her] child's life. . . . [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*. . . .

"Section 17a-112 (j) (3) (B) allows for the termination of parental rights due to a respondent's failure to achieve personal rehabilitation only after the respondent has been issued specific steps to facilitate rehabilitation. Specific steps provide notice . . . to a parent as to what should be done to facilitate reunification and prevent termination of rights. . . . The specific steps are a benchmark by which the court will measure the respondent's conduct to determine whether termination is appropriate pursuant to § 17a-112 (j) (3) (B). . . . We acknowledge that the court need not base its determination purely on the respondent's compliance with the specific steps . . . . A parent may complete all of the specific steps and still be found to have failed to rehabilitate . . . . Conversely, a parent could fall somewhat short in completing the ordered steps, but still be found to have achieved sufficient progress so as to preclude a termination of his or her rights based on a failure to rehabilitate." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Marie J.*, 219 Conn. App. 792, 805–808, 296 A.3d 308 (2023). "[T]he relevant date for considering whether [a respondent] failed to rehabilitate is the date on which the termination of parental rights petition was filed . . . . Although a court *may* rely on events occurring after the date of the filing of the petition to terminate parental rights 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 . . . *it is not required to do so*." (Emphasis in original; internal quotation marks omitted.) *In re Nevaeh G.-M.*, 217 Conn. App. 854, 880, 290 A.3d 867, cert. denied, 346 Conn. 925, 295 A.3d 418 (2023). We emphasize that, on review, we must determine "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]." (Emphasis in original.) *In re Anaishaly C.*, 190 Conn. App. 667, 687, 213 A.3d 12, cert. denied, 345 Conn. 914, 283 A.3d 505 (2019).

In its memorandum of decision, the court stated that it considered all of the evidence introduced at trial in reaching its conclusion. On the basis of our careful review of the record, construed in the light most favorable to sustaining the judgment, as we are obligated to do, we conclude that there is sufficient evidence to support the court's conclusion.

In the present case, the court heard testimony from Franklin, a licensed clinical psychologist who performed three separate court-ordered psychological evaluations. Franklin conducted the first psychological evaluation of the respondent on June 18, 2019 (June 18, 2019 evaluation), which resulted in a written report that was admitted into evidence. In the June 18, 2019 evaluation, Franklin diagnosed the respondent with "[d]epressive disorder, with anxious features"; posttraumatic stress disorder; and "[a]lcohol [u]se [d]isorder, provisional." Franklin opined that "[t]here is no evidence of suicidal ideations at this time. However, [the respondent] does poorly with stress and should be monitored closely. This is important as historically, poor response to psychosocial stressors have resulted in impulsive behaviors and statements." Franklin articulated that the respondent's current diagnosis required that she continue with psychotropic medications. According to Franklin, "[t]his is important because mood stabilizing medications allow her [to] manage the physiological and neurotransmitter components of her depression, ameliorat[e] negative cognitive ideations and impulsive behaviors."

Franklin conducted a second evaluation of the respondent on February 16, 2021 (February 16, 2021 evaluation), which resulted in a written report that also was admitted into evidence. In the February 16, 2021 evaluation, Franklin noted that, although the respondent has shown improvement, "there continues to be evidence of mood dysregulation and anxiety." He noted that "[h]er clinical profile reflects ongoing cognitive ruminations, low self-esteem, and poor concentration. She continues to experience emotional distress . . . [and] to be vulnerable . . . . [The department] reports that she recently started engaging in self-injurious behaviors due to [Tarik's father's wife] becoming aware

of her relationship with [Tarik's father]." (Internal quotation marks omitted.)

In Franklin's third evaluation of the respondent, which he conducted on August 18, 2021 (August 18, 2021 evaluation), and resulted in a written report that was admitted into evidence, he stated that the respondent demonstrated improvement in her mood. He opined, however, that she may still do poorly with external stressors. In the August 18, 2021 evaluation, he diagnosed her with generalized anxiety disorder. He noted that the "current diagnosis represents clinical improvement, likely due [t]o her ongoing therapy and in particular her compliance with psychotropics." Franklin continued to be concerned that [the respondent] may be vulnerable to psychosocial stressors. In the August 18, 2021 evaluation, Franklin concluded that, although the respondent had made progress toward reunification, "full rehabilitation may not have been achieved as she continues to drink alcohol socially, making her a high risk for relapse of other drugs, and she has terminated use of mood stabilizers." In the August 18, 2021 evaluation. Franklin's opinion was that, "as of this report . . . reunification is unlikely to occur in the foreseeable future."

In addition to the written evaluations conducted by Franklin, the court heard testimony from him. Franklin testified that, in his first evaluation of the respondent in 2019, he confirmed that the respondent had issues with depressive disorder and post-traumatic stress disorder. He further testified that her diagnosis required treatment with psychotropic medications. Franklin testified that if the respondent was sufficiently engaged in therapy and was taking psychotropic medication, there was a possibility of beginning the reunification process with Tarik at that time. He further testified that, during his second evaluation of the respondent, there were some concerns raised regarding the respondent's suicidal ideation and self-mutilating behavior, and that she had stopped taking her medications because she felt that she did not need them. According to Franklin, his concerns during the second evaluation of the respondent were that her issues had not been sufficiently addressed that, because Tarik had been engaging in tantrums, biting, and fighting other people, the respondent could not manage Tarik's behaviors at that time. He testified that, in his opinion, the respondent does poorly with psychosocial stressors and that Tarik's out-of-control behaviors would "push her over the edge." In Franklin's opinion, to send Tarik back to the respondent with his unresolved issues would set the respondent up to fail because she is incapable of managing Tarik's behaviors.

The court further heard testimony from Dr. Jessica Biren Caverly, a licensed psychologist who had performed an evaluation of the respondent at her request.

Biren Caverly prepared a written report dated December 17, 2021, which was admitted as an exhibit at trial. In her report, Biren Caverly acknowledged that the respondent "has been engag[ed] in mental health treatment and [that] she is taking her prescribed medication as indicated." However, Biren Caverly opined that the respondent "continues to require mental health treatment and medication management." Biren Caverly recommended that the respondent "continue to engage in mental health and medication management service in order to learn more about parenting strategies and handling interpersonal deficits, as well as to demonstrate stability on her current medication." Ultimately, Biren Caverly recommended that, "[o]nce [the respondent] completed parenting education to the satisfaction of her provider, [the department] should pursue reunification between [her] and Tarik."

The court also heard testimony from Molly Glynn, a family support specialist employed by The Village for Families & Children, who performed a reunification readiness assessment and prepared a written report (reunion readiness report), which was introduced as a full exhibit.[11] The reunion readiness report, which is dated May 19, 2022, indicated that the original safety issues that resulted in Tarik's placement had not been "altered or reduced to a sufficient level whereby control within the family is probable." According to the reunion readiness report, the respondent was not taking her prescribed medications at the time. In that report, Glynn indicated that the respondent reported to her that "she was spiraling and needed support that no one was giving her." In the reunion readiness report, Glynn concluded that, "[a]t this time reunification is not being recommended between [the respondent] and her son . . . due to concerns regarding [the respondent's] compliance with her prescribed mental health treatment, thus preventing the reduction of original safety concerns and reason of removal."

In addition, the court heard evidence that, on May 4, 2022, the respondent was transported by emergency personnel to the emergency department at Manchester Memorial Hospital (hospital) with suicidal ideations. According to a final report prepared by the hospital, which was admitted into evidence, the respondent's therapist called "911 for assistance following a telephone contact with [the respondent] where she had made suicidal statements with a plan to overdose. On the scene she repeated her [earlier statements suggesting suicidal ideations]; she was transported without incident to the [emergency department]." It was noted in the final report that the respondent appeared at the emergency department as uncooperative and hostile. The report described her as a patient who "quickly escalates her tone and behavior; she has been banging on the wall at several junctures and insisting that she will elope and is not going to be held against 'her fucking

will.' She refuses to answer questions regarding her overall situation and mental status; while insisting that she is not a risk to herself and only needs to 'talk to my therapist' she is unable to give a reliable safety promise at this time. Her insight and judgment are poor." She was admitted to the hospital after an emergency psychiatric services assessment.

Viewed in the light most favorable to sustaining the judgment, the evidence sufficiently supports the court's conclusion that there was clear and convincing evidence that the respondent failed to achieve a sufficient degree of rehabilitation necessary to encourage a belief that now, or within a reasonable time, she could assume a responsible position in Tarik's life.

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.

** September 29, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] In the same proceeding, the petitioner also sought to terminate the respondent father's parental rights; however, the court did not grant that petition. The respondent father is not participating in this appeal. All references in this opinion to the respondent are to the mother only.

[2] The attorney for the minor child filed a statement in accordance with Practice Book § 67-13 adopting the brief filed by the petitioner and asking the court to affirm the judgment of the court.

[3] The respondent challenges only the court's finding that she failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i). She does not challenge the court's findings that the department made reasonable efforts to reunify her with Tarik or that the termination of her parental rights was in the best interests of Tarik.

[4] *Curran* involved a medical malpractice action that was tried to a jury in which the trial court granted the defendant's motion for a directed verdict, concluding that there was no evidence presented by the plaintiff in her case-in-chief that the defendant breached the standard of care in treating the plaintiff. *Curran* v. *Kroll*, supra, 118 Conn. App. 406. This court in *Curran* reversed the trial court's judgment. Id., 403. In setting forth the standard for appellate review of a directed verdict, this court explained that "[d]irected verdicts are not favored. . . . A trial court should direct a verdict only when a jury could not reasonably and legally have reached any other conclusions. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a verdict rendered for the other party." (Internal quotation marks omitted.) Id., 407.

[5] Chapter 16 of the Practice Book, titled "Jury Trials," is in the portion of the Practice Book devoted to "Procedure in Civil Matters." Practice Book § 16-37 provides: "Whenever a motion for a directed verdict made at any time after the close of the plaintiff's case-in-chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to so do and to the same extent as if the motion had not been made. After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict; or if a verdict was not returned such party may move for judgment in accordance with his or her motion for a directed verdict within the aforesaid time after the jury has been discharged from consideration of the case. If a verdict was returned, the judicial authority may allow the judgment to stand or may set the verdict aside and either order a new trial or direct the entry of

judgment as if the requested verdict had been directed. If no verdict was returned, the judicial authority may direct the entry of judgment as if the requested verdict had been directed or may order a new trial."

"The trial court . . . [under Practice Book § 16-37] may grant the motion, deny the motion, *or reserve decision on the motion*." (Emphasis in original.) *Riley* v. *Travelers Home & Marine Ins. Co.*, 333 Conn. 60, 72, 214 A.2d 345 (2019). "Practice Book § 16-37 treats the trial court's election to reserve decision as the equivalent of a denial of the motion for purposes of subsequent proceedings, which is why the rule states that the case is deemed to have been submitted to the jury subject to a later determination of the legal questions raised by the motion if, for any reason, the motion is not granted . . . . In the event that the jury thereafter returns a verdict for the plaintiff, the rule provides what steps the unsuccessful defendant may take to renew any legal claims previously raised in its motion for a directed verdict: After the acceptance of a verdict and within the time stated in Section 16-35 for filing a motion to set a verdict aside, a party who has moved for a directed verdict may move to have the verdict and any judgment rendered thereon set aside and have judgment rendered in accordance with his or her motion for a directed verdict . . . ." (Citation omitted; internal quotation marks omitted.) Id., 72–73.

[6] Chapter 15 of the Practice Book, titled "Trials in General; Argument by Counsel," is in the portion of the Practice Book devoted to "Procedure in Civil Matters." Practice Book § 15-8 provides: "If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial authority may grant such motion if the plaintiff has failed to make out a prima facie case. The defendant may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made."

"The standard for determining whether the plaintiff has made out a prima facie case, under Practice Book § 15-8, is whether the plaintiff put forth sufficient evidence that, *if believed*, would establish a prima facie case, not whether the trier of fact believes it. . . . For the court to grant the motion [for a judgment of dismissal pursuant to § 15-8], it must be of the opinion that the plaintiff has failed to make out a prima facie case. In testing the sufficiency of the evidence, the court compares the evidence with the allegations of the complaint. . . . In order to establish a prima facie case, the proponent must submit evidence which, if credited, is sufficient to establish the fact or facts which it is adduced to prove. . . . [T]he evidence offered by the plaintiff is to be taken as true and interpreted in the light most favorable to [the plaintiff], and every reasonable inference is to be drawn in [the plaintiff's] favor. . . . Whether the plaintiff has established a prima facie case is a question of law, over which our review is plenary." (Emphasis in original; internal quotation marks omitted.) *In re Natalie J.*, 148 Conn. App. 193, 204, 83 A.3d 1278, cert. denied, 311 Conn. 930, 86 A.3d 1056 (2014). "[A] motion for judgment of dismissal must be made by the defendant *and decided by the court* after the plaintiff has rested his case, but before the defendant produces evidence." (Emphasis in original; internal quotation marks omitted.) *Moutinho* v. *500 North Avenue, LLC*, 191 Conn. App. 608, 619, 216 A.3d 667, cert. denied, 333 Conn. 928, 218 A.3d 68 (2019).

[7] Under the waiver rule, "when a trial court denies a defendant's motion for a directed verdict at the close of the plaintiff's case, the defendant, by opting to introduce evidence in his or her own behalf, waives the right to appeal the trial court's ruling. . . . The rationale for this rule is that, by introducing evidence, the defendant undertakes a risk that the testimony of defense witnesses will fill an evidentiary gap in the [plaintiff's] case." (Citations omitted; internal quotation marks omitted.) *In re James L.*, 55 Conn. App. 336, 340, 738 A.2d 749, cert. denied, 252 Conn. 907, 743 A.2d 618 (1999). Here, the petitioner argues that the trial court's decision to reserve judgment on the motion was the functional equivalent of a denial of that motion. Moreover, the petitioner argues that, in light of the fact that the respondent presented evidence following the court's decision to reserve judgment on the motion for a directed verdict, the waiver rule applies to preclude the respondent from challenging the court's ruling on the motion in the present appeal.

[8] "It is well settled that [o]ur case law and rules of practice generally limit [an appellate] court's review to issues that are distinctly raised at trial. . . . [O]nly in [the] most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court. . . . The reason for the rule is obvious: to permit

a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party." (Internal quotation marks omitted.) *In re Sequoia G.*, 205 Conn. App. 222, 235, 256 A.3d 195, cert. denied, 338 Conn. 904, 258 A.3d 675 (2021).

[9] As we have explained, the record reflects that, initially, when making the oral motion, counsel for the respondent did not specify what motion he was bringing or the rule of practice on which he relied. Counsel for the petitioner did, however, characterize the respondent's motion as a directed verdict motion, a characterization to which the respondent did not object at trial. Furthermore, when renewing the motion, the respondent's counsel unequivocally stated that the motion was a directed verdict motion.

[10] Practice Book § 1-1, which outlines the scope of our rules of practice, provides in relevant part that "(a) [t]he rules for the Superior Court govern the practice and procedure in the Superior Court in all civil and family actions whether cognizable as cases at law, in equity or otherwise, in all criminal proceedings and in all proceedings on juvenile matters. . . ." The rules of practice and procedure that specifically govern juvenile matters are codified in Chapters 26 through 35a of the Practice Book. Practice Book § 34a-1 (b) provides in relevant part: "The provisions of . . . [§] 15-8 . . . of the rules of practice shall apply to juvenile matters . . . ." As our courts have recognized, a respondent in a proceeding to terminate parental rights properly may challenge whether the petitioner has established a prima facie case by means of a motion to dismiss brought pursuant to Practice Book § 15-8. See also *In re Devon W.*, 124 Conn. App. 631, 639–41, 6 A.3d 100 (2010) (rejecting claim that trial court improperly denied motion brought pursuant to Practice Book § 15-8 to dismiss petitions for termination of parental rights of respondent parents on ground that petitioner failed to produce sufficient evidence to establish prima facie case); see also *In re Nasia B.*, 98 Conn. App. 319, 324–27, 908 A.2d 1090 (2006) (agreeing with petitioner's claim that trial court improperly granted motion brought pursuant to Practice Book § 15-8 to dismiss petition to terminate parental rights of respondent parents on ground that petitioner had failed to establish prima facie case).

[11] The intake for the reunion readiness assessment evaluation occurred on March 23, 2022. The evaluation concluded on May 11, 2022.