IN RE JASON R. ET AL.*
(SC 18847)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.**

*Argued May 15—officially released September 10, 2012****

Erich H. Gaston, with whom was *Alison P. Gaston*, for the appellant (respondent mother).

Gregory T. D'Auria, solicitor general, with whom were *Susan T. Pearlman*, assistant attorney general, and, on the brief, *George Jepsen*, attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

Opinion

EVELEIGH, J. This certified appeal[1] arises from the termination of the parental rights of the respondent mother to her two minor children, Jason R. and Fernando R. (children).[2] The respondent appeals, following our grant of her petition for certification, from the judgment of the Appellate Court affirming the judgments of the trial court, rendered in favor of the petitioner, the commissioner of children and families, terminating her parental rights to the children.[3] *In re Jason R.*, 129 Conn. App. 746, 748, 23 A.3d 18 (2011). On appeal, the respondent asserts that the Appellate Court incorrectly concluded that the trial court did not improperly shift the burden of proof on the issue of personal rehabilitation to the respondent. We disagree, and, accordingly, affirm the judgment of the Appellate Court.

The opinion of the Appellate Court sets forth the following facts and procedural history. "The respondent was born in Hartford in 1989. The respondent's mother had a history of substance abuse, and the respondent was raised by her grandmother. The [involvement of the department of children and families (department)] with the respondent began when she was a teenager. At that time, the respondent had mental health and behavioral problems.

"Fernando and Jason were born less than one year apart in 2006 and 2007, respectively.[4] On December 13, 2007, the petitioner filed with the court neglect petitions and motions seeking ex parte orders of temporary custody of the children. These motions were denied by the court. On January 25, 2008, believing that the children were in imminent risk of physical harm from their surroundings and that immediate removal from such surroundings was necessary to ensure their safety, pursuant to General Statutes § 17a-101g, the department removed the children from the respondent, and they have been in the petitioner's custody since that date. On January 28, 2008, the petitioner again filed motions seeking ex parte orders of temporary custody of the children, and those motions were granted by the court. On February 1, 2008, the court sustained the orders of temporary custody. On April 8, 2008, the respondent entered a plea of nolo contendere to the neglect allegations concerning each of the children, the court adjudicated each child neglected pursuant to General Statutes § 46b-120 (9) (B) and (C), and the court committed each child to the care, custody and guardianship of the [petitioner] pursuant to General Statutes § 46b-129 (j). The children were placed together in a preadoptive foster home, and the children's foster mother has expressed a willingness to allow the respondent to have a relationship with the children if she is able to adopt them. The children have strong bonds with both the respondent and their foster parents.

"Both prior to and after the removal of the children from the respondent's custody, the department provided the respondent with services dealing with her mental health, substance abuse, parenting education and housing issues and needs. A series of department social workers worked with the respondent to reunite the family. Additionally, after the children were removed from her care and custody, the department provided visitation services to the respondent in a variety of venues with varying degrees of supervision.

"In addition to direct services, the department offered the respondent support and services from other agencies. From August 12 until December 30, 2008, the respondent received individual counseling at Catholic Charities. The focus of the counseling was on stabilizing the respondent and 'creating a home environment that would allow reunification.' This service was discontinued because the respondent 'continued to show no consistent progress. She continued exhibiting signs of being extremely overwhelmed when faced with simple requests regarding working toward reunification. . . . She poorly demonstrates her ability to take initiative in making decisions for herself or for her family on her own. She expressed that she had a low tolerance level for stress and anger. She does show that she cares for her children; however, she seemed to lack the understanding of the importance of proving that she was able to maintain the family on her own without assistance.' . . . Catholic Charities recommended that the respondent 'address her mental health issues and receive assistance obtaining medical insurance so she can be able to receive individual therapy.' . . . The respondent also was prescribed medication, but she often did not take it. She stated she did not need the medication or that she could not obtain it because of insurance problems.

"In October, 2008, the respondent participated in a court-ordered evaluation by Logan L. Green, an expert in forensic and clinical psychology. Green reported that the respondent had achieved a wide range of scores on various performance criteria. The respondent's verbal IQ was 77, which ranked at the sixth percentile and is classified as 'borderline.' The respondent's performance IQ was 103, which ranked at the fifty-eighth percentile and is classified as 'normal functioning.' Green concluded that '[a] verbal-performance difference of this size is suggestive of learning disabilities, poor academic achievement, poor reading ability, and at times left hemisphere or diffuse brain damage.' Green also noted that the respondent's 'exceptional guardedness and extremely idealized self-presentation prevents interpretation of her capacity for bonding. Therefore, the extent to which she is capable of offering relatively consistent parental love could not be determined.' Green diagnosed the respondent with anxiety disorder

with compulsive defenses, dysthymic disorder and obsessive-compulsive disorder. Green recommended that the respondent be evaluated to determine whether she had attention deficit hyperactivity disorder . . . and that she receive psychological treatment with appropriate medication therapy, academic and vocational training, reliable support from family and practical training to plan and monitor solutions to everyday problems. Green also recommended a parenting education program called Parent/Child Interactive Therapy (parenting program) in which the respondent would be observed interacting with her children through a one-way mirror while being directed by the observer through the use of an earpiece. Green, however, was not sure if the parenting program would be an available option and stated that 'parenting training that allows for feedback immediately after the interaction session . . . would certainly be acceptable.'

"Following Green's evaluation and report, the department recommended to the respondent that she attend the intensive outpatient program at the Rushford Center, where she began receiving services in February, 2009.[5] The respondent was discharged from this program in March, 2009, because of poor attendance. She returned to the Rushford Center in April, 2009, where she participated in the program. She completed the program satisfactorily and was referred to the 'women seeking safety trauma group.'

"The department then asked that the Rushford Center prepare another intake evaluation on May 14, 2009, because of the respondent's acknowledged use of marijuana. The respondent was tested for marijuana on twenty occasions between October 3, 2008, and December 15, 2009. Five of those test results were positive and fifteen were negative. The respondent acknowledged that she had begun using marijuana when she was twelve years old and that she continues to use it.

"The respondent also attended sessions at Family Matters, a center for child visitation and clinical parenting consultation, from April 9 to May 28, 2009. Family Matters provided supervised visitation with a parent education and feedback component. Family Matters also recommended that the department follow steps 'to assure a safe and positive transition for [the children] to [the respondent's] home' and noted the respondent's 'significant progress.'

"Approximately sixteen months after the children were placed in the custody of the petitioner, on June 8, 2009, the petitioner filed petitions to terminate the parental rights of the respondent and the father as to [the children]. Pursuant to General Statutes § 17a-112 (j), the petitioner alleged that the department had made reasonable efforts to reunify each of the children with the respondent, termination was in the best interest of each of the children and, pursuant to § 17a-112 (j) (3)

(B), the children previously were adjudicated neglected in a prior proceeding and that the respondent had failed to achieve a degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the age and needs of each of the children, the respondent could assume a responsible position in their lives.

"After the petitioner filed the termination of parental rights petitions, the department continued to provide services to the respondent. From August 7 to November 7, 2009, the respondent received services at Community Residences, Inc., a family reunification and preservation program supported by the department. Community Residences, Inc., provided the respondent with supervised visitation, parent education and feedback. Community Residences, Inc., continued to work with the respondent through February, 2010. Its final evaluation and recommendation described the respondent's 'moderate improvements' in utilizing parenting techniques. The respondent indicated that she felt 'badly about providing consequences for inappropriate behaviors' by her children because she believed the purpose of the visits was to 'provide a fun and enjoyable experience for her children.' The respondent believed that the children displayed inappropriate behavior because her authority was undermined by the presence of the social worker giving her directions. The social worker transitioned visits from the community to the department offices when the children's behavior became 'unsafe or unmanageable . . . .' Community Residences, Inc., found that the children's behavior was easier to manage in a controlled environment and that it was significantly more appropriate while in the care of the foster mother. Community Residences, Inc., also noted that the respondent 'clearly loves her children and appropriately shows them affection during visits . . . .'

"The record also reveals the following. On some occasions, the respondent chose not to participate in programs to which she was referred by the department. For individual counseling, the department referred the respondent to Community Health Center . . . but she did not follow up . . . . The respondent eventually attended Community Health Center for mental health treatment, but missed her initial intake appointment in July, 2009, and did not complete the intake until August, 2009. The respondent missed several of her scheduled sessions at Community Health Center. The department also referred the respondent to domestic violence programs. She was referred to Chrysalis for a support group that she never attended and to Catholic Charities for a support group that she attended briefly.

"The respondent's housing situation varied throughout the progress of this case. In January, 2008, the respondent was being evicted from her apartment. The department located a shelter for the respondent and

her children, but, after a couple of days, the respondent refused to stay there with the children. Following the children's removal from her on January 28, 2008, the respondent became transient and stayed with friends. The department thereafter referred the respondent to the Supportive Housing Program. During the summer of 2008, the department paid a security deposit so the respondent could obtain an apartment. The respondent was unable to maintain this apartment and was evicted in January, 2009, for nonpayment of rent. The respondent then secured a one bedroom apartment through supportive housing. The hearing on the termination of parental rights petitions took place on March 8 and 10, 2010, approximately twenty-five months after the children were removed from the respondent and placed in foster care. On July 8, 2010, the court, *Baldwin*, *J.*, issued a memorandum of decision granting the petitions. The court found that the department 'has made reasonable efforts to reunite [the respondent and the children], including engagement of rehabilitation services that enhanced [the respondent's] caregiving skills.' The court stated that '[a]s of the date of trial [the respondent] had not made significant progress to persuade the court by clear and convincing evidence that she had met the objectives identified by . . . Green as important for reunification.' The court found that '[t]he record and exhibits also establish that [the respondent] continued to use marijuana through 2009 and into 2010. That fact continues to generate concern that [the respondent's] cognitive deficits and continued self-medication raise serious doubts about her ability to care for her two boys.' However, the respondent 'worked to be reunited with her two boys beginning the day that [the department] invoked the ninety-six hour hold. Her relationship with [the department] has been clumsy at times, and she has resented having to meet the requirements of the reunification plan. But she actively participated in most of the required services in a constructive way. She cooperated with her psychological evaluation and testing, she acknowledged her weaknesses, and she has demonstrated that she is willing to continue to work with [the department] toward reunification.'

"In the dispositional finding required pursuant to § 17a-112 (k) (1),[6] the court stated that the respondent did 'not [establish] to the court's satisfaction that she is prepared educationally or emotionally to assume the primary care role of caring for [the children].' In the dispositional finding required pursuant to § 17a-112 (k) (3) . . . the court found that the respondent 'has not fully complied with substance abuse orders of the court. Her compliance with some court orders has been difficult for her because she is cognitively compromised. She has been faithful to her visitation opportunities and has been reasonably compliant with services offered to her. However, she has not always been able to sustain

her commitment to services that challenge her cognitive abilities.' In the dispositional finding required pursuant to § 17a-112 (k) (7) . . . the court further stated that the respondent has 'taken full advantage of every opportunity to build and sustain a relationship with her children and has been successful in that effort. [The respondent] and [the children] would be well served by continuing contact with each other after the permanency decisions have been implemented.'[7]

"On August 16, 2010, pursuant to Practice Book §§ 11-11, 34a-1 (b) and 63-1, the respondent filed a motion for reconsideration, reargument and/or articulation, arguing, inter alia, that the court's statement that " '[the respondent] had not made significant progress to persuade the court by clear and convincing evidence that she had met the objectives identified by . . . Green as important for reunification' " indicates that the court improperly shifted the burden of proof on the issue of personal rehabilitation to the respondent. After oral argument on September 3, 2010, the court, on September 24, 2010, issued a written decision that denied the relief sought on reargument and reconsideration. In the decision, the court agreed with the respondent that some of the language of the memorandum of decision 'suggest[ed] a shifting of the burden of proof to [the respondent].' The court stated, however, that its 'intention was to conclude that [the respondent] had an obligation to meet the requirements of her specific steps in order to be reunited with her two sons. Those steps included the following requirements: 1. Submit to substance abuse assessment and follow recommendations regarding treatment, including in-patient treatment if necessary, aftercare and relapse prevention; 2. Submit to random drug testing—time and method of the testing shall be at the discretion of [the department]; 3. Cooperate with recommended service providers . . . substance abuse assessment/treatment; 4. Cooperate with recommended court-ordered evaluations or testing; and 5. Not engage in substance abuse. The record demonstrates her repeated resistance to full cooperation with offered [department] services to a successful conclusion. The court concluded that [the department] had proved by clear and convincing evidence that, over the period of commitment, [the respondent] had not addressed successfully her mental health issues, her substance abuse issues, her housing needs, and her ability to set limits on [the] children's behavior.' " (Citations omitted.) *In re Jason R.*, supra, 129 Conn. App. 748–57.

Thereafter, the respondent appealed from the judgments of the trial court to the Appellate Court. In connection with her appeal to the Appellate Court, the respondent filed a second motion for articulation. In response, the trial court issued a further articulation, dated December 28, 2010, in which it stated that the memorandum of decision "read in its entirety clearly

articulates that the court's conclusion that [the department] provided [the respondent] with the opportunity and services necessary to address the issues upon which the original commitment was based, and [that the respondent] failed to take full advantage of those services or rehabilitate to a degree that reunification was appropriate."

On appeal to the Appellate Court, the respondent asserted, inter alia, that the trial court improperly shifted the burden of proof to her on the issue of personal rehabilitation and improperly departed from the reasoning contained within its original memorandum of decision in its subsequent articulations. *In re Jason R.*, supra, 129 Conn. App. 748–57, 757. A majority of the Appellate Court rejected the first of these two claims, concluding that "[e]ven if the court may have used unclear phraseology, we are not persuaded that the language employed evinces an improper shifting of the burden of proof to the respondent on the adjudicatory ground of personal rehabilitation."[8] Id., 759. The Appellate Court majority further concluded that, "reviewing the court's decision in its entirety, it is evident that the court required the petitioner to prove [its] case by the clear and convincing evidence standard of proof." Id. The majority also rejected the respondent's claim that the trial court's articulations were an improper revision of its memorandum of decision, concluding that "[t]he articulations served to further clarify that the court had employed the correct standard." Id., 764. This appeal followed.

On appeal to this court, the respondent asserts that the Appellate Court incorrectly concluded that the trial court did not improperly shift the burden of proof. Specifically, the respondent asserts that the trial court improperly required the respondent to prove by clear and convincing evidence that she had made progress on personal rehabilitation. Furthermore, the respondent claims that the Appellate Court improperly relied on the articulations issued by the trial court because the trial court improperly used those articulations to change the reasoning or basis of its initial decision. In response, the petitioner asserts that the Appellate Court correctly concluded that the trial court did not place the burden of proof on the respondent on the issue of personal rehabilitation. Specifically, the petitioner claims that the trial court's decision, taken as a whole, demonstrates that the trial court required the petitioner to prove by clear and convincing evidence that the children had been found to have been neglected in a prior proceeding and that the respondent had failed to achieve a degree of personal rehabilitation as would encourage the belief that, within a reasonable time, she could assume a responsible position in the children's lives. Furthermore, the petitioner asserts that the Appellate Court properly relied on the trial court's two articulations to clarify any ambiguities in the decision.[9] We

agree with the petitioner.

We begin by setting forth the standard of review applicable to the respondent's claim. "The question of whether a trial court has held a party to a less exacting standard of proof than the law requires is a legal one. . . . Accordingly, our review is plenary." (Citation omitted.) *Kaczynski* v. *Kaczynski*, 294 Conn. 121, 126, 981 A.2d 1068 (2009). "Similarly, plenary review applies to a question of misallocation of a burden of proof. See *New Haven* v. *State Board of Education*, 228 Conn. 699, 714–20, 638 A.2d 589 (1994) (applying plenary review to challenge to allocation of burden of proof between parties in administrative appeal); *Zabaneh* v. *Dan Beard Associates, LLC*, 105 Conn. App. 134, 140, 937 A.2d 706 (applying plenary review to plaintiff's claim that 'the [trial] court improperly required that it, rather than the defendant, bear the burden of proof regarding the existence of permission'), cert. denied, 286 Conn. 916, 945 A.2d 979 (2008); *Wieselman* v. *Hoeniger*, 103 Conn. App. 591, 596–97, 930 A.2d 768 (applying plenary review to claim 'that although the court applied the clear and convincing standard of proof required to establish a fraudulent transfer, it did so to the wrong party'), cert. denied, 284 Conn. 930, 934 A.2d 245 (2007)." *Braffman* v. *Bank of America Corp.*, 297 Conn. 501, 516, 998 A.2d 1169 (2010). Furthermore, "if it is not otherwise clear from the record that an improper standard was applied, the appellant's claim will fail on the basis of inadequate support in the record." *Kaczynski* v. *Kaczynski*, supra, 131.

In support of her claim that the Appellate Court incorrectly concluded that the trial court did not improperly shift the burden of proof to the respondent, the respondent relies on two sentences in the trial court's memorandum of decision. First, the respondent relies on this statement from the trial court's findings: "As of the date of trial [the respondent] had not made significant progress to persuade the court by clear and convincing evidence that she had met the objectives identified by . . . Green as important for reunification." The respondent also relies on the following statement from the "required findings" portion of trial court's memorandum of decision: "Although [the respondent] has worked hard to take advantage of those services and has completed some of them, she has not established to the court's satisfaction that she is prepared educationally or emotionally to assume the primary care role of caring for her children."

In examining the respondent's claim in the present case, however, we are mindful that "an opinion must be read as a whole, without particular portions read in isolation, to discern the parameters of its holding." *Fisher* v. *Big Y Foods, Inc.*, 298 Conn. 414, 424–25, 3 A.3d 919 (2010). Furthermore, "[w]e read an ambiguous trial court record so as to support, rather than contra-

dict, its judgment." (Internal quotation marks omitted.) *Matza* v. *Matza*, 226 Conn. 166, 187, 627 A.2d 414 (1993).

Reading the trial court's memorandum of decision in the present case as a whole, we conclude that it is clear that the trial court applied the proper burden of proof. First, the trial court explained at the beginning of the opinion that, "[i]n order to prevail on its allegations with respect to termination of [the respondent's] rights, the [petitioner] must prove by clear and convincing evidence that . . . [w]ith respect to [the respondent] . . . '[the children have] been found to have been neglected in a prior proceeding and . . . [the respondent has] failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the children, [the respondent] could assume a responsible position in the life of the children' . . . ." Second, the trial court further stated, "[i]n summary, [the department] has made reasonable efforts to reunite [the respondent] and [the] children including engagement of rehabilitation services that enhanced [the respondent's] care giving skills. The record and exhibits also establish that [the respondent] continued to use marijuana through 2009 and into 2010. That fact continues to generate concern that [the respondent's] cognitive deficits and continued self-medication raise serious doubts about her ability to care for [the children]." Third, the trial court indicated that "[t]he [petitioner] offered testimony from [department] social workers, a [department] case aide and . . . Green. . . . [The respondent] offered no rebuttal to the court at trial." Fourth, the trial court further noted that "throughout the period of commitment up to the date that [the department] filed the pending permanency plan with the court for approval, [the respondent] had not made sufficient progress with her court-ordered specific steps to be reunited with [the] children." Fifth, the trial court stated that, "[i]n light of all the evidence, the court has concluded that after [the] children had been in [the department's] custody and their foster home from January 28, 2008, to the hearing in early March, 2010, [the respondent] cannot meet the difficult challenges quickly enough."

Based on the foregoing, we conclude that the trial court's memorandum of decision, when read as a whole, does not improperly shift the burden of proving rehabilitation onto the respondent. Instead, the trial court appropriately required the petitioner to prove by clear and convincing evidence that the respondent had failed to achieve sufficient personal rehabilitation such that termination of her parental rights was in the best interests of the children.

Indeed, the trial court's ultimate conclusion on this issue further demonstrates that it did not improperly shift the burden of proof to the respondent. Specifically,

the trial court found that "[the petitioner] has proven by clear and convincing evidence that [the] children have been found to have been neglected in a prior proceeding and [the respondent] has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the children, she could assume a responsible position in [the] children's lives." We therefore conclude that the trial court properly required the petitioner to bear the burden of proof and only commented on the respondent's failure to demonstrate that she achieved personal rehabilitation after concluding that the petitioner had proven its case by clear and convincing evidence. See *Leonard* v. *Commissioner of Revenue Services*, 264 Conn. 286, 303 n.9, 823 A.2d 1184 (2003) ("We note, however, that, in reaching its ultimate conclusion, the trial court first relied on the credibility of testimony by the plaintiff's witnesses, and then rejected the defendant's evidence. We therefore conclude that the court properly rejected the defendant's evidence only after it first concluded that the plaintiff had demonstrated that the deficiency was improper.").

Moreover, to the extent that there is any ambiguity in the trial court's memorandum of decision, that court's subsequent articulations sufficiently clarified its ruling. "It is well established that [a]n articulation is appropriate where the trial court's decision contains some ambiguity or deficiency reasonably susceptible of clarification. . . . [P]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision, thereby sharpening the issues on appeal." (Internal quotation marks omitted.) *Priest* v. *Edmonds*, 295 Conn. 132, 140, 989 A.2d 588 (2010). This court has emphasized the importance of an articulation when the issue on appeal involves which standard of proof or burden of proof the trial court applied. In *Kaczynski* v. *Kaczynski*, supra, 294 Conn. 130–31, this court concluded as follows: "When a trial court in a civil matter requiring proof by clear and convincing evidence fails to state what standard of proof it has applied, a reviewing court will presume that the correct standard was used. If a party, following the rendering of the trial court's judgment, believes that the trial court potentially utilized the less stringent standard of preponderance of the evidence, that party has the burden of seeking an articulation if the decision is unclear; see Practice Book § 66-5; or reargument if impropriety is apparent; see Practice Book § 11-12; thus giving that court the opportunity to clarify the standard used or to correct the impropriety and thereby avoiding an unnecessary appeal. If, instead, the party forgoes articulation or reargument and instead chooses to raise the issue for the first time on appeal, the reviewing court will not presume error from silence as to the standard used. Consequently, if it is not otherwise clear

from the record that an improper standard was applied, the appellant's claim will fail on the basis of inadequate support in the record."

In the present case, the trial court articulated its decision on two separate occasions and each of these articulations further supports our conclusion that the trial court did not improperly shift the burden of proof to the respondent. In its first articulation, the trial court stated: "The record demonstrates [the respondent's] repeated resistance to full cooperation with offered [department] services to a successful conclusion. The court concluded that [the petitioner] had proved by clear and convincing evidence that, over the period of commitment, [the respondent] had not addressed successfully her mental health issues, her substance abuse issues, her housing needs, and her ability to set limits on [the] children's behavior." In its second articulation, the trial court stated that "the [original] decision read in its entirety clearly articulates that the court's conclusion that [the department] provided [the respondent] with the opportunity and services necessary to address the issues upon which the original commitment was based, and [the respondent] failed to take full advantage of those services or rehabilitate to a degree that reunification was appropriate. The court's decision, taken as a whole, finds that [the department] made reasonable efforts to reunite [the respondent] and the children and that termination of her parental rights was in [the] children's best interest[s]." We conclude that the foregoing articulations clarify any ambiguity in the trial court's original memorandum of decision and establish that the trial court did not improperly shift the burden of proof to the respondent.[10]

The respondent asserts that we should not rely on the articulations by the trial court because they are improper attempts by the trial court to revise its decision. We disagree. In *Kaczynski* v. *Kaczynski*, supra, 294 Conn. 131, this court recently stated that when it is unclear what standard of proof a trial court has applied in a civil matter, a reviewing court will presume the correct standard was used and, if a party believes that the improper standard was used, "that party has the burden of seeking an articulation if the decision is unclear . . . or reargument if impropriety is apparent . . . *thus giving that court the opportunity* to clarify the standard used or *to correct the impropriety* and thereby avoiding an unnecessary appeal." (Citations omitted; emphasis added.) Accordingly, we conclude that the Appellate Court properly relied on the articulations in the present case and that those articulations further clarified that the trial court did not improperly shift the burden of proof to the respondent.

It is also important to note that the trial court's order terminating the parental rights of the respondent clearly indicates the following: "The court finds clear and con-

vincing evidence of the following ground(s) for termination of parental rights . . . [t]he child/youth has been found in a prior proceeding to have been neglected or uncared for and the [respondent has] . . . failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child/youth . . . [she] could assume a responsible position in the life of the child/youth . . . . The court finds clear and convincing evidence that termination of parental rights is in the best interest of the child/youth." The language of this order further demonstrates that the trial court applied the appropriate burden of proof in the present case.

The respondent also asserts that the Appellate Court improperly relied on *Walshon* v. *Walshon*, 42 Conn. App. 651, 681 A.2d 376 (1996), in concluding that the articulations clarified the trial court's allocation of the burden of proof. *Walshon* involved a defendant's postjudgment motion to modify a custody order. Id., 652. After a hearing, the plaintiff filed a motion to dismiss, which the trial court granted. Id., 653. The defendant sought an articulation from the court in order to clarify the legal standard employed in its decision. Id. In its subsequent articulation, the trial court stated that, taking all the evidence produced by the defendant as true, that court could not find a material change of circumstances to justify modification of the custody order. Id. On appeal, the defendant claimed that the trial court had changed his ruling in the articulation and improperly assessed the credibility of the witnesses and weighed the evidence. Id. The Appellate Court in *Walshon* concluded that, taking the original decision as a whole, the decision did not apply the wrong legal standard and the articulations clarified, but did not contradict, the original decision. Id., 656. The respondent claims that *Walshon* is distinguishable from the present case because it involved a matter less drastic than the termination of parental rights. We disagree. The Appellate Court properly relied on *Walshon* for its discussion of whether a trial court changed its initial decision in its articulation and that reliance did not depend on the underlying nature of the decision.

The respondent also relies on the Appellate Court's decision *In re Zamora S.*, 123 Conn. App. 103, 998 A.2d 1279 (2010). *In re Zamora S.* involved a claim that the trial court had improperly required the department to prove a subordinate fact by clear and convincing evidence. Id., 111. In *In re Zamora S.*, the trial court had used the language "[n]o clear and convincing evidence has been presented to the court" in its memorandum of decision. Id. The Appellate Court reversed the judgment of the trial court, concluding that the subordinate fact was not determinative of the case and that, therefore, the trial court improperly required the petitioner to prove that fact by clear and convincing evidence. Id., 113–14. The Appellate Court further concluded that

"any subordinate facts that, together, led the court to the conclusion that those elements have been met need not be proven by that heightened standard of proof." Id., 114. We disagree that *In re Zamora S.* is applicable to the present case. First, *In re Zamora S.* did not involve a claim that the trial court improperly shifted the burden of proof to a parent. Second, unlike the present case, in *In re Zamora S.* it was clear that the trial court imposed a higher standard of proof with regard to the subordinate facts. In the present case, there is at best some ambiguity in two sentences of the trial court's memorandum of decision regarding its allocation of the burden of proof. The ambiguity created by these statements is clarified, however, by reading the trial court's decision as a whole and by that court's subsequent articulations. Accordingly, we are not persuaded that *In re Zamora S.* is applicable to the present case.

We conclude that the Appellate Court correctly determined that the memorandum of decision, read as a whole, as well as the two articulations in the present case, demonstrate that the trial court did not improperly shift the burden of proof to the respondent.

The judgment of the Appellate Court is affirmed.

In this opinion ROGERS, C. J., and NORCOTT, PALMER, HARPER and VERTEFEUILLE, Js., concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79-3, 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 Appellate Court.

** This case was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille. Although Justice Norcott was not present when the case was argued before the court, he read the record, briefs and transcript of oral argument prior to participating in this decision.

*** September 10, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] We granted the respondent mother's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly determine that the trial court, in this termination of parental rights case, did not shift to the [respondent] mother the burden of proof on the issue of personal rehabilitation?" *In re Jason R.*, 302 Conn. 924, 924–25, 28 A.3d 339 (2011).

[2] We note that although the trial court also rendered judgments terminating the parental rights of the respondent father, these judgments are not challenged in the present appeal. We therefore refer to the respondent mother as the respondent.

[3] "The respondent has another child, J, to whom she gave birth in May, 2005. The respondent was unable to care for J, and the respondent's grandmother became J's legal guardian. The respondent still maintains a relationship with J, who is not a party to these proceedings." *In re Jason R.*, supra, 129 Conn. App. 748 n.2.

[4] "The respondent was fifteen years old when J was born . . . sixteen years old when Fernando was born and seventeen years old when Jason was born." (Citation omitted.) *In re Jason R.*, supra, 129 Conn. App. 748 n.3; see footnote 3 of this opinion.

[5] "The Rushford Center previously had provided mental health services to the respondent after a declaration that she would commit suicide if the children were taken by the department. The respondent claims that the statement was an exaggeration designed to persuade the department not to take the children." *In re Jason R.*, supra, 129 Conn. App. 751 n.4.

[6] General Statutes § 17a-112 (k) provides in relevant part: "Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent . . . (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order . . . and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

[7] "As set forth in the court's memorandum of decision, the 'permanency decisions' referred to by the court were termination of the respondent's parental rights and adoption of the children. '[C]ontinued contact' by a biological parent after termination of parental rights is sometimes referred to as 'open adoption.' See *In re Samantha S.*, 300 Conn. 586, 587, 15 A.3d 1062 (2011)." *In re Jason R.*, supra, 129 Conn. App. 756–57 n.7.

[8] Judge Robinson authored a dissenting opinion in which he concluded that "the trial court improperly shifted the burden of proof on the issue of personal rehabilitation to the respondent . . . ." *In re Jason R.*, supra, 129 Conn. App. 774.

[9] The petitioner also asserts that, even if the trial court improperly shifted the burden of proof to the respondent, such an error was harmless. Because we conclude that the Appellate Court correctly determined that the trial court did not improperly shift the burden of proof to the respondent, we do not address this claim.

[10] We agree with the dissent that "a parent's desire to maintain family unity is an interest far more precious than any property right . . . ." (Citation omitted; internal quotation marks omitted.) Indeed, that is the very reason that, as the trial court repeatedly pointed out, "[i]n order to prevail on its allegations with respect to termination of [the respondent's] rights, the [petitioner] must prove by clear and convincing evidence that . . . [the respondent has] failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the children, [the respondent] could assume a responsible position in the life of the children . . . ." Taking the trial court's memorandum of decision and the articulations as a whole, we conclude that the trial court properly employed this exacting standard.