IN RE AZAREON Y. ET AL.*
(SC 19087)

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

*Argued May 16—officially released July 30, 2013***

James P. Sexton, assigned counsel, for the appellant (respondent mother).

Michael Besso, assistant attorney general, with whom were *Susan T. Pearlman*, assistant attorney general,

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

Robert J. Moore, for the minor children.

David J. McGuire, *Thomas J. Donlon* and *Jamie M. Landry* filed a brief for the American Civil Liberties Union Foundation of Connecticut as amicus curiae.

Joshua Michtom and *Sarah Healy Eagan* filed a brief for the office of the chief public defender et al. as amici curiae.

Opinion

McDONALD, J. The respondent mother, Shayna Y. (respondent),[1] appealed from the trial court's judgments granting petitions to terminate her parental rights with respect to her minor son and daughter filed by the petitioner, the Commissioner of Children and Families, pursuant to General Statutes § 17a-112.[2] Before the Appellate Court, the respondent sought review under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), of a claim that she previously had not advanced—namely, that the trial court's application of § 17a-112 to her was unconstitutional because substantive due process required the trial court to find by clear and convincing evidence that termination of her parental rights was the least restrictive means necessary to ensure the state's compelling interest in protecting the children's safety and well-being (best interests), and no such finding was made. The Appellate Court concluded that it could not reach the merits of that claim due to an evidentiary lacuna. *In re Azareon Y.*, 139 Conn. App. 457, 463, 60 A.3d 742 (2012). We granted the respondent's petition for certification to appeal to this court to consider: (1) whether the Appellate Court properly determined that her unpreserved constitutional claim was unreviewable because the record was inadequate; and (2) if that determination was improper, whether the trial court's application of § 17a-112 to the respondent violated her substantive due process rights. *In re Azareon Y.*, 308 Conn. 925, 64 A.3d 329 (2013). We agree with the Appellate Court's determination as to the inadequacy of the record, and, therefore, we do not reach the second certified question. Accordingly, we affirm the judgment of the Appellate Court.

The opinion of the Appellate Court recites the following facts found by the trial court by clear and convincing evidence in its oral decision, none of which is in dispute. "When the respondent, who was born in 1989, was a young child, she was removed from her own mother's care and placed in the custody of her maternal aunt. The respondent did not do well in school and, at the age of ten and one-half years old, was referred to Riverview Hospital. She has been diagnosed with attention deficit hyperactivity disorder, anxiety and depression. . . . [T]he respondent is transient and unemployed and has mental health and domestic violence issues. She exhibits poor parenting skills, a failure to perceive safety issues and poor judgment.[3] The respondent has received a variety of services from Hartford Behavioral Health, Village for Children and Family and Klingberg Family Services, but either has not completed the programs offered or was not able to benefit from them. [Medication will not help the respondent's memory and judgment problems.]

"The respondent gave birth to her son in 2008 and to her daughter in 2009. A social worker from the depart-

ment of children and families [department] removed the children from the respondent's home in November, 2010, pursuant to a ninety-six hour hold. The petitioner . . . filed a motion for an order of temporary custody on November 12, 2010. On May 10, 2011, the court, *Dyer*, *J.*, adjudicated the children neglected and ordered specific steps for the respondent. [The petitioner thereafter filed permanency plans seeking termination of the respondent's parental rights and adoption, which the trial court, *Frazzini*, *J.*, approved on September 20, 2011. That same day] the petitioner filed petitions to terminate the respondent's parental rights with respect to her son and her daughter. Since October 13, 2011, the children have resided with the respondent's maternal aunt, a licensed foster parent, who has presented herself as an adoptive resource. [The trial court, *Cofield*, *J.*] granted the petitions to terminate the respondent's parental rights with respect to her minor son and daughter on May 18, 2012, after finding that termination was in the best interests of the children. The court found that the children were in need of a secure and permanent environment." (Footnotes altered.) *In re Azareon Y.*, supra, 139 Conn. App. 459–60.

The record reveals the following additional undisputed facts and procedural history. Although the respondent had contended during proceedings in the trial court on the petitions for termination that she should be given the opportunity to rehabilitate and reunify with her children, before the Appellate Court the respondent "concede[d] that 'her cognitive limitations preclude reunification with her children as a viable means of providing a stable environment for them going forward.' " Id., 460. Nonetheless, she claimed that § 17a-112, as applied to her, violated her substantive due process rights under the federal constitution, or alternatively under the state constitution, because the trial court should have been required to find by clear and convincing evidence that the permanency plan ordered was the least restrictive means necessary to ensure the state's compelling interest in protecting the children's best interests. Id., 460–61. The respondent acknowledged that she had failed to preserve this claim at trial and, therefore, sought to prevail under *State* v. *Golding*, supra, 213 Conn. 239–40. *In re Azareon Y.*, supra, 139 Conn. App. 461.

In response to this claim, the Appellate Court concluded: "The record contains the petitioner's permanency plan but is devoid of alternatives, and the respondent has not indicated that she requested that the court consider any alternatives. Moreover, the court's memorandum of decision does not indicate whether the court considered a permanency plan other than the one advocated by the petitioner, and the respondent did not ask the court to articulate whether it had considered other options. . . . Our role is not to guess at possibilities, but to review claims based on a complete factual

record developed by the trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the respondent's claims] would be entirely speculative." (Citation omitted; internal quotation marks omitted.) Id., 463. Accordingly, the Appellate Court affirmed the trial court's judgment, holding that the respondent's claim failed under the first prong of *Golding* "for lack of an adequate record."[4] Id. This certified appeal followed.

The respondent claims that the Appellate Court's conclusion as to the state of the record was improper and that she is entitled to prevail on her substantive due process claim. With respect to the first issue, the respondent contends that the Appellate Court confused the first and fourth prongs of *Golding*, and, in the process, not only impermissibly shifted the burden to her to prove that the alleged constitutional violation would have produced a different outcome at trial, but also relieved the petitioner of her burden of proof under the proper constitutional standard.[5] In the respondent's view, the deficiency in the evidentiary record actually confirms that the trial court could not have undertaken the constitutional analysis that substantive due process required. As authority for her position that she should not be required to demonstrate that she can prevail on the record as it exists under the new standard she seeks, the respondent points to United States Supreme Court cases involving fundamental parental rights in which that court had remanded cases for a new trial when the judgments had been obtained under a constitutionally deficient standard, despite the uncertainty of whether the parent ultimately would prevail in light of the evidence adduced under the old standard. Finally, the respondent contends that the Appellate Court improperly concluded that the record is ambiguous as to whether the trial court considered permanency plans other than termination because the absence of any evidence regarding the availability of such plans would have made a least restrictive means analysis impossible.

Although the petitioner mounts numerous attacks on the respondent's position, we are persuaded by the petitioner's contention that a proper understanding of the respondent's constitutional claim and the proper application of *Golding* support the Appellate Court's conclusion. Therefore, we have no occasion to express an opinion as to the merits of the respondent's substantive due process claim.

Under *Golding*, "a defendant can prevail on a claim of constitutional error not preserved at trial only if all of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the

defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt." (Emphasis omitted; footnote omitted.) *State* v. *Golding*, supra, 213 Conn. 239–40. "The first two steps in the *Golding* analysis address the reviewability of the claim, while the last two steps involve the merits of the claim." (Internal quotation marks omitted.) *State* v. *Britton*, 283 Conn. 598, 615, 929 A.2d 312 (2007).

An appellant who has not preserved her claim before the trial court must overcome hurdles that are not imposed when the issue was properly presented to that court. This court repeatedly has underscored that "*Golding* is a *narrow exception* to the general rule that an appellate court will not entertain a claim that has not been raised 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. . . . Nevertheless, because constitutional claims implicate fundamental rights, it also would be unfair automatically and categorically to bar a defendant from raising a meritorious constitutional claim that warrants a new trial solely because the defendant failed to identify the violation at trial. *Golding* strikes an appropriate balance between these competing interests: the defendant may raise such a constitutional claim on appeal, and the appellate tribunal will review it, but only if the trial court record is adequate for appellate review. The reason for this requirement demands no great elaboration: in the absence of a sufficient record, there is no way to know whether a violation of constitutional magnitude in fact has occurred. Thus, as we stated in *Golding*, we will not address an unpreserved constitutional claim [i]f the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred . . . ." (Emphasis added; internal quotation marks omitted.) *State* v. *Canales*, 281 Conn. 572, 580–81, 916 A.2d 767 (2007).

To determine whether the record is adequate to ascertain whether a constitutional violation occurred, we must consider the respondent's alleged claim of impropriety and whether it requires any factual predicates. "[P]arents' interest in the care, custody and control of their children, [i]s 'perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court.' *Troxel* v. *Granville*, [530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)]." *Roth* v. *Weston*, 259 Conn. 202, 216, 789 A.2d 431 (2002). In reliance on this right, the respondent contends that the following judicial gloss must be engrafted onto § 17a-112 in order not to violate substantive due process, which was not applied to her: "[T]he [trial] court must find by clear

and convincing evidence that a viable permanency plan recognized by statute that is less restrictive than termination of parental rights is not capable of providing the children with a permanent, safe and nurturing home in light of their age and needs. The petitioner has the burden of proof as to this finding." Applying *Golding* properly, according to the respondent, the only facts that need to be reflected in the record in support of this claim are: (1) that she is the children's biological mother; (2) that the trial court terminated her parental rights with respect to her children, thereby forever destroying her fundamental liberty interest in their care, custody, and concern; and (3) that the trial court terminated these rights without first finding that a less restrictive permanency plan was not available to secure the petitioner's compelling interest in protecting the children.[6] Because such facts indisputably are reflected in the record, the respondent contends that we must consider whether she had a substantive due process right that required the trial court to make this finding. We disagree with the respondent's attempt to characterize her claim as a mere question of law lacking factual predicates beyond those she has cited.

The respondent's claim actually is comprised of two closely related elements: (1) that there is a substantive constitutional entitlement to a less restrictive alternative to termination where one exists; and (2) that the trial court cannot order termination of parental rights without finding by clear and convincing evidence that this constitutional requirement has been met. In other words, unless there is some valid alternative to termination, it cannot violate substantive due process to terminate parental rights. Therefore, the record must reflect whether there is a valid alternative permanency plan to termination and adoption.[7] It is undisputed that the record contains no such finding.

At trial, the petitioner was never put on notice of the respondent's proposed constitutional gloss to § 17a-112. On appeal, the petitioner does not concede either that there are available alternatives to termination/adoption or that such alternatives would adequately safeguard the children's best interests. "In such circumstances, the [petitioner] bears no responsibility for the evidentiary lacunae, and, therefore, it would be manifestly unfair to the [petitioner] for this court to reach the merits of the [respondent's] claim upon a mere assumption that [the factual predicate to the respondent's claim has been met]."[8] (Emphasis omitted.) *State* v. *Brunetti*, 279 Conn. 39, 59, 901 A.2d 1 (2006), cert. denied, 549 U.S. 1212, 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007).

Not only would such an assumption be improper, but because "under the test in *Golding*, we must determine whether the [appellant] can prevail on his [or her] claim, a remand to the trial court would be inappropriate. The first prong of *Golding* was designed to avoid remands

for the purpose of supplementing the record." (Emphasis omitted.) *State* v. *Stanley*, 223 Conn. 674, 689–90, 613 A.2d 788 (1992). Indeed, this is not a case in which the record only would need to be supplemented by a finding by the trial court after applying the proposed standard to the existing record, as it arguably was in *Stanley*.[9] As both parties concede, there is an inadequate basis in the record for the trial court to determine whether there are available alternatives to termination that adequately would safeguard the children's best interests. Thus, in order to make the requisite finding, the evidence would have to be opened. In cases of unpreserved constitutional claims, this court consistently has refused to order a new trial when it would be necessary to elicit additional evidence to determine whether the constitutional violation exists. See *State* v. *Dalzell*, 282 Conn. 709, 721–22, 924 A.2d 809 (2007); *State* v. *Canales*, supra, 281 Conn. 582; *State* v. *Brunetti*, supra, 279 Conn. 59, 64; *State* v. *Daniels*, 248 Conn. 64, 80, 726 A.2d 520 (1999), overruled on other grounds by *State* v. *Singleton*, 274 Conn. 426, 438, 876 A.2d 1 (2005); *State* v. *Medina*, 228 Conn. 281, 301–302, 636 A.2d 351 (1994). Whether it would have been the appellee's burden of proof to demonstrate such additional facts on remand has never been deemed a relevant factor. Although such a stringent approach clearly limits review of constitutional claims, *Golding* provides a limited exception to review of unpreserved claims. Application of the same standard applied to preserved claims would defeat the careful balance that this court struck to permit review of unpreserved constitutional claims.

The respondent's characterization of her claim as one of a constitutionally deficient *standard* glosses over the substantive requirement underlying that standard. If we were to sanction the respondent's approach, almost any claim lacking a factual predicate in the record could be reframed as a pure legal question as to whether a deficient standard had been applied. For example, in *State* v. *Brunetti*, supra, 279 Conn. 56, the defendant sought review of an unpreserved claim that the search of his parents' home was illegal because his father's consent to the search should not prevail over his mother's refusal to consent, when both were present and had equal authority to consent to the search of their residence. We deemed the record inadequate to review that claim because the record did not clearly reflect whether the defendant's mother, who had declined to sign a consent form, had refused consent. Id. Under the respondent's approach, however, the *Brunetti* defendant could have avoided this problem by framing his claim as presenting a pure question of law, namely, that the trial court had applied a constitutionally defective standard because: (1) the trial court was required to find that consent to search was given by both parents; and (2) the state bore the burden of proving consent. To allow appellants to reframe their unpre-

served claims in such a manner would undermine the balance this court struck in *Golding*.

The United States Supreme Court cases cited by the respondent do not support the result she seeks, and indeed underscore her mischaracterization of her claim. Those cases involved claims of *procedural* due process. See *Santosky* v. *Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *Stanley* v. *Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). In such cases, proof of application of a defective standard would establish the constitutional violation. The claim that the respondent has advanced, however, is one of *substantive*, not procedural, due process.[10]

Therefore, we agree with the Appellate Court that the record is inadequate for review. Indeed, in addition to the absence of a critical factual finding, we also agree with the Appellate Court that there is an additional *Golding* concern implicated in the present case. Specifically, the record is ambiguous as to whether the trial court concluded that the petitioner proved by clear and convincing evidence that termination was the only option available to satisfy the best interests of the children. The trial court expressly concluded that the petitioner had proved by clear and convincing evidence that termination was in the children's best interests. The court cited the ages of the respondent's children, approximately three and one-half years old and two and one-half years old at the time the court ordered termination, and their "need for a secure and permanent environment." At the time termination was ordered, the statutory scheme provided four permanency options: (1) reunification with the parent; (2) long-term foster care with a relative; (3) transfer of guardianship; or (4) termination followed by adoption.[11] General Statutes § 17a-111b (c) and General Statutes (Rev. to 2011) § 46b-129 (j) and (k) (2) (B). As the respondent concedes on appeal, reunification is not a viable option. The lack of evidence as to whether the maternal aunt would have agreed to either long-term foster care or a conventional guardianship would not have precluded the trial court from reasonably concluding that termination followed by adoption was the only plan in the best interests of the children. It was the only plan that would afford these young children with a truly permanent placement. Under *State* v. *Golding*, supra, 213 Conn. 240, "[i]f the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred, we will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the [respondent's] claim."

The judgment of the Appellate Court is affirmed.

In this opinion the other justices 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.

** July 30, 2013, the date that this decision was released as a slip opinion,

is the operative date for all substantive and procedural purposes.

[1] The trial court also rendered judgments terminating the parental rights of the respondent John Doe with respect to his minor son on the grounds of abandonment and no ongoing parent-child relationship pursuant to General Statutes § 17a-112 (j) (3) (A) and (D), and the respondent Frederick R. with respect to his minor daughter on the ground of failure to achieve such a degree of personal rehabilitation as would encourage the belief that, within a reasonable time, he could assume a responsible position in the life of his daughter pursuant to § 17a-112 (j) (3) (B) (i). Neither father is a party to this appeal. We therefore refer to the respondent mother as the respondent in this opinion.

[2] General Statutes § 17a-112 provides in relevant part: "(j) The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that (1) the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent in accordance with subsection (a) of section 17a-111b, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts, except that such finding is not required if the court has determined at a hearing pursuant to section 17a-111b, or determines at trial on the petition, that such efforts are not required, (2) termination is in the best interest of the child, and (3) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child; (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child . . . .

"(k) 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; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, as amended; (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; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; 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. . . ."

[3] Examples of such issues reflected in the record include leaving the children unattended, leaving the children with inappropriate caregivers, letting her two year old son bathe himself, and forgetting to give her daughter ringworm medication.

[4] The Appellate Court also rejected the respondent's claim that the trial court had denied her due process under the federal constitution by failing to order, sua sponte, an evaluation to determine whether she was competent to understand the proceedings and assist her counsel. *In re Azareon Y.*, supra, 139 Conn. App. 463–67. That determination is not before us in this certified appeal.

[5] The American Civil Liberties Union Foundation of Connecticut filed an amicus curiae brief in support of the respondent's position on this issue.

[6] The respondent asserts that she does not contend that the trial court would be constitutionally obligated to order, sua sponte, an alternative, less restrictive permanency plan if it believed one to be available. Rather, she contends that the trial court would be required to deny the termination petition, leaving the petitioner with the options of submitting a new permanency plan with such an alternative or submitting a new termination petition supported with sufficient proof of no less restrictive alternatives.

[7] We note that the respondent has framed her claim inconsistently throughout the appellate proceedings, in some cases framing it in a manner that makes clear that an available alternative is a factual predicate. For example, in her brief to the Appellate Court, the respondent asserted: "The central question in this termination of parental rights appeal is whether the substantive due process clauses of the federal and state constitutions permit a trial court to terminate parental rights *when* less restrictive means of securing the children's best interests *are available*." (Emphasis added.) *In re Azareon Y.*, Appellate Court Records & Briefs, October Term, 2012, Respondent's Brief p. 1. We also note that, in one of her iterations of her claim in her brief to this court, the respondent asserts that "[t]he only question is whether long-term foster care or a permanent guardianship with [the maternal aunt] would secure the children's needs without requiring the respondent's parental rights forever be destroyed." Although we question how the resolution of this question satisfies the broader standard articulated by the respondent, we note that the respondent never has represented that the aunt is amenable to either option nor did she propose such an option to the trial court. The aunt did indicate that she was amenable to an open adoption, an arrangement that would provide the respondent with visitation, but at the aunt's discretion. Given the long-standing, and apparently amicable, relationship between the respondent and the aunt, who was the respondent's own foster parent, the respondent would seem to have been readily able to obtain such information.

[8] The respondent attempts to avoid the force of *Golding*'s first prong by underscoring the fact that the petitioner bears the burden of proof in termination proceedings. This point, however, simply illustrates that the respondent's claim, in effect, is that the petitioner failed to adduce sufficient evidence in support of its petition when the petitioner had no notice that additional evidence was required.

[9] In *State* v. *Stanley*, supra, 223 Conn. 689, this court concluded that the record was inadequate for *Golding* review of the defendant's claim that the state had to prove beyond a reasonable doubt, rather than by a preponderance of evidence, that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights. See *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 26 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). This court reasoned that we had no basis on which to determine whether the trial court would have found that the state had sustained that higher burden of proof. *State* v. *Stanley*, supra, 689. In the present case, the respondent recognizes that *Stanley* directly undermines her claim even as she frames it as a purely legal question as to the proper "standard," but she contends that we should not follow *Stanley* because it is an outlier. We agree that *Stanley* differs from other cases, cited subsequently in this opinion, in which this court has declined to remand due to an inadequate record because additional evidence was required to supplement the record to determine whether the appellant could prevail on the constitutional claim. In *Stanley*, no additional evidence necessarily would have been required, although it could be argued that the state might have chosen to put on additional evidence if it had known that it was subject to a heightened burden of proof. Because the claim in the present case undoubtedly would require additional evidence in order to establish an essential factual predicate, however, we need not address the suggestion of the respondent that we should disavow *Stanley*'s application of *Golding*.

[10] Although the respondent relies on the remedy afforded in these United States Supreme Court procedural due process cases, the fact that she does not provide the requisite analysis for such claims; see *In re Lukas K.*, 300 Conn. 463, 469, 14 A.3d 990 (2011) (noting three part balancing test for

procedural due process claims under *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 [1976]); further demonstrates that she presents her claim as a matter of substantive, not procedural, due process.

[11] After the trial concluded in the present case, the statutory scheme was amended to add an option of a permanent guardianship. See Public Acts, Spec. Sess., June, 2012, No. 12-1, §§ 272-273, codified as General Statutes § 46b-129 (j) and (k) (2). The respondent seeks a new trial at which this option would be available to the court.