IN RE ELVIN G. ET AL.*
(SC 19108)

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

Argued March 18—officially released November 12, 2013

Dana M. Hrelic, with whom were *Kenneth J. Bartschi* and, on the brief, *Brendon P. Levesque* and *Jason Bogli*, for the appellant (respondent father).

Tammy Nguyen-O'Dowd, assistant attorney general, with whom, on the brief, were *George Jepsen*, attorney general, *Gregory T. D'Auria*, solicitor general, and *Benjamin Zivyon* and *Michael Besso*, assistant attorneys general, for the appellee (petitioner).

Opinion

ROGERS, C. J. This case raises the question of whether a prior order of specific steps to aid in reunification is a necessary prerequisite for any termination of parental rights that is based solely on a parent's failure to rehabilitate. The respondent father appeals[1] from the judgments of the trial court terminating his parental rights with respect to his minor children, Elvin G.[2] and Kadahfi G. The respondent claims that the trial court improperly terminated his parental rights pursuant to General Statutes § 17a-112 (j) (3) (B) (i)[3] based on his failure to rehabilitate because court-ordered specific steps are statutorily required and the petitioner, the Commissioner of Children and Families (commissioner), never provided him with such specific steps.[4] We disagree with the trial court's conclusion that the prior provision of specific steps is not required in termination proceedings based on § 17a-112 (j) (3) (B) (i). We agree with the court, however, that under the particular circumstances of this case, specific steps would not have made any difference in the respondent's failure to rehabilitate. Accordingly, because the failure to provide specific steps was harmless error, we affirm the judgments of the trial court.

The following facts, as found by the trial court, and procedural history are relevant. When the respondent's parental rights were terminated on October 1, 2012,[5] Elvin and Kadahfi were ten and nine years old, respectively. The respondent was thirty-one years old and had spent most of his adult life, as well as his children's lives, in prison. In June, 2000, he was convicted of drug offenses and incarcerated. He was released under supervised parole on April 17, 2001, but was incarcerated again on January 22, 2002, for additional drug offenses. Three weeks later, Elvin was born. The respondent was released to a Department of Correction halfway house on September 20, 2002, but escaped seven days later. In January, 2003, he was found and arrested, and on May 23, 2003, he was convicted and incarcerated anew for the escape. One month later, Kadahfi was born. Except for a five week period during the summer of 2004, the respondent remained incarcerated. During that five week period, he was arrested for the federal crime of possession of a stolen firearm. On November 2, 2005, following his conviction for that crime, the respondent was transferred from state to federal custody and, thereafter, was incarcerated in various federal prisons. He remained incarcerated at the time his parental rights were terminated.[6]

For several years following their births, Elvin and Kadahfi lived with their mother, who had two other sons with different fathers. The Department of Children and Families (department) became involved with the family in 2006, when the mother tested positive for phencyclidine, or PCP, at the time one of her other

sons was born. The mother was struggling with substance abuse and needed housing and assistance. On May 11, 2006, the department filed neglect petitions, citing the mother's PCP use and lack of stable housing, and the respondent's incarceration and failure to provide a plan for the care, welfare and safety of Elvin and Kadahfi. The mother entered a plea of nolo contendre, and the respondent stood silent. On November 28, 2006, the children were adjudicated neglected, but remained with their mother under the protective supervision of the department. The trial court, *Wollenberg, J.*, ordered specific steps as to the mother only. On January 31, 2008, because of the respondent's continued incarceration and the mother's inability to overcome her substance abuse issues, the children were committed to the custody of the department and were placed with their maternal grandmother. The trial court, *Olear, J.*, again ordered specific steps for the mother only. In April, 2008, when the grandmother became ill and could no longer care for them, the children were placed in foster care, where they remained at the time of trial.

While Elvin and Kadahfi were in their mother's care, she refused to take them to prison to visit the respondent. Consequently, the children's only contact with the respondent during that period was by telephone. When the department assumed custody in 2008, it provided monthly visitation between the children and the respondent by picking up the children from their foster homes, driving them to the federal prison in Otisville, New York, where the respondent was incarcerated at that time, and supervising the visits. The children occasionally misbehaved during these visits, but also seemed to enjoy them.

The children's last visit with the respondent was on February 21, 2010, almost two years prior to the trial in this matter.[7] When the department's social worker and the children arrived for the next scheduled visit on March 22, 2010, they were told that the respondent was not permitted to have visitors. On March 30, 2010, the department filed petitions to terminate both the mother's and the respondent's parental rights on the sole basis that Elvin and Kadahfi previously had been found to be neglected and both parents had failed to rehabilitate.[8] On May 16, 2010, another visit was attempted, but the department's social worker learned that the respondent would not be permitted to have any visitors until September, 2011. Federal inmate disciplinary records submitted at trial revealed that the respondent had tested positive for marijuana on February 18, 2010, and was sanctioned by losing his visitation rights for eighteen months.[9] At the respondent's behest, the department wrote to prison officials twice to request that his visitation rights be reinstated, but received no response. In December, 2010, the respondent was transferred by federal authorities to a prison in Oklahoma and, about one month later, was transferred again to a

prison in Arizona. In January, 2012, the respondent was transferred again to a prison in California.

The trial court, *Epstein, J.*,[10] made the following specific findings regarding the children. As a result of their traumatic childhoods, Elvin and Kadahfi have experienced serious difficulties and exhibited aggressive and defiant behaviors. Elvin has struggled with anger management issues, poor school performance, inattentiveness, impulsivity and anxiety and mood disorders. In December, 2010, he was hospitalized for a psychiatric problem. In a court-ordered psychological evaluation, Elvin spoke positively about the respondent, but also indicated a belief that the respondent had been incarcerated for eleven years. As the trial court found, that number was incorrect, but Elvin's "perception that his father has been in jail all of [Elvin's] life is clear." With the assistance of his foster family and various therapists, Elvin has been improving, but he continues to need help. Elvin has bonded with his foster family and wants to be adopted by that family. One of Elvin's younger half brothers also resides with the foster family, and the family arranges for visits with Kadahfi and the other half brother.

Kadahfi initially was placed in a therapeutic foster home, but his aggressive and defiant behaviors led the foster parents to request his removal. He also experienced difficulties in a second foster home, but has done well at his third placement. Kadahfi relates well to his current foster parents, has limited recollection of living with his mother and has told a court-appointed psychologist that he has no memories of the respondent. He would like to be adopted by the foster family. The other half brother has joined Kadahfi at the foster home, and the two boys have a good and supportive relationship. The foster family would like to adopt both Kadahfi and his half brother.

Kadahfi has suffered disturbing episodes while at school, such as engaging in tantrums, rolling himself into a ball, covering his ears and rocking back and forth. He also has been expelled. After being transferred to a different school, Kadahfi has improved. More recently, he has been mainstreamed into a regular education program.

A psychologist has diagnosed Kadahfi with post-traumatic stress disorder and attention deficit hyperactivity disorder, resulting from abuse, neglect, in-utero drug exposure, witnessing domestic violence, his mother's poor health condition and addiction, the respondent's incarceration, and multiple foster placements. That psychologist has stressed Kadahfi's need for lasting, positive attachments so that he may feel secure and able to address the experiences that underlie his distress. Kadahfi has received therapy and medication for his behavioral issues. His negative behaviors have diminished, and he has developed skills to address his violent

and traumatic reactions, and has begun to adhere to household and school rules.

After summarizing the evidence and making the foregoing findings, the trial court found, by clear and convincing evidence, that the department had made reasonable efforts to reunify the respondent with Elvin and Kadahfi, that the respondent had failed to rehabilitate and that termination of his parental rights was in the children's best interests. In regard to reasonable efforts, the court found that, due to the respondent's incarceration during the entire period of department involvement, the department was not able to provide him with any parenting, substance abuse or therapy services, or make referrals for him. The court found further that the department had made extraordinary efforts by arranging for the children to visit the respondent in prison in New York. Additionally, the court found, the department had encouraged the respondent to participate in whatever services were available at prison, and it attempted to arrange visitation even after it was disallowed due to the respondent's disciplinary violations.

The trial court rejected the respondent's contention that the department had not made reasonable efforts to reunify the respondent with the children because it had not placed Elvin and Kadahfi with the respondent's wife, whom he had married in June, 2008, where the respondent could join them once he was released from prison. According to the court, the respondent's claim in this regard demonstrated his "inability to put the children's needs before his own. It constitute[d] a hopeful possibility for [the respondent's] benefit at some time still in the future, keeping the children in limbo, with no recognition of the needs and ages of the children, a necessary part of rehabilitation and reunification."[11] The court found that the respondent's long-term incarceration and the impediments to visitation that he had caused constituted a clear inability to benefit from reunification efforts. In sum, the trial court concluded that the department had established, by clear and convincing evidence, that it had made reasonable efforts and that the respondent was unable to benefit from those efforts.

As to the respondent's failure to rehabilitate, the trial court first noted that the respondent was incarcerated at the time the neglect petitions were filed, when the children were four and three years old. When the children's mother no longer could care for them, at which time they were six and four and one-half years old, the respondent still was unavailable to parent them and the children were placed in foster care where they required significant help to address the emotional and mental health issues they had developed. When the termination petitions were filed, and the children were eight and seven years old, the respondent remained incarcerated,

with the possibility of release still years away. The court acknowledged that incarceration alone cannot be the basis for terminating parental rights, but observed, nevertheless, that the respondent's incarceration posed " 'inevitable restraints' " on his ability to visit with his children and meet their needs, particularly given their significant developmental issues. The trial court also noted that the respondent's inability to appreciate the children's needs, as evidenced by his suggestion that they should reside with his wife, who was a stranger to the children, and his actions in prison that further resulted in disciplinary measures, demonstrated his failure to rehabilitate. Specifically, his drug use and other disciplinary violations led to sanctions, which made visitation and communication with his children impossible, which, in turn, caused them more emotional harm than they already were suffering. In the court's view, the respondent's "inability to recognize the diabolically detrimental impact of his conduct on his children and their sense of security is itself an indictment of his parenting abilities." The court allowed that the respondent had made commendable strides in terms of his personal improvement by taking advantage of prison programs, but emphasized that the necessary rehabilitation required more, namely, the ability to attend to the needs of Elvin and Kadahfi. According to the court, for the respondent, attaining this ability remained only a possibility, and it was simply too late and unfair to the children, given their needs, to expect them to wait any longer for that possibility to materialize.

The trial court also found that the issuance of specific steps to the respondent, given the circumstances of this case, would have been futile. The court reiterated that the respondent had been incarcerated since before the neglect adjudication; that the department could not offer him, or refer him to, any programs; that the children had dire and drastic needs that required immediate and ongoing attention; and that the respondent could not even begin to address those needs on a necessary day-to-day basis until his release, which, at the time of the neglect adjudication, was years away. The trial court reasoned further that it would be impossible for the respondent to complete standard specific steps such as securing and maintaining housing for the children, refraining from activity that would expose him to the criminal justice system, and finding legal employment. The court stated, in summary: "In order to attend to the bare basic minimum needs of a child, a parent must be available to the child or have a reasonable prospect of being available to the child. Any orders of the court for [the respondent] to engage in efforts to rehabilitate could not have been followed by [the respondent] because neither the Superior Court, nor [the department], has the authority to dictate to the Federal Bureau of Prisons the activities in which a prisoner must engage. [The department] has no authority whatsoever

to offer services to an incarcerated prisoner, much less the ability to do so." The court concluded that the department had established, by clear and convincing evidence, that the respondent had failed to rehabilitate.

Finally, the trial court considered the best interests of Elvin and Kadahfi. It noted the harm they had suffered, and the lack of stability in their environment during the time prior to their entering foster care. The court found that the children had vague or no memories of the respondent and did not know him as a nurturing, consistent caregiver. It found further that the children desperately needed permanent, stable caregivers so that they could address their previous dysfunction and instability, develop expectations of success rather than failure, improve their motivation and self-control, find relief from constant anxiety and achieve positive self-awareness. According to the court, the children now were on a progressive and positive path. The court concluded that the department had established, by clear and convincing evidence, that termination of the respondent's parental rights was in the best interests of Elvin and Kadahfi.[12] The court then granted the petitions to terminate the respondent's parental rights and rendered judgments accordingly. This appeal followed.

The respondent argues that the trial court improperly terminated his parental rights because § 17a-112 (j) (3) (B) (i) requires, as a prerequisite to termination for failure to rehabilitate, that a parent first receive court-ordered specific steps to guide him toward rehabilitation, and the respondent, undisputedly, did not receive such specific steps. The commissioner contends, to the contrary, that the trial court correctly held that specific steps are mandated only in cases brought pursuant to clause (ii) of § 17a-112 (j) (3) (B), or, in the alternative, if specific steps were required, the failure to provide them in the case at hand essentially was harmless. We agree with the respondent that a prior order of specific steps toward the goal of rehabilitation is required in any termination proceeding solely alleging the ground of failure to rehabilitate, pursuant to either clause (i) or (ii) of § 17a-112 (j) (3) (B). We conclude, however, that the provision of specific steps to the respondent under the particular circumstances of this case could not have made a difference and, consequently, that the absence of specific steps was harmless error that did not preclude termination of the respondent's parental rights.

We first note the applicable standard of review. Generally, we review a trial court's finding that a parent has failed to achieve sufficient rehabilitation only for clear error. *In re Melody L.*, 290 Conn. 131, 148, 962 A.2d 81 (2009). The respondent contends, however, that in finding that he had failed to rehabilitate, the trial court misconstrued a statutory requirement. Our review of the court's interpretation of statutes is plenary. *Earl*

B. v. *Commissioner of Children & Families*, 288 Conn. 163, 173, 952 A.2d 32 (2008). "When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) Id., 173–74.

Proceedings to terminate parental rights are governed by § 17a-112. See footnote 3 of this opinion. "Under § 17a-112, a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)] exists by clear and convincing evidence. The commissioner . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. In contrast to custody proceedings, in which the best interests of the child are always the paramount consideration and in fact usually dictate the outcome, in termination proceedings the statutory criteria must be met before termination can be accomplished and adoption proceedings begun. . . . Section [17a-112 (j) (3)] carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent." (Citation omitted; footnote omitted; internal quotation marks omitted.) *In re Eden F.*, 250 Conn. 674, 688–89, 741 A.2d 873 (1999).[13] Because a respondent's fundamental right to parent his or her child is at stake, "[t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun." *In re Juvenile Appeal (Anonymous)*, 181 Conn. 638, 644–45, 436 A.2d 290 (1980).

In the present case, the department alleged, as the sole ground for termination, that the respondent had failed to achieve sufficient rehabilitation pursuant to § 17a-112 (j) (3) (B) (i). Subparagraph (j) (3) (B) pro-

vides, in full, that parental rights may be terminated if the court finds that "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 [General Statutes §] 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 . . . ." General Statutes § 17a-112 (j) (3) (B). Reading this provision, the trial court concluded that the requirement of previously issued specific steps applies only to clause (ii), when the finding of neglect and termination of parental rights are simultaneous. In so concluding, the court first found subparagraph (j) (3) (B) ambiguous. It then considered the legislative history of clause (ii), as well as Appellate Court case law indicating that "parental rights may be terminated in the absence of specific steps having been ordered." See *In re Justice V.*, 111 Conn. App. 500, 511, 959 A.2d 1063 (2008), cert. denied, 290 Conn. 911, 964 A.2d 545 (2009), citing *In re Michael M.*, 29 Conn. App. 112, 126, 614 A.2d 832 (1992), and *In re Shavoughn K.*, 13 Conn. App. 91, 99–100, 534 A.2d 1243 (1987), cert. denied, 207 Conn. 805, 540 A.2d 374 (1988).

Although a well placed comma might enhance the clarity of § 17a-112 (j) (3) (B), we nevertheless disagree that its meaning is ambiguous. We begin with the necessary presumption that some portion of the language following clause (ii) is intended to modify clause (i) as well as clause (ii). Otherwise, pursuant to clause (i), a prior adjudication of neglect, standing alone, would constitute grounds for a termination of parental rights. This would be an absurd result. See *Tomlinson* v. *Tomlinson*, 305 Conn. 539, 554, 46 A.3d 112 (2012) ("we read each statute in a manner that will not . . . lead to absurd results" [internal quotation marks omitted]). Pursuant to the trial court's interpretation, the requirement of a prior provision of specific steps appends to clause (ii) only, thereby leaving only the concluding portion of the statute, which concerns failure to rehabilitate, to modify *both* clauses (i) and (ii). Aside from being ungrammatical, however, that reading is logically incoherent. Specifically, a trial court could terminate parental rights if it finds that "the child (i) has been found by the Superior Court . . . to have been neglected or uncared for in a prior proceeding . . . 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 . . . ." General Statutes § 17a-

112 (j) (3) (B). The logical flaw in this reading is that it charges the child, rather than the parent, with the duty to rehabilitate.

Alternatively, appending both the prior specific steps and failure to rehabilitate requirements to clause (i), as well as clause (ii), eliminates this dissonance. Read in that fashion, the statute provides that a trial court can terminate parental rights if the court finds that "the child (i) has been found by the Superior Court . . . to have been neglected or uncared for in a prior proceeding . . . and the parent of such child has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child . . . ." General Statutes § 17a-112 (j) (3) (B). In addition to being grammatically coherent, this reading of the statute is the only logical one.

In concluding that the specific steps requirement applied only to clause (ii), the trial court reasoned that that requirement and clause (ii) were added to § 17a-112 (j) (3) (B) at the same time, by the same legislative act, and that clause (i), as it previously existed, contained no specific steps requirement. It is true that, prior to the addition of clause (ii) in 1998, clause (3) (B) (i), which then was designated as subparagraph (3) (B), contained no specific steps requirement, but provided simply that a trial court could terminate parental rights if it found that "the parent of a child who has been found by the Superior Court to have been neglected or uncared for in a prior proceeding 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 . . . ."[14] General Statutes (Rev. to 1997) § 17a-112 (c) (3) (b).[15] What the trial court did not acknowledge, however, is that specific steps are statutorily required, by another provision, as part of an adjudication of neglect.[16] Pursuant to § 46b-129, which governs such adjudications, at the time a trial court finds a child to be neglected and, as a result, commits him or her to the custody of the commissioner or another authorized party, the court must "order specific steps that the [child's] parent must take to facilitate the return of the child . . . to the custody of such parent." General Statutes § 46b-129 (j) (3).[17]

Clause (ii) of § 17a-112 (j) (B) (3), which created a second ground for termination based on a parent's failure to rehabilitate, was added in 1998. See Public Acts 1998, No. 98-241, § 8 (P.A. 98-241). Clause (ii) permits an adjudication of neglect and a termination of parental rights to be accomplished in the same proceeding, so

long as the subject child already has been in the commissioner's custody for fifteen months and the child's parent previously has been provided with specific steps toward rehabilitation. Because there has been no prior adjudication of neglect under this ground, unlike in proceedings brought pursuant to clause (i), the trial court is directed to ensure that specific steps otherwise have previously been issued.[18] From the phrasing the legislature ultimately used, however, it is apparent that, when adding clause (ii), the legislature also chose to make explicit what already had been implicit in clause (i), namely, that a prior issuance of specific steps was required for that clause as well.[19]

The trial court also relied on Appellate Court decisions holding that "parental rights may be terminated in the absence of specific steps having been ordered." *In re Justice V.*, supra, 111 Conn. App. 511, citing *In re Michael M.*, supra, 29 Conn. App. 126, and *In re Shavoughn K.*, supra, 13 Conn. App. 99–100. That reliance was misplaced, however, because *In re Justice V.* involved an adjudication premised on abandonment, for which specific steps are not statutorily required; see General Statutes § 17a-112 (j) (3) (A); and *In re Michael M.* and *In re Shavoughn K.* both predated the statutory requirement of specific steps, which was not added to § 46b-129 until 1997. See footnote 17 of this opinion.

In sum, the prior provision of specific steps is required in *any* case in which the commissioner seeks to terminate parental rights on the ground of a parent's failure to rehabilitate, regardless of whether the petition is filed pursuant to § 17a-112 (j) (3) (B) (i) or (ii). Accordingly, the trial court's conclusion to the contrary was improper. We conclude, however, that this impropriety does not provide a basis for disturbing the trial court's judgments, because we agree with the court that under the particular circumstances of the present case, the failure to provide specific steps to the respondent was harmless error. In short, even if such steps had been provided, they could not have made a difference in the trial court's finding of the respondent's failure to rehabilitate.[20]

We previously have explained that "[p]ersonal rehabilitation . . . refers to the restoration of a parent to his or her former constructive and useful role as a parent . . . [and] 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. . . . [Section 17a-112 (j) (3) (B) (ii)] does not require [a parent] to prove precisely when [he] will be able to assume a responsible position in [his] child's life. Nor does it require [him] to prove that [he] will be able to assume full responsibility for [his] child, unaided by available support systems. It requires the court to find,

by clear and convincing evidence, that the level of rehabilitation [he] has achieved, if any, falls short of that which would reasonably encourage a belief that at some future date [he] can assume a responsible position in [his] child's life." (Internal quotation marks omitted.) *In re Melody L.*, supra, 290 Conn. 149.

Specific steps provide notice and guidance to a parent as to what should be done to facilitate reunification and prevent termination of rights. Their completion or noncompletion, however, does not guarantee any outcome. A parent may complete all of the specific steps and still be found to have failed to rehabilitate. See id., 150–51 ("In determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment, regardless of whether those factors were included in specific expectations ordered by the court or imposed by the department. . . . Accordingly, successful completion of expressly articulated expectations is not sufficient to defeat a department claim that the parent has not achieved sufficient rehabilitation." [Internal quotation marks omitted.]). 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. See *In re Luis C.*, 210 Conn. 157, 167, 554 A.2d 722 (1989) (agreeing that parent's "failure to fulfill all court expectations does not equate with a conclusion that she could not assume a responsible position in the child's life").

In the present case, the trial court's findings demonstrate that the obstacles to the respondent's rehabilitation as a parent were formidable. As a result of the respondent's lengthy history of incarceration for drug and firearm offenses, which he began serving at a young age, he had a minimal employment history and no clearly established household.[21] More importantly, because of the respondent's voluntary actions that resulted in his incarceration, he had spent almost no time in the physical company of his children, who were seven and eight years old at the time the petitions to terminate were filed. The trial court's findings indicate that the respondent was incarcerated for all but a five week period of Kadahfi's life and all of Elvin's life except for a period of less than one year. Those brief periods of freedom occurred when both children were just infants. For years after the respondent began serving his final prison sentence, his only contact with Elvin and Kadahfi was by telephone. That did not change until the department assumed custody of the children, when they were six and four and one-half years old, respectively. For the following twenty-two months, the department arranged prison visits but, due to the children's young ages and the respondent's out-of-state location, those short visits occurred only monthly.[22] Thereafter, because of the

respondent's disciplinary violations and transfers among out-of-state locations, the possibility of interaction between the respondent and his children was foreclosed. As a result of this history of sparse contact, Kadahfi had no memories of the respondent, and Elvin had no recollection of him outside of prison. As we noted previously in this opinion, the trial court also made extensive findings regarding the behavioral and emotional difficulties both children had experienced due to their traumatic childhoods, and about their bonding with their foster families.

If specific steps had been issued, they would have been directed at (1) helping the respondent live a legal and responsible lifestyle, (2) establishing a bond between the respondent and the children, and (3) ensuring that the respondent had the skills and resources necessary to parent troubled children. The respondent likely would have been ordered to seek individual, parenting and family counseling, and to make progress toward specific treatment goals. Undoubtedly, the court also would have ordered the respondent to take the standardly issued steps of: establishing and maintaining adequate housing and legal income; cooperating with department home visits; accepting and cooperating with in home support services; refraining from drug use and alcohol abuse, submitting to drug testing and, if necessary, seeking substance abuse treatment; keeping appointments with, and being accountable to, the department; cooperating with probation and parole officials and refraining from further involvement with the criminal justice system; and visiting the children as often as the department permitted. See generally B. Levesque & M. Taylor, 1A Connecticut Practice Series: Connecticut Juvenile Law (2012–13 Ed.) p. 261 (Specific Steps Form, Judicial Branch Form JD-JM-106, also available at http://jud.ct.gov/webforms/forms/JM106.pdf [last visited October 31, 2013]).[23]

As the trial court reasoned, however, the department had no authority or ability to offer services or treatment in a federal prison, to administer drug tests to the respondent, or to monitor his compliance with court-ordered directives. Moreover, during the respondent's incarceration, he chose to engage in conduct that resulted in disciplinary infractions and loss of privileges, which limited further his already sparse contact with his children and the department. Accordingly, his ability to make progress in bonding with the children, learning to parent them and meeting their specialized needs necessarily was restrained. Finally, until his release, which remained years away, the respondent could not begin to attempt to secure legal employment, establish a household appropriate for the children and demonstrate his ability to refrain from further involvement in the criminal justice system. In short, as long as he remained incarcerated, specific steps directing him to make the foregoing efforts would have been

pointless.[24]

Additionally, the record reflects that, to the limited extent the respondent could begin to rehabilitate while incarcerated, he was well aware of what he needed to do despite the absence of specific steps. The trial court found that the department had encouraged the respondent to participate in whatever services were available to him in prison and, by his own account, he actively had pursued such services.[25] It is important to note, however, that the respondent does not contest the trial court's finding that he still fell short of achieving the level of rehabilitation that would encourage the belief that, considering the particular needs of Elvin and Kadahfi, he could assume a responsible position in their lives within a reasonable time. In other words, he does not claim that the trial court's finding that he had failed to rehabilitate was clearly erroneous. Furthermore, the respondent does not argue that, had he only been provided with more particular guidance, there were additional programs available that he could have pursued, or other measures that he could have taken, that would have enabled him to rehabilitate as a parent.[26]

In sum, we agree with the trial court that, given the length of the respondent's incarceration and his disciplinary infractions, his history of failing to parent his children, and the children's myriad and specialized needs, the provision of specific steps would not have made a difference because the department could not provide the necessary assistance and monitoring, and the respondent could not even begin to interact regularly with the children and demonstrate the requisite progress, until his release from prison which, at the time the termination petitions were filed, still was years away. Accordingly, the lack of specific steps, in the circumstances of this case, was harmless error. See *James H.* v. *Arizona Dept. of Economic Security*, 210 Ariz. 1, 3, 106 P.3d 327 (App. 2005) (The court explained, in rejecting a father's statutory and constitutional claims that he was entitled to family reunification services before his parental rights could be terminated on the basis of his prolonged incarceration,[27] that services "would have clearly been futile" because such incarceration "is something neither the [defendant department of economic security] nor the parent could ameliorate through reunification services. The damage to the parent-child relationship that justifies severance stems from the enforced physical separation of the parent from the child, and nothing the [d]epartment has to offer in the way of services can affect that reality. Nor could [the father] by participating in services remedy his inability to provide a normal home for the children for the period for which he will be incarcerated."), review denied, 2005 Ariz. LEXIS 55 (May 24, 2005); see also *In the Interest of RLK & CAK*, 957 S.W.2d 778, 782 (Mo. App. 1997) (stating, in response to incarcerated father's claim that statutory criteria for termination of

his parental rights based on "failure to rectify" were unsatisfied because, inter alia, he had not been provided services, "[i]t is obvious that no social service plan . . . was feasible so long as [the] [f]ather remained incarcerated . . . . [and] [i]t is likewise obvious that no efforts by the juvenile officer or [the division of family services] to aid [the] [f]ather in adjusting his circumstances to provide a proper home for the children . . . would free [him] from incarceration").

The respondent argues that the trial court effectively terminated his parental rights solely due to his incarceration, and that such action is impermissible. The respondent is correct that the fact of incarceration, in and of itself, cannot be the basis for a termination of parental rights. See *In re Juvenile Appeal (Docket No. 10155)*, 187 Conn. 431, 443, 446 A.2d 808 (1982); see also 3 D. Kramer, Legal Rights of Children (2005) § 28.14, p. 89. At the same time, a court properly may take into consideration the inevitable effects of incarceration on an individual's ability to assume his or her role as a parent. See, e.g., *In re Katia M.*, 124 Conn. App. 650, 661, 6 A.3d 86 (parent's unavailability, due to incarceration, is "an obstacle to reunification"), cert. denied, 299 Conn. 920, 10 A.3d 1051 (2010); see also *In re Gwynne P.*, 346 Ill. App. 3d 584, 597–98, 805 N.E.2d 329 (2004) (parent's repeated incarceration may lead to "diminished capacity to provide financial, physical, and emotional support for the child" [internal quotation marks omitted]), aff'd, 215 Ill. 2d 340, 830 N.E.2d 508 (2005). Extended incarceration severely hinders the department's ability to offer services and the parent's ability to make and demonstrate the changes that would enable reunification of the family. See *In re Kamal R.*, 142 Conn. App. 66, 71, 62 A.3d 1177 (2013); *In re Anvahnay S.*, 128 Conn. App. 186, 194, 16 A.3d 1244 (2011); *In re Katia M.*, supra, 670. This is particularly the case when a parent has been incarcerated for much or all of his or her child's life and, as a result, the normal parent-child bond that develops from regular contact instead is weak or absent. See *In re Katia M.*, supra, 671. The logistics of prison visits with young children, particularly to out-of-state facilities, limit their feasibility. See, e.g., *In re Luciano B.*, 129 Conn. App. 449, 461, 21 A.3d 858 (2011). Disciplinary infractions that a parent incurs while incarcerated may further limit his freedoms and restrict his ability to rehabilitate. See *In re Amy H.*, 56 Conn. App. 55, 60–61, 742 A.2d 372 (1999).

We conclude that the trial court properly took into consideration the respondent's long-term and ongoing inability to provide financial, physical and emotional support to his children and did not terminate his parental rights solely on the basis of his incarceration. Again, that incarceration and, therefore, the respondent's absence from his children's lives, was lengthy and, at the time the termination petitions were filed, was expected to continue for years. Because his terms of

incarceration encompassed most of his adult life, the respondent had spent minimal time working and establishing a household. Prior to his final incarceration, the respondent had spent only five weeks parenting Kadahfi and less than one year parenting Elvin. Given the weak existing parent-child bond, the children's relatively advanced ages and their special needs, as well as the amount of time remaining until the respondent could even begin to make the requisite progress toward reassuming his role as a parent, the court's conclusion was not improper.[28] See *In the Interest of M.J.P.*, 290 Ga. App. 184, 188, 659 S.E.2d 402 (2008) (father's "near-continuous incarceration during the life of the child [which was] still in progress at the time of the termination hearing" justified termination under circumstances; father's lengthy prison history, poor employment record and substantial failure to complete case plan goals impeded placement of child with him upon release); *In the Interest of RLK*, supra, 957 S.W.2d 782–83 (holding that father's parental rights were not terminated on basis of incarceration alone; due to father's lengthy prison term, neither of two children, who had special needs, had any substantial ties to him; no services were likely to bring type of parental adjustment that would enable return of children within ascertainable period of time and father could not provide stable home for number of years).

To summarize, the trial court's conclusion that specific steps are not required for terminations of parental rights brought pursuant to § 17a-112 (j) (3) (B) (i) was legally incorrect. A prior order of specific steps is required for any termination of parental rights grounded in a parent's failure to rehabilitate. Nevertheless, the trial court's misconstruction of § 17a-112 (j) (3) (B) (i) does not provide a basis for disturbing its judgments because we agree with the court that, under the particular circumstances of this case, the provision of specific steps would not have made a difference.[29]

The judgments are affirmed.

In this opinion NORCOTT, PALMER, EVELEIGH, McDONALD and ESPINOSA, Js., 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 Appellate Court.

** The listing of justices reflects their seniority status on this court as of the date of oral argument.

[1] The respondent father appealed from the trial court's judgments to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] The respondent father also is named Elvin G. For clarity, we will refer to the father as the respondent and to the children individually by their first names and jointly as the children. The respondent mother; see footnote 5 of this opinion; is not involved in this appeal. Accordingly, references herein to the respondent are to the father only.

[3] General Statutes § 17a-112 provides in relevant part: "(a) In respect to any child in the custody of the Commissioner of Children and Families in accordance with section 46b-129 . . . the commissioner . . . may petition

the court for the termination of parental rights with reference to such child. . . .

"(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; (C) the child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being, except that nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights; (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; (E) the parent of a child under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families; (F) the parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent; or (G) the parent was convicted as an adult or a delinquent by a court of competent jurisdiction of a sexual assault resulting in the conception of the child, except a conviction for a violation of section 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction.

"(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. . . .

"(q) The provisions of this section shall be liberally construed in the best interests of any child for whom a petition under this section has been filed."

[4] The respondent claims alternatively that, if § 17a-112 (j) (3) (B) (i) does not require the prior provision of specific steps, it is unconstitutionally vague. Because we agree that specific steps are required, we do not reach this claim.

[5] The trial court also terminated the respondent mother's parental rights with respect to Elvin and Kadahfi, as well as her other two sons, in a separate memorandum of decision dated August 21, 2012. The proceedings were bifurcated as to the mother and the respondent, who were not married. The mother is not involved in this appeal.

[6] At the time of trial, the respondent was incarcerated in a federal prison in California. He participated in the proceedings by telephonic conferencing.

Varying testimony at trial indicated that the respondent was scheduled to be released from prison some time between November, 2012, and July, 2013, but that his latest release date for a maximum sentence was in 2014.

[7] The trial was held between April 23 and 25, 2012.

[8] The department earlier had planned to reunite the children with their mother, who had been making progress toward rehabilitation, and to leave the respondent's parental rights intact. After the mother suffered an aneurysm in August, 2009, that rendered her permanently disabled and unable to care for her children, the department changed the plan to termination of both the mother's and the respondent's parental rights.

On April 5, 2012, shortly before trial, the commissisoner moved to amend the termination petition as to the respondent to add the grounds of abandonment and no ongoing parent-child relationship. On April 16, 2012, the respondent objected, claiming prejudice, and on April 23, 2012, the trial court, *Epstein, J.*, denied the commissioner's motion to amend.

[9] The prison records revealed that, in addition to the sanction for marijuana use, the respondent had received a three month visitation restriction for possession of contraband in May, 2009, and that he had received other sanctions, including the loss of telephone and e-mail privileges, for six other violations of prison rules. The last violation was in October, 2011.

[10] Hereinafter in this opinion, references to the trial court are to Judge Epstein, unless otherwise indicated.

[11] On March 29, 2012, shortly before trial, the respondent filed a motion to transfer guardianship of Elvin and Kadahfi to his wife. In another part of its memorandum, the trial court denied the respondent's motion after finding that the respondent's wife had met the children only twice, and had last seen them more than two years prior. The court also denied the respondent's April 16, 2012 motion to transfer guardianship of the children to his father's girlfriend, whom the respondent had never met, and who had not seen or spoken with Elvin and Kadahfi "for years."

[12] The trial court also made the factual findings mandated by § 17a-112 (k); see footnote 3 of this opinion; which largely reiterated the findings the court already had made.

[13] Also as part of the adjudicative phase, the trial court must find, by clear and convincing evidence, that the department has made reasonable efforts to reunify the family, unless it finds that the parent is unable to benefit from such efforts or that such efforts are not required. See General Statutes § 17a-112 (j) (1); *In re Davonta V.*, 285 Conn. 483, 487 n.4, 940 A.2d 733 (2008); see also General Statutes § 17a-111b (b). If the trial court finds that reasonable efforts have been made or are unnecessary and that a statutory ground for termination has been proven, "it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child." *In re Davonta V.*, supra, 487. The court also must make explicit written findings as to several factors enumerated in § 17a-112 (k). Id., 487 n.5.

[14] We briefly discuss the legislative history of § 17a-112 only to refute the trial court's reasoning concerning that history, and not because it is necessitated by any ambiguity in the relevant provision.

[15] Subsection (c) of § 17a-112 subsequently was redesignated as subsection (j). See Public Acts 2000, No. 00-137, § 1.

[16] In construing statutes, courts are "guided by the principle that the

legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires us to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only [to] the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *In re Jusstice W.*, 308 Conn. 652, 663, 65 A.3d 487 (2012).

[17] The quoted language was added to § 46b-129 in 1997. See Public Acts 1997, No. 97-319, § 19. At that time, subsection (j) was designated as subsection (d). In 1998, subsection (d) became subsection (j). See Public Acts 1998, No. 98-241, § 5.

[18] The addition of clause (ii) was prompted by the federal Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997), which set a number of prerequisites for qualification for certain federal funding. See 41 H.R. Proc., Pt. 12, 1998 Sess., p. 4146; 41 S. Proc., Pt. 9, 1998 Sess., p. 2665; see also Office of Legislative Research, Bill Analysis, Substitute House Bill No. 5745. That act required states, to receive that federal funding, to initiate proceedings to terminate parental rights whenever a child has been in foster care for fifteen months, unless, inter alia, "the [s]tate has not provided to the family of the child, consistent with the time period in the [s]tate case plan, such services as the [s]tate deems necessary for the safe return of the child to the child's home . . . ." Pub. L. No. 105-89, § 103 (a) (3); see also General Statutes § 17a-111a (incorporating federal requirements).

[19] Public Act 98-241, § 8, as originally enacted, is somewhat confusing. The act altered § 17a-112 (j) (3) (B), which was then § 17a-112 (c) (3) (B), as follows, with the newly added language underlined, to permit a trial court to terminate parental rights when it finds that "(B) the parent of a child who (1) has been found by the Superior Court to have been neglected or uncared for in a prior proceeding, or (2) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and such parent has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129, as amended by this act, 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 . . . ." The trial court, in analyzing the legislative history, focused on this act and concluded that the specific steps requirement belonged to clause (ii) only. Subsequently, however, subparagraph (j) (3) (B) was rephrased, to read as it currently does, by means of a technical amendment. See Public Acts 2000, No. 00-196 (entitled "An Act concerning the Revisor's Technical Corrections to the General Statutes and Certain Public and Special Acts"), § 15. As rephrased, it is abundantly clear that the specific steps language added by P.A. 98-241, § 8, modifies *both* clause (i) and (ii), as we discussed previously in this opinion.

[20] We have at times found a trial court's noncompliance with a statutory requirement to be harmless error when it is clear that compliance could not have affected the outcome. See, e.g., *State* v. *Johnson*, 253 Conn. 1, 20, 29, 751 A.2d 298 (2000) (trial court's failure to order competency hearing, as required by General Statutes [Rev. to 1991] § 54-56d [d], harmless error); *State* v. *Yurch*, 229 Conn. 516, 523, 641 A.2d 1387 (trial court's failure to properly instruct jury regarding defendant's election not to testify, as required by General Statutes § 54-84 [b], harmless error), cert. denied, 513 U.S. 965, 115 S. Ct. 430, 130 L. Ed. 2d 343 (1994); *In re Edwin N.*, 215 Conn. 277, 281–83, 575 A.2d 1016 (1990) (trial court's failure to make probable cause finding required by General Statutes § 46b-127 before transferring juvenile to regular criminal docket harmless error); see also *Sander* v. *Sander*, 96 Conn. App. 102, 118, 899 A.2d 670 (2006) (trial court's failure to make findings required by General Statutes § 46b-56c [c] before entering educational support order harmless error); *New London* v. *Picinich*, 76 Conn. App. 678, 692, 821 A.2d 782 (trial court's failure to view property in condemnation proceedings, as required by General Statutes § 8-132 [b], harmless error), cert. denied, 266 Conn. 901, 832 A.2d 64 (2003); see generally *Wiseman* v. *Armstrong*, 295 Conn. 94, 106–10, 989 A.2d 1027 (2010) (general discussion of harmless error review).

We disagree with the dissent that, by engaging in a harmlessness analysis, we are reading into the § 17a-112 (j) (3) (B) specific steps requirement a futility exception that the legislature intended to apply only to the requirement of reasonable reunification efforts embodied in § 17a-112 (j) (1). Simply put, examining the effect of the trial court's error for harmlessness is not "the functional equivalent" of holding that the court in fact did not err

because specific steps were not required. As our opinion makes clear, the prior issuance of specific steps is statutorily required in any termination of parental rights under § 17a-112 (j) (3) (B) and, therefore, specific steps should have been provided to the respondent at the time of the neglect adjudication. The benefit of hindsight makes it equally apparent, however, that in the present case, even if such steps properly had been provided at that time, they could not have made a difference in the trial court's later finding of the respondent's failure to rehabilitate. Consequently, the trial court's procedural impropriety does not require reversal of the judgments.

[21] The respondent testified that, upon his release, he planned to reside with his wife, whom he had married while in prison, and that he planned to start his own landscaping business. There is no indication in the record that the respondent ever had lived with his wife prior to beginning his lengthy period of incarceration. Department social studies that were admitted into evidence reflect the respondent's reports of his employment, prior to age twenty, as a maintenance worker, an orderly and in various pizzerias.

[22] The trial court's findings indicate that the drive to the prison in New York where the respondent was incarcerated took two and one-half hours each way. Department records in evidence indicated that each visit lasted two to three hours.

[23] "The trial courts routinely use a preprinted form document, produced by the judicial department entitled 'Specific Steps,' to issue orders to facilitate the reunification of a minor child, who is in the department's custody, and his or her parents. . . . The form contains check boxes that courts use to issue orders to the parents and a list of preprinted general orders to the department. The form also contains an option marked 'other' that the courts may use to issue customized supplemental orders." (Citations omitted.) *In re Leah S.*, 284 Conn. 685, 687–88 n.2, 935 A.2d 1021 (2007).

[24] In light of the facts that the respondent remained incarcerated and had no cohabitation history with his wife, whom he had married while in prison, and that the wife was a virtual stranger to the deeply traumatized children; see footnote 11 of this opinion; we question the dissent's suggestion that one benefit that potentially could have flowed from the provision of specific steps was the respondent and his wife successfully establishing adequate housing for the children. According to the dissent, "providing [the wife] with the opportunity to visit with and possibly to care for the children while the respondent was incarcerated [certainly] would have made it much easier for [the wife], the children, and the respondent to be reunited as a family after the respondent's release from prison." The trial court expressed the concern that the thirty-one year old respondent, who had been incarcerated for approximately ten of the last twelve years, had "yet to demonstrate his ability to stay the straight and narrow in the nonstructured world to which he will be returning when he is released from prison." Because of the distinct possibility that the respondent would be unsuccessful with this transition, we agree with the trial court that it would have been inappropriate to disrupt the stability of the children's long-term foster placement to prepare them for a reunification that might never occur.

[25] Claudia Roman, a department social worker who had taken Elvin and Kadahfi to visit the respondent in prison, testified that, during the visits, she had spoken with the respondent about parenting classes, anger management and developing vocational skills. She testified further that the department had provided the respondent with parenting information, and encouraged him to participate in prison services that would benefit him. The respondent testified that he attended available classes pertaining to parenting, mentoring and fitness training and, to a limited extent, participated telephonically in meetings, case review and family therapy.

[26] In his brief, the respondent does not identify any particular rehabilitative opportunities that were open to him, but that he declined to pursue because he failed to appreciate their utility. Rather, he simply invites this court to "imagine the efforts he would have made had he been provided with specific steps from the beginning." Unfortunately, it is difficult to conceive of what the respondent would have done with more guidance. We agree with the respondent that, as a general matter, specific steps provide parents with notice as to what problems need to be corrected to enable reunification with their children. We disagree, however, that under the circumstances of the present case, such particularized notice could have made a difference.

[27] In Arizona, pursuant to state statute, parental rights may be terminated if "the parent is deprived of civil liberties due to the conviction of a felony . . . if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." Ariz. Rev. Stat. Ann. § 8-

533 (B) (4) (2007). In deciding whether to sever parental rights pursuant to this provision, a court "should consider all relevant factors, including, but not limited to: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between that child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue." (Internal quotation marks omitted.) *James H.* v. *Arizona Dept. of Economic Security*, supra, 210 Ariz. 3 (Norris, J., concurring).

[28] In finding that the respondent had failed to rehabilitate, the trial court acknowledged that termination of parental rights could not be based on incarceration alone. The court reasoned, however, that "the inability of the parent to be a part of the child's developmental process, especially very damaged children such as Elvin and Kadahfi, with no prospect of the participation of that parent for some time to come, factors into the rehabilitation concept." At trial, Eric Frazer, an expert in clinical psychology and forensic psychology who had evaluated the respondent, Elvin and Kadahfi, explained the effects of the respondent's long-term absence on the children and the substantial challenge of remedying the damage that had resulted. The trial court's reasoning is consistent with that explanation.

According to Frazer, "the issue . . . is not so much that [the respondent is] in prison. It's that . . . being in prison results in his absence as a caregiver.

"So the concern is that his absence as a caregiver has had a direct impact on multiple levels . . . to the children.

"It's impacted his availability to meet all of the[ir] developmental needs . . . their behavioral needs, their emotional needs, their educational needs, their needs for stability, their needs for shelter, their needs for nurturance.

"And it's his absence of being able to provide those needs that has had the significant impact. So it's not just the fact that he happens to be in prison. It's the impact of that on each of the children in multiple domains.

"The additional issue is the parent/child relationship and the attachment [that] was unable to evolve appropriately, consistently.

"So these children lost their father at a time [when] having regular, meaningful, consistent, predictable contact on a regular basis is what they needed to thrive and to cultivate a relationship with him.

"So again, by being in prison, his absence of being available to provide that was a significant detriment to the child[ren].

"Now, if we fast forward and if he was released today, you can't just turn attachment on like a light switch. It doesn't just automatically start up because there's biological ties.

"It takes time. It takes investment. And it takes involvement on a regular, predictable basis in those areas of parenting that [were discussed] . . . . [T]hat's an overall summary of the concerns."

Frazer subsequently reiterated: "[T]he concerns for the children's needs don't simply rest on the fact that the [respondent] is incarcerated.

"It's the fact that he's unavailable to parent, has been unavailable to parent for many, many, many years.

"And that has undermined the opportunity for an attachment to exist and continue. And it has undermined the opportunity for a relationship to continue where he's able to function as a caregiver to the children in every extent that they need."

[29] We emphasize that our holding today is highly fact specific and is in no way intended to suggest that the absence of previously provided specific steps routinely will be excused in cases involving incarcerated parents whose rights are terminated on the basis of a failure to rehabilitate. As we have explained herein, such steps are statutorily required and, in any number of circumstances, providing them to the parent would not be a futile directive. In some cases, for example, the parent will have a solid work history and a well established bond with his or her children, the term of incarceration will be relatively short, regular visitation may be appropriate and available, the children's needs will be less dire and/or the other parent will be available to provide a stable household during the incarcerated parent's absence. Specific steps play an important role in guiding parents toward reunification with their children and, ordinarily, they must be provided.