IN RE PAUL M., JR.*
(AC 36779)

Beach, Sheldon and Flynn, Js.

*Argued October 14—officially released December 17, 2014***

(Appeal from Superior Court, judicial district of Middlesex, Child Protection Session at Middletown, Hon. Francis J. Foley III, judge trial referee.)

Erich Gaston, with whom, on the brief, was *Alison P. Gaston*, for the appellant (respondent father).

Renee Bevacqua Bollier, assistant attorney general, with whom on the brief were *George Jepsen*, attorney general, and *Benjamin Zivyon*, assistant attorney general, for the appellee (petitioner).

Peter K. Manko, for the minor child.

Opinion

BEACH, J. The respondent father[1] appeals from the judgment of the trial court terminating his parental rights with respect to his minor child, Paul M., Jr. (child).[2] The respondent claims the trial court erred in (1) finding that he had failed to achieve a sufficient degree of personal rehabilitation, and (2) determining that it was in the child's best interest to terminate his parental rights. We affirm the judgment of the trial court.

The record discloses the following relevant factual and procedural history. In March, 2013, the petitioner, the Commissioner of Children and Families (commissioner) filed a petition to terminate the parental rights of the respondent to the child. The petition alleged, as adjudicative grounds for termination, that (1) the child had been abandoned by the respondent, and/or (2) he had been found to be neglected or uncared for in a prior proceeding and the respondent had failed to achieve rehabilitation.

Following an evidentiary hearing, the court, *Hon. Francis J. Foley III*, judge trial referee, ordered that the parental rights of the respondent as to the child be terminated. The court explained in its April 3, 2014 memorandum of decision that the petition seeking the termination of the respondent's parental rights alleged both abandonment and failure of the respondent to rehabilitate. The court noted that because a finding of abandonment had been affirmed on appeal; *In re Paul M.*, 148 Conn. App. 654, 656, 85 A.3d 1263, cert. denied, 311 Conn. 938, 88 A.3d 550 (2014); it would address only the issue of failure to rehabilitate.

By way of background, in June, 2013, the commissioner had filed a motion to allow the Department of Children and Families (department) to cease reunification efforts on the ground that the respondent had "abandoned" the child, pursuant to General Statutes § 17a-112 (j). Following a hearing, the court, *Brown, J.*, had found that the respondent had absconded from Connecticut in order to avoid arrest from early January to late May, 2013, and had failed to provide information as to how he could be reached. The court concluded that the respondent did not have a continuing or maintained degree of interest as set forth in General Statutes §§ 17a-111b (a) and 17a-112 (j). The court granted the commissioner's motion to cease reunification efforts. On appeal, this court found that the trial court's finding of abandonment was not clearly erroneous and affirmed the court's granting of the commissioner's motion to cease reunification efforts. *In re Paul M.*, supra, 148 Conn. App. 656.

In its April 3, 2014 memorandum of decision, the court chronicled the respondent's history. The respondent had a dysfunctional childhood with frequent

involvement by the department. He was adopted by his great aunt and uncle. The respondent exhibited emotional problems that were not addressed with consistent therapy. The respondent's behavior, and emotional and psychiatric difficulties, necessitated five inpatient psychiatric hospitalizations, three outpatient treatment programs and two placements in residential treatment facilities. The respondent sexually assaulted two family members, aged two and four, and was placed in a residential treatment facility. During his time at the facility, he was destructive and disruptive, and he used coercion and a physical threat to engage in sexual activity with a resident with limited abilities. The respondent was discharged from the facility against the recommendations of staff. The respondent later dropped out of school, left home and reported that he had been sexually abused by a department worker.

The respondent's history of criminal convictions includes the following: in 2010, disorderly conduct; in 2007 and 2009, failure to register on sex offender registry; in 2005, threatening in the second degree, violation of probation, failure to appear and violation of probation; in 2000, possession of narcotics and interfering with an officer/resisting arrest; in 1998, sexual assault in the first degree, sexual assault in the second degree, sexual assault in the third degree, risk of injury to a child, failure to appear and violation of probation; and in 1996, unlawful restraint and failure to appear.

The respondent received treatment from Dr. Anthony Campagna for his mental health issues from 2005 until 2013, when he violated his probation. Campagna said the respondent had an adjustment disorder and was immature, in that he was developmentally delayed and was functioning as a teenager. He had limited ability to attach to others. He also had judgment problems and unresolved trauma from early emotional neglect, separation from his family, and sexual victimization.

The child was in the home of his biological parents for forty-five days after his birth in 2010 before being removed from the home by the department. During that forty-five day period, the police were called seven times in response to domestic violence episodes. The department received two anonymous calls reporting domestic violence and illegal drug use within the home. The respondent was arrested and removed from the home nineteen days after the birth of the child. Thereafter, the child remained with his biological mother until he was removed from the home by the department.

In January, 2011, the respondent was no longer incarcerated but was on probation as part of a criminal sentence. Specific steps were put in place to aid him in his rehabilitation. In February, 2012, the respondent filed a motion to revoke commitment. The court, *Gilligan, J.*, found that the respondent had completed a twenty-six week domestic violence program and a par-

enting skills program, and that he had attended the Birth to Three sessions and all of his scheduled visits with the child. Campagna stated that the respondent had made progress, albeit slow progress. The court concluded at that time that the cause for commitment no longer existed and that it was in the child's best interest to live with the respondent. In March, 2012, the respondent achieved protective supervision status until September 26, 2012, when the department closed the file.

Within ninety days of the closing of the file, the custodial arrangement began to fall apart. The respondent's probation officer, Patricia Belin, had concerns about the child's care. The respondent was violating conditions of probation by drinking and accessing the Internet. Belin confiscated eight cell phones, all of which were capable of accessing the Internet, from the respondent's home. The police were called regarding an incident in which the respondent, while intoxicated, was pushing the child in a stroller and attempting to walk to New Haven from Meriden. In January, 2013, the respondent, fearing arrest for violation of probation, left the child with a friend and fled the jurisdiction. The respondent was found five months later by a bounty hunter in Las Vegas.

The court found that the respondent had failed to rehabilitate within the meaning of § 17a-112 (j) (3) (B) (i). The court further found that termination of the respondent's parental rights was in the child's best interest. This appeal followed.

We note that a "hearing on a petition to terminate parental rights consists of two phases, adjudication and disposition. . . . In the adjudicatory phase, the trial court determines whether one of the statutory grounds for termination of parental rights . . . exists by clear and convincing evidence. If the trial court determines that a statutory ground for termination exists, it proceeds to the dispositional phase. . . . In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the [parent's] parental rights is not in the best interests of the child. In arriving at that decision, the court is mandated to consider and make written findings regarding seven factors delineated in . . . § [17a-112 (k)] . . . ." (Internal quotation marks omitted.) *In re Alison M.*, 127 Conn. App. 197, 203–204, 15 A.3d 194 (2011).

"In order to terminate a parent's parental rights under § 17a-112, the [commissioner] is required to prove, by clear and convincing evidence, that: (1) the department has made reasonable efforts to reunify the family; General Statutes § 17a-112 (j) (1); (2) termination is in the best interests of the child; General Statutes § 17a-112 (j) (2); and (3) there exists any one of the seven grounds for termination delineated in § 17a-112 (j) (3)." (Internal

quotation marks omitted.) *In re Melody L.*, 290 Conn. 131, 148–49, 962 A.2d 81 (2009), overruled on other grounds by *State* v. *Elson*, 311 Conn. 726, 746–47, 754, 91 A.3d 862 (2014).

I

The respondent's first two arguments concern the court's finding that the respondent had failed to rehabilitate. Section 17a-112 (j) (3) (B) (i) provides for the termination of parental rights where the child "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 . . . ." See *In re Elvin G.*, 310 Conn. 485, 503, 78 A.3d 797 (2013). "[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. . . . The statute 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.

A

The respondent claims that the trial court impermissibly "bootstrapped" the prior finding of abandonment into its operative finding of failure to rehabilitate. He argues that abandonment and failure to rehabilitate are "separate and distinct" grounds and are "not to be combined by courts at will and 'morphed' into a hybrid ground for termination." He argues that, in doing so, the trial court violated the tenet of statutory construction that "the legislature does not intend to enact meaningless provisions." (Internal quotation marks omitted.) *In re Joseph W.*, 121 Conn. App. 605, 629, 997 A.2d 512 (2010), aff'd, 301 Conn. 245, 21 A.3d 723 (2011). Moreover, he argues that, in so doing, the court violated his right to due process by not providing him with notice at the hearing on the motion to cease reunification efforts that a finding of abandonment might later be bootstrapped into a finding of failure to rehabilitate

under § 17a-112 (j) (3) (B) (i). We are not persuaded.

The petition listed two grounds for termination: abandonment; General Statutes § 17a-112 (j) (3) (A); and failure to rehabilitate; General Statutes § 17a-112 (j) (3) (B) (i). The court noted that Judge Brown's finding of abandonment was affirmed on appeal and said that it would address only the ground of failure to rehabilitate. The court found, as to the adjudicatory phase, that a statutory ground for termination existed—that the respondent had failed to rehabilitate. The respondent argues that the following passage from the court's memorandum of decision shows that it impermissibly bootstrapped or "morphed" the finding of abandonment into the finding of failure to rehabilitate: "[T]he same conduct that constituted abandonment, that is, leaving the child with a stranger without adequate support or resources and without any responsible person with authority to make decisions for the child, taken together with [the respondent's] frustration with child care, the domestic violence with his girlfriend, his alcohol abuse, his flight from Connecticut and violation of the terms of probation leading to his incarceration, all lead this court to find that [the respondent] has failed in his rehabilitation."

Contrary to the respondent's arguments, the court did not impermissibly use the *finding* of abandonment to find, in turn, a failure to rehabilitate, nor did it conflate the statutory grounds of failure to rehabilitate and abandonment. Rather, the court assessed only whether the commissioner had proven by clear and convincing evidence that the respondent had failed to rehabilitate. The court simply did not apply the doctrine of collateral estoppel to the finding of abandonment.[3]

The court found by clear and convincing evidence that the respondent had failed to rehabilitate. Some of the same *conduct* that had underlain the finding of abandonment was used to support the finding of failure to rehabilitate. The commissioner introduced the testimony of Belin, the respondent's probation officer during the relevant time period. Belin testified that, at the time of her supervision, the respondent was on probation for sexual assault in the third degree, risk of injury to a child and failure to appear; he had violated probation four times. She further testified that the respondent expressed to her his frustrations with parenting; she noted that "he would get very frustrated with little things that are typical for a two year old." She testified that at the time the respondent absconded, he was noncompliant with the conditions of his probation, in that he was engaging in unapproved contact with minors, namely, his fifteen year old son, consuming alcohol, and using social networking sites to solicit sex from women. Belin testified that after the respondent left Connecticut, he called her to inform her that he was not doing well and was no longer taking his medication.

He initially refused to tell Belin where the child was, but Belin later learned that the respondent reportedly called the New Haven Police Department and provided information as to where the child was. She testified that the child later was found with the sister of the person with whom the respondent had left the child.

The court based its finding of failure to rehabilitate on a number of factors, including the facts amounting to abandonment, the respondent's frustration with child care, domestic violence with his girlfriend, his flight from Connecticut, and violating the terms of his probation. The respondent has pointed to no authority to support the proposition that evidence supporting one ground for termination cannot be used to support another ground for termination.

B

The respondent also argues that the court's finding that he had failed to rehabilitate was not legally correct or factually supported. We are not persuaded.

The respondent argues that although he has made mistakes, he clearly loves the child and never gave up on him. He argues that when he was out of state from January, 2013, to May, 2013, he was in constant contact with the child's grandmother, his own probation officer, the social worker from the department, and his significant other at the time, regarding the child's welfare. He vigorously contested the motion to cease reunification efforts and appealed from the court's granting of the motion. He further argues that the trial court "obviously terminated [the respondent's] parental rights based upon his incarceration. However, in Connecticut, incarceration alone is insufficient to terminate parental rights." Although the respondent highlights the efforts that he has made and his love for the child, "motivation to parent is not enough; ability is required." *In re G.S.*, 117 Conn. App. 710, 718, 980 A.2d 935, cert. denied, 294 Conn. 919, 984 A.2d 67 (2009).

The respondent is correct in asserting that the fact of incarceration by itself is not sufficient to terminate parental rights. See *In re Katia M.*, 124 Conn. App. 650, 661, 6 A.3d 86, cert. denied, 299 Conn. 920, 10 A.3d 1051 (2010). The court, however, did not base its decision solely on the fact that the respondent was incarcerated. A court may recognize that "incarceration . . . may prove an obstacle to reunification due to the parent's unavailability"; id.; and here the court did so. The court noted that the respondent's incarceration rendered him unable to serve as caretaker for the child. It stated: "The fact that the [respondent is] in prison is only an issue in so far as [his] criminal conduct has rendered [him] unable to perform as a parent. [He is] unable to serve as caretaker. [His] personal criminal conduct has impacted on the child on multiple levels. [He is] unable to meet the developmental, emotional, educational,

medical and moral needs of the child. [He] cannot provide for the shelter, nurturance, safety and security of [the child]." In finding a failure to rehabilitate, the court cited numerous factors, including leaving the child with a stranger, his frustration with child care, domestic violence, alcohol abuse, flight from Connecticut and violation of the terms of probation that led to his incarceration.

The respondent further argues that he loves the child, has a bond with him, has never been physically abusive toward the child and that his "temporary lapse in judgment," in which he decided to leave the state for a number of months to avoid facing charges of violation of probation, should not be held against him, particularly in light of the fact that his abuse and neglect as a child, his criminal history and his status as a sex offender have not prevented him from successfully parenting the child in the past. The fact that the respondent may love the child does not in itself show rehabilitation. See *In re Ashley S.*, 61 Conn. App. 658, 667, 769 A.2d 718 ("[a] parent's love and biological connection . . . is simply not enough" [internal quotation marks omitted]), cert. denied, 255 Conn. 950, 769 A.2d 61 (2001). Although the respondent highlights strides he has made, "even if a parent has made successful strides . . . such improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, [he] could assume a responsible position in the life of [his child]." *In re Alejandro L.*, 91 Conn. App. 248, 260, 881 A.2d 450 (2005). Furthermore, the respondent did not experience but one "lapse in judgment," though one was especially egregious, but rather, as highlighted by the court, had a long criminal history and "historical problems of dysfunction" over his lifetime.

The respondent argues that the fact that his incarceration was short should have been a favorable factor in determining whether he had sufficiently rehabilitated. He argues that his incarceration resulted from a violation of probation rather than a new criminal charge, and his contemplated release date was in January, 2015, even if he receives no credit for good behavior. There is no indication that the court was unaware of the length of the respondent's incarceration or that it did not take it into consideration. A short period of incarceration and a bond with the child do not by themselves demonstrate rehabilitation. The court determined that the "underlying, historical problems of dysfunction that [the respondent] has demonstrated over [his] lifetime" were of "great importance." The court further stated that proof of rehabilitation "will require more than a year of sobriety, therapy, and full adjustment into the community. This child at four years of age needs permanency now. He should not be required to wait in limbo for another year or two to see if [the respondent] can conduct [his] affairs as [a] law-abiding productive citizen capable of parenting; a condition [he has] never

demonstrated in the past."

In sum, we do not conclude that the court's finding regarding the respondent's failure to rehabilitate was clearly erroneous. There was sufficient evidence to support the court's finding and we are not left with a definite and firm conviction that a mistake has been made.

II

The respondent next claims that the court erred in determining that it was in the child's best interest to terminate his parental rights. We disagree.

"In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of [the respondent's] parental rights is not in the best interests of the child. In arriving at this decision, the court is mandated to consider and [to] make written findings regarding seven factors delineated in [§ 17a-112 (k)]. . . . As with the findings made in the adjudicatory phase, we reverse the court's determination of the best interests of the child only if the court's findings are clearly erroneous." (Internal quotation marks omitted.) *In re Harlow P.*, 146 Conn. App. 664, 678–79, 78 A.3d 281, cert. denied, 310 Conn. 957, 81 A.3d 1183 (2013).

General Statutes § 17a-112 (k) provides: "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 interests 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."

The respondent takes issue with the court's findings regarding the fourth factor—the feelings and emotional ties of the child with respect to the child's parents and, in this case, foster parents. He first argues that in analyzing this factor, the court impermissibly considered whether the foster parents, who potentially would adopt the child, would be better caregivers than the child's biological parents. In support of his argument, the respondent notes the following passages in the court's decision: "[T]he testimony of the social workers regarding their observations of the adjustment of [the child] to the foster home, the level of care he receives and the devotion of the foster parents to him *satisfy the court that remaining in his present placement is the best possible outcome and accordingly in the best interest of the child*"; and "[t]he child has adjusted very well in his foster home and to the extended foster family. This family is providing the day-to-day physical, emotional, moral and educational support the child needs. *The foster parents are committed to the child and would like to adopt him.*" (Emphasis added.)

In *In re Baby Girl B.*, 224 Conn. 263, 618 A.2d 1 (1992), the Commissioner of Children and Youth Services sought to terminate the mother's parental rights as to her two day old child, on the ground that the mother had abandoned the child at a hospital within hours of giving birth, without disclosing either her identity or her address to hospital staff. Id., 267–68. The trial court granted the petition. Id., 269. After the child was placed in a preadoptive home, the mother moved to open the judgment terminating her parental rights. Id., 270. Over the objection of the commissioner, the trial court granted her motion to open. Id., 271. The commissioner filed an amended petition to terminate the mother's parental rights, which was denied by the trial court. Id., 272. The Supreme Court affirmed the judgment denying the commissioner's petition to terminate parental rights. Id., 303. In the course of its decision, the court noted: "It bears emphasis that a judicial termination of parental rights may not be premised on a determination that it would be in the child's best interests to terminate the parent's rights in order to substitute another, more suitable set of adoptive parents. Our statutes and caselaw make it crystal clear that the determination of the child's best interests comes into play only after statutory grounds for termination of parental rights have been established by clear and convincing evidence. . . . [A] parent cannot be displaced because someone else could do a better job of raising the child. . . .

"Although, as a matter of statutory fiat, consideration of the best interests of the child cannot vitiate the necessity of compliance with the specified statutory standards for termination of parental rights . . . [i]nsistence upon strict compliance with the statutory criteria before termination . . . can occur is not inconsistent with concern for the best interests of the child. . . . A child, no less than a parent, has a powerful interest in the preservation of the parent-child relationship." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 280–81.

In *In re Denzel A.*, 53 Conn. App. 827, 833–34, 733 A.2d 298 (1999), the child's grandmother, whose motion to intervene was granted in part by the trial court, challenged on appeal the findings of the trial court in the dispositional phase by arguing that the trial court improperly failed to consider the option of transferring guardianship to her. She argued that child would have been better off living with her than being adopted by strangers. Id., 834. In denying the grandmother's claims, this court stated: "[T]he only reason in this case not to sever the parent-child relationship would be if the severance would ensure that [the child] could reside with his grandmother. Where he should reside and with whom, however, are not questions that relate to whether it is in his best interests to terminate his relationship with his parents." (Emphasis omitted.) Id.; see also *In re Sheena I.*, 63 Conn. App. 713, 724, 726, 778 A.2d 997 (2001) (judgment of trial court terminating parental rights affirmed and claim that court erred in appointing commissioner statutory parent of child and should have instead placed child in long term foster care or transferred guardianship to child's grandmother or maternal aunt denied; this court reasoned that trial court "properly considers only whether the parent's parental rights should be terminated, not where or with whom a child should reside following termination").

It is, then, improper for a termination of parental rights to be grounded on a finding that a child's prospective foster or adoptive home will be "better" than life with one or more biological parent. On the other hand, the court is statutorily required to address in writing "the feelings and emotional ties of the child with respect to . . . 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." General Statutes § 17a-112 (k) (4). Although a comparison of the prospective homes and the resources of the prospective families is, viewed independently, irrelevant to and improper in the determination of whether to terminate parental rights, because the proper focus is on the ability of the biological parent and how that ability or limitation of ability relates to the best interest of the child, the court also must consider the bond that the child has developed toward

both. The court in this case improperly overstated the importance of the perceived relative advantage of the putative adoptive home, and those findings were made erroneously. The court's remaining findings, however, were entirely appropriate and support the ultimate conclusion of the court.

In context, then, the challenged findings of the court do not vitiate its judgment. The court *first* found that the commissioner had proved the adjudicative ground by clear and convincing evidence. This finding was made without any reference to any bond with or interest in adoption by the foster parents. The only remaining issue was disposition, that is, whether termination was in the best interest of the child. The court addressed each of the seven mandated findings in writing. Because the child had been in the care of the foster parents for more than one year, the court was required to address the child's bond with them. In that light, the findings that the foster home in general provided for the child's needs, including emotional needs for love and stability, are relevant to the child's bond with the foster parents, which the court is required to examine under § 17a-112 (k) (4). See *In re Joseph L.*, 105 Conn. App. 515, 529, 939 A.2d 16 ("[t]he best interests of the child include the child's interests in . . . stability of its environment" [internal quotation marks omitted]), cert. denied, 287 Conn. 902, 947 A.2d 341, 342 (2008).

The challenged findings, then, were inappropriate and unnecessary but not fatal to the judgment. Although the court found that the bond between the child and the foster parents was strong, and the bond contributed to the conclusion that termination was in the best interest of the child, the court did not "displace" the respondent "because someone else could do a better job of raising the child." See *In re Baby Girl B.*, supra, 224 Conn. 263 (displacing parent because another could do " 'a better job' " was improper). Rather, after examining the statutory criteria of § 17a-112 (k), as required, the court determined by clear and convincing evidence that it was in the child's best interest to terminate the respondent's parental rights. The court's § 17a-112 (k) findings are as follows: the department had offered the respondent multiple services and programs that resulted in reunification with the child, but the department was unable to offer current services because of the respondent's incarceration; the respondent was issued specific steps for reunification, with which he complied, until the department oversight ended, at which time he "decompensated" and abandoned the child; the child did not have emotional ties with the respondent[4] but was well adjusted in the foster home; the child was four years old and needed permanency, which, as the child's attorney recommended, could be achieved only by termination of parental rights; "given the historic level of dysfunction of both biological parents, giving them additional time would not likely enable them to

adjust their circumstances, conduct or conditions to make it in the best interests of the child to be reunited within a time-frame suitable for the child. . . . Given their prior felony criminal records and the very serious nature of the charges for which they have been previously convicted, there is a strong possibility that neither parent will be available to parent anyone for a considerable period of time" [citation omitted]; and there had been no unreasonable conduct by the department, foster parents or third parties preventing the respondent from maintaining a meaningful relationship with the child. The court found that termination was in the child's best interests and noted that in so finding it had "examined multiple relevant factors including the notion that permanency, consistency and stability are crucial for children [and that a] child's interests in sustained growth, development, well-being, stability and continuity of environment are equally important. The length of stay in foster care, the nature of the relationship of the child with the biological parents, the degree of contact maintained with the biological parents, and the genetic bond to the [respondent] have all been considered."

The court examined the seven factors delineated in § 17a-112 (k), as well as other considerations approved by our case law, and concluded that it was in the child's best interest for the respondent's parental rights to be terminated. We conclude that this determination was not clearly erroneous.

The judgment is affirmed.

In this opinion the other judges concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79a-12, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

** December 17, 2014, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The court also terminated the parental rights of the respondent mother. The mother is not a party to this appeal. Accordingly, we refer to the father only as the respondent.

[2] The attorney for the minor child filed a statement adopting the brief of the petitioner, the Commissioner of Children and Families, in this appeal.

[3] See *In re Jah'za G.*, 141 Conn. App. 15, 28, 60 A.3d 392 ("[T]hat constitutional rights are at stake in a case is not a reason, in itself, not to apply the doctrine of collateral estoppel. . . . [C]ollateral estoppel has been applied in child protection cases." [Citation omitted; internal quotation marks omitted.]), cert. denied, 308 Conn. 926, 64 A.3d 329 (2013).

[4] The respondent argues that the court failed to consider the bond between him and the child as required by § 17a-112 (k) (4). He argues that that the court erred in finding that the child had no bond with him. He contends that "the trial court is not clairvoyant and this finding is without evidence, especially since [the respondent] was not evaluated by Dr. Sichel. In fact, in early 2013, the [department] noted a strong bond between [the respondent] and [the child]."

We cannot retry facts. See *Jason Robert's, Inc.* v. *Administrator, Unemployment Compensation Act*, 127 Conn. App. 780, 786, 15 A.3d 1145 (2011). The court properly considered the bond between the respondent and the child and did not err in finding that the bond was lacking. In early 2013, there may have been a bond between child and parent, but after the respondent's leaving the child to avoid a probation violation—during which five

month absence Sichel interviewed the mother and was unable to conduct an interview with the respondent—the court properly could have found a lack of a bond.