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IN RE KHARM A.*
(AC 45968)

Alvord, Moll and Seeley, Js.

Syllabus

The respondent mother appealed to this court from the judgment of the trial court terminating her parental rights with respect to her minor child. She claimed that the trial court erroneously concluded that the Department of Children and Families had made reasonable efforts at reunification pursuant to statute (§ 17a-112 (j) (1)). *Held* that, because the respondent mother challenged only one of the two separate bases for upholding the trial court's determination that the requirements of § 17a-112 (j) (1) had been satisfied, the mother's appeal was moot because there was no practical relief that this court could provide: although the trial court found both that the department made reasonable efforts to reunify the mother with her child and that the mother was unable or unwilling to benefit from reunification efforts, in her principal appellate brief, the mother challenged only the court's finding that the department made reasonable efforts to reunify her with her child; moreover, although her statement of issues and a heading in her brief referenced the court's finding that she was unable or unwilling to benefit from reunification efforts, the argument section of her brief, which was contained in two and one-half pages, did not provide legal analysis on this point.

Argued March 22—officially released April 13, 2023**

Procedural History

Petition by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor child, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and tried to the court, *Conway*, *J.*; judgment terminating the respondents' parental rights, from which the respondent mother appealed to this court. *Appeal dismissed.*

Caroline E. Lovallo, certified legal intern, with whom was *Joshua D. Michtom*, assistant public defender, for the appellant (respondent mother).

Amanda Szyszkiewicz, assistant attorney general, with whom were *Evan O'Roark*, assistant attorney general, and, on the brief, *William Tong*, attorney general, for the appellee (petitioner).

Opinion

ALVORD, J. The respondent mother, Letishag A., appeals from the judgment of the trial court terminating her parental rights with respect to her minor child, K.[1] On appeal, she claims that the court erroneously concluded that the Department of Children and Families (department) had made reasonable efforts at reunification, pursuant to General Statutes § 17a-112 (j) (1). The respondent does not brief a claim that the court erred in its additional conclusion that she was unable or unwilling to benefit from reunification efforts. Because the respondent challenges only one of the two bases for the court's determination that § 17a-112 (j) (1) had been satisfied, we conclude that the respondent's appeal is moot.[2]

The following facts, which were found by the trial court, and procedural history are relevant to this appeal. Prior to K's birth, the respondent and Kyle J. had two older children, Z and P. In 2017, Z, then five weeks old, was subjected to extreme physical abuse while in the care of the respondent and Kyle J.[3] The respondent's and Kyle J.'s parental rights as to Z were terminated in 2019. P was committed to the care and custody of the petitioner, the Commissioner of Children and Families, in March, 2019.

K was born in October, 2020, and the petitioner filed a motion for an order of temporary custody a few days following her birth, which was granted ex parte that same day. On October 15, 2020, the petitioner filed a neglect petition as to K, and the contested hearing on the order of temporary custody was consolidated with the adjudicatory phase of the neglect petition. After a hearing, the court sustained the order of temporary custody and adjudicated K neglected. The dispositional phase of the neglect petition as to K was consolidated with the petition for the termination of the respondent's and Kyle J.'s parental rights as to P. Following a hearing, the court, *Conway*, *J.*, terminated the respondent's and Kyle J.'s parental rights as to P and committed K to the custody of the petitioner. Since her discharge from the hospital following her birth, K has been in the care of her foster mother, who is also the adoptive mother of Z and the pre-adoptive foster mother of P.

On December 3, 2021, the petitioner filed a petition for the termination of the respondent's and Kyle J.'s parental rights as to K. As to the respondent, the petition alleged the grounds of failure to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i) and (E).[4] On July 26, 2022, the court held a trial on the petition. The respondent was absent at the scheduled start of the trial but appeared approximately one hour after it began. The petitioner presented the testimony of two social workers with the department, Kelly Stratton and James Roth, and offered into

evidence fifteen exhibits, which were admitted. The respondent offered into evidence one exhibit, which was admitted, and did not present any testimony.

In its September 2, 2022 memorandum of decision, the court, *Conway*, *J.*, found that the respondent, "as she has with her other children, remained consistent in attending supervised visits. She is appropriate at the supervised visits and attentive to [K's] needs and interests. [The department] attempted to refer [the respondent] and [K] to CT Youth Resolution, a community based agency that offers parenting education services and supervised visitation sessions. [The respondent] refused to sign the agency's standardized release form to permit CT Youth Resolution, in the event of a medical emergency, to contact emergency medical personnel and if needed to have [K] transported via ambulance to [an] emergency medical treatment center. A second attempt was made to have the respondent . . . work with another community agency, Qualified Parent Center, but for similar reasons [the respondent] would not engage with the provider.

"When the assigned [department] social worker discussed with [the respondent] what needed to be addressed for reunification to be possible, namely beneficial and documented mental health treatment, [intimate partner violence] treatment, [the respondent's] prior substance use and the physical abuse of Z, [the respondent] denied any need for treatment or services. [The respondent] insists [the department] kidnapped all three of her children and she exhibits no insight as to why [K] is not in her care nor does she hold herself or [Kyle J.] accountable for the extreme physical abuse of Z in 2017." (Footnote omitted.) On the basis of these findings, the court found that (1) the department had made reasonable efforts at reunification and (2) the respondent was unable or unwilling to benefit from those efforts at reunification.

With respect to the statutory grounds for termination alleged in the petition, the court found that the respondent had failed to achieve an appropriate degree of personal rehabilitation as would encourage the belief that, within a reasonable time, considering the age and needs of the child, she could assume a responsible position in K's life. Specifically, the court found that, although the respondent "has consistently attended supervised visits with [K] and is attentive to [K] during said visits, [the respondent] has not engaged in documented treatment that meaningfully addresses the reasons why [K] was removed from her care at birth and why [K] has remained out of [the respondent's] care for almost two years. To reiterate [the respondent's] issues and lack of progress over the past two years: [the respondent] has engaged in long-standing and unaddressed [intimate partner violence] behaviors, [the respondent] repeatedly refused to engage in parenting

programs—a critical intervention which may have given [the respondent] the necessary tools to someday provide [K] with a physically safe environment and which may have bestowed in [the respondent] an ability and the skills to be a responsible entity in [K's] life, and [the respondent] has not engaged in documented, beneficial mental health treatment. As reflected in [the court's June 28, 2021 written decision in which it terminated the respondent's and Kyle J.'s parental rights as to P and committed K to the custody of the petitioner], as far back as November, 2020, for parental rehabilitative purposes, it was recommended that the respondent . . . receive protracted and effective psychotherapy with a seasoned professional. Psychologist . . . Madeleine Leveille conducted a court-ordered psychological evaluation of the respondent . . . and in November, 2020, Dr. Leveille credibly opined the following: '[The respondent] would need to have weekly psychotherapy for a period of two years to modify her maladaptive tendencies towards avoidance, social distancing, and mistrust. This individual psychotherapy could address the [domestic] violence issues in [the respondent's] life as well as her maladaptive personality tendencies. Given these personality tendencies, [the respondent] would be a challenging client, even for a seasoned professional who has experience working with individuals who are dually diagnosed with a substance use disorder (active or in remission) and a personality disorder. Given that [the respondent] has not engaged in psychotherapy for any extended period of time, it is highly likely that she will not follow through [on] this recommendation for individual psychotherapy.' "[5] The court concluded that, "until and unless [the respondent] successfully engages in the recommended mental health treatment articulated above, [the respondent's] 'asociality, paranoid thinking, stubbornness and irritability, [which] are aspects of her underlying personality disorder' . . . render [the respondent] incapable of parenting [K] or assuming a responsible position in [K's] life." Accordingly, the court found that the respondent had failed to rehabilitate pursuant to § 17a-112 (j) (3) (B) (i) and (E).

In the dispositional phase of the proceedings, the court made findings as to each of the criteria set forth in § 17a-112 (k) and concluded that the termination of the respondent's parental rights was in K's best interest. Accordingly, the court rendered judgment terminating the respondent's and Kyle J.'s parental rights as to K and appointing the petitioner as K's statutory parent. This appeal followed.

On appeal, the respondent claims that the trial court erred in concluding that the department had made reasonable efforts to reunify K with the respondent. Specifically, the respondent argues that the department should have "tr[ied] again to engage her with services" once it "knew" that she was no longer in a relationship

with or living with Kyle J. The petitioner responds that the respondent's "challenge to the trial court's finding that the department made reasonable reunification efforts is moot because she fails to also challenge the trial court's finding that she was unable or unwilling to benefit from reunification efforts—an independent basis for satisfying the efforts element set forth in § 17a-112 (j) (1)." We agree that the respondent's claim is moot because there is no practical relief that this court can afford her with respect to her claim.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [this] court's subject matter jurisdiction . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. . . . A case is considered moot if [the] court cannot grant the appellant any practical relief through its disposition of the merits . . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the plaintiff or defendant in any way." (Internal quotation marks omitted.) *In re A'vion A.*, 217 Conn. App. 330, 354, 288 A.3d 231 (2023).

Section 17a-112 (j) (1) provides in relevant part that the Superior Court "may grant a petition [for termination of parental rights] . . . if it finds by clear and convincing evidence that . . . the [department] has made reasonable efforts to locate the parent and to reunify the child with the parent . . . *unless* the court finds . . . that the parent is unable or unwilling to benefit from reunification efforts . . . ." (Emphasis added.) "In construing that statutory language, our Supreme Court has explained that, [b]ecause the two clauses are separated by the word unless, this statute plainly is written in the conjunctive. Accordingly, the department must prove *either* that it has made reasonable efforts to reunify *or*, *alternatively*, that the parent is unwilling or unable to benefit from reunification efforts. . . . [E]ither showing is sufficient to satisfy this statutory element. . . .

"Because either finding, standing alone, provides an independent basis for satisfying § 17a-112 (j) (1) . . . in cases in which the trial court concludes that *both* findings have been proven, a respondent on appeal must demonstrate that both determinations are improper. If the respondent fails to challenge either one of those independent alternative bases . . . the trial court's ultimate determination that the requirements of § 17a-112 (j) (1) were satisfied remains unchallenged and intact. . . . In such instances, the appeal is moot, as resolution of a respondent's claim of error in her favor could not [afford] her any practical relief." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re A'vion A.*, supra, 217 Conn. App. 354–55; see also, e.g., *In re Jorden R.*, 293 Conn. 539, 557, 979

A.2d 469 (2009).

In the present case, the court found that the department had made reasonable efforts to reunify the respondent with K *and* that the respondent was unable or unwilling to benefit from reunification efforts. In her principal appellate brief, the respondent challenges the court's finding that the department made reasonable efforts to reunify her with K. Although her statement of issues and a heading in her brief reference the court's finding that she was unable or unwilling to benefit from reunification efforts, the argument section of her brief, which is contained in two and one-half pages, does not provide legal analysis on this point. See, e.g., *Stubbs* v. *ICare Management, LLC*, 198 Conn. App. 511, 529, 233 A.3d 1170 (2020) (deeming claim abandoned because it was only referenced in statement of issues, introduction, and heading of brief).[6] Rather, her argument solely addresses the reasonable efforts determination.

Because the respondent challenges only one of the two separate and independent bases set forth in § 17a-112 (j) (1), there is no practical relief that this court can afford her with respect to her claim. See, e.g., *In re Isabella Q.*, 217 Conn. App. 837, 847, A.3d (2023); *In re Natalia M.*, 190 Conn. App. 583, 588, 210 A.3d 682, cert. denied, 332 Conn. 912, 211 A.3d 71 (2019).

The appeal is dismissed.

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.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

** April 13, 2023, 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 father, Kyle J., who has not appealed from that judgment. We hereinafter refer to the respondent mother as the respondent and to Kyle J. by name.

[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] In its September 2, 2022 memorandum of decision terminating the respondent's and Kyle J.'s parental rights as to K, the trial court quoted its factual findings from its June 28, 2021 written decision in which it terminated the respondent's and Kyle J.'s parental rights as to P and committed K to the custody of the petitioner, the Commissioner of Children and Families. "Specifically, on or about July 14, 2017, five week old [Z] sustained a left mandibular (jaw) fracture, left facial bruising, a liver laceration, bilateral eye hemorrhages, fractures of his left femur and left tibia (lower leg bone) and multiple rib fractures. [The department] [learned] of [Z's] injuries fortuitously: [Z] and [the respondent and Kyle J.] failed to appear for a scheduled pediatric appointment on or about July 14, 2017. The pediatrician's office notified [the department] of the family's no show and on the morning of July 14, 2017, the assigned [department] social worker proceeded to the family's residence to assist in transporting the child and parents to the pediatrician's office. The [department] social worker observed [Z] to have a swollen face, and the social worker checked to see if [Z] was still breathing. After speaking to the [respondent and Kyle J.], the social worker called 911 and [Z] was

transported by ambulance to the hospital.

The [respondent and Kyle J.] contend that in the early morning [hours] of July 14, [Z] accidentally fell to the floor from [Kyle J.'s] arms after the swaddling blanket unraveled and that during the fall [Z's] head hit the leg of the bassinet. Dr. Lisa Pavlovic, an expert in child abuse pediatrics, credibly opined that [the respondent and Kyle J.'s] explanation does not plausibly explain [Z's] injuries. Dr. Pavlovic credibly testified that lacerations of the liver are usually caused by blunt force trauma and Dr. Pavlovic credibly opined that [Z] was a victim of severe physical abuse."

[4] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court . . . may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) . . . (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, abused 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 . . . [or] (E) the parent of a child under the age of seven years who is neglected, abused 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 . . . ."

[5] The respondent had submitted into evidence a document that indicated that she was discharged from Cornell Scott Hill Health Corporation—Dixwell Behavioral Health by Christina Lapierre, a licensed clinical social worker (LCSW), with a checked box next to "Successful completion of treatment/graduation." The court noted that the assigned department social worker had no prior knowledge of the document until the morning of the termination of parental rights trial. The court further found that "[n]o start date is reflected and the respondent . . . provided no testimony, from herself or from anyone else, as to the type and length of treatment or the identified issues or treatment goals that [the document] references as 'successful.' " (Footnotes omitted.) The court concluded: "What treatment work [the respondent] and LCSW Lapierre may or may not have engaged in and over what period of time remains unknown. Moreover, whatever level of progress [the respondent] achieved in her work with LCSW Lapierre and how said progress may or may not have impact on [the respondent's] caregiving capabilities as to [K] also is not discernable."

[6] The respondent also includes in her statement of issues a claim that there was insufficient evidence to support the trial court's finding that the respondent failed to rehabilitate. As the petitioner notes in her brief, the respondent did not brief this claim and, thus, it is deemed abandoned. See *Russo* v. *Thornton*, 217 Conn. App. 553, 569 n.21, A.3d (2023) ("[when] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned" (internal quotation marks omitted)).