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IN RE AMANI O.*
(AC 46293)
(AC 46327)

Cradle, Suarez and Clark, Js.

Syllabus

The respondent father and the petitioner, the Commissioner of Children and Families, filed separate appeals to this court challenging the trial court's order granting an emergency motion filed by the attorney for the minor child, A, that required the Department of Children and Families to cease reunification efforts with respect to the father and A. The father also appealed from the trial court's order rejecting the petitioner's proposed permanency plan for A, which called for reunification with the father. After A had been adjudicated neglected and committed to the care and custody of the petitioner, her attorney filed the emergency motion because A had been diagnosed with a reactive airway disease and it was unclear whether there was secondhand smoke in the father's apartment, which would exacerbate her condition. The petitioner filed a motion for reconsideration of the emergency order, arguing that the department was statutorily (§ 17a-111b) required to make reasonable efforts to reunify A with her parents. The trial court denied the motion and instructed the department to consider how to protect A from secondhand smoke. The trial court also indicated that it was returning the matter of the permanency plan to the petitioner for the filing of a different permanency plan. *Held*:

1. The trial court exceeded its authority under § 17a-111b (a) when it ordered the department to cease reunification efforts, and, accordingly, this court vacated the order: the plain language of § 17a-111b required the department to make reasonable efforts to reunify the respondent father with A unless certain specific conditions were met, the trial court did not make any findings that would satisfy the conditions enumerated in § 17a-111b, and the parties did not dispute that none of the exceptions applied; moreover, contrary to the argument of A's attorney, although a trial court does have broad authority pursuant to statute (§ 46b-121 (b) (1)) to issue orders that are necessary and appropriate for the welfare, protection, proper care, and suitable support of a child, nothing in the text of that statute indicated that the authority granted therein superseded the department's mandate under § 17a-111b to make reasonable reunification efforts.

2. This court dismissed the respondent father's claim that the trial court abused its discretion by rejecting the petitioner's proposed permanency plan for lack of subject matter jurisdiction because the rejection did not satisfy the second prong of the test established in *State* v. *Curcio* (191 Conn. 27) and, therefore, was not a final judgment, as the father would not suffer irreparable harm in the absence of an immediate appeal:

   a. The father's argument that his claim satisfied the second prong of *Curcio* because the trial court's failure to revoke the commitment of A to the petitioner following the permanency hearing was functionally the same as an extension of the commitment of A to the care and custody of the petitioner was unavailing as, under the statutory scheme, the permanency plan did not implicate a right that was then held by the father but, instead, set a goal that would not influence his custodial rights until a future date; moreover, the father's argument that, because the trial court, during a permanency hearing, could revoke commitment if a cause for it no longer existed and it was in the best interests of A, any decision following a permanency hearing, other than the revocation of commitment, implied that the trial court decided that revocation of commitment was not in the best interests of A was unpersuasive because it failed to account for the plain language of the statute, which provided that commitment could be revoked at any time.

   b. The father's argument that his claim satisfied the second prong of *Curcio* because the trial court's rejection of the permanency plan impaired his custodial rights as to A was unavailing: rejection of the permanency plan did not necessitate that the petitioner propose a perma-

nency plan with a goal other than reunification, as nothing in the language of § 17a-111b suggested that the trial court's rejection of the permanency plan foreclosed the possibility of the petitioner including that same goal in subsequent proposed permanency plans, it merely required the trial court to approve a permanency plan that would be in the best interests of A and that would take into consideration A's need for permanency; moreover, the trial court's rejection of a permanency plan did not affect the department's duty to make reasonable efforts toward reunification.

Argued May 23—officially released August 10, 2023**

Procedural History

Petition by the Commissioner of Children and Families to adjudicate the respondents' minor child neglected, brought to the Superior Court in the judicial district of New Britain, Juvenile Matters, and tried to the court, *C. Taylor*, *J.*; judgment adjudicating the minor child neglected and committing her to the custody of the petitioner; thereafter, the court, *C. Taylor*, *J.*, granted the emergency motion filed by the attorney for the minor child to cease reunification efforts with the respondents and rejected the petitioner's proposed permanency plan for reunification of the minor child with the respondent father; subsequently, the court, *C. Taylor*, *J.*, denied the petitioner's motion for reconsideration of the emergency order to cease reunification efforts, and the petitioner and the respondent father filed separate appeals with this court.

Reversed in part; *order vacated*; *appeal dismissed in part in Docket No. AC 46293.*

James P. Sexton, assigned counsel, with whom was *Gail Oakley Pratt*, assigned counsel, for the appellant in Docket No. AC 46293 and the appellee in Docket No. AC 46327 (respondent father).

Evan O'Roark, assistant attorney general, with whom, on the brief, was *William Tong*, attorney general, for the appellant in Docket No. AC 46327 (petitioner).

Evan O'Roark, assistant attorney general, with whom, on the brief, were *William Tong*, attorney general, and *Nisa Khan*, assistant attorney general, for the appellee in Docket No. AC 46293 (petitioner).

Joshua Michtom, senior assistant public defender, for the minor child in both appeals.

Opinion

CRADLE, J. In these two related appeals, the respondent father, Carlos O., and the petitioner, the Commissioner of Children and Families, appeal from the trial court's order granting the emergency motion filed by the attorney for the minor child, Amani O., to cease reunification efforts with the respondent.[1] The respondent also appeals from the court's order rejecting the petitioner's proposed permanency plan for Amani, which called for reunification with the respondent. In their respective appeals, the respondent and the petitioner claim that the court exceeded its authority when it ordered that the Department of Children and Families (department) cease reunification efforts with the parents.[2] The respondent also claims that the court improperly rejected the petitioner's proposed permanency plan, which, he argues, will irreparably prejudice him in the pending trial proceedings. We agree with the respondent and the petitioner that the court exceeded its authority by ordering the department to cease reunification efforts and, therefore, reverse and vacate the court's judgment as to that order. We further conclude that the court's rejection of the petitioner's proposed permanency plan was not an appealable final judgment and, therefore, dismiss the portion of the respondent's appeal that challenges that action.

The following procedural history is relevant to this appeal.[3] Shortly after Amani was born in 2020, the department, acting on behalf of the petitioner, invoked a ninety-six hour hold on her, filed a neglect petition, and moved for an order of temporary custody. The court granted—and later sustained—temporary custody. Meanwhile, the petitioner proposed, and the court accepted, a permanency plan with a goal of revocation of commitment and reunification of Amani with her parents. On February 10, 2021, the court, *C. Taylor*, *J.*, adjudicated Amani neglected and committed her to the care and custody of the petitioner. On April 6, 2022, the attorney for the minor child filed an emergency motion to cease increasing visitation with the parents because she was unsure whether they had stopped smoking tobacco, thus posing a health risk to Amani, who is diagnosed with reactive airway disease. Judge Taylor held a hearing on that motion that same day. The court temporarily granted the emergency motion to cease increasing visitation, ordered that visitation not take place in the parents' homes, and appointed a guardian ad litem for the limited purpose of examining the respondent's apartment to determine whether secondhand smoke was present.

On April 14, 2022, the attorney for the minor child filed an emergency motion to cease reunification with the respondent, arguing that it was still unknown whether the respondent had quit smoking.[4] The court held a hearing on the emergency motion on April 22,

2022, during which the guardian ad litem reported that she "did not smell or observ[e] any active smoking" but noticed a "stale odor of cigarette smoke that . . . permeated from the carpet, the furniture, [and] . . . the walls" of the respondent's home. During the hearing, the respondent argued that the emergency motion should be denied because the guardian ad litem's report demonstrated no evidence of secondhand smoke, only a stale smell of smoke. The court granted in part the emergency motion to cease reunification efforts by ordering that Amani no longer visit the respondent parents in their respective homes "until [the court addressed] the issue of secondhand smoke" at a more extensive hearing to be scheduled for a later date. Then, on July 26, 2022, the petitioner filed a motion for review of a permanency plan, seeking to reunify Amani with the respondent. Rebecca T. and the attorney for the minor child objected to the permanency plan. The court heard arguments on the motion for review of the permanency plan as part of the proceedings on the emergency motion to cease reunification efforts.

Subsequent hearings on the motion to cease reunification efforts were held over five nonconsecutive days spanning from May to November, 2022. On January 19, 2023, the court issued an order that stated: "The court grants the child's emergency motion to cease reunification efforts with the parents." On January 31, 2023, the petitioner filed a motion for reconsideration of the emergency order to cease reunification efforts, arguing that the department is statutorily required to make reasonable efforts to reunify the child with the parents. The court denied that motion on March 8, 2023, without explanation, and instructed the department to "consider how to protect the child from secondhand smoke." Also on January 19, 2023, the court rejected the petitioner's proposed permanency plan for reunification of Amani with the respondent and returned the matter to the petitioner "for the filing of a different permanency plan."[5]

These expedited appeals followed.[6] On May 3, 2023, the court issued an articulation of its judgment granting the emergency motion to cease reunification efforts, in which it cited to *In re Ava W.*, 336 Conn. 545, 248 A.3d 675 (2020), explaining that its order was necessary to safeguard the health of the child.[7] Additional facts and procedural history will be set forth as necessary.

I

The petitioner and the respondent claim that the court exceeded its statutory authority under General Statutes § 17a-111b (a) by ordering the department to cease reunification efforts.[8] The attorney for the minor child argues that the court properly exercised its authority under General Statutes § 46b-121 (b) (1). We agree with the petitioner and the respondent.

This claim presents a question of statutory interpretation, over which we exercise plenary review. See *Cerame* v. *Lamont*, 346 Conn. 422, 426, 291 A.3d 601 (2023). "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." (Internal quotation marks omitted.) Id. "Further, in construing statutes, we presume that there is a purpose behind every sentence, clause or phrase used in an act, and that no part of a statute is superfluous." (Internal quotation marks omitted.) *Carpenter* v. *Daar*, 346 Conn. 80, 103 n.17, 287 A.3d 1027 (2023).

We therefore must first consider the text of the relevant statutes. Section 17a-111b provides in relevant part: "(a) The Commissioner of Children and Families *shall make reasonable efforts to reunify a parent with a child* unless the court (1) determines that such efforts are not required pursuant to subsection (b)[9] of this section or subsection (j) of section 17a-112,[10] or (2) has approved a permanency plan other than reunification pursuant to subsection (k) of section 46b-129. . . ." (Emphasis added; footnotes added.)

The plain language of § 17a-111b requires the department to make reasonable efforts to reunify the parent with the child unless certain specific conditions are met. In the present case, the court did not make any findings that would satisfy the exceptions enumerated in § 17a-111b, and the parties do not dispute that none of those exceptions applies. Because none of the exceptions to the statutory mandate of § 17a-111b applies in the present case, the court did not have authority to order that the department cease reunification efforts.

The attorney for the minor child, however, argues that the court had the authority to order "a temporary cessation of [reunification] efforts to protect the child's well-being, pursuant to the trial court's broad authority under . . . § 46b-121 (b) (1) . . . ." Assuming, arguendo, that the court relied on § 46b-121 (b) (1) in issuing its order for the department to cease reunification efforts with the parents, we nonetheless conclude that the court exceeded its authority. Section 46b-121 (b) (1) provides in relevant part: "In juvenile matters, the Superior Court shall have authority to make and enforce such orders directed to parents . . . guard-

ians, custodians or other adult persons owing some legal duty to a child therein, as the court deems necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child subject to the court's jurisdiction or otherwise committed to or in the custody of the Commissioner of Children and Families. . . ."

"A plain reading of § 46b-121 (b) (1) in its current form quite apparently grants the Superior Court comprehensive authority to issue orders in juvenile matters. The statute broadly enables the court to issue any order that it deems not only necessary but also necessary or appropriate . . . . The language also enables the court to issue orders directed at a broad range of actors and does not limit the scope of the statute to biological parents; rather, it extends it to any other adult persons owing some legal duty to a child . . . ." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *In re Ava W.*, supra, 336 Conn. 572.

Although § 46b-121 (b) (1) endows the court with broad authority to issue orders that are necessary and appropriate for the welfare, protection, proper care, and suitable support of a child committed to the care of the petitioner; id.; nothing in the text of § 46b-121 (b) (1) indicates that the authority granted therein supersedes the department's mandate, under § 17a-111b, to make reasonable reunification efforts. "Our case law is clear . . . that when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent and to know of all other existing statutes and the effect that its action or nonaction will have [on] any one of them." (Internal quotation marks omitted.) *Daley* v. *Kashmanian*, 344 Conn. 464, 485 n.16, 280 A.3d 68 (2022). To read such a grant of authority into the text of § 46b-121 (b) (1) would render the limited exceptions set forth in § 17a-111b superfluous. Although § 46b-121 provides broad authority for a court to issue an order necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child, such order cannot be inconsistent with the specific requirements our legislature has set forth in the General Statutes. Therefore, the argument advanced by the attorney for the minor child is unavailing. See *Seramonte Associates, LLC* v. *Hamden*, 202 Conn. App. 467, 479, 246 A.3d 513 (2021) ("[i]t is well settled that the legislature is always presumed to have created a harmonious and consistent body of law" (internal quotation marks omitted)), aff'd, 345 Conn. 76, 282 A.3d 1253 (2022). Accordingly, we conclude that the court improperly ordered the department to cease reunification efforts.

II

The respondent also claims that the court improperly rejected the petitioner's proposed permanency plan for reunification. As a threshold issue, the parties disagree

as to whether the approval or rejection of a permanency plan pursuant to General Statutes § 46b-129 is an appealable final judgment.[11] Because we determine that the rejection of a permanency plan is not a final judgment, we dismiss this claim.

"The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law [over which we exercise plenary review]. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear." (Internal quotation marks omitted.) *In re Marcquan C.*, 202 Conn. App. 520, 528, 246 A.3d 41, cert. denied, 336 Conn. 924, 246 A.3d 492 (2021).

"The right of appeal is purely statutory. . . . The statutory right to appeal is limited to appeals by aggrieved parties from final judgments." (Citations omitted.) *State* v. *Curcio*, 191 Conn. 27, 30, 463 A.2d 566 (1983). "An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them." Id., 31. "[T]he court may deem an interlocutory order or ruling to have the attributes of a final judgment if the ruling or order falls within either of the two prongs of the test set forth in *Curcio*." *In re Marcquan C.*, supra, 202 Conn. App. 531.

The respondent argues that this court has subject matter jurisdiction over this appeal because the court's rejection of the petitioner's proposed permanency plan satisfies the second prong of *Curcio*.[12] "[F]or an interlocutory ruling in either a criminal or a civil case to be immediately appealable under the second prong of *Curcio*, certain conditions must be present. There must be (1) a colorable claim, that is, one that is superficially well founded but that may ultimately be deemed invalid, (2) to a right that has both legal and practical value, (3) that is presently held by virtue of a statute or the state or federal constitution, (4) that is not dependent on the exercise of judicial discretion and (5) that would be irretrievably lost, causing irreparable harm to the [appellant] without immediate appellate review. . . . The second prong of the *Curcio* test focuses on the nature of the rights involved. It requires the parties seeking to appeal to establish that the trial court's order threatens the preservation of a right already secured to them and that that right will be irretrievably lost and the [parties] irreparably harmed unless they may immediately appeal. . . . One must make at least a colorable claim that some recognized statutory or constitutional right is at risk." (Citation omitted; internal quotation marks omitted.) Id., 533–34.

Section 46b-129 (k) governs permanency plan proce-

dures and provides in relevant part: "(1) (A) Nine months after placement of the child or youth in the care and custody of the commissioner . . . the commissioner shall file a motion for review of a permanency plan . . . . The court shall hold evidentiary hearings in connection with any contested motion for review of the permanency plan . . . . The commissioner shall have the burden of proving that the proposed permanency plan is in the best interests of the child or youth. After the initial permanency hearing, subsequent permanency hearings shall be held not less frequently than every twelve months . . . .

"(2) At a permanency hearing held in accordance with the provisions of subdivision (1) of this subsection, the court shall approve a permanency plan that is in the best interests of the child or youth and takes into consideration the child's or youth's need for permanency. The child's or youth's health and safety shall be of paramount concern in formulating such plan. Such permanency plan may include the goal of (A) revocation of commitment and reunification of the child or youth with the parent or guardian, with or without protective supervision; (B) transfer of guardianship or permanent legal guardianship; (C) filing of termination of parental rights and adoption; or (D) for a child sixteen years of age or older, another planned permanent living arrangement ordered by the court . . . .

"(4) At a permanency hearing held in accordance with the provisions of subdivision (1) of this subsection, the court shall (A) (i) ask the child or youth about his or her desired permanency outcome . . . . The court may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child or youth. . . ."

In support of his assertion that his claim satisfies the second prong of *Curcio*, the respondent advances two arguments. First, although none of the parties requested revocation of commitment prior to the filing of the present appeal, the respondent argues that any decision other than revocation of commitment, following a permanency hearing, is effectively an extension of the commitment of the minor child to the petitioner, which this court has previously stated is an appealable final judgment. See *In re Todd G.*, 49 Conn. App. 361, 365, 713 A.2d 1286 (1998). Second, the respondent argues that rejection of a permanency plan of reunification impairs the respondent's custodial right as to his child and will not be appealable following the disposition of the underlying proceedings.[13] We address each argument in turn.

A

The respondent first argues that his claim satisfies the second prong of *Curcio* because the court's failure to revoke the commitment of the minor child to the

petitioner following the permanency hearing—even though none of the parties requested revocation of commitment—was functionally the same as an extension of the commitment of the child to the care and custody of the petitioner. Relying on cases holding that " '[a]n extension of commitment is an immediately appealable final judgment' "; *In re Jeisean M.*, 270 Conn. 382, 404, 852 A.2d 643 (2004); the respondent argues that, because the court may revoke commitment upon making certain findings at a permanency hearing, "the question of whether the court should revoke a child's commitment to the petitioner or extend it and approve a permanency plan to work [toward] in the future is an inherent part of every permanency [hearing]" and is therefore a final judgment. We disagree.

Considering that our analysis requires a comparison of the current revision of the relevant statute with previous revisions—which required the petitioner to move for extensions of commitment—the following legislative history and relevant case law are instructive. The statutorily required proceedings for the commitment of minor children to the care and custody of the department shifted in 1998 with the introduction of permanency plan procedures into § 46b-129. See Public Acts 1998, No. 98-241, § 5. Revisions of § 46b-129 predating the introduction of permanency plans included the following language: "Ninety days before the expiration of each twelve-month commitment . . . the Commissioner of Children and Families shall petition the court either to (1) revoke such commitment . . . or (2) terminate parental rights . . . or (3) *extend the commitment beyond such twelve-month period* on the ground that an extension is in the best interest of the child. . . ." (Emphasis added.) General Statutes (Rev. to 1997) § 46b-129 (e). This court held that orders extending a minor child's commitment to the petitioner satisfied the second prong of *Curcio*—and were, therefore, final judgments—because an immediate appeal was the only reasonable method of ensuring protection of the parent's custodial right as to their child over the next twelve months of commitment. See *In re Todd G.*, supra, 49 Conn. App. 365.

After the legislature incorporated permanency plans into our statutory scheme for neglect proceedings in 1998; see Public Acts 1998, No. 98-241, § 5; the legislature, in 2001, amended the language of § 46b-129 to provide: "Nine months after placement of the child or youth in the care and custody of the commissioner . . . the commissioner shall file a motion for review of a permanency plan *and to maintain or revoke the commitment*. . . ." (Emphasis added.) Public Acts 2001, No. 01-142, §7. Our Supreme Court held that, like orders extending a minor child's commitment, an order granting a permanency plan *and* maintaining a minor child's commitment was also an appealable final judgment. See *In re Jeisean M.*, supra, 270 Conn. 404–405.[14]

In 2001, the legislature also removed the time limit on commitments and replaced it with the provision that the initial commitment of a minor child to the care and custody of the petitioner "shall remain in effect until further order of the court . . . provided such commitment may be revoked or parental rights terminated at any time by the court, or the court may vest such child's or youth's care and personal custody in any private or public agency which is permitted by law to care for neglected, uncared-for or dependent children or youth or with any person or persons found to be suitable and worthy of such responsibility by the court." Public Acts 2001, No. 01-142, § 6. Then, in 2006, the legislature removed the requirement that the petitioner file a motion to maintain or revoke commitment with a proposed permanency plan. Public Acts 2006, No. 06-102, § 9.

Relying heavily on precedent holding that extensions of commitment—and other temporary custody orders—are final judgments, the respondent argues that the failure to revoke commitment and, instead, to proceed with a permanency plan, "interferes with constitutionally safeguarded family integrity rights by prolonging the time a parent is without the custody of his or her child." Unlike the present case, the orders challenged in the cases cited by the respondent all implicated the immediate custody of the child following the ruling at issue. See, e.g., *In re Zakai F.*, 336 Conn. 272, 295–98, 255 A.3d 767 (2020) (determining that denial of reinstatement of guardianship implicated parental rights even if deprivation was only temporary); *In re Victoria B.*, 79 Conn. App. 245, 259 n.15, 829 A.2d 855 (2003) (noting that order extending commitment and finding that further reunification efforts were not appropriate was final judgment); *In re Todd G.*, supra, 49 Conn. App. 365 (holding that order extending commitment of child to petitioner was final judgment). The legislature has amended the relevant statute for implementing permanency plans such that they no longer implicate the immediate custody of the minor child. Indeed, under our current statutory scheme, once a court adjudicates a child neglected and commits that child to the care and custody of the petitioner, "such commitment shall remain in effect," without the requirement that the petitioner move for the extension of the commitment. General Statutes § 46b-129 (j) (2) (A). Accordingly, although extensions of commitment—under the now defunct statutory scheme for custody—determined the immediate status of custody over the child, and therefore were appealable final judgments, the current statutory scheme for proposing permanency plans deals with future goals for custody of the child. In other words, because permanency plans do not, for the aforementioned reasons, implicate a right that is " 'presently held' " by the parent and, instead, set goals that will not influence the parent's custodial

rights until a future date, this argument fails to satisfy the second prong of *Curcio*. See, e.g., *In re Marcquan C.*, supra, 202 Conn. App. 533. Accordingly, the respondent's argument that such cases, dealing with temporary deprivations of custodial rights, are controlling in the present case—and indicate that the court's rejection of the petitioner's permanency plan was a final judgment under the second prong of *Curcio*—is unavailing.

Furthermore, we find unpersuasive the respondent's argument that, because the court, during a permanency hearing, "may revoke commitment if a cause for commitment no longer exists and it is in the best interests of the child"; General Statutes § 46b-129 (k) (4); any decision, following a permanency hearing, other than revocation of commitment, implies that the court decided that revocation of commitment was not in the best interests of the minor child.[15] This argument fails to account for the plain language of the statute, that "commitment may be revoked . . . at any time by the court . . . ." General Statutes § 46b-129 (j) (2) (A). There is nothing in the language of § 46b-129 that would suggest that the court's authority to revoke commitment is any greater during a permanency hearing than it is at any other point during the proceedings. Indeed, the court may revoke commitment both before and after a permanency hearing, insofar as it does so in accordance with the procedures set forth in the statute. See *In re Nasia B.*, 98 Conn. App. 319, 329–30, 908 A.2d 1090 (2006). Therefore, any right implicated by the court's failure to revoke commitment during a permanency hearing would not be irrecoverable without an appeal because any party could move, at any time, to revoke commitment. Accordingly, this argument also fails to satisfy the second prong of *Curcio*. See, e.g., *In re Marcquan C.*, supra, 202 Conn. App. 533.

B

The respondent next argues that his claim satisfies the second prong of *Curcio* because the court's rejection of a permanency plan of reunification impairs his custodial right as to Amani. Specifically, the respondent argues that, because the department is no longer required to "make reasonable efforts to reunify a parent with a child [if] the court . . . (2) has approved a permanency plan other than reunification pursuant to subsection (k) of section 46b-129"; General Statutes § 17a-111b (a); the rejection of the petitioner's permanency plan for reunification satisfies the second prong of *Curcio* because it would lead to the department ceasing reunification efforts and impairing the respondent's ability to reunify with Amani.[16] We disagree.

The respondent is correct that, under § 17a-111b (a), the department would no longer be required to make reasonable efforts to reunify him with Amani if the court approves of a permanency plan that sets a goal other than reunification.[17] Rejection of a permanency

plan of reunification, however, does not necessitate that the petitioner propose a permanency plan with a goal other than reunification. Indeed, the respondent's argument fails because it mistakenly presupposes that the petitioner cannot propose another permanency plan of reunification after the court has already rejected one.

Nothing in the language of the statute suggests that a court's rejection of a permanency plan forecloses the possibility of including that same goal in subsequent proposed permanency plans. It simply requires that the court "approve a permanency plan that is in the best interests of the child or youth and takes into consideration the child's or youth's need for permanency. . . ." General Statutes § 46b-129 (k) (2). Furthermore, § 46b-129 (k) (1) (A) establishes that the petitioner has the burden of proving that her proposed plan is in the best interests of the child. It follows then, that, under § 46b-129 (k), the petitioner must propose, and the court shall approve, whatever permanency plan is in the best interests of the child. If a court rejects a permanency plan for reunification, the petitioner need not propose a permanency plan for a goal she does not believe is in the child's best interests. Instead, the petitioner could simply file a new permanency plan for reunification that addresses the court's concerns.

Because the court's rejection of a permanency plan with a goal of reunification does not mandate that the petitioner propose a permanency plan with a different goal, this action does not affect the department's duty to make reasonable efforts toward reunification. Therefore, this argument also fails.

We conclude that the court's rejection of the petitioner's permanency plan for reunification does not satisfy the second prong of *Curcio* and, therefore, is not a final judgment because the respondent will not suffer irreparable harm in the absence of an immediate appeal. We therefore lack subject matter jurisdiction over the respondent's claim that such action was an abuse of discretion. Accordingly, we dismiss the respondent's appeal as to this order.

The judgment ordering the department to cease reunification efforts is reversed and that order is vacated; the portion of the appeal in AC 46293 challenging the order rejecting the petitioner's proposed permanency plan 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 court.

** August 10, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] Amani's mother, Rebecca T., is a party in the underlying proceedings before the trial court. Rebecca T., however, is not participating in this appeal. Accordingly, any reference to the respondent in this opinion is to Carlos O. only.

The respondent's appeal is docketed before this court as AC 46293, and the petitioner's appeal is docketed as AC 46327. We address the claims of these related appeals together.

[2] The respondent also claims that the court improperly denied the petitioner's motion to reconsider the order. Because we conclude that the court exceeded its authority in granting the order, we need not decide whether the court abused its discretion in denying the motion to reconsider.

[3] Because we decide, as to the first claim, that the court exceeded its statutory authority in granting the order to cease reunification efforts and, as to the second claim, that we lack subject matter jurisdiction, we need not discuss the facts underlying the pending motion to revoke commitment and permanency proceedings. See footnote 5 of this opinion.

[4] The attorney for the minor child requested that the court issue "an order to prevent the [department] to stop the reunification process until such time as the parents are able to care for this minor child adequately or any other equitable relief that the court believes is in the best interest of the minor child." In his brief to this court, the attorney for the minor child clarified that the request was for a temporary cessation of the department's reunification efforts.

[5] Instead of appealing this decision, on February 28, 2023, the petitioner filed a motion to revoke commitment and order a period of protective supervision in the juvenile court. That same day, the attorney for the minor child filed an objection to the motion. Trial in the motion to revoke commitment and permanency proceedings are ongoing at the time of this decision.

[6] Both the petitioner and the respondent filed motions to expedite their respective appeals on April 19, 2023. This court granted both motions the following day.

[7] In its articulation, the court did not explicitly cite to General Statutes § 46b-121 (b) (1) but, instead, relied on *In re Ava W.*, supra, 336 Conn. 545, to support its assertion that it had authority to order that the department cease reunification efforts. In *In re Ava W.*, our Supreme Court concluded that the trial court has authority to order posttermination visitation under § 46b-121 (b) (1). See id., 568. In so concluding, the court stated that § 46b-121 (b) (1), in the absence of limiting language, "broadly enables the court to issue any order that it deems not only 'necessary' but also 'necessary or appropriate . . . .' " (Emphasis omitted.) Id., 572. Nowhere in the court's opinion, however, does it address the language of General Statutes § 17a-111b or whether the mandate set forth therein limits the authority granted by § 46b-121 (b) (1).

[8] The petitioner and the respondent argue in the alternative that, even if the court had the authority to order the department to cease reunification efforts, it abused its discretion by doing so here. Because we conclude that the court exceeded its statutory authority, the court did not have discretion to act as it did. Therefore, we need not further address this facet of the petitioner's and the respondent's claims.

[9] General Statutes § 17a-111b (b) provides in relevant part: "The court may determine that such efforts are not required if the court finds upon clear and convincing evidence that: (1) The parent has subjected the child to the following aggravated circumstances: (A) The child has been abandoned . . . or (B) the parent has inflicted or knowingly permitted another person to inflict sexual molestation or exploitation or severe physical abuse on the child or engaged in a pattern of abuse of the child; (2) the parent has killed, through deliberate, nonaccidental act, another child of the parent or a sibling of the child, or has requested, commanded, importuned, attempted, conspired or solicited to commit or knowingly permitted another person to commit the killing of the child, another child of the parent or sibling of the child, or has committed or knowingly permitted another person to commit an assault, through deliberate, nonaccidental act, that resulted in serious bodily injury of the child, another child of the parent or a sibling of the child; (3) the parental rights of the parent to a sibling have been terminated within three years of the filing of a petition pursuant to this section, provided the commissioner has made reasonable efforts to reunify the parent with the child during a period of at least ninety days; (4) the parent was convicted by a court of competent jurisdiction of sexual assault . . . or (5) the child was placed in the care and control of the commissioner pursuant to the provisions of sections 17a-57 to 17a-60, inclusive, and section 17a-61."

[10] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing . . . may grant a petition [for termination of parental rights] 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 . . . 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) . . . (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, or (ii) is found to be neglected, abused 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 . . . ."

[11] Although none of the parties addressed subject matter jurisdiction in their principal appellate briefs, this court, sua sponte, ordered supplemental briefing on this threshold issue. See *Iacurci* v. *Sax*, 139 Conn. App. 386, 398 n.3, 57 A.3d 736 (2012) ("an appellate court, in its sound discretion, may order supplemental briefing related to issues that are relevant to the disposition of an appeal, but are not adequately addressed in the parties' initial briefs"), aff'd, 313 Conn. 786, 99 A.3d 1145 (2014). This court's order, in Docket No. AC 46293, dated May 31, 2023, stated: "It is hereby ordered, sua sponte, that the parties shall file supplemental briefs of no more than 4000 words on or before June 14, 2023, addressing whether the portion of the respondent father's appeal challenging the trial court's rejection of the petitioner's proposed permanency plan should be dismissed for lack of subject matter jurisdiction because the acceptance or rejection of a permanency plan is not an appealable final judgment." The respondent, in his supplemental appellate brief, argued that approval or rejection of a permanency plan is an appealable final judgment, while the petitioner, in her supplemental brief, argued that it is not. The attorney for the minor child adopted the supplemental brief of the respondent.

[12] None of the parties argues that the respondent's claim satisfies the first prong of *Curcio*.

[13] The respondent also argues that approval of a permanency plan other than reunification similarly impairs the parent's custodial right as to the minor child. Because the respondent appeals from the court's rejection of a proposed permanency plan, and we determine that such judicial action was not a final judgment, this appeal does not present an opportunity to decide whether an approval of a different permanency plan would be a final judgment. See *CT Freedom Alliance, LLC* v. *Dept. of Education*, 346 Conn. 1, 27–28, 287 A.3d 557 (2023) ("Connecticut courts will rule only on live controversies—i.e., those in which the parties before us require resolution. . . . Like the federal courts, [w]e do not give advisory opinions; we do not sit as roving commissions assigned to pass judgment on the validity of legislative enactments . . . and we do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities." (Citations omitted; internal quotation marks omitted.)).

[14] Our Supreme Court in *In re Jeisean M.* reviewed a challenge to an order extending the commitment of the child to the petitioner and ruling on the petitioner's permanency plan pursuant to a revision of § 46b-129 predating the 2001 amendment discussed in this opinion. *In re Jeisean M.*, supra, 270 Conn. 386 n.4.

[15] We note that none of the parties moved for revocation of commitment before the trial court prior to the filing of this appeal, nor did the court explicitly deny revocation of commitment. See footnote 5 of this opinion.

[16] The respondent additionally argues that approval of a permanency plan for an objective other than reunification is also a final judgment. However, because we conclude that the challenged action of the court at issue in this appeal—rejection of the petitioner's permanency plan of reunification—was not a final judgment, this case does not present an opportunity for this court to decide whether approval of a permanency plan can be a final judgment. See also footnote 13 of this opinion.

[17] We note, however, that the department also is not required to cease reunification efforts upon court approval of a permanency plan with a goal other than reunification. Under the statute, the department retains discretion to continue reunification efforts until there is a final disposition in the neglect proceedings.