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The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

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IN RE GABRIELLA M. ET AL.*
(AC 46217)

Alvord, Moll and Lavine, Js.

Syllabus

The respondent mother appealed to this court from the judgments of the trial court terminating her parental rights with respect to her minor children on the ground that she had failed to achieve a sufficient degree of personal rehabilitation pursuant to statute (§ 17a-112). The mother had a history of substance abuse and mental health issues, and, at the time of trial, the children had not visited with her for more than three years. The children lived with the maternal grandmother, who stated her commitment to serve as a long-term resource for the children. After the petitioner, the Commissioner of Children and Families, filed petitions to terminate parental rights, the mother filed a motion to transfer permanent legal guardianship to the maternal grandmother. The trial court, having found by clear and convincing evidence that permanent transfer of legal guardianship was not in the children's best interests because it was not as permanent an option an adoption, and that adoption was possible and appropriate, granted the petitions to terminate the mother's parental rights and denied the motion to transfer permanent legal guardianship to the maternal grandmother. *Held* that the respondent mother could not prevail on her unpreserved claim that the trial court violated her right to substantive due process as guaranteed by the fourteenth amendment to the United States constitution by terminating her parental rights as to the minor children without making a finding that termination was the least restrictive means by which the petitioner could achieve the state's compelling interest in protecting the safety of the children: even if this court assumed, without deciding, that the mother's right to substantive due process required the court to make a "least restrictive" determination, on the basis of the record in the present case, the mother's claim failed under the third prong of *State* v. *Golding* (213 Conn. 233) because it was evident that the trial court considered, but rejected, the transfer of permanent legal guardianship to the maternal grandmother as a less restrictive disposition, and, given the significant needs of the children and the mother's various shortcomings as found by the court, which findings the mother did not dispute, the record established that the court determined that nothing short of terminating the mother's parental rights would adequately protect the children's best interests.

Argued September 6—officially released October 11, 2023**

Procedural History

Petitions by the Commissioner of Children and Families to terminate the respondents' parental rights with respect to their minor children, brought to the Superior Court in the judicial district of New Haven, Juvenile Matters, and consolidated with the respondent mother's motion to transfer permanent legal guardianship; thereafter, the cases were tried to the court, *Chavey*, *J.*; judgments terminating the respondents' parental rights and denying the motion to transfer permanent legal guardianship, from which the respondent mother appealed to this court. *Affirmed*.

Matthew C. Eagan, assigned counsel, for the appellant (respondent mother).

Evan O'Roark, assistant solicitor general, with whom were *Nisa Khan* and *Albert J. Oneto IV*, assistant attorneys general, and, on the brief, *William Tong*, attorney

general, for the appellee (petitioner).

Ingrid Swanson, for the minor children.

Opinion

MOLL, J. The respondent mother, Gina N.,[1] appeals from the judgments of the trial court rendered in favor of the petitioner, the Commissioner of Children and Families, terminating her parental rights as to her minor children, G and A, on the ground that she failed to achieve a sufficient degree of personal rehabilitation pursuant to General Statutes § 17a-112 (j) (3) (B) (i). On appeal, the respondent claims that the court violated her right to substantive due process as guaranteed by the fourteenth amendment to the United States constitution by terminating her parental rights as to the children without making a finding that termination was the least restrictive means by which the petitioner could achieve the state's compelling interest in protecting the safety of the children. Assuming, without deciding, that the respondent's right to substantive due process required the court to make a "least restrictive" determination, we conclude, on the basis of the record in the present case, that the court necessarily determined that termination of the respondent's parental rights was the least restrictive disposition. Accordingly, we affirm the judgments of the trial court.

The following facts, as found by the trial court, and procedural history are relevant to our resolution of this appeal. In April, 2019, following its investigation of reported "concerning behavior" by the respondent,[2] the Department of Children and Families (department) invoked ninety-six hour holds on the respondent's children. Thereafter, the petitioner applied for ex parte orders of temporary custody and filed neglect petitions. On April 25, 2019, the court, *Hon. Richard E. Burke*, judge trial referee, issued orders of temporary custody, which were sustained on May 10, 2019. On July 23, 2019, the court, *Conway, J.*, adjudicated the children neglected[3] and committed them to the petitioner's custody. Thereafter, the petitioner placed the children in the home of their maternal grandmother, Lorraine N. On December 15, 2020, the court approved permanency plans of permanent legal guardianship to the maternal grandmother.

On September 13, 2021, the petitioner filed motions to review and to approve permanency plans of termination of the respondent's parental rights and adoption of the children. On September 14, 2021, the petitioner filed petitions to terminate the parental rights of the respondent[4] on the ground that, under § 17a-112 (j) (3) (B) (i), the children had been found to be neglected, abused, or uncared for in a prior proceeding and the respondent had failed to achieve such a degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the children, she could assume a responsible position in their lives. On October 21, 2021, the court, *Hon. Shelley A. Marcus*, judge trial referee, approved the

permanency plans of termination of parental rights and adoption.[5] On November 16, 2021, the respondent filed a motion to transfer permanent legal guardianship to the maternal grandmother.

By agreement of the parties, the court, *Chavey*, *J.*, consolidated the hearing on the respondent's motion to transfer permanent legal guardianship with the trial on the termination petitions, which the court conducted on August 31, September 14 and October 26, 2022. On November 28, 2022, the court issued a memorandum of decision terminating the respondent's parental rights and appointing the petitioner as the children's statutory parent. The court determined that the petitioner had demonstrated, by clear and convincing evidence, that the children had been adjudicated neglected on July 23, 2019, and that the respondent had failed to sufficiently rehabilitate under § 17a-112 (j) (3) (B) (i). The court also found that the petitioner had made reasonable efforts to locate the respondent and to reunify her with the children.[6] The court proceeded to determine that termination of the respondent's parental rights was in the children's best interests. The court thereafter denied the respondent's motion to transfer permanent legal guardianship to the maternal grandmother.[7] This appeal followed.[8]

At the outset, we set forth the following relevant legal principles. "Proceedings to terminate parental rights are governed by § 17a-112. . . . Under [that provision], a hearing on a petition to terminate parental rights consists of two phases: the adjudicatory phase and the dispositional phase. During the adjudicatory phase, the trial court must determine whether one or more of the . . . grounds for termination of parental rights set forth in § 17a-112 [(j) (3)][9] exists by clear and convincing evidence. The [petitioner] . . . in petitioning to terminate those rights, must allege and prove one or more of the statutory grounds. . . . Subdivision (3) of § 17a-112 (j) carefully sets out . . . [the] situations that, in the judgment of the legislature, constitute countervailing interests sufficiently powerful to justify the termination of parental rights in the absence of consent. . . . Because a respondent's fundamental right to parent his or her child is at stake, [t]he statutory criteria must be strictly complied with before termination can be accomplished and adoption proceedings begun. . . .

"If the trial court determines that a statutory ground for termination exists, then it proceeds to the dispositional phase. During the dispositional phase, the trial court must determine whether termination is in the best interests of the child. . . . The best interest determination also must be supported by clear and convincing evidence. . . .

"In the dispositional phase of a termination of parental rights hearing, the emphasis appropriately shifts from the conduct of the parent to the best interest of

the child. . . . In the dispositional phase . . . 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 interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven statutory factors delineated in [§ 17a-112 (k)].[10]. . . The seven factors serve simply as guidelines for the court and are not statutory prerequisites that need to be proven before termination can be ordered. . . . There is no requirement that each factor be proven by clear and convincing evidence." (Citations omitted; footnotes added; internal quotation marks omitted.) *In re Christina C.*, 221 Conn. App. 185, 215–17, A.3d (2023).

"[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 [case law] 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." (Internal quotation marks omitted.) Id., 217–18.

On appeal, the respondent does not challenge the factual findings or legal conclusions made by the court in terminating her parental rights, nor does she claim error with respect to the court's denial of her motion to transfer permanent legal guardianship to the maternal grandmother. The respondent's sole claim, as she frames it, "is comprised of two closely related elements: (1) there is a substantive constitutional entitlement [pursuant to the due process clause of the fourteenth amendment to the United States constitution] to a less restrictive alternative to termination [of parental rights] where one exists; and (2) the trial court cannot order termination of parental rights without finding by clear and convincing evidence that such [an] alternative does not exist." See *In re Azareon Y.*, 309 Conn. 626, 637, 72 A.3d 1074 (2013) (describing identical claim). As the respondent contends, (1) our statutory scheme governing the termination of parental rights fails to comport with this substantive due process requirement because it does not mandate that a trial court find, as a prerequisite to terminating parental rights, that a less restrictive alternative to termination does not exist, and (2) the court's failure to make such a finding before terminating her parental rights pursuant to this statutory scheme violated her right to substantive due process.[11]

As the respondent concedes, she did not raise her claim of error before the trial court, and, therefore, she seeks review of her unpreserved claim under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120

A.3d 1188 (2015). "Pursuant to *Golding*, a [respondent] can prevail on a claim of constitutional error not preserved at trial only if *all* of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation . . . exists and . . . deprived the [respondent] of a fair trial; and (4) if subject to harmless error analysis, the [petitioner] has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. . . . The first two steps in the *Golding* analysis address the reviewability of the claim, [whereas] the last two steps involve the merits of the claim." (Citation omitted; emphasis in original; internal quotation marks omitted.) *In re Maliyah M.*, 216 Conn. App. 702, 707, 285 A.3d 1185 (2022), cert. denied sub nom. *In re Edgar S.*, 345 Conn. 972, 286 A.3d 907 (2023). The petitioner argues that the respondent's unpreserved claim (1) is unreviewable under the second prong of *Golding* because her claim is not of constitutional magnitude alleging the violation of a fundamental right or, in the alternative, (2) fails on the merits under the third prong of *Golding* because our statutory scheme governing the termination of parental rights, in operation, empowers trial courts to terminate parental rights only when termination is the least restrictive disposition.[12]

It is well settled that, "as a jurisprudential matter, [our appellate courts] generally [avoid] an unnecessary determination of constitutional questions." *In re Brayden E.-H.*, 309 Conn. 642, 656, 72 A.3d 1083 (2013). Consistent with this legal tenet, our Supreme Court and this court previously have declined to resolve the question of whether a "least restrictive" determination is constitutionally mandated when the record has established that the trial court satisfied that standard. See id., 656–57 ("[W]e conclude that, because it is readily apparent from our review of the record that the respondent is not entitled to the relief that she seeks, we should reserve for another day the questions of whether substantive due process requires a determination that termination is the least restrictive means to protect a child's best interest and, if so, whether § 17a-112 violates that requirement. In the present case, even if we were to assume that such a right existed, the trial court's decision reveals that this standard was met."); *In re Daniel N.*, 163 Conn. App. 798, 806, 134 A.3d 624 ("We . . . conclude that in finding that termination of the parental rights was in the best interests of the children, the court necessarily found that termination was the least restrictive permanency plan required to protect the children's best interests. See *In re Brayden E.-H.*, [supra, 661] (in applying best interests standard, trial court necessarily found that termination was least restrictive permanency plan consistent with children's best interests). Accordingly, we conclude, as did our

Supreme Court in *In re Brayden E.-H.*, that 'even if we were to assume, arguendo, such a least restrictive determination is constitutionally mandated . . . the respondent's claim fails because the record reflects that this standard was satisfied.'[13]" (Footnote in original.)), cert. denied, 321 Conn. 908, 135 A.3d 280 (2016).[14] Instructed by this precedent, we conclude that, even if we were to assume, arguendo, that the federal constitution imbued the respondent with a substantive due process right to a "least restrictive" determination as a prerequisite to the termination of her parental rights, the record in the present case demonstrates that the court necessarily made such a determination, thereby satisfying this standard. Accordingly, we further conclude that the respondent's claim fails under the third prong of *Golding*.

The following facts, with respect to which the respondent does not claim error on appeal, are relevant to our analysis. In the adjudicatory phase of the termination proceedings, the court determined that the respondent failed to achieve a sufficient degree of personal rehabilitation pursuant to § 17a-112 (j) (3) (B) (i). In support of that determination, the court found that the respondent "has failed to overcome long-standing challenges, including mental health and substance use, affecting her ability to care responsibly for the children given their age[s] and needs, and has failed to gain insight into their needs." As to her mental health, the court found that the respondent "continues to have significant mental health issues," citing evidence in the record reflecting that (1) in April, 2022, the APT Foundation, a methadone treatment clinic that provides services for opioid users and addicted individuals, reported to the department that "its staff had observed [the respondent] having ongoing delusions and paranoia and had concerns with [her] mental stability," (2) in April, 2022, the respondent presented to Dr. Jessica Biren Caverly, the court-ordered psychological evaluator, as having " 'significant mental illness' and indicating 'some sort of psychosis,' " and (3) as of April, 2022, the respondent " 'continue[d] to demonstrate symptoms of significant psychopathology that would require mental health treatment.' " In addition, while recognizing that the respondent successfully had completed an intensive outpatient program with Yale New Haven Hospital between July and August, 2022, and that she had testified that she intended to participate in a follow-up program to which she had been referred, the court expressed "[concern] that [the respondent] had reported to Dr. Caverly in April, 2022, that her 'mental health [was] addressed,' " that she was uncertain whether she needed to seek treatment with a therapist, and that she had " 'been very busy with a lot of things,' " which the court construed as reflecting that the respondent "did not appreciate the significance or urgency of her need to attend to her mental health on an ongoing

basis."[15] In addition, commenting on her testimony at the termination trial, the court observed that the respondent "was at times overly defensive and hard to follow, and generally [made] assertions that were tangential, illogical or otherwise incredible. Additionally . . . [she] repeatedly sought to blame others, including [the department] and [the maternal grandmother], for her current situation."

As to her substance use, the court found that the respondent "has not made enough progress to attain the ability to care responsibly for the children." The court found that the respondent had tested positive for alcohol and fentanyl while in an intensive outpatient program with the APT Foundation in 2022, which positive tests she sought to deny or to minimize.

The court further found that the respondent had failed to gain insight into the reasons for the department's involvement vis-à-vis the children and the issues that needed to be addressed to reunite with the children, stating that the respondent (1) repeatedly told Dr. Caverly, and incredibly testified at trial, that she was " 'confused' as to the underlying child protection issues" and "even claimed not to know in April, 2022, that [the department] was seeking termination of parental rights," and (2) misrepresented to Dr. Caverly in 2022 that (a) she had produced " 'clean urines,' " notwithstanding a positive screen the prior week, and (b) she had completed all treatment programs to which she had been referred.

The court also found that "[b]oth children have significant needs: [G] has asthma, engages in attention-seeking behaviors, has been diagnosed with attachment disorder, and has symptoms of anxiety; [A] has severe eczema, is described as hyperactive, has been diagnosed with [post-traumatic stress disorder] and [attention deficit hyperactivity disorder], and 'has significant difficulties regulating his emotions and impulsivity.' These demanding physical and emotional needs require a caregiver who is sober, consistent and steady, and [the respondent] is in no position to be such a caregiver to these children." (Footnote omitted.)

In the dispositional phase of the termination proceedings, the court determined that termination of the respondent's parental rights was in the children's best interests. In support of that determination, the court made findings consistent with those it had made in the adjudicatory phase. The court further found that "[t]he children, who are just eight years old, have not visited with the [respondent] for over three years, and thus 'there is no ongoing relationship between the [respondent] and the children.' "[16] The court also stated that the maternal grandmother has a ten year protective order against the respondent, with an exception for communications about the children.[17]

As the court further found, "[the respondent is] still not in a position to serve as [a] responsible [caregiver] for the children, due to [her] ongoing mental health and substance use needs . . . . Moreover, the children have lived with [their] maternal grandmother since the spring of 2019, when they were not yet five years old, and they also had lived with her periodically before that. The maternal grandmother has cared for the children's significant physical and emotional needs, and they are doing well. [The maternal grandmother] has stated her commitment to serving as a long-term resource for the children. As Dr. Caverly concluded, '[the children] must be in the care of a guardian who is capable of meeting their significant mental health needs, including taking them to all appointments and advocating for them in school.' The totality of the evidence . . . including but not limited to [the respondent's] inappropriate conduct at the children's school, expressions of apparent reluctance regarding mental health services, and continued significant substance use and mental health needs, makes clear that the respondent is [not] capable, now or in the foreseeable future, of serving as the responsible caregiver that the children's needs require." (Footnote omitted.)

After granting the petitioner's petitions to terminate the respondent's parental rights, the court addressed, and denied, the respondent's motion to transfer permanent legal guardianship to the maternal grandmother. Applying General Statutes § 46b-129 (j) (6),[18] the court found, inter alia, "by clear and convincing evidence that [permanent transfer of legal guardianship] is not in the children's best interest[s] because it is not as permanent an option as adoption. Termination of parental rights and adoption offer more long-term stability and consistency for the children than would a permanent legal guardianship, which is subject to being reopened and modified when statutory requirements are met. These children require that long-term permanency and stability in light of their significant needs . . . and [termination of parental rights] and adoption are best suited to provide [such long-term permanency and stability]."[19]

On the basis of the record before us, we conclude that the court necessarily found, by clear and convincing evidence, that termination of the respondent's parental rights was the least restrictive means to protect the children's best interests. It is evident that the court considered, but rejected, the transfer of permanent legal guardianship to the maternal grandmother as a less restrictive disposition. Given the significant needs of the children and the respondent's various shortcomings as found by the court, which findings the respondent does not dispute, the record establishes that the court determined "that nothing short of terminating the respondent's [parental] rights would adequately protect the children's best interests."[20] *In re Brayden E.-H.*,

supra, 309 Conn. 662. Accordingly, we further conclude that the respondent's claim fails under the third prong of *Golding* because, assuming that a "least restrictive" determination is constitutionally required, the court did not violate the respondent's constitutional right to that determination.

The judgments are 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 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 person's identity may be ascertained.

** October 11, 2023, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The trial court also rendered judgments terminating the parental rights of the children's father, Anthony M., who filed a separate appeal from those judgments. Our decision in that appeal was also released today. See *In re Gabriella M.*, 221 Conn. App. 844, A.3d (2023). We refer in this opinion to Gina N. as the respondent.

[2] As the court found, "in April, 2019, [the Department of Children and Families] received anonymous reports of [the respondent's] concerning behavior. She reportedly had gone to the children's school with bloodshot eyes and smelling of alcohol; had stated that she was scared to go home because someone was trying to hurt her and the children; had stated that [the children's] father was able to see the children through the television if she turned it on; had asked for money to feed the children; and had stated she was going to kill herself."

[3] Previously, in 2017, the children were adjudicated neglected and placed under an order of protective supervision. The period of protective supervision expired in 2018.

[4] In the petitions, the petitioner also sought to terminate the parental rights of the children's father. The judgments terminating the father's parental rights are not at issue in this appeal. See footnote 1 of this opinion.

[5] On September 14, 2022, the court again approved permanency plans of termination of parental rights and adoption.

[6] The court determined that the petitioner had made reasonable efforts to reunify the respondent with the children prior to December 15, 2020, the date on which the permanency plans of permanent transfer of guardianship to the maternal grandmother had been approved. The court further determined that, as a result of the December 15, 2020 approval of permanency plans other than reunification, the petitioner was not required to demonstrate that it had made reasonable efforts at reunification after December 15, 2020, through the adjudicatory date; nevertheless, the court determined that the petitioner had made reasonable reunification efforts after December 15, 2020, through the adjudicatory date.

[7] In the November 28, 2022 decision, the court also denied a motion for visitation that the respondent had filed. The respondent does not challenge that decision on appeal.

[8] The attorney for the children has adopted the petitioner's appellate brief.

[9] General Statutes § 17a-112 (j) provides in relevant part: "The Superior Court, upon notice and hearing . . . may grant a petition filed pursuant to this section if it finds by clear and convincing evidence that . . . (3) (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child; (B) the child (i) has been found by the Superior Court or the Probate Court to have been neglected, 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; (C) the child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being, except that nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights; (D) there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child; (E) the parent of a child under the age of seven years who is neglected, 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; (F) the parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent; or (G) the parent committed an act that constitutes sexual assault as described in section 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a or compelling a spouse or cohabitor to engage in sexual intercourse by the use of force or by the threat of the use of force as described in section 53a-70b of the general statutes, revision of 1958, revised to January 1, 2019, if such act resulted in the conception of the child."

[10] General Statutes § 17a-112 (k) provides: "Except in the case where termination of parental rights 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 and Safe Families Act of 1997, as amended from time to time; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

[11] "The due process clause of the fourteenth amendment to the United States constitution provides that no state shall 'deprive any person of life, liberty or property, without due process of law . . . .' The United States Supreme Court has held that the due process clause 'protects individuals against two types of government action. So-called substantive due process prevents the government from engaging in conduct that shocks the conscience . . . or interferes with rights implicit in the concept of ordered liberty . . . . When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. . . . This requirement has traditionally been referred to as procedural due process.' . . . *United States* v. *Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)." *State* v. *Anderson*,

319 Conn. 288, 309 n.33, 127 A.3d 100 (2015). The respondent claims a violation of her right to substantive due process.

[12] The respondent contends, and the petitioner agrees, that the first prong of *Golding* is satisfied because the record is adequate to review the respondent's claim on the basis that a less restrictive alternative to termination of the respondent's parental rights was presented to the trial court by way of the respondent's motion to transfer permanent legal guardianship to the maternal grandmother. Cf. *In re Azareon Y.*, supra, 309 Conn. 636–42 (concluding that record was inadequate to review identical, unpreserved substantive due process claim).

[13] "In *In re Brayden E.-H.*, supra, 309 Conn. 656, the court eschewed deciding the constitutional question of whether the respondent had a substantive due process right to a determination that termination is the least restrictive means to protect a child's best interest. We do the same." *In re Daniel N.*, supra, 163 Conn. App. 806 n.4.

[14] The substantive due process claim raised in *In re Brayden E.-H.* was preserved for appellate review; *In re Brayden E.-H.*, supra, 309 Conn. 655; whereas the respondent in *In re Daniel N.* sought *Golding* review of her unpreserved substantive due process claim. *In re Daniel N.*, supra, 163 Conn. App. 805.

[15] The court further observed that, although the respondent's completion of the intensive outpatient program between July and August, 2022, was "commendable," the "[m]ere completion of a program is not sufficient; [the respondent] needed to have achieved stability in her mental health, which she has not done."

[16] On October 8, 2019, the court, *Conway, J.*, granted a motion to cease visitation with the children filed by the petitioner. As the court, *Chavey, J.*, explained in its November 28, 2022 decision, the motion to cease visitation "followed several incidents. First, [the respondent and the children's father] made an after-hours visit to the children's school on September 19, 2019, and their conduct . . . led not only to a lockdown at the school but also to arrests of both [the respondent and the father] for breach of the peace and interfering with an officer. They were both incarcerated for a period following those arrests, and a full no-contact protective order was issued in favor of the children. Second, [the department] had noted concerning behaviors by both parents at supervised visits at [the department's] office and in the community, leading [the department] to have concerns about the children's welfare. For example, the parents refused to leave at the end of visits and had inappropriate conversations with the children . . . [and the respondent] became irate and demanded that [the] children not leave with the maternal grandmother but instead go into foster care . . . . Third, after [the respondent and the father] missed a scheduled visit at the [department's] offices in early September, 2019, [the respondent and the father] had gone to the home of the maternal grandmother, with whom the children were placed, and were banging on the windows and screaming, leading the maternal grandmother to call 911." (Footnotes omitted.)

[17] The court also stated that the respondent had been incarcerated from approximately March to August, 2021, for "violating a protective order that prohibited her from contacting the maternal grandmother."

[18] General Statutes § 46b-129 (j) (6) provides: "Prior to issuing an order for permanent legal guardianship, the court shall provide notice to each parent that the parent may not file a motion to terminate the permanent legal guardianship, or the court shall indicate on the record why such notice could not be provided, and the court shall find by clear and convincing evidence that the permanent legal guardianship is in the best interests of the child or youth and that the following have been proven by clear and convincing evidence:

"(A) One of the statutory grounds for termination of parental rights exists, as set forth in subsection (j) of section 17a-112, or the parents have voluntarily consented to the establishment of the permanent legal guardianship;

"(B) Adoption of the child or youth is not possible or appropriate;

"(C) (i) If the child or youth is at least twelve years of age, such child or youth consents to the proposed permanent legal guardianship, or (ii) if the child is under twelve years of age, the proposed permanent legal guardian is: (I) A relative, (II) a caregiver, or (III) already serving as the permanent legal guardian of at least one of the child's siblings, if any;

"(D) The child or youth has resided with the proposed permanent legal guardian for at least a year; and

"(E) The proposed permanent legal guardian is (i) a suitable and worthy person, and (ii) committed to remaining the permanent legal guardian and

assuming the right and responsibilities for the child or youth until the child or youth attains the age of majority."

Section 46b-129 was amended since the events underlying this appeal by No. 21-15, § 117, of the 2021 Public Acts, which made changes to the statute that are not relevant to this appeal. Accordingly, we refer to the current revision of the statute.

[19] The court also found that adoption was possible and appropriate. See General Statutes § 46b-129 (j) (6) (B).

[20] During oral argument before this court, the respondent's counsel was asked to clarify his position by identifying the phase of a parental termination proceeding—adjudicatory or dispositional—during which a trial court must make the purported requisite finding that termination of parental rights is the least restrictive disposition. The respondent's counsel characterized the finding as a "dispositional finding." Nevertheless, recognizing that the dispositional phase follows only after the court has determined during the adjudicatory phase that a statutory ground for termination exists, the respondent's counsel contended that the finding must be made during the adjudicatory phase in conjunction with the court's determination that there is a statutory ground for termination. We are not convinced by the proposition that a "least restrictive" determination, if constitutionally mandated, must be made during the adjudicatory phase of termination proceedings. As this court stated in *In re Daniel N.*, supra, 163 Conn. App. 798, this proposition "finds no support in our law," and "[w]e fail to discern the relevance of an alternative permanency plan to the threshold adjudication of parental fitness [made during the adjudicatory phase]." Id., 804 n.2.