SCHALLER, J., dissenting. "The termination of parental rights . . . is a drastic solution; it severs all ties between parent and child . . . ." *In re Bruce R.*, 234 Conn. 194, 214, 662 A.2d 107 (1995). In my view, this extreme measure was not warranted in this case. I conclude that this fourteen year old child's best interest is *decidedly not* served by a termination of the respondent mother's parental rights despite the fact, as the trial court correctly determined, the respondent has to this point not achieved a reasonable degree of rehabilitation under General Statutes § 17a-112 (j) (3) (B). The traditional analysis that was applied in this case overlooks the most important point—that termination is inappropriate for this situation. That conclusion is borne out by the fact that the trial court did not find, by clear and convincing evidence, that termination was in the child's best interest.

The majority correctly notes that we are bound to review, not retry, the trial court's factual determinations. I wish to emphasize, however, that our authority extends to determining whether the court properly carried out its statutory duties and whether its fact-findings met the requisite standards. In particular, we are bound to review whether the trial court properly made findings by clear and convincing evidence that the child's best interest is served by termination of the respondent's rights. I take issue with the majority on this score. Although the majority credits the trial court with having found "by clear and convincing evidence that it was in the child's best interest to terminate the respondent's parental rights," nowhere in the court's memorandum do such findings appear. The adjudication portions of the decision are supported by facts found by clear and convincing evidence. The § 17a-112 (k) portion of the disposition consists of fact-findings by clear and convincing evidence. The crucial section of the court's memorandum of decision devoted to determining the child's best interest, a separate portion of the disposition phase, however, consists of a medley of facts drawn from other sections of the memorandum and significantly, of observations, none of them meeting the clear and convincing standard. The reason is evidence. Despite the use of traditional concepts and traditional language of parental termination cases, the concepts and the language surely do not fit the child's situation. Ultimately, there is no clear and convincing finding of best interest because, in fact, the child's best interest is *not* served by terminating his legal relationship with the respondent. Our Supreme Court has instructed that "termination of parental rights proceedings are not designed to *punish* parents, but to *protect* children." (Emphasis in original.) *In re Samantha C.*, 268 Conn. 614, 662–63, 847 A.2d 883 (2004). In my view, by moving

to terminate the respondent's parental rights, the petitioner, the commissioner of children and families, has not only failed to protect the child, but has *punished* both parent and child.

The fundamental facts concerning the child's present situation add up to a factual conclusion that his best interest will be served by maintaining his family relationship with the respondent. A result that terminates the only permanent relationship that the child is assured of, that is, with the respondent and her family, leaves him with no permanent relationships, so far as we can tell from the record in this case. At age fourteen with no likelihood of adoption even by the family that, according to some testimony, has made some sort of "long-term foster care" commitment to him, the child has everything to lose and nothing to gain by a termination of the respondent's rights. It was made crystal clear at trial and on appeal that the child has no opinion—certainly no informed opinion—on the issue of termination. He does not understand the concept; it has no meaning for him at this time. Although at the moment, he does not want to see the respondent and does want to remain in the present foster home, it is likely that his views may change in the future. Nothing in the trial court's findings or in the record suggests that he will be *expelled* from this foster family if the respondent's parental rights remain intact. On the other hand, the child is adamant that he wants to retain his viable relationships with his brother and other maternal relatives.

The trial court accepted the arguments made by the petitioner that it was in the best interest of the child to terminate the respondent's parental rights on the basis of "closure," "permanency" and "stability." The record reveals, however, that despite the use of these *buzzwords*, which deserve no talismanic significance, termination was unnecessary and unwise. According to the trial court's findings, the child is prospering at present despite the lack of "closure," "permanency" and "stability" that has existed since he has been in the foster home. I further note that the concepts of "closure," "permanency" and "stability" were introduced by the petitioner's witnesses rather than by the child, who did not testify. Moreover, some of the petitioner's witnesses purported to offer his views through unreliable testimony. When the trial court reached the crucial issue of best interest, which must be established by clear and convincing evidence, it failed to indicate that it found best interest by that standard.

The trial court based its decision on a few facts and numerous observations that departed from the facts that it previously had found. The court noted that "he is a very adoptable child" despite its finding that there is no reason to believe that adoption will occur in this instance. The court next noted: "He is old enough to be fully cognizant of his attachment to his foster parents

such that removal from their home would cause him considerable emotional harm as a result of the loss of that bond, particularly in light of the number of times that it has previously happened to him." Removal from the foster home is a *red herring* because whether the respondent's parental rights are terminated or not, he is welcome to remain in the foster home.[1] The court next noted that, in many respects, he is doing extremely well. It is not a reason for termination that his progress has taken place while he was living with the present uncertainty. The court noted that he "won't be able to really settle in" despite the fact that he has, indeed, already done so. "He won't be able to really attach to someone else," the court noted, although he, indeed, already has. His wish to retain his blood relationships is dismissed with a note that the foster family, which has not given the only permanent commitment, adoption, is willing to allow him to maintain contact. The court further noted that "[t]here is no point in giving [the respondent] any more time to reconsider [her] lack of commitment to [the child]." Aside from the fact that this observation is relevant to the adjudicative stage, I would point out that this is not an adversary proceeding in which the petitioner should attempt to prevail over the respondent or in which the respondent should be punished—at the child's expense—for her inability to achieve rehabilitation so far.

The court then concluded that the child's best interest will be served by "freeing him from the legal relationship with [the respondent] and legalizing his status so that a family . . . can provide him with the love and care he requires." The fact is that this *liberation* will, a mere four years from reaching majority, serve to terminate permanently his legal relationship with the respondent and her blood relatives. The record reveals no reason why termination is necessary or desirable. His present positive situation, living with his foster family for the next four years, will continue with or without termination of the respondent's rights. The concepts of "closure" and "move on" have little relevance to this fourteen year old's future. Closure at the expense of his birth relationships is meaningless. Permanency to a fourteen year old whose only remaining blood relationships are terminated is meaningless. No further closure or permanency will be achieved. In a short time, he will reach majority and choose for himself. At that point, he may well choose to work at reestablishing a relationship with the respondent.[2] Nothing is gained by depriving him of that relationship at this time.

Only one participant in this case has anything to gain by a termination of the parental rights of the respondent—the petitioner. Although not strictly before us, it is evident from the record that the petitioner chose to pursue termination against the advice of Barbara P. Berkowitz, a child psychologist. Berkowitz emphasized that the child needed to consent to any plans for adop-

tion or adoption would not work. Additionally, she indicated that permanent foster care would achieve the same goals as the termination of the respondent's parental rights. Simply put, according to Berkowitz, who was qualified as an expert witness,[3] leaving the child in permanent foster care would have the same positive effects as termination of the respondent's parental rights, but without any of the harmful side effect of severing all ties with his biological family.

The petitioner also chose to pursue termination contrary to the express recommendation of the child's guardian ad litem, who indicated that it *was not in the child's best interest to terminate the respondent's parental rights at this time*.[4] The guardian ad litem further testified that she had never discussed termination with him because she did not want to upset him and was concerned with the possibility of his being "closed off" from people he valued. In short, it was the guardian ad litem's opinion that termination was an excessive measure that was unwarranted under these circumstances.

Moreover, the record before this court reveals that the child's counsel made clear that the child has no wish for and takes no position in favor of terminating the respondent's rights. Further, there was no indication that he rejected a possible future reconciliation. The reasons cited by the court—closure and permanency—while traditional concepts in this field, are mere artifices, irrelevant to this fourteen year old child at this stage of his life. Nothing in the record indicates that a wish for *closure* of the respondent's relationship with the child or permanent foster status without natural or adoptive parents was expressed by the child.[5] In fact, the court's findings do not reveal in any sense that the child seeks *closure* of his relationship with the respondent. Although he does not want to communicate with her at present, he will soon reach majority and may well change his mind in the future.[6] He assuredly does not seek closure of his blood relationships with other relatives, which will occur as a result of the termination. He merely wants to remain where he is until the age of majority. The child surely did not introduce ideas of closure, permanency or stability in this situation. These concepts are imposed by others on his situation. It can be inferred that closure and permanency will benefit only the petitioner, which will not have to address the respondent's needs and concerns further. Surely this is not in the child's best interest.

We have stated that "[t]his court is ever mindful of the gravity of the proceeding that may end in the termination of parental rights and results in the complete severance of the legal relationship, *with all its rights and responsibilities, between the child and the parent*." (Emphasis added.) *In re Ashley M.*, 82 Conn. App 66, 70–71, 842 A.2d 624 (2004); see also *In re Kachainy C.*,

67 Conn. App. 401, 406, 787 A.2d 592 (2001). "The interest of parents in raising their children, and in their children in general, is a fundamental right. *That right warrants deference and protection. Stanley* v. *Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). Termination of parental rights does not follow automatically from parental conduct that might justify the removal of a child from the natural parental home." (Emphasis added.) *In re Alexander T.*, 81 Conn. App. 668, 672–73, 841 A.2d 274, cert. denied, 268 Conn. 924, 848 A.2d 472 (2004).

The termination of the respondent's parental rights represents a drastic step that, in my view, should not have been taken. In a real sense, this is a case in which traditional analysis, traditional concepts and traditional language are not relevant to the facts. With due respect to the evidence of the child's laudable progress, it cannot be disputed that the child achieved that progress while in the present, uncertain situation; nothing in the record suggests that his progress would be jeopardized if termination is not granted. This child does not need the termination of the respondent's parental rights to *move on*. He has already done so and, at present, is in the best possible position despite his difficult and challenging childhood. In terminating the respondent's parental rights and the child's legal connection with the respondent's family, with only four years of minority left and no serious prospects of any other permanent family, the child loses, rather than gains, from what I am compelled to see as a thoroughly ill-advised course of action on the part of the petitioner.

For the foregoing reasons, I respectfully dissent.

[1] The court stated: "Although the foster parents are not willing to be an adoptive resource for [the child], they are committed to caring for him under long-term foster care. The foster parents report that he will be welcome in their home forever."

[2] Barbara Stark, a program supervisor employed by the department of children and families, conceded in her testimony that the child may want to reconnect with the respondent in the future and that confronting his issues with her may help him to move forward in his development toward adulthood.

[3] "The psychological testimony from professionals is rightly accorded great weight in termination proceedings. *In re Nicolina T.*, 9 Conn. App. 598, 605, 520 A.2d 639, cert. denied, 203 Conn. 804, 525 A.2d 519 (1987)." (Internal quotation marks omitted.) *In re Kezia M.*, 33 Conn. App. 12, 22, 632 A.2d 1122, cert. denied, 228 Conn. 915, 636 A.2d 847 (1993).

[4] Attorney Mildred Doody, the child's guardian ad litem, testified that she believed that "for the present time, it would be in [the child's] best interests to remain in his present placement, but with a plan of long foster care." She explained that the fact that the foster family was not ready to take the significant step of adoption, coupled with the child's clearly expressed desire to continue his relationship with his brother, aunt and grandmother was the basis for her opinion. She further stated that the child never expressed a desire to have the respondent's parental rights terminated. In short, she disagreed with the petitioner regarding the need to terminate the respondent's parental rights.

[5] Barbara Stark, a program supervisor employed by the department of children and families, stated that she had never spoken with the child, himself.

[6] Renata Tecza, a permanency planning social worker employed by the department of children and families, testified that it was common for children to be upset by seeing their parents incarcerated.