IN RE BRAYDEN E.-H. ET AL.*
(SC 19136)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, McDonald and Espinosa, Js.

*Argued May 16—officially released July 30, 2013***

James P. Sexton, assigned counsel, for the appellant

(respondent mother).

Michael Besso, assistant attorney general, with whom were *Susan T. Pearlman*, assistant attorney general, and, on the brief, *George Jepsen*, attorney general, and *Gregory T. D'Auria*, solicitor general, for the appellee (petitioner).

Priscilla F. Hammond, for the minor children.

Opinion

McDONALD, J. The respondent mother, Elise E. (respondent),[1] appeals[2] from the judgments of the trial court terminating her parental rights with respect to her two minor children, B and L, and awarding permanent guardianship of the children to their paternal great-aunt and her husband, Jane I. and John I. The respondent contends that the trial court's application of General Statutes § 17a-112[3] in terminating her parental rights violated substantive due process guaranteed under the federal constitution, or alternatively under the state constitution, because the trial court was required to determine that termination was the least restrictive permanency plan to protect the children's best interests. The respondent further contends that this standard was not met in the present case because termination was not required when permanent guardianship was sufficient to accomplish that purpose. We conclude that, even if we were to assume, arguendo, that such a least restrictive determination is constitutionally mandated, a proposition vigorously contested by the petitioner, the Commissioner of Children and Families, the respondent's claim fails because the record reflects that this standard was satisfied. Accordingly, we affirm the judgments of the trial court.

The record reveals the following undisputed facts found by the trial court and procedural history.[4] The respondent reported being a victim of sexual abuse as a very young child, a fact that she did not reveal until she was eighteen. This abuse, her own mother's emotional unavailability, and her father's alcoholism contributed to substantial mental health and substance abuse issues that ever since have burdened the respondent.

The respondent's conditions manifested themselves early in her life. She was in counseling by age five. At fourteen, she was admitted to Natchaug Hospital for "out of control" behavior. From ages sixteen to eighteen, she suffered from anorexia and bulimia. During this period, the respondent became involved in the juvenile court system and was sent to Riverview Hospital for evaluation, remaining there for treatment for three months. At age eighteen, she was admitted to the Institute of Living for her eating disorders. At age twenty-one, she entered a substance abuse treatment facility.

In 2007, at age twenty-three, the respondent gave birth to B, the first of her two children with Floyd H. The respondent had met Floyd when the two were in middle school. Floyd had his own troubled family history that he brought to the relationship. The two bonded through their emotional neediness and their abuse of marijuana and alcohol. They married in 2005. Floyd filed for divorce in June, 2008, after which the two maintained a turbulent relationship that included incidents of domestic violence.

The respondent's mental health and substance abuse problems continued to plague her after B's birth and after the birth of her second child, L, in 2009. In summer, 2008, the respondent entered the Natchaug Hospital adult inpatient unit on two separate occasions due to substance abuse and depression. By the end of 2008, the respondent was in a residential treatment facility, but later was discharged due to an altercation with another resident. In 2010, the respondent was admitted and treated for short periods of time at two different hospitals; admission tests revealed her blood alcohol level to be 0.232 and 0.293, approximately three times the legal limit for operating a motor vehicle. In 2010, the respondent entered various treatment programs, none of which was able to control her dual, chronic illnesses.

The respondent's illnesses also led to numerous interactions with the criminal justice system. The respondent acknowledged having been subject to twenty arrests, most of them for alcohol related incidents. Her Connecticut conviction record reflects eleven arrests, most involving multiple criminal violations. The majority of these violations was for operating a motor vehicle while under the influence of intoxicating liquor, disorderly conduct, assault (including assault of police officers), violation of probation, and violation of restraining or protective orders. One arrest for a violation of a protective order occurred in August, 2011, when the respondent entered Floyd's home in an intoxicated and agitated state while he had custody of their children. These arrests reflect the sad fact that the respondent becomes violent and out of control when she drinks alcohol, and she becomes destructive—to herself, to property and to others.

As a result of these circumstances, the Department of Children and Families (department) first became involved with the family in 2008. In September, 2008, B was removed from his parents' care following a fully contested order of temporary custody, and thereafter was placed with his paternal grandparents. In December, 2008, B was committed to the custody of the petitioner, and thereafter was placed with the respondent at the residential treatment facility where she was then residing. After the respondent was expelled from that facility, B was placed back in the petitioner's care and custody. B was reunited with his parents in July, 2009. In July, 2010, a second contested order of temporary custody for both children was sustained, resulting initially in a foster care placement. In January, 2011, an adjudication of neglect was entered, and the children were placed under protective supervision with Floyd. In February, 2011, both children were removed from Floyd's care and committed to the petitioner's care after day care providers noticed bruising on B's buttocks and upper leg. Floyd later was convicted of charges in

relation to this incident and was placed on probation. The children were then placed in foster care with Jane and John.

In October, 2011, the petitioner filed motions for review of permanency plans for the children, in which she proposed the termination of both parents' rights and adoption. The respondent filed an objection, contending that the department had not made reasonable reunification efforts and that reunification was in the children's best interests. In February, 2012, the trial court, *Dyer*, *J.*, issued a decision approving the permanency plans and overruling the respondent's objection. At the time the court issued its decision, the respondent was incarcerated on a felony conviction and was not expected to be released from custody to the community for at least several more months, after which time she would be on probation for a period of five years. The court first concluded that the department and other agencies had offered appropriate rehabilitation and reunification services to both the respondent and Floyd. The court further concluded that, in accordance with General Statutes § 46b-129 (k), the petitioner had established by a preponderance of the evidence that the proposed plan of termination and adoption was in the best interests of the children. In so concluding, the court acknowledged the respondent's regular communication with her children while she was incarcerated, as well as her appropriate interactions with them when they visited her monthly. The court also noted, however, significant gains made by both children during the past year that they had been in foster care with Jane and John, who had expressed a willingness to adopt the children.[5] In particular, B's therapy had helped ameliorate aggression and defiance that had manifested as a result of his having been uprooted repeatedly from his parents' care and having been exposed to his parents' discordant relationship. The court ultimately found: "[T]he respondent's chronic history of relapses and failed substance abuse treatment during the past two years, and her criminal record that includes several arrests for violation of protective/restraining orders and violation of probation, cast doubt upon the respondent's assurances of appropriate postrelease comportment, and compliance with [the department's] requirements and court orders. . . . [T]his court cannot determine that [the respondent] will be able to resume a responsible parental role in the lives of the children within a reasonable period of time in the future, especially given the ages of the children, and the length of time they have already spent in foster care. . . . The totality of the evidence proved that both children presently require the stable and permanent home that their biological parents have thus far been unable to provide for them. The evidence also suggests that it would be detrimental to delay permanency for [the children] any further in order to allow an uncertain amount of time in the future

for possible parental rehabilitation."

In November, 2011, the petitioner filed petitions to terminate the parental rights of the respondent and Floyd. Although both parents contested the petitions, neither sought custody of the children; Floyd sought a transfer of permanent guardianship to Jane and John, and the respondent sought transfer of an unspecified type of guardianship to Jane. In accordance with § 17a-112 (j); see footnote 3 of this opinion; the court, *Hon. Francis J. Foley III*, judge trial referee, found by clear and convincing evidence in the adjudicatory stage of the proceedings that: there had been a prior adjudication of neglect; the department had made reasonable efforts to promote reunification through the offer of appropriate and available services; specific steps had been provided to the parents; and there had been insufficient progress by either parent to believe that either had achieved such a degree of personal rehabilitation as would encourage the belief that, within a reasonable period of time, considering the ages and needs of the children, either parent could assume a responsible position in the life of the children. In so concluding, the court relied in part on the report of the court-appointed psychologist, Robin Grant-Hall, who had conducted evaluations of the parents in 2008, 2010, and 2012. In the report cited by the court in its memorandum of decision, Grant-Hall found that neither parent was within two to three years of being able to effectively and safely parent. She further opined: "The tragic aspect of this family situation is that both [Floyd] and [the respondent] are loving, connected parents who displayed good parenting skills. However, their substance abuse and emotional problems preclude them from being safe, nurturing, stable parents. [B] is [at] least somewhat bonded and attached to both parents. [L] has a bond with his father, but a limited to nonexistent bond with his mother. . . . Neither of them can afford to become attached to either or both parents only to be taken from their care once again. Significant attachment damage could occur which would permanently negatively impact on their relationships and overall functioning." (Internal quotation marks omitted.)

Finding that a ground for termination existed, the court turned to the dispositional stage of the proceedings to determine whether there was clear and convincing evidence that termination was in the children's best interests, in accordance with § 17a-112 (j) (2). In answering that question in the affirmative, the court made findings in relation to the seven factors enumerated in § 17a-112 (k); see footnote 3 of this opinion; consistent with those found in the adjudicatory stage of the proceedings. The court also considered dispositional alternatives to the petitioner's request for termination and adoption, including the guardianships sought by Floyd and the respondent. The court first rejected the respondent's unspecified request, which

the court construed as seeking a conventional (temporary) guardianship under General Statutes § 35a-20. The court reasoned that this type of guardianship would permit the respondent to return to court without limit and that she would take "every possible opportunity to undermine and destabilize [Jane's] position as principal caretaker by filing motions for reinstatement of guardianship. The children could never confidently attach and would be tormented by divided loyalties." The court next considered permanent guardianship and adoption as possible dispositions. The court examined the five requirements for permanent guardianship under General Statutes § 46b-129 (j) (5),[6] noting that the only questionable factor was whether "[a]doption of the child or youth is not possible or appropriate" pursuant to § 46b-129 (j) (5) (B). (Internal quotation marks omitted.) In considering this factor, the court took into account the relationship between each parent and the children—the respondent having a minimal bond with L—as well as between each parent and the proposed guardians—the respondent being hostile to Jane. Although Jane and John were willing to adopt the children, the court concluded this was not the most appropriate disposition given that Jane and John both were in their sixties and had chronic illnesses. Instead, the court concluded that "[p]ermanent [g]uardianship with [Jane] and [John], with continued involvement of their nephew, Floyd, and no possible interference by [the respondent] is the best scenario under the present circumstances." In deciding against termination of Floyd's rights, the court cited, inter alia: the importance of parental ties where possible; Floyd's bond with both children; Floyd's relationship to Jane and John, who would continue to permit Floyd to visit the children after resolution of the case; Floyd's lesser need than the respondent for long-term treatment for substance abuse and mental health issues; and the fact that the care of the children likely would fall to the paternal side of the family should Jane and John become unable to continue care. Accordingly, the court granted the petitions to terminate the respondent's parental rights, denied the petitions to terminate Floyd's rights, and awarded permanent guardianship of the children to Jane and John.

Both the petitioner and the respondent thereafter filed motions to reargue. The petitioner's motion to reargue challenged the trial court's decisions not to terminate Floyd's parental rights and to order permanent guardianship instead of adoption. In her motion, the respondent contended that the trial court had misconstrued her request for a transfer of guardianship as seeking a conventional guardianship, as well as the law insofar as § 46b-129 (j) (5) (c) did not require that both parents be related to the proposed permanent guardian. She also claimed that the court had failed to safeguard her constitutional right to substantive due process, which required the court to determine that termination

was the least restrictive means necessary to achieve the state's compelling interest in protecting the children from harm.

The trial court conducted a hearing on the motions, during which it sustained the respondent's objection to the petitioner's motion. The court deferred ruling on the respondent's constitutional claim to permit the parties to submit supplemental briefs, which they indicated could be done in short order because they had briefed the same issue in a case recently heard by the Appellate Court. In her supplemental brief, the respondent: (1) marshaled authority that she contended supported her position that the substantive due process clauses of the state and federal constitutions required the petitioner to prove that termination was the least restrictive permanency plan available to secure the best interests of the children; (2) sought vacation of the judgment terminating her parental rights due to the court's failure to make such a determination; and (3) sought a new judgment allowing her "severely circumscribed visitation rights with her children" that could have addressed the court's concerns while allowing her to maintain a legal relationship to her children.

The trial court issued a memorandum of decision granting reargument but denying the relief requested. In that decision, the court underscored its reasons for terminating the respondent's parental rights and rejected the respondent's alternatives as unworkable. The court also rejected her constitutional claim as unsupported by existing law and as a matter better directed to the legislature. The respondent then appealed from the judgments terminating her parental rights to the Appellate Court, challenging the trial court's decision as violative of substantive due process. The petitioner filed a "preliminary statement of issues" challenging whether the respondent properly had preserved that claim. In light of another case on which this court had granted certification regarding the same constitutional issue; *In re Azareon Y.*, 308 Conn. 925, 64 A.3d 329 (2013); we transferred the respondent's appeal from the Appellate Court to this court and heard argument on both cases on the same day.[7]

In her appeal, the respondent claims that the trial court's application of § 17a-112 violated her rights under the substantive due process clauses of the state and federal constitutions. In support of this claim, the respondent asserts the following propositions. Due to the recognized fundamental right of parents in the care, custody, and control of their children, strict scrutiny must be applied to determinations under § 17a-112. Consistent with that standard, the court must consider whether termination was the least restrictive permanency plan available to protect the state's compelling interest in the children's best interests, a burden that the petitioner bears by clear and convincing evidence.

Substantive due process guarantees under the federal constitution compel such a result, and, if not, more expansive guarantees under the state constitution do so. The court's application of § 17a-112 in the present case did not comport with the requisite standard because it determined that the best interests of the children were satisfied by a permanency plan of a permanent guardianship. The trial court failed to recognize that its concerns regarding the respondent's interference with the children and the guardians could have been addressed through injunctive relief rather than by termination. The respondent also contends that she preserved this issue for appeal, but alternatively seeks review under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), if this court concludes otherwise.

The petitioner disputes every proposition asserted by the respondent and contends that the case law from other jurisdictions on which the respondent relies does not support her claim. The petitioner further contends that any impropriety by the trial court in failing to undertake a least restrictive alternative analysis was harmless error, because the evidence demonstrates that the court rejected, with good reason, the respondent's claim that her parental rights should not be terminated so that she might retain a future right of visitation. Counsel for the children supports the petitioner's position. We conclude that the issue is preserved but that the respondent cannot prevail on her claim.

With respect to the issue of preservation, we note that, although the trial court properly could have declined to consider the respondent's constitutional claim because she raised it for the first time in her motion to reargue; *Hudson Valley Bank* v. *Kissel*, 303 Conn. 614, 624, 35 A.3d 260 (2012); *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 94 n.28, 952 A.2d 1 (2008); the court did not do so. The petitioner did not object to the trial court's consideration of the claim, and she agreed to submit a supplemental brief on the matter.[8] The petitioner conceded at oral argument before this court that neither she nor the respondent claimed that the court needed to open the evidence to decide the issue. The trial court's decision on the motion to reargue rejected the claim on the merits. Therefore, the dual concerns underlying the rules of preservation, fair notice to the trial court and opposing counsel; see *State* v. *Jorge P.*, 308 Conn. 740, 753, 66 A.3d 869 (2013); *Council* v. *Commissioner of Correction*, 286 Conn. 477, 498, 944 A.2d 340 (2008); were satisfied. Accordingly, the issue is properly before us.

With respect to the merits of this claim, we recognize the significance of the question presented. Nonetheless, as a jurisprudential matter, this court generally avoids an unnecessary determination of constitutional questions. See *Hogan* v. *Dept. of Children & Families*, 290 Conn. 545, 560, 964 A.2d 1213 (2009) ("we eschew

unnecessarily deciding constitutional questions"); *Negron* v. *Warden*, 180 Conn. 153, 166, 429 A.2d 841 (1980) ("[w]e . . . follow the recognized policy of self-restraint and the basic judicial duty to eschew unnecessary determinations of constitutional questions"). Consistent with that philosophy, we 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 considering the respondent's claims, it is useful to clarify the narrow question before us. The respondent does not challenge the court's decision to vest Jane and John with permanent guardianship of the children. Nor does she challenge any of the trial court's findings with regard to her past history, her current inability to safely parent her children, the long-term challenges that she faces to overcome her dual, chronic illnesses, or the strained state of her relationship with Jane. Indeed, the respondent does not challenge the trial court's finding that termination of her parental rights is in the best interests of the children under the established meaning of that standard, a finding that this court would not disturb unless it was clearly erroneous. *In re Davonta V.*, 285 Conn. 483, 488, 940 A.2d 733 (2008). In light of the record before us, we conclude that the threshold, and ultimately dispositive question, is whether, despite the trial court's application of the established best interests standard, its findings nonetheless clearly reveal that it in fact rejected the respondent's arguments and necessarily found in doing so, by clear and convincing evidence, that termination was the least restrictive permanency plan consistent with the children's best interests. In effect, we examine the court's decision to determine whether, under the undisputed facts found, there was sufficient evidence to support such a conclusion as a matter of law. Cf. *In re Jermaine S.*, 86 Conn. App. 819, 829, 863 A.2d 720 (noting that reviewing court "must determine whether those facts correctly found are, as a matter of law, sufficient to support the judgment" [internal quotation marks omitted]), cert. denied, 273 Conn. 938, 875 A.2d 43 (2005); see also *Rostain* v. *Rostain*, 213 Conn. 686, 690, 569 A.2d 1126 (1990) (conducting careful review of record to determine whether trial court made essential finding); *Caracansi* v. *Caracansi*, 4 Conn. App. 645, 648–49, 496 A.2d 225 (examining trial court's memorandum of decision to determine whether it made factual finding), cert. denied, 197 Conn. 805, 499 A.2d 56 (1985).

The record reflects the following additional undisputed facts. As previously indicated, in the adjudicatory

stage of the proceedings on the petitions, the court found that grounds for termination had been established by clear and convincing evidence. In so concluding, the court recited extensive facts demonstrating the respondent's inability to control her behavior even when directed by court order not to engage in certain conduct or when under the supervision of police officers. The court also cited Grant-Hall's report, which stated in relevant part: "[The respondent] is a severe alcoholic who has not been able to maintain sobriety for extended periods of time. When she drinks, she becomes enraged, violent, and at times, psychotic. . . . Even if [the respondent] could somehow maintain sobriety and work sufficiently on her trauma issues to obtain emotional stability, she would need to do so for at least two years (after prison) before any reunification plans could be developed. . . ." (Internal quotation marks omitted.) The court noted: "[Grant-Hall] . . . favors a form of guardianship to allow the parents to remain in contact with the children. [The respondent] sees this recommendation as an open window to be reunited with the children if she can maintain sobriety. This court finds this plan unworkable since [the respondent] has not demonstrated stable continuous sobriety in more than a decade. She has not ever displayed the ability to provide a safe and secure environment for her children. . . . Grant-Hall has proposed a fall back position if legal guardianship is not workable. In that scenario, the parental rights would be terminated but the children could see their parents at public events and holidays. This proposal is not satisfying either, especially for [the respondent]. While [the respondent] has historically had little relationship with . . . Jane, the foster mother, after hearing [Jane's] testimony in court, [the respondent], during her testimony, could barely hide her disdain for . . . Jane. . . . [A]s it was, Jane never did allow [the respondent] in her home for visitation. It is not surprising, [the respondent], drunk or sober is a force to be reckoned with. [The respondent] would be impossible for . . . Jane to accommodate. [The respondent] is confrontational, unpredictable and aggressive. It is likely that [the respondent] would undermine . . . Jane's relationship with the children. . . . In this case, the transcripts will not adequately convey [the respondent's] barely controlled anger." (Citations omitted.)

In the dispositional stage of the proceedings, the court made similar factual findings. The court found that the respondent "is positively hostile to Jane . . . ." In rejecting a conventional guardianship as a potential disposition, the court explained: "[T]his case has been litigated at every turn. There is . . . reason to believe that if guardianship was awarded in this case, [the respondent] would be taking every possible opportunity to undermine and destabilize [Jane's] position as principal caretaker by filing motions for reinstatement of

guardianship. The children could never confidently attach and would be tormented by divided loyalties." In considering the competing alternatives of adoption and permanent guardianship, the court concluded that "[p]ermanent [g]uardianship with [Jane] and [John], with continued involvement of their nephew, Floyd, *and no possible interference by* [*the respondent*] *is the best scenario under the present circumstances*." (Emphasis added.)

At the hearing on the motions to reargue, the court further emphasized this point when addressing its intention in rendering its decision: "I clearly think that the [respondent's] involvement *in any way* in the future of the guardians or in the future of the children *is toxic to them*. I think she is . . . the type of litigious person that the permanent guardianship statute was . . . designed to remedy."[9] (Emphasis added.) Later, when attempting to allay the concern of Jane and John that the respondent's family could retain some legal rights if permanent guardianship, rather than adoption, was the disposition, the court stated: "I don't think that's a good reading of the statute, and certainly, it's not a good reading of my decision because *I really wanted to cut the* [*respondent*] *off as much as I could* because I see her as undermining your authority and I don't want her to be able to undermine your authority." (Emphasis added.)

In her supplemental brief submitted after that hearing, the respondent contended that the court had misconstrued her proposed disposition as seeking temporary guardianship and that it could have allayed its concerns by means other than termination. Specifically, she suggested: conditioning visitation on extended periods of sobriety; requiring visits to be supervised at her expense and contingent on her not undermining Jane's relationship with the children; and even proscribing visitation for a period of two years to allow the respondent to address her myriad issues, as Grant-Hall had suggested. In denying the relief requested in that motion, the trial court explained: "The respondent argues that even though she did not specifically ask for 'permanent' guardianship, the court should have concluded that was what she was seeking. First, even if that was what she was seeking, she would not have fared better. Indeed, *giving her any opportunity to further litigate would be disastrous to the children and to the guardians*. As it is now, the statute does not address specifically visitation and thus could provide her with an opportunity to litigate. *That possibility does not exist if her parental rights are terminated. The intention of the court was to prevent her from having any further control or influence over the children, including visitation, during which time she could undermine the authority of the guardians*." (Emphasis added.) In answering the respondent's contention that the court had not explained how the chil-

dren would benefit from continuing contact with their father but not with her, the court noted that the incident of child abuse had resulted from a "spontaneous act of frustration," for which Floyd had accepted responsibility, and that it had been caused in part by the respondent's violation of restraining orders. The court went on to explain that the respondent "is variously described as [the] 'more aggressive' of the two parents and *beyond control*." (Emphasis added.)

In our view, this record fully demonstrates that the trial court necessarily found, by clear and convincing evidence, that termination was the least restrictive alternative to protect the children's best interests. Indeed, the court's response to the respondent's supplemental brief on the motion to reargue reflects that the court considered and rejected the measures short of termination suggested by the respondent. The court concluded that *any* avenue that would permit the respondent to exert *any* further control or influence over the children would undermine the guardians' relationship with the children and would be contrary to the children's best interests. The court further cited evidence of the respondent's past history of violating court orders that demonstrates that, in her current condition, the respondent would not adhere to the proposed injunctive orders she suggests to address the legitimate concerns articulated by the court. Finally, the fact that the court declined to terminate Floyd's rights but determined that termination of the respondent's rights was necessary reflects the court's conclusion that nothing short of terminating the respondent's rights would adequately protect the children's best interests.

The respondent contends, however, that the trial court's orders were based on a misunderstanding of its authority to issue injunctive orders that, if necessary, could have barred visitation for a period of years. In particular, the respondent cites General Statutes § 45a-612, under which "[t]he grant of . . . visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child, and any such court may include in its decree an order terminating such visitation rights," and General Statutes § 46b-121 (b) (1), under which the trial court "shall also have authority to grant and enforce temporary and permanent injunctive relief in all proceedings concerning juvenile matters." Although the petitioner contends that neither statute provides the authority suggested by the respondent, and neither bars the respondent from coming into court to seek relief, we need not decide those questions. The trial court's decision manifests its clear intention to permanently prevent the respondent from interposing herself into the relationship between the guardians and the children, and a similarly clear determination that termi-

nation of the respondent's parental rights was the only appropriate means to guarantee that end. In light of such findings, the trial court had no need to consider whether it had the authority to conditionally permit or bar the respondent's visitation rights.

The judgments are affirmed.

In this opinion the other justices 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.

** July 30, 2013, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The children's father, Floyd H., also was a respondent in the proceedings before the trial court. Although Floyd's history reflects his own troubled family history, substance abuse, and mental health issues, the court did not terminate his parental rights, and he is not a party to this appeal. Accordingly, we refer to Floyd's history only to the extent necessary to give context to the respondent mother's claim and refer to Elise E. as the respondent in this opinion.

[2] The respondent appealed from the judgments of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-2.

[3] General Statutes § 17a-112 provides in relevant part: "(j) The Superior Court, upon notice and hearing as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section 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 in accordance with subsection (a) of section 17a-111b, 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 or uncared for in a prior proceeding, or (ii) is found to be neglected 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 . . . .

"(k) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, as amended; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best 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. . . .”

[4] Because it is unnecessary to our resolution of this appeal, our statement of facts does not reflect the entirety of the numerous services and programs that were made available to the respondent by the Department of Children and Families and other agencies, as well as those sought out directly by the respondent.

[5] The court noted at the outset of its decision that the children’s paternal grandparents, who had been granted intervenor status, did not wish to participate in the hearing. The court further noted that the maternal grandparents, who also had intervened in the case, were removed as parties upon their request.

[6] General Statutes § 46b-129 (j) (5) 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 as 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, or (II) 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.”

[7] In this other case, in which the constitutional issue was raised for the first time on appeal, we concluded that the Appellate Court properly determined that the record was inadequate to review the unpreserved constitutional claim. *In re Azareon Y.*, 309 Conn. , A.3d (2013).

[8] The petitioner contended at oral argument before this court that she did object to the respondent’s expansion of her argument in her supplemental brief to argue that injunctive relief should have been considered as part of, or in conjunction with, the least restrictive permanency plan. We have not found any such objection in the record before us. In any event, the petitioner agreed at oral argument that the trial court’s decision on the motion to reargue can be read to indicate that it rejected the respondent’s argument regarding injunctive relief.

[9] Subdivisions (5) and (6) of § 46b-129 (j) make clear that a parent may not file a motion to terminate a permanent guardianship.