

\*\*\*\*\*

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. In no event will any such motions be accepted before the “officially released” date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

ROBINSON, J., concurring. I agree with the majority that the trial court's judgment should be affirmed on the basis of its finding that the respondent, Brian T., Sr., denied his minor child, Brian T., Jr., the care, guidance and control necessary for the child's well-being. I further agree with Judge Lavine's concurring opinion that proof of one ground is sufficient to terminate parental rights; see *In re Brea B.*, 75 Conn. App. 466, 473, 816 A.2d 707 (2003); and, because of that principle, I ordinarily would not address the respondent's claims regarding abandonment, failure to rehabilitate and the lack of an ongoing parent-child relationship, other statutory grounds on which the trial court terminated his parental rights. Nevertheless, I write separately to express my concerns regarding the use of failure to rehabilitate as a basis to terminate the respondent's parental rights, as it was done in this matter. Specifically, I believe there should be symmetry between the termination of parental rights procedure that was followed in this matter and the procedure under the provisions of General Statutes § 17a-112 (j) (3) (B). When a child has been adjudicated neglected or uncared for, the court should order specific steps for the parent to take to facilitate the child's return to the parent. No specific steps were ordered for the respondent in this case. Further, I believe that in determining whether a parent has achieved a degree of personal rehabilitation such that he could assume a responsible position in the child's life within a reasonable time, a court should focus on the time period subsequent to when a neglect proceeding was conducted.

As I noted in the matter of *In re Jason R.*, 129 Conn. App. 746, 774, 23 A.3d 18 (*Robinson, J.*, dissenting), cert. granted, 302 Conn. 924, 28 A.3d 339 (2011), the termination of an individual's parental rights is one of the most drastic actions that a state must take against its citizens. "The termination of parental rights is defined as the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child and his parent . . . . It is a most serious and sensitive judicial action. . . . Although that ultimate interference by the state in the parent-child relationship may be required under certain circumstances, the natural rights of parents in their children undeniably warrants deference and, absent a powerful countervailing interest, protection." (Internal quotation marks omitted.) *Id.* Accordingly, it is through this judicial lens that this court must thoroughly review the termination of an individual's parental rights.

General Statutes § 46b-129 (a) provides that an interested party may file in the Superior Court a petition stating that a child has been neglected, uncared for or

abused. Section 46b-129 (j) provides that upon a finding that a child is uncared for, neglected or abused, a court may commit that child to the custody of the commissioner of children and families, or vest legal guardianship of the child in someone other than the parent. Section 46b-129 (j) also provides that “[t]he court shall order specific steps that the parent must take to facilitate the return of the child or youth to the custody of such parent . . . .” (Emphasis added.)

Under General Statutes § 45a-717 (g) (2) (D),<sup>1</sup> a Probate Court may approve a petition terminating the parental rights of an individual if it finds upon clear and convincing evidence that “the parent of a child who (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 such parent 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 . . . .”

Generally, a Superior Court has sole jurisdiction under § 46b-129 to determine, pursuant to that section, if a child has been neglected, and to order specific steps for the parent to take to facilitate the child’s return to the parent. *In re Juvenile Appeal (85-BC)*, 195 Conn. 344, 366, 488 A.2d 790 (1985). It appears from the record that no petition alleging neglect was filed pursuant to § 46b-129 (a). It appears, rather, that the Probate Court determined that the child had been neglected and uncared for in deciding whether to remove the respondent and the child’s mother, Nicole G., as guardians of the child. The Probate Court, however, did not order specific steps for the respondent to take in order to facilitate the child’s return to the respondent.

This court has concluded that when termination of parental rights is sought under § 17a-112 (j) (3) (B), a failure to order specific steps under § 46b-129 (j) would preclude termination for failure to achieve personal rehabilitation. *In re Justice V.*, 111 Conn. App. 500, 510, 959 A.2d 1063 (2008), cert. denied, 290 Conn. 911, 964 A.2d 545 (2009). In the matter of *In re Justice V.*, after a finding of child neglect, the commissioner of children and families sought to terminate the mother’s parental rights on the basis of abandonment and failure to rehabilitate. *Id.*, 504 n.4. The mother claimed that when the child was adjudicated neglected, the court failed to provide her with specific steps pursuant to § 46b-129 (j). *Id.*, 505. This court noted that § 46b-129 (j) requires specific steps be provided to the parent and that “[p]ersonal rehabilitation, therefore, is to be determined, in

part, by compliance with those specific steps, *which give the parent fair warning of what is required . . . to be reunited with the child.*” (Citation omitted; emphasis added; internal quotation marks omitted.) *Id.*, 507. The court concluded that “given the requirement of § 17a-112 (j) (3) (B), a failure to order specific steps would preclude termination for a failure to achieve sufficient personal rehabilitation” but that because parental rights were properly terminated on the ground of abandonment, the trial court’s error did not result in manifest injustice. *Id.*, 510.

I believe that parental rights should not be terminated under § 45a-717 (g) (2) (D), for failure to rehabilitate, when specific steps were not ordered for the parent. Although the Probate Court did not find that the child was neglected or uncared for under § 46b-129, and, thus, arguably was not required to provide specific steps for the respondent, fairness dictates that in order to terminate parental rights due to a failure to rehabilitate, specific steps should be ordered for a parent whose child has been found neglected or uncared for. The court provides specific steps to a parent to apprise that individual of the steps that will assist the parent to be reunited with the child. If no steps are provided to a parent, that parent will not be aware of the benchmarks he or she should strive to meet. While it is true that a court’s determination regarding whether a parent has achieved personal rehabilitation can take into account more than whether that individual has met the specific steps provided to the individual, the specific steps still act as a guide to parents seeking to reunite their families. See *In re Allison G.*, 276 Conn. 146, 161, 883 A.2d 1226 (2005) (“[a]lthough the specific steps provide a benchmark by which the court measures whether either reunification or termination of parental rights is appropriate, the court necessarily will consider the underlying [neglect] adjudication and the attendant findings”). The specific steps are intricately intertwined with the failure to rehabilitate, as indicated by the statutory language in all three of the relevant statutory provisions. Accordingly, I believe that in order to terminate parental rights on the basis of a failure to rehabilitate, that parent should be provided with specific steps to take to facilitate the return of the child. As the respondent was not provided with specific steps, I find it troubling that his parental rights were terminated on the basis of a failure to rehabilitate.

Furthermore, I believe that in determining whether a parent has failed to rehabilitate, a court should focus on the actions of the parent because the child was found to have been neglected or uncared for. “[T]he adjudicatory determination to be made by the trial court is whether the parent of a child who has been found by the [S]uperior [C]ourt to have been neglected [or] uncared for in a prior proceeding has failed to achieve such degree of personal rehabilitation as would encour-

age 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. . . . In conducting this inquiry, the trial court must analyze the respondent's rehabilitative status as it relates to the needs of the particular child . . . . The trial court must also determine whether the prospects for rehabilitation can be realized within a reasonable time given the age and needs of the child. . . .

“Although the standard is not full rehabilitation, the parent must show more than any rehabilitation. . . . Successful completion of the petitioner's expressly articulated expectations is not sufficient to defeat the petitioner's claim that the parent has not achieved sufficient rehabilitation. . . . [I]n assessing rehabilitation, the critical issue is not whether the parent has improved [her] ability to manage [her] own life, but rather whether [she] has gained the ability to care for the particular needs of the child at issue. . . . Thus, even if a parent has made successful strides in her ability to manage her life and may have achieved a level of stability within her limitations, such improvements, although commendable, are not dispositive on the issue of whether, within a reasonable period of time, she could assume a responsible position in the life of her child.” (Citations omitted; internal quotation marks omitted.) *In re Victoria B.*, 79 Conn. App. 245, 254–55, 829 A.2d 855 (2003).

The language of § 45a-717 (g) (2) (D) provides that parental rights may be terminated when a child has been adjudged neglected and uncared for and the parent 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 . . . .” On the basis of this language, it appears that the court should examine the actions of the parent *since* the neglect proceeding in determining whether the parent has failed to rehabilitate. See *In re Hector L.*, 53 Conn. App. 359, 367, 730 A.2d 106 (1999) (“[a]t the adjudicatory phase of the termination hearing, the ultimate issue faced by the trial court was whether the respondent was better able to resume the responsibilities of parenting at the time of filing the termination petition than he had been at the time of the children's commitment”). Although a court may consider events that preceded the finding of neglect, such consideration should only be in the context of determining whether such individual has taken steps toward rehabilitation. See *In re Vincent D.*, 65 Conn. App. 658, 670, 783 A.2d 534 (2001) (“[i]n determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment, regardless of whether those factors were included in specific expectations ordered by the court or imposed by the department”). Termination of parental rights on the ground of failure

to rehabilitate essentially means that since the time the child was adjudged neglected or uncared for, the respondent has not demonstrated a change in his or her life that is sufficient to allow him or her to maintain parental rights.

In reaching its conclusion that the respondent's parental rights should be terminated on the ground of a failure to rehabilitate, the court found that the "[respondent] had *eight years* during which he might have been available to assume a 'responsible position in [the] [c]hild's life.' During those years, he neither made himself available as a resource for [the] [m]other or [the] [c]hild [n]or significantly contributed to the care and maintenance of [the] [c]hild. Furthermore, he has demonstrated resentment of the role that [the maternal grandparents] have played in their care and nurture of [the] [c]hild. [The] [c]hild is closely bonded and fully committed to his maternal grandparents, his [m]other and [a]unt. His guardians have supported his relationship with his paternal grandparents but reserve their judgment as to whether [the respondent] is committed to acceptance of the nature of his future role in [the] [c]hild's life. He carries the heavy burden of proving to [the maternal grandparents] that his life has changed and he can play a positive role in his son's development. He must recognize that [the maternal grandparents] will be making the decision in [the] [c]hild's life. The court finds by clear and convincing evidence that [the respondent] *has failed to rehabilitate over the first seven years of [the] [c]hild's life* and that the age and needs of [the] [c]hild require that [the maternal grandparents] continue in the parental role in which they have served." (Emphasis added.)

The court's primary reason for terminating the respondent's parental rights on the basis of a failure to rehabilitate was that for the first seven years of the child's life, the respondent failed to assume a responsible position. The court should have asked whether the respondent had achieved a degree of personal rehabilitation *since* the finding that the child was neglected and uncared for, as would encourage the belief that in a reasonable amount of time he could assume a responsible position in his son's life. I am concerned that the court simply grouped the first seven years of the child's life together in determining that the respondent has failed to rehabilitate. The child was adjudicated neglected or uncared for in January, 2005. I believe that the court should have primarily focused on the years since that proceeding to determine whether the respondent had taken steps toward rehabilitation so that he could assume a responsible position in the child's life.<sup>2</sup> Accordingly, I respectfully concur.

<sup>1</sup> As the majority noted, the statutory language set in § 45a-717 (g) (2) (D) and § 17a-112 (j) (3) (B) is identical; thus, prior analysis under § 17a-112 (j) (3) (B) will be used to analyze § 45a-717 (g) (2) (D).

<sup>2</sup> For example, the respondent completed a Tier II Living in Balance class and an eleven week Embracing Fatherhood program in 2006. In addition,

the respondent completed an eight week anger management program and a nine week active parenting now program in 2009 after the petition was filed. The court, however, noted none of these accomplishments in its decision to terminate parental rights on the basis of a failure to rehabilitate.

---