STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ISREALA GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA GREENE,

Respondent-Appellant.

UNPUBLISHED
March 24, 2009

No. 286252
Macomb Circuit Court
Family Division
LC No. 2005-059540-NA

In the Matter of THOMAS GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA GREENE,

Respondent-Appellant.

No. 286253
Macomb Circuit Court
Family Division
LC No. 2005-059541-NA

In the Matter of CHRISTIONA GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA GREENE,

Respondent-Appellant.

No. 286254
Macomb Circuit Court
Family Division
LC No. 2005-059542-NA

In the Matter of ISAIHA GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA GREENE,

Respondent-Appellant.

No. 286255
Macomb Circuit Court
Family Division
LC No. 2005-059543-NA

In the Matter of SARAH GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA GREENE,

Respondent-Appellant.

No. 286256
Macomb Circuit Court
Family Division
LC No. 2006-000445-NA

Before: Jansen, P.J., and Borrello and Stephens, JJ.

PER CURIAM.

In these consolidated matters, respondent appeals by right the circuit court's termination of her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). For the reasons that follow, we reverse and remand for further proceedings consistent with this opinion.

We perceive no error requiring reversal with respect to respondent's argument that her pleas were not knowing and voluntary. Respondent may not collaterally attack the circuit court's jurisdiction now when a direct appeal was available to her earlier in the proceedings. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). At any rate, the record establishes that respondent's pleas were knowingly and voluntarily made. See MCR 3.971(C)(1). When it initially appeared that respondent was having difficulty understanding the nature of the proceedings, the referee appointed a guardian ad litem for her. At the first plea hearing, respondent's guardian ad litem stated:

> [Respondent] and I have discussed the issues pretty carefully. She understands that she has, I discussed with her her right to a trial before a referee, judge, or a jury, her right to contest these pleadings, that an amended petition has been filed, her right to call witnesses or cross-examine witnesses against her. She understands that she will be waiving those rights if she enter[s] a no contest plea and she wishes to enter a no contest plea to the petition as amended and would stipulate to the factual basis on the face of the petition itself from prior testimony.

Thereafter, respondent appeared before the referee at a subsequent hearing and pleaded no contest to the allegations in the petition concerning the remaining child. The court explained respondent's rights and respondent indicated that she understood them. Her attorney and guardian ad litem were both satisfied, and the court found the plea knowingly and voluntarily made. It was made clear to respondent that the remaining child was being incorporated into the terms of the already-existing parent-agency agreement. There is no indication on the record before us that respondent was unable to make knowing and voluntary pleas, especially in light of the fact that she was assisted by a guardian ad litem.

We do find error requiring reversal, however, in the circuit court's handling of respondent's request for additional services under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. Respondent timely raised her request for additional services under the ADA early in the proceedings. *In re AMB*, 248 Mich App 144, 194-195; 640 NW2d 262 (2001); *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). The ADA requires the Department of Human Services (DHS) "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services." *Id*. at 25. "Thus, the reunification services and programs provided by the [DHS] must comply with the ADA." *Id*. "[I]f the [DHS] fails to take into account the [parent's] limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id*. at 26.

We note that, as used in the ADA, the word "[d]isability" means "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; a record of such an impairment; or being regarded as having such an impairment," and includes "[a]ny mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." 28 CFR 35.104. The record in this case tends to establish that respondent suffers from low cognitive functioning and mental health concerns. Nevertheless, the services provided for respondent were no different than those provided for parents with no mental health or ADA-related issues. Indeed, it appears that the circuit court never specifically determined whether respondent suffered from a "disability" under the ADA or whether she was entitled to special accommodations under the ADA.

It is axiomatic that the circuit court must first determine whether a parent suffers from a "disability" under the ADA before it can "take into account the [parent's] limitations or disabilities and make any reasonable accommodations" under the ADA. See *In re Terry*, 240 Mich App at 26. We conclude that the circuit court clearly erred by proceeding to terminate respondent's parental rights without first determining whether she suffered from a "disability" within the meaning of the ADA. MCR 3.977(J). We therefore reverse the termination of respondent's parental rights and remand. On remand, the circuit court must take evidence and

determine whether respondent suffers from a "disability" within the meaning of the ADA. If the court finds on remand that respondent does suffer from a "disability" under the ADA, the court must ensure that respondent receives services and accommodations consistent with the ADA's requirements.[1]

In light of our conclusions above, we need not consider the remaining arguments raised by respondent on appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens

[1] We acknowledge that a parent cannot raise for the first time on appeal an alleged violation of an antidiscrimination statute, such as the ADA, to attack the validity of an otherwise-valid child protective proceeding. *In re AMB*, 248 Mich App at 195-196. However, the present case is unlike *In re AMB* because respondent here timely raised her ADA argument before the circuit court.