STATE OF MICHIGAN

COURT OF APPEALS

In re KELSEY, Minors.

UNPUBLISHED
April 19, 2016

No. 327789
Oakland Circuit Court
Family Division
LC No. 13-810779-NA

Before: O'CONNELL, P.J., and MARKEY and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's April 27, 2015 order authorizing a guardianship over the minor children pursuant to MCR 3.979(B). We affirm.

In this case, the minor children were removed from respondent's care in July 2013 based on various allegations relating to the deplorable conditions of respondent's home, the lack of education being provided to the children, and respondent's failure to adequately address her mental-health issues. Respondent pleaded nolo contendere to the allegations in the petition and entered into a parent-agency agreement to address those allegations. Over the next several months, respondent failed to consistently comply with the parent-agency agreement or benefit from the services that were provided. Eventually, the circuit court entered an order authorizing a guardianship over the minor children pursuant to MCR 3.979(B). This appeal followed.

On appeal, respondent first challenges this circuit court's order taking jurisdiction over the children. However, the circuit court's exercise of jurisdiction can only be challenged by direct appeal from the initial order of disposition. MCR 3.993(A)(1); *In re Hatcher*, 443 Mich 426, 439-440; 505 NW2d 834 (1993). Here, respondent did not directly appeal the circuit court's September 26, 2013 dispositional order. See MCR 7.204(A)(1)(a) (requiring an appeal of right to be filed 21 days after entry of the order being appealed). Rather, respondent appealed the circuit court's April 20, 2015 order authorizing the guardianship. Thus, respondent's jurisdictional challenge is untimely. Furthermore, we disagree with respondent's argument because there was sufficient evidence presented to support the circuit court's decision to take jurisdiction over the children. MCL 712A.2(b); *In re Brock*, 442 Mich 101, 108-109 (1993). Specifically, the circuit court heard testimony from a CPS worker regarding the unsuitable nature of respondent's home, respondent's mental-health issues, respondent's lack of cooperation, and a variety of other issues as well as the contents of respondent's own plea. Accordingly, we reject respondent's jurisdictional challenge.

Respondent next argues that she was deprived of her constitutional right to due process because it is unclear whether she knowingly, understandingly, and voluntarily pleaded nolo contendere. We disagree. MCR 3.971(C)(1) provides that "[t]he court shall not accept a plea or admission of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made." See also *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). Stated simply, the record reflects that respondent's plea was knowingly, understandingly, and voluntarily made. While it is true that respondent was diagnosed with anxiety disorder, panic disorder, bipolar disorder, and attention deficit hyperactivity disorder, there is nothing in the record to suggest that those diagnoses impaired her ability to understand the proceedings at issue. The trial court thoroughly questioned respondent regarding her understanding of the implications of pleading nolo contendere, respondent signed a form indicating the same, and respondent was represented by counsel. While she claims on appeal that a guardian ad litem needed to be appointed on her behalf, the record simply does not reflect that need. Accordingly, we conclude that respondent's plea was knowingly, understandingly, and voluntarily made.

Respondent also argues that petitioner failed to seek special accommodation services as required by the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*. We reject this argument for multiple reasons. First, it was not raised in a timely manner and, therefore, waived. See *In re Terry*, 240 Mich App 14, 26, n 5; 610 NW2d 563 (2000) ("Any claim that the parent's rights under the ADA were violated must be raised well before a dispositional hearing regarding whether to terminate her parental rights, and the failure to timely raise the issue constitutes a waiver."). Moreover, the record undermines her argument. Respondent entered into a parent-agency treatment plan that required her to meet with her psychiatrist, participate in therapy, and take prescription medication (as well as complete a variety of other services). There is nothing to suggest that these services were insufficient, and respondent does not articulate any inadequacies with them on appeal. Accordingly, we conclude that respondent was not deprived of her rights under the ADA.

Affirmed.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Colleen A. O'Brien