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IN RE JOSEPH W., JR., ET AL.*
(SC 18951)
(SC 18952)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.

*Argued May 14—officially released June 28, 2012***

David B. Rozwaski, for the appellant in Docket No. SC 18951 (respondent mother).

David J. Reich, for the appellant in Docket No. SC 18952 (respondent father).

Stephen G. Vitelli, assistant attorney general, with whom, on the brief, was *George Jepsen*, attorney general, for the appellee in both cases (petitioner).

Opinion

ROGERS, C. J. The primary issue in this appeal is whether the trial court applied the proper standard of proof when, pursuant to General Statutes § 46b-129, it rendered adjudications of neglect under the doctrine of predictive neglect. The respondents, Karin H. (mother) and Joseph W., Sr. (father), are the parents of Joseph W., Jr., and Daniel W. (children). The petitioner, the commissioner of children and families (commissioner), filed neglect petitions with respect to both children. The trial court, *Wilson, J.*, found that the children were neglected and committed them to the custody of the department of children and families (department). Ultimately, the trial court, *Olear, J.*, rendered judgments terminating the respondents' parental rights with respect to both children. The respondents appealed from the judgments to the Appellate Court, the majority of which reversed the judgments of the trial court and remanded the cases for further proceedings. *In re Joseph W.*, 121 Conn. App. 605, 621–22, 997 A.2d 512 (2010). We then granted the commissioner's petition for certification to appeal to this court. See *In re Joseph W.*, 297 Conn. 928, 998 A.2d 1195 (2010). After we affirmed the judgment of the Appellate Court, the cases were remanded to the trial court for a new neglect proceeding. *In re Joseph W.*, 301 Conn. 245, 268, 21 A.3d 723 (2011). On remand, the trial court, *Bentivegna, J.*, again found that both children were neglected under the doctrine of predictive neglect and committed them to the custody of the commissioner. The respondents then filed these separate appeals[1] from the adjudications of neglect. We conclude that the trial court applied an improper standard of proof and, therefore, we reverse the judgments and remand the case to the trial court for new neglect proceedings.

The trial court, *Bentivegna, J.*, found the following facts. The department has been involved with the mother since 2002, when her oldest child, Kristina H. (Kristina), was born and subsequently removed from the mother's custody by the department.[2] When Kristina was born, the mother exhibited strange behavior at the hospital. Ultimately, it was determined that her mental problems impaired her ability to safely parent her infant. From 2002 to 2005, the department worked with the mother in an attempt to address the child protection concerns but, in 2007, the trial court *Bear, J.*, rendered judgment terminating the mother's parental rights with respect to Kristina.

Meanwhile, in 2005, the mother became pregnant by Joseph W., Sr. The respondents did not inform the department of the pregnancy. In order to avoid the removal of the child from their care, the respondents left the state of Connecticut, and Joseph W., Jr. (Joseph), was born in a hospital in Lackawanna County, Pennsylvania on July 19, 2005. Hospital personnel noti-

fied the local child protection agency that the mother was exhibiting bizarre behavior and that both respondents had failed to provide accurate information regarding their housing situation and financial status. In addition, the father appeared to lack insight as to the mother's mental problems and their implications for Joseph's safety and well-being. The Pennsylvania authorities notified the department of the situation and placed a hold on Joseph to prevent him from being discharged to the care of the respondents. They also obtained a court order stating that the department would assume custody of the child after obtaining a court order allowing it to do so.

On July 21, 2005, the commissioner filed an ex parte motion for temporary custody of Joseph, which the trial court, *Goldstein*, *J.*, granted. At the same time, the commissioner filed a neglect petition alleging that the respondents were denying Joseph proper care. The neglect petition alleged that the "[m]other has a significant and long-standing mental health condition that impairs her ability to safely parent her child. Despite the provision of psychiatric services, [the] mother has failed to benefit from said services. [The] [f]ather has no insight or acceptance of [the mother's] psychiatric impairment and the implications they have for this child. By virtue of the child's age, he requires a competent and responsible caregiver." The trial court, *Taylor*, *J.*, held a contested hearing on the temporary custody order on August 5, 2005. After the hearing, the court sustained the temporary custody order and ordered specific steps for the respondents to regain custody. Joseph was placed in a foster home. Over the course of the following year, the department made referrals for services and evaluations for the respondents to address the child protection concerns.

The respondents' second child, Daniel W. (Daniel), was born on July 20, 2006. On July 24, 2006, the commissioner filed an ex parte motion for an order of temporary custody, which the trial court, *Trombley*, *J.*, granted. At the same time, the commissioner filed a neglect petition alleging that the respondents were denying Daniel proper care and that he was being permitted to live under conditions that were injurious to his well-being. The petition also alleged that the "[m]other has unresolved mental health issues that prohibit her from adequately caring for the child. Despite the provision of psychiatric services, [the] mother has failed to avail herself of or benefit from said services. [The] [f]ather fails to recognize the mother's mental health issues and how they negatively impact her ability to care for the child. [The] [f]ather has not demonstrated an ability to care for the child independent of the mother. By virtue of the child's age, he requires a competent and responsible caregiver." The trial court, *Bear*, *J.*, scheduled a contested hearing on the order of temporary custody, at which it sustained the order by agreement of the

parties. The court also ordered specific steps for the respondents to regain custody. Daniel was placed in the same foster home as Joseph.

The first trial on the neglect petitions took place on August 2, 2007. The mother pleaded nolo contendere. The father, although present, did not enter a plea. Accordingly, the parties presented no evidence at the hearing. The trial court, *Wilson, J.*, rendered adjudications of neglect for both children and committed the children to the custody of the commissioner.

Thereafter, the commissioner filed petitions to terminate the respondents' parental rights with respect to both children. After a trial, the trial court, *Olear, J.*, granted the petitions. The respondents then appealed from the judgments terminating their parental rights as to each child. Ultimately, in affirming the Appellate Court, this court concluded that the judgments of the trial court should be reversed because the father improperly had been prevented from entering a plea at the neglect proceeding and, therefore, the adjudications of neglect, on which the judgments terminating the respondents' parental rights had been predicated, had to be opened. *In re Joseph W.*, supra, 301 Conn. 267.

On remand, the trial court, *Bentivegna, J.*, conducted a second trial on the neglect petitions for both children. Shortly before trial, the respondents sent a letter to the trial court in which they stated that they believed that the department had violated their rights under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., and requested that the department provide an ADA coordinator to oversee the case. They also stated that they questioned "the [j]udicial [b]ranch's enforcement of the ADA law, as well." On the first day of trial, the trial court responded to this request by stating that "the ADA does not provide a defense or create a special obligation in a child protection proceeding," and "child protection proceedings are not services, programs or activities within the meaning of . . . the ADA." Accordingly, the court denied the respondents' request and proceeded with trial.

At trial, the commissioner presented as exhibits the transcripts of the trial before Judge Olear on the petitions for termination of parental rights. The commissioner also presented a number of exhibits that previously had been exhibits at the termination proceeding. The new testimony presented by the commissioner at the trial on the neglect petitions related solely to the dispositional phase of the proceeding, not to whether the children were neglected at the time that the neglect petitions were filed.

After trial, the trial court found by a fair preponderance of the evidence that both children were neglected under the doctrine of predictive neglect. See *In re Brianna C.*, 98 Conn. App. 797, 802, 912 A.2d 505 (2006)

("[a] finding of neglect is not necessarily predicated on actual harm, but can exist when there is a potential risk of neglect"). With respect to Joseph, the trial court found that, as of the date that the neglect petition had been filed, the mother had a long-standing history of mental health problems and narcolepsy;[3] she had failed repeatedly to comply with treatment plans for her mental and physical health problems; and, although the department had asked her repeatedly if she was pregnant, she consistently had denied it. The court also found that both respondents had left the state prior to Joseph's birth "without having any real plan for housing and employment." In addition, the "[f]ather lacked insight into [the] mother's mental health issues and the implications for the child's safety and well-being."[4] The court concluded that this evidence established that Joseph "was at risk of harm in the respondents' care."

With respect to Daniel, the trial court found that, as of the date that the neglect petition had been filed, the mother had continued to be in noncompliance with services aimed at treating her mental problems and, during supervised visitation with Joseph, had "demonstrated an inability to properly care for the child." The trial court found that the father had refused to communicate with the department's assigned social worker for the first fifteen months of the father's involvement, had refused to complete required paperwork, and had refused to cooperate with entities to which he had been referred for parenting services. The father also had failed to comply completely with recommendations that he "complete parenting education, demonstrate the ability to provide a safe and secure home for the child, provide a parenting plan, and abide by the court orders regarding restrictions on [the] mother's access to his home." The court acknowledged, however, that, during supervised visitations with Joseph before Daniel's birth, the father had been "able to properly care for the child with some assistance and [had] demonstrated love and affection." The court concluded that this evidence established that, "in July 2006, Daniel's well-being and safety were placed at risk by the respondents."

With respect to disposition, the trial court found by a fair preponderance of the evidence "that it is in the best interests of the children that they be committed to the care and custody of the [commissioner]." In support of this finding, the court relied on the same evidence that it had cited in support of the neglect adjudications. The court also noted that the children had been living in foster care with their half sister, Kristina, their entire lives, they had been able to overcome behavioral problems associated with visitations with the respondents after the visits were canceled, they were thriving in foster care, and they viewed their foster parents as their parents. The respondents' separate appeals followed.

On appeal, the father claims that: (1) the standard of proof governing the doctrine of predictive neglect, as applied by the trial court, is inconsistent with the standard of proof for neglect, as set forth in General Statutes (Rev. to 2011) § 46b-120 (8);[5] (2) there was insufficient evidence to support a finding of predictive neglect with respect to either Joseph or Daniel; and (3) the trial court improperly denied the respondents' request for relief under the ADA. The mother claims that: (1) there was insufficient evidence to support a finding of predictive neglect with respect to either of the children; (2) if this court concludes that the evidence supports the neglect adjudications, there was insufficient evidence to support the trial court's finding that it was in the best interests of the children to commit them to the care of the commissioner; and (3) the trial court improperly denied the respondents' request for relief under the ADA. We agree with the father's claim that the trial court applied an improper standard of proof under the doctrine of predictive neglect. Accordingly, we conclude that the case must be remanded to the trial court for new neglect proceedings so that the court can apply the proper standard of proof. We therefore need not address the respondents' claims that there was insufficient evidence to support the neglect adjudications and the mother's claim that there was insufficient evidence to support the court's dispositional determination. Because, however, the issue is likely to arise on remand, we address the respondents' ADA claim and conclude that the trial court properly denied the respondents' request for relief under that statute.

I

We first address the father's claim that the trial court applied an improper standard of proof when it determined that the children were neglected under the doctrine of predictive neglect. We agree.

We begin with a review of the law governing neglect proceedings. "Neglect proceedings under . . . § 46b-129 are comprised of two parts, adjudication and disposition. . . . During the adjudicatory phase, the court determines if the child was neglected." (Citation omitted; internal quotation marks omitted.) *In re Kamari C-L.*, 122 Conn. App. 815, 824–25, 2 A.3d 13, cert. denied, 298 Conn. 927, 5 A.3d 487 (2010). "Section [46b-120 (8)] provides that a child may be found neglected if the child is 'being denied proper care and attention, physically, educationally, emotionally or morally,' or is 'being permitted to live under conditions, circumstances, or associations injurious to the well-being of the child or youth . . . .' " Id., 825.

"Where no standard of proof is provided in a statute, due process requires that the court apply a standard which is appropriate to the issues involved." *In re Juvenile Appeal (83–CD)*, 189 Conn. 276, 296, 455 A.2d 1313

(1983). Applying due process principles, this court has concluded that "the fair preponderance of the evidence standard of proof is the proper standard in neglect proceedings because any deprivation of rights is reviewable and nonpermanent and therefore the private interests involved are relatively balanced between the safety of the child and combined family integrity interests of parent and child." (Internal quotation marks omitted.) *In re Juvenile Appeal (84–AB)*, 192 Conn. 254, 264–65, 471 A.2d 1380 (1984).

The Appellate Court has held that "[t]he [petitioner in a neglect proceeding], pursuant to [§ 46b-120], need not wait until a child is actually harmed before intervening to protect that child. . . . This statute clearly contemplates a situation where harm could occur but has not actually occurred. Our statutes clearly and explicitly recognize the state's authority to act before harm occurs to protect children whose health and welfare *may* be adversely affected and not just children whose welfare has been affected. . . . The doctrine of predictive neglect is grounded in the state's responsibility to avoid harm to the well-being of a child, not to repair it after a tragedy has occurred. . . . Thus, [a] finding of neglect is not necessarily predicated on actual harm, but can exist when there is a potential risk of neglect. . . . The standard of proof applicable to nonpermanent custody proceedings, such as neglect proceedings, is a fair preponderance of the evidence." (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Kamari C-L.*, supra, 122 Conn. App. 825.

The trial court in the present case applied the "potential risk of neglect" standard set forth in *In re Kamari C-L*, as it was bound by the Appellate Court precedent. The father claims that, contrary to the Appellate Court's conclusion in that case, § 46b-120 requires that, to make a finding of predictive neglect, the trial court must find that "the respondent's parental deficiencies . . . *would have* permitted the child to live under conditions, circumstances or associations injurious to her well-being [or] *would have* denied her proper care and attention physically, educationally, emotionally or morally." (Emphasis added.) *In re Kelly S.*, 29 Conn. App. 600, 606, 616 A.2d 1161 (1992). Thus, the father appears to contend that the standard of proof in predictive neglect proceedings should be virtual certainty that harm to the child will occur.

We agree with the father that *In re Kamari C-L.* does not set forth the proper standard of proof for determining neglect under the doctrine of predictive neglect, but we disagree with his proposed standard. As we have indicated, this court previously has held that, to establish actual neglect, the petitioner must prove one of the four prongs of § 46b-120 (8) by a preponderance of the evidence. *In re Juvenile Appeal (84–AB)*, supra, 192 Conn. 264–65. Although we agree

with the Appellate Court that "[t]he [petitioner in a neglect proceeding], pursuant to [§ 46b-120], need not wait until a child is actually harmed before intervening to protect that child"; *In re Kamari C-L.*, supra, 122 Conn. App. 825; we conclude that it would be inconsistent with the due process principles underlying our decision in *In re Juvenile (84–AB)* to allow a petitioner in predictive neglect proceedings to establish its case merely by proving by a preponderance of the evidence that there is a "potential risk" of neglect. Under this standard, the petitioner could prevail if the court found by a preponderance of the evidence that there is a very slight risk, e.g., 10 percent, of future harm to the child, thereby giving insufficient weight to the "combined family integrity interests of parent and child." (Internal quotation marks omitted.) *In re Juvenile Appeal (84–AB)*, supra, 265. We conclude, therefore, that the trial court must find that it is more likely than not that, if the child remained in the current situation, the child would be "denied proper care and attention, physically, educationally, emotionally or morally"; General Statutes (Rev. to 2011) § 46b-120 (8) (B); or would be "permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth . . . ." General Statutes (Rev. to 2011) § 46b-120 (8) (C); see also *Stuart* v. *Stuart*, 297 Conn. 26, 38, 996 A.2d 259 (2010) ("the general rule [is] that when a civil statute is silent as to the applicable standard of proof, the preponderance of the evidence standard governs factual determinations required by that statute" [internal quotation marks omitted]).

We further conclude that, in neglect proceedings involving the doctrine of predictive neglect, the petitioner is required to meet this standard with respect to *each parent* who has contested the neglect petition and who has expressed a desire, or at least a willingness, to care for the child independently of the other parent. We have previously recognized that, in a neglect proceeding involving allegations of *actual* neglect, the focus is exclusively on the *child*'s historical situation, and the petitioner is not required to establish that a particular *parent* was aware of or responsible for the neglect of the child. *In re Joseph W.*, supra, 301 Conn. 262—63, citing *In re David L.*, 54 Conn. App. 185, 191, 733 A.2d 897 (1999) ("[a] finding that the child is neglected is different from finding who is responsible for the child's condition of neglect"); *In re Joseph W.*, supra, 262—63 (whether child is neglected is sole issue that can be contested in neglect proceedings). As we stated in *In re Joseph W.*, supra, 262, however, "it is difficult to see how the holding of *In re David L.* could ever apply to proceedings in which the department is seeking a neglect adjudication under the doctrine of predictive neglect, since at that point there has been no neglect of the child by either parent. Although, as the court in *In re David L.* [supra, 163] properly recognized,

there is no reason to allow a noncustodial parent to contest a neglect petition on the irrelevant ground that the noncustodial parent was not aware of the past neglect or was not responsible for caring for the child, there are good reasons to allow a noncustodial parent to enter a plea that, even if the custodial parent might neglect the child in the future if that parent were to retain sole custody, the noncustodial parent would not neglect the child if given custody." Thus, in predictive neglect proceedings, the trial court must find with respect to each parent who has entered a plea contesting the neglect petition and who has expressed a willingness or desire to care for the child independently of the other parent that, if the child were to remain in that parent's independent care, the child would be "denied proper care and attention, physically, educationally, emotionally or morally"; General Statutes (Rev. to 2011) § 46b-120 (8) (B); or would be "permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth . . . ." General Statutes (Rev. to 2011) § 46b-120 (8) (C). If the parents have indicated that they intend to care for the child jointly, however, or if the trial court discredits a parent's claim that he or she intends to care for the child independently, the trial court may treat the parents as a single unit in determining whether the petitioner has met its burden of proving predictive neglect.

Because the trial court in the present case applied an incorrect standard when it rendered the adjudications of neglect under the doctrine of predictive neglect, the respondents are entitled to a new trial under the proper standard. *Stuart* v. *Stuart*, supra, 297 Conn. 54 (when trial court rejected plaintiff's claim after applying clear and convincing evidence standard of proof, and this court concluded that proper standard of proof was preponderance of evidence, case was remanded to trial court for application of proper standard); *State* v. *Davis*, 229 Conn. 285, 302–303, 641 A.2d 370 (1994) (case was remanded to trial court for new hearing on probation revocation when trial court may have applied improper standard of proof at prior hearing); *Barber* v. *Skip Barber Racing School, LLC*, 106 Conn. App. 59, 76, 940 A.2d 878 (2008) (when trial court applies lower standard of proof than is required, case must be remanded for new trial under proper standard); *Statewide Grievance Committee* v. *Presnick*, 18 Conn. App. 475, 477, 559 A.2d 227 (1989) (same); see also *State* v. *Ovechka*, 292 Conn. 533, 547–48 n.19, 975 A.2d 1 (2009) ("an appellate court does not retry a case, admit new evidence or weigh the evidence" [internal quotation marks omitted]), quoting C. Tait & E. Prescott, Connecticut Appellate Practice and Procedure (3d Ed. 2000) § 8.8 (a), pp. 305–306. On remand, the trial court must determine, on the basis of evidence of events preceding the filing of the neglect petitions; Practice Book § 35a-7 (a);[6] whether, for both children, it was more likely than not

that, if the child had remained in the care of either the mother or the father, or of both parents, the child would have been "denied proper care and attention, physically, educationally, emotionally or morally"; General Statutes (Rev. to 2011) § 46b-120 (8) (B); or would have been "permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth . . . ."[7] General Statutes (Rev. to 2011) § 46b-120 (8) (C).

Once again, we are required to emphasize "that this court is well aware and concerned that our decision in this matter will . . . further [delay] any certainty and stability regarding the future of these innocent children." *In re Joseph W.*, supra, 301 Conn. 267–68. We find it absolutely "tragic and deplorable [that this] . . . litigation has continued for years while the children, whose interests are . . . paramount, suffer in the insecurity of 'temporary' placements." *In re Juvenile Appeal (83–CD)*, supra, 189 Conn. 292. "We are also cognizant, however, that parents have a fundamental right to raise their children as they see fit, in the absence of neglect or abuse." *In re Joseph W.*, supra, 301 Conn. 268. We have a constitutional duty to ensure that, when that right has been curtailed, all relevant legal standards have been fully satisfied, and our deep concern for the children's interests in a stable home and family environment cannot deter us from fulfilling that duty. *In re Juvenile Appeal (83–CD)*, supra, 292 (in neglect proceedings, courts must resist temptation to be swayed by fact that continued placement in foster care could result in "material advantages" to children).[8] In recognition of the plight of these children, however, and in the sincere hope that this matter will be finally resolved within a short time, we again order, "pursuant to our supervisory authority over the administration of justice, that [on remand] the neglect proceeding and any subsequent proceeding to terminate the respondents' parental rights be expedited." *In re Joseph W.*, supra, 301 Conn. 268.

II

The respondents' final claim on appeal is that they were denied their rights under the ADA. Specifically, the mother contends that the department "did not make reasonable efforts [at] reunification, because [it] failed [to] make arrangements for [her] to have a coordinator to assist her in her effort of reunification with her children." The father, on the other hand, argues that the trial court denied the respondents' due process rights by refusing to provide them with an ADA coordinator during the neglect proceedings. We disagree, and, accordingly, affirm the judgment of the trial court regarding the respondents' ADA claims.

At the neglect proceedings, the trial court rejected the mother's claims under the ADA based in part upon *In re Antony B.*, 54 Conn. App. 463, 735 A.2d 893 (1999),

in which the Appellate Court concluded that "the ADA neither provides a defense to nor creates special obligations in a termination proceeding"; id., 472; because "termination proceedings are not services, programs or activities within the meaning of . . . the ADA . . . ." (Internal quotation marks omitted.) Id., 471–72. The mother now claims on appeal that the trial court's reliance upon *In re Antony B.* was misplaced because the Appellate Court's holding in that case pertained solely to termination proceedings, rather than neglect proceedings, and she was not attempting to assert the alleged ADA violations as a defense in the neglect proceedings.

Turning to the mother's first argument, we note that, although the Appellate Court did state in a footnote in *In re Antony B.* that its holding "concern[ed] only the applicability of the ADA to termination proceedings"; id., 473 n.9; it did so only in contrast to a hypothetical case where a parent brings *a separate cause of action* against the department, rather than attempting to assert an ADA violation as a defense in on-going child protection proceedings. Although that case involved termination proceedings, the Appellate Court's reasoning is equally applicable in neglect proceedings, which are also initiated by the department in the interest of child protection but which are "neither final nor irrevocable because [they are] subject to change via numerous statutorily prescribed stages of review."[9] *Fish* v. *Fish*, 285 Conn. 24, 117, 939 A.2d 1040 (2008) (*Katz, J.*, concurring); see also *In re Juvenile Appeal (84–AB)*, supra, 192 Conn. 263–64; *In re Juvenile Appeal (83–CD)*, supra, 189 Conn. 287–88. Accordingly, the trial court properly applied *In re Antony B.* in the present case.

The mother also attempts to distinguish *In re Antony B.* by arguing that she is not asserting the alleged ADA violations as a defense, but rather as an affirmative claim that "the [department] did not make reasonable efforts [at] reunification, because [it] failed [to] make arrangements for [the mother] to have a coordinator to assist her . . . with her children." In the context of this appeal, however, because the mother is appealing from the adjudication of neglect, it is unclear what remedy she seeks if she is not attempting to assert the alleged ADA violations as a defense to the adjudication of neglect. Additionally, even if she is not attempting to assert them as a defense, she has not adequately briefed the claim she intended to bring against the department. Because she has failed to provide the court with any provision, either in the federal statute itself or under relevant state law, demonstrating that a violation of a parent's rights under the ADA can be the basis for an appeal from an adjudication of neglect, we reject her claims on appeal.

Turning to the father's ADA claim, he argues that the judicial branch was "required to provide a designated

person or coordinator to ensure [that] the mother [was] not denied access to the courts."[10] Specifically, he claims that, under 28 C.F.R. § 35.107 (a), as a public entity with more than fifty employees, the judicial branch was required to "designate at least one employee to coordinate its efforts to comply with its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part . . . ." (Internal quotation marks omitted.) We disagree.

Even if we were to assume that the respondents were disabled under the definition set forth in the ADA, an issue on which the father made no offer of proof, he has cited no authority for the proposition that 28 C.F.R. § 35.107 requires trial courts to provide disabled parents with ADA coordinators during child protection proceedings.[11] Moreover, even if we were to assume that an ADA coordinator may be appointed under appropriate circumstances, the father does not challenge his competency to participate in the neglect proceedings, and a review of the record indicates that he actively participated in them by speaking directly to the court in support of his ADA claim. Furthermore, at oral argument before this court, it was noted that, throughout the neglect proceedings, neither respondent's counsel requested that a guardian ad litem be appointed to represent the respondents. Accordingly, we reject the ADA claim of the father and agree with the trial court's conclusion in this regard.

The judgments are reversed and the case is remanded to the trial court for a new trial.

In this opinion the other justices concurred.

* In accordance with the spirit and intent of General Statutes § 46b-142 (b) and Practice Book § 79-3, the names of the parties involved in this appeal are not disclosed. The records and papers of this case shall be open for inspection only to persons having a proper interest therein and upon order of the Appellate Court.

** June 28, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] The respondents appealed from the neglect adjudications to the Appellate Court and we transferred the appeals to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] Joseph W., Sr., is not Kristina's father.

[3] Various health care providers diagnosed the mother as having: schizotypal personality; major depression; personality change due to sequelae of brain tumor removal when she was a teenager; attention deficit hyperactivity disorder; and personality disorder.

[4] The trial court also found that the father had been diagnosed during a psychological evaluation ordered by the department as having a personality disorder that was manifested by "pervasive attitudes and conduct that were rigid and self-defeating."

[5] General Statutes (Rev. to 2011) § 46b-120 (8) provides: "A child or youth may be found 'neglected' who (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth, or (D) has been abused . . . ."

Section 46b-120 was amended in 2011 for purposes not relevant to this appeal. See Public Acts 2011, No. 11-71, §§ 7 and 8; Public Acts 2011, No. 11-157, §§ 9, 10 and 11; Public Acts 2011, No. 11-240, § 2. For convenience, all references to § 46b-120 in this opinion are to the 2011 revision of the

statute, which is the revision that the trial court applied.

[6] Practice Book § 35a-7 (a) provides in relevant part: "In the adjudicatory phase [of a neglect proceeding], the judicial authority is limited to evidence of events preceding the filing of the petition or the latest amendment . . . ."

[7] Thus, the trial court in the present case will need to make findings regarding whether the father was willing to care for the children independently and, if so, whether it was more likely than not, based on evidence of events occurring before the dates of the respective neglect petitions, or the amended neglect petitions, if applicable, each child would have been subject to neglect if left in his care. If the court finds that the father would have been willing only to care for the children jointly with the mother, it will then need to decide whether it was more likely than not that, based on evidence of events occurring before the dates that the respective neglect petitions were filed, the children would have been subject to neglect if left in the care of *both* parents.

Even though we herein reverse the judgment of the trial court adjudicating the children neglected solely on the basis of the father's claim on appeal, the trial court must make these determinations for both respondents because, as we have explained, a neglect adjudication pertains to the status of the child, not to the status of a particular parent. Accordingly, the court must make similar findings with respect to the mother.

[8] This is especially true of the adjudicative phase of a neglect proceeding, where the best interests of the child are not a consideration.

[9] An adjudication of neglect is much less serious than a termination of parental rights. *In re Juvenile Appeal (84–AB)*, supra, 192 Conn. 264. Accordingly, the fact that an ADA violation is not a defense even in termination proceedings strongly suggests that such a violation is not a defense in neglect proceedings.

[10] The department argues that the father's ADA claim was unpreserved because it is "not what [he] claimed in his request . . . or in his argument at trial." (Citation omitted.) The record reveals, however, that the respondents' letter stated: "We also question the [j]udicial [b]ranch's enforcement of the ADA law, as well." In addition, at the hearing, the father stated to the trial court: "[B]efore proceeding forward, under our ADA rights, we would like to have [the department's] designated responsible employee present *during* [*these*] *proceedings*, as well as the judicial branch's ADA coordinator. . . . I'm not waiving my right for this. I'd like for these people to be present." (Emphasis added.) The trial court, in denying the father's request, responded: "I understand your position and you made a record of your position . . . ." We conclude therefore that the father preserved this claim for appellate review.

[11] The father has also failed to identify with any specificity the duties that he believes an ADA coordinator should have been assigned in this case. By way of example in his brief, he asserts: "In the instant case the accommodations *may have* only required more frequent breaks so that the parents could have additional time to have the proceedings and evidence explained to them to ensure that they understood and could assist in the defense of their case." (Emphasis added.) The father also does not cite any authority for his supposition that such actions were necessary and the record reveals that the respondents' counsel never indicated to the trial court that their clients were unable to understand the proceedings that were taking place.