STATE OF MICHIGAN

COURT OF APPEALS

In re MICHAEL JAMES DEGRAW, JR., and MICHELLE DEGRAW, Minors.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

MELINDA KROTZ,

Respondent-Appellant,

and

MICHAEL DEGRAW, SR.,

Respondent.

UNPUBLISHED
September 20, 1996

No. 187915
LC No. 94-004059-NA

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

MICHAEL JAMES DEGRAW, SR.,

Respondent-Appellant,

and

MINDY CROATES DEGRAW,

Respondent.

No. 188130
LC No. 94-004059-NA

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

In docket number 188130, respondent Michael James Degraw, Sr., (respondent-father) appeals as of right a July 11, 1995, order terminating his parental rights to Michael James Degraw, Jr., born March 19, 1992, and Michelle Degraw, born May 20, 1993. In docket number 187915, respondent Melinda Krotz, also known as Mindy Croates Degraw (respondent-mother), appeals as of right a July 17, 1995, order terminating her parental rights to the same children. We affirm.

Respondent-mother was born in August 1969, while respondent-father was born in May 1954. Although never married to each other, respondents lived together for approximately six years and are the biological parents of the subject minor children. Both respondents are developmentally disabled.

The events that initiated this proceeding occurred on December 28, 1993, when petitioner received a referral from a private individual alleging both that the trailer in which respondents and the children lived was in an unsanitary condition and that respondents had been sexually abusing the subject children. Later that same day, a protective services worker and two police officers visited respondents' trailer. After observing the unsanitary condition of the trailer, respondent-mother and the children were moved to the home of respondent-mother's father and stepmother.[1] Petitioner decided not to petition the juvenile court at this time and petitioners were referred for, and began utilizing, various services for the purpose of improving their parenting skills.

In early February 1994, respondent-mother's stepmother notified petitioner that she was no longer able to care for the children. Petitioner thereafter petitioned the probate court, alleging in relevant part, that respondents home was unfit for the children because of its unsanitary condition, that respondents had been provided with various programs for the purpose of assisting them with their parenting skills, that respondents had been unable to grasp the parenting concepts taught in these programs, and that respondents could not adequately care for the children given their mental and emotional impairments. The petition requested that the court place the children in foster care. A preliminary hearing was held February, 10, 1994, following which the hearing referee ordered that the petition be filed and that the children be placed in foster care.

An amended petition dated June 7, 1994, and containing substantially the same allegations as the February 1994 petition, was subsequently filed by petitioner requesting termination of respondents' parental rights. On May 15, 1995, the adjudication hearing began before Allegan County Probate Judge George A. Greig. Before any witnesses were called, Judge Greig considered several motions and, as relevant to this case, (1) granted petitioner's motion to release the jury and conduct the adjudication hearing as a bench trial; (2) denied respondents' motions to disqualify himself as the judge in this case (this motion was referred by the state court administrator to Allegan Circuit Judge Harry A. Beach, who likewise denied respondents' motions to disqualify Judge Greig), and; (3) denied respondents' motions to suppress, on Fourth Amendment grounds, the testimony of the worker and one

of the police officers who visited respondents' trailer on December 28, 1993. Following the conclusion of the parties' cases, Judge Greig, in an order dated May 22, 1995, found by a preponderance of the evidence that the children came within the court's jurisdiction, and ordered that the children be made temporary wards of the court and that their placement in foster care be continued.

On July 11, 1995, the day set for the dispositional hearing, respondent-father voluntarily released his parental rights to the children. At that time, all parties to this proceeding stipulated that respondent-father preserved for subsequent appellate review any issue that might be raised in this matter, including issues raised during the adjudication hearing. Judge Greig then entered the order terminating respondent-father's parental rights, following which the dispositional phase of this case began with respect to respondent-mother. Judge Greig subsequently found that a ground for the termination of respondent-mother's parental rights was established under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) by clear and convincing evidence, and that termination was in the best interests of the children.

Respondents' appeals of the respective orders terminating their parental rights have been consolidated for decision. In part I of this opinion, we consider the common issues raised by respondents concerning the adjudication hearing.[2] In part II of this opinion, we consider the issues raised solely by respondent-mother.

I.

A.

Respondents argue that the trial court erred at the adjudication hearing in granting petitioner's motion to release the jury where all parties, as well as the court, were operating under the assumption that the facts at the adjudication hearing would be found by a jury. We disagree.

A respondent may demand a jury determination of the facts in the adjudicative phase of child protective proceedings but not the dispositional phase. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). A party who is entitled to a jury trial must file a written demand within the time periods specified in MCR 5.911(B). In addition, "[t]he court may excuse a late filing in the interest of justice." MCR 5.911(B).

In this case, it is undisputed that neither respondent filed a written demand for a jury trial within the time periods provided by MCR 5.911(B). Thus, the decision to empanel a jury was within the court's discretion. *Adamski v Cole*, 197 Mich App 124, 130; 494 NW2d 794 (1992); *In re Hubel*, 148 Mich App 696, 700; 384 NW2d 849 (1986). The record indicates that the court's scheduling of the adjudication hearing as a jury trial was contingent upon respondents actually filing a written demand for a jury trial within the time periods specified in MCR 5.911(B). The record also indicates that respondents were notified of these time periods. Except for their contention that they "assumed" or "expected" a jury trial would be conducted, neither respondent has presented, either below or on appeal, any justification for failing to file a timely written demand. Accordingly, we find that the court's

decision to not empanel a jury at the adjudication hearing did not constitute an abuse of discretion. *Hubel, supra*.

B.

Respondents allege error in the denial of their motions to disqualify Judge Greig from the adjudication hearing on the ground that Judge Greig could not impartially hear this case in light of his extensive involvement with, and exposure to, confidential information about respondents. Specifically, respondents have noted that Judge Greig, while in private practice in 1976, represented respondent-mother's biological father, who was to be called as a witness in this case. Respondents have also noted that, after assuming the bench, Judge Greig had presided over proceedings involving the adoption of respondent-mother, the appointment of a guardian for respondent-mother, the termination of the parental rights of respondent-mother's adoptive parents, and the termination of respondent-father's parental rights to other children. In addition, respondent-father further argues that Judge Greig is personally biased against respondents because he has formed a "preconceived disposition" concerning respondents intellectual limitations as a result of his participation in previous proceedings concerning respondents.

We review the lower courts' factual findings for an abuse of discretion. *Cain v Dep't of Corrections*, 451 Mich 470, 503; 548 NW2d 210 (1996). However, we review de novo the application of the law to these facts. *Id*. at 503, n 38.

It is true that Judge Greig acknowledged below that he was aware "of some intellectual deficiencies here on behalf" of respondents. However, Judge Greig further stated that such deficiencies "wouldn't necessarily mean that they are by the same token automatically a neglectful or abusive parent. Each case rests on its own facts . . . ." The judge further noted that he had dismissed respondent-mother's guardianship because "I found that it was no longer necessary." Thus, we conclude that respondents have failed to show that Judge Greig was personally biased against respondents where Judge Greig's opinion concerning respondents' mental capabilities did not "display a deep-seated . . . antagonism that would make fair judgment impossible." *Cain, supra*. Moreover, respondents do not seriously contend that Judge Greig was actually biased against them. Thus, disqualification of Judge Greig was not warranted under MCR 2.003(B)(1). *Cain, supra* at 508-509.

Respondent-father, citing *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975), also contends that the probability of actual bias in this case was too high to be constitutionally tolerable. We disagree. Judge Greig was not "enmeshed in other matters" involving respondents as that phrase has been narrowly interpreted by our Supreme Court. See *Cain, supra* at 500-502. Nor was there any indication that Judge Greig "might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker." *Crampton, supra* at 351. Judge Greig did not personally conduct any investigations, amass evidence or file the petition to terminate respondents' parental rights. *Id.* at 354. Nor was Judge Greig reevaluating a previous decision. *Id*. See also *Livonia v Dep't of Social Services*, 423 Mich 466, 511; 378 NW2d 402 (1985). Rather, Judge Greig was deciding the separate question of whether the children at issue in this case came within the court's jurisdiction. *Crampton, supra* at 355; see also *Livonia, supra*. Judge Greig's view of respondents' developmental disabilities did not "as a practical or legal matter foreclose fair and effective

consideration" of the issues presented at the adjudication hearing. *Crampton, supra*. Accordingly, we conclude that Judge Greig's disqualification was not constitutionally required by due process.

C.

Respondents argue that Judge Greig erred at the adjudication hearing in failing to suppress the testimony of Mary McCrorey and Lieutenant Rick Cain, the protective services worker and one of the police officers, respectively, who visited respondents' trailer on December 28, 1993 [hereinafter referred to as December 28], concerning their observations of the unsanitary condition of respondents' trailer. Respondents contend that such testimony was the result of an unconstitutional search because respondent-mother did not voluntarily consent to a search of respondents' trailer.

A court's decision following a suppression hearing will not be reversed unless it is clearly erroneous. *People v Jordan*, 187 Mich App 582, 589; 568 NW2d 294 (1991). A finding is clearly erroneous when this Court is firmly convinced that a mistake has been made. *Id*. at 589.

The Fourth Amendment protects not only criminal suspects but also limits governmental intrusions in civil contexts. *Wyman v James*, 400 US 309, 317; 91 S Ct 381; 27 L Ed 2d 408 (1971); *Flatford v City of Monroe*, 17 F3d 162 (CA 6, 1994); *People v McKendrick*, 188 Mich App 128, 141-143; 468 NW2d 903 (1991). A governmental invasion of a person's home, whether to make an arrest or conduct a search, must generally be conducted pursuant to a warrant in order to be deemed reasonable and not violative of the Fourth Amendment. *Wyman, supra* at 316-317; *United States v Rosario*, 962 F2d 733, 736 (CA 7, 1992); *People v Grady*, 193 Mich App 721, 724; 484 NW2d 417 (1992). In this case, the record is clear that McCrorey and Cain did not have a warrant to enter or search respondents' trailer.

However, consent is an exception to the warrant requirement. *Jordan, supra* at 587. The state must demonstrate that the consent was voluntarily given and not the result of duress or coercion, express or implied. *Schneckloth v Bustamonte*, 412 US 218, 248; 93 S Ct 2041; 36 L Ed 2d 854 (1973); *People v Lumpkin*, 394 Mich 456; 231 NW2d 637 (1975); *Grady, supra*. Voluntariness is a question of fact and is determined by evaluating the totality of the circumstances. *Schneckloth, supra* at 233, 248; *Lumpkin, supra* at 458. A consent can be valid even if the person is not apprised of his right to refuse to consent to a search, *Jordan, supra*, or to a police entry into the premises, *People v Simmons*, 49 Mich App 80, 83; 211 NW2d 247 (1973). Low intelligence is one of the factors that may be considered in determining whether a person's consent was voluntary. *Schneckloth, supra* at 226. A third party may consent to a search when the consenting person has an equal right of possession or control of the premises. *Jordan, supra*. Thus, respondent-father concedes that he is bound by any valid consent given by respondent-mother.

In this case, the testimony of McCrorey and Cain indicate that upon arriving at the respondents' trailer, they knocked on the door. Respondent-mother answered the door and identified herself. McCrorey and Cain identified themselves, and Cain informed respondent-mother that they were acting on, and wanted to talk to her or ask questions about, the referral to protective services concerning the

children. Cain asked whether they could come inside, and respondent-mother opened the door and invited or let them into the trailer. Neither McCrorey nor Cain could remember whether respondent-mother said anything. In *People v Brown*, 127 Mich App 436; 339 NW2d 38 (1983), this Court held, on facts almost identical to the present case, that the defendant's conduct was sufficient to constitute a valid consent to entry where police officers knocked on the defendant's door, the defendant unlocked and opened the door, the police officers identified themselves and asked whether they could come inside, and the defendant unlatched the screen door and pushed it open.

Respondents argue that respondent-mother could not validly consent, given her intellectual limitations. There is no question in this case that respondent-mother is developmentally delayed. However, on December 28, respondent-mother was living as an independent adult in the trailer with respondent-father and their two children. McCrorey testified that, based on her discussions with respondents on December 28, she believed they understood her and the officer very well. After hearing the testimony of McCrorey and Cain and finding that respondent-mother had consented to the entry of the trailer, Judge Greig heard and observed the testimony of respondent-mother, during which she indicated that Cain had asked whether he could come into the trailer, that no weapons were drawn, and that she told McCrorey and Cain they could come into the trailer. During his subsequent findings of fact, Judge Greig once again found that respondent-mother had validly consented to the entry of the trailer. Accordingly, we are not firmly convinced that Judge Greig erred in failing to find that respondent-mother's developmental deficiencies rendered her incapable of giving a voluntary consent.

Both respondents note that on the day before Cain's and McCrorey's visit to their trailer, the police had forcibly entered their trailer, drew their weapons and arrested a man named Carl Dilsworth, who had been staying at respondents' trailer during December 1993 with an underage female. Respondents argue that the tactics used by the police in making this arrest created a climate of duress and coercion that rendered respondent-mother incapable of giving a voluntary consent to Cain and McCrorey on December 28. We disagree. During the December 28 visit to respondents' trailer, only one of the officers was in uniform and no weapons were drawn. There is no indication in the record that either of these police officers were involved in the arrest of Dilsworth the previous day. More significantly, on December 28, respondent-mother was given a choice by Cain concerning whether to allow entry into the trailer.

Accordingly, we conclude that the trial court did not clearly err in finding that McCrorey and the officers entered respondents' trailer pursuant to respondent-mother's voluntary consent. As properly found by the trial court, Cain's and McCrorey's conduct thereafter in simply observing the obviously unsanitary conditions of respondents' trailer from their lawful vantage point inside the trailer did not violate a reasonable expectation of privacy and, therefore, did not constitute a search. [3] *United States v Jacobsen*, 466 US 109, 113; 104 S Ct 1652; 80 L Ed 2d 85 (1984); *People v Powell*, 199 Mich App 492, 496; 502 NW2d 353 (1993); *McKendrick, supra* at 143; *People v Daniels*, 160 Mich App 614, 619; 408 NW2d 398 (1987).

Respondent-father argues that McCrorey's and Cain's testimony should have been suppressed because this evidence was obtained as a result of an illegal search and seizure the previous day when the

police arrested Carl Dilsworth. We disagree. Even assuming that the police engaged in an unconstitutional search and seizure during the arrest of Dilsworth at respondents' trailer on December 27, the record indicates that Cain's and McCrorey's presence at respondents' trailer on December 28 was the result of the independent referral received that dayand and not the events of the preceding day. *Jordan, supra* at 588-589.

In summary, we conclude that the testimony of Cain and McCrorey was properly admitted at the adjudication hearing.

II.

A.

Respondent-mother argues that termination of her parental rights was untimely because she did not have a full and fair opportunity to learn how to bond with the children where she was not offered the same opportunity as the childrens' foster care mother for bonding therapy. In so arguing, respondent relies on *In re Newman*, 189 Mich App 61, 62; 472 NW2d 38 (1991), in which this Court reversed the probate court's termination of the parental rights of the respondent-father and the mildly-retarded respondent-mother. In *Newman*, the probate court had based its decision to terminate the parental rights of the respondents, in part, on the ground that the respondents had "repeatedly failed to maintain their home so as to make it fit for habitation by the children." *Id*. at 65. This Court held that this finding was clearly erroneous where respondents "had demonstrated over the course of time an ability and willingness to learn," and the homemaker who had been assigned to give the respondents the hands-on instruction they obviously needed had stopped going into the respondents home because it was so dirty. *Id*. at 66, 70. This Court stated:

> How then can we say there is no reasonable likelihood that the conditions in the home would not be rectified within a reasonable time when the one person who could have helped respondents remedy the conditions refused to do?
>
> * * *
>
> We believe the trial court did err in finding the conditions in the home to be a basis for terminating respondents' parental rights because respondents were not given a full and fair opportunity to maintain the home. They need help. It was not shown that after being given consistent assistance they still did not rectify the conditions. [*Id*. at 66-67.]

Unlike *Newman*, the record in this case indicates that respondent-mother actually received a variety of services designed to improve her parenting skills. Specifically, workers from the Parents as Teachers program worked with respondents in their trailer two to four times a month from early 1993 until February 1994. The HomeMaker Aide Services program was made available to respondent-mother from mid-January 1994 to June 1994. However, respondent-mother was not present the majority of time when the worker from this program arrived at respondents' trailer for an appointment.

During February and March 1994, respondent-mother attended nine parenting classes containing other adults with developmental disabilities. For a short period of time in late January 1994, respondents met almost daily with a worker from the Families First program for the purpose of improving their parenting skills. At some point, respondent-mother was referred to, and began receiving, therapy through the Life consultation Services program.

Unlike *Newman*, the record in this case is replete with evidence that respondent-mother, through no fault of her own, is unable to retain or grasp the concepts associated with basic child care, including the important concept of bonding, and would be unable to do so within a reasonable time. Both the parenting class teacher and the worker from the Families First program expressed concern with respondents' lack of retention of the material designed to improve their parenting skills. Despite repeated emphasis, the worker with the Parents as Teachers program observed no progress in respondent-mother's ability to bond with the children, including the fact that respondent-mother seemed unable to learn when Michelle needed to be picked up off the floor. This worker testified that she could have referred respondent-mother for bonding therapy but that she did not do so because respondent-mother was not even retaining the initial bonding interactions that she had attempted to teach respondent-mother, such as holding Michelle for bottle feedings. With respect to respondent-mother's ability to parent, this worker ultimately concluded that "this is either going to be a very long process or she's just not ever going to get it."

It is true that none of the services offered respondent-mother were the frequent five-minutes sessions recommended by respondent-mother's expert witness. However, even this expert testified that respondent-mother was not capable of parenting the children independently, and that the treatment process for respondent-mother would take years.

We conclude that, unlike *Newman*, respondent-mother had a full and fair opportunity to learn basic child-care skills, including how to bond with her children. In determining that the statutory ground for termination, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), was met by clear and convincing evidence, the trial court's findings that respondent-mother, without intent, had failed to provide proper care or custody for the children and that there was no reasonable expectation that she would be able to do so within a reasonable time were not clearly erroneous. *Newman, supra* at 65. The trial court did not abuse its discretion in determining that termination of respondent-mother's parental rights was in the childrens' best interests. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

B.

Respondent-mother argues that during the proceedings below no reasonable accommodation was made for her developmental disability in violation of the Americans with Disabilities Act, 42 USC 12101 *et seq*. We assume only for the purpose of this analysis, but make clear that we do not decide, that the ADA applies to proceedings involving the termination of parental rights.[4]

The ADA prohibits discrimination against persons on the basis of a disability in the areas of employment, public services, public transportation and public accommodations. See, generally, 42 USC 12101 *et seq*. Specifically, the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 USC 12132. A public entity is defined as a state or local government, or department thereof. 42 USC 12131. "The ADA requires a public entity to make 'reasonable accommodation' to allow disabled persons to receive the services or to participate in the public entity's programs." *In the Interest of C.M.*, 526 NW2d 562, 566 (Iowa App, 1994) (citing 28 CFR 35.130[b][7]); see also *In the Matter of: Jonathan Burrows*, ___ Ohio App ___; ___ NW2d ___; 1996 Ohio App Lexis 2346; *Stone v Daviess Co Division of Children and Family Services*, 656 NE2d 824, 826, 830 (Ind App, 1995); *In re the Welfare of AJR.*, 78 Wash App 222; 896 P2d 1298 (1995).

In this case, respondent-mother alleges only the following instance of a failure to accommodate:

> Testimony from a Defense expert was that tests given the mother were geared for a person with a 6th grade reading level, beyond the mother's 3rd grade level, the results would not be valid. Yet no reasonable accommodation was made for the mother.

In this case, a 1987 psychological report concerning respondent-mother placed respondent-mother's "overall reading performance at the third year, second month grade level." A 1994 psychological evaluation of respondent-mother conducted for this case indicates that respondent-mother was given the Minnesota Multiphasic Personality Inventory test. During the dispositional hearing in this case, respondent-mother's expert testified that she questioned the results of the 1994 evaluation of respondent-mother in light of the facts that the 1987 assessment placed respondent-mother's reading comprehension at third-grade level, whereas the Minnesota test was "based on individuals having a sixth grade level of reading comprehension."

However, our review of the 1994 evaluation reveals that it further states that respondent-mother "demonstrates ability to read and comprehend at approximately the 5th grade level. She was assisted with the MMPI to ensure comprehension." Thus, we find no failure to reasonably accommodate respondent-mother during this testing. Our review of the remainder of the services offered respondent-mother is in accord. Respondent-mother's intellectual disability was taken into account during her participation in both the parenting classes and the Parents as Teachers program. Respondent-mother failed to be present for the majority of the appointments offered by the Homemaker Aide program. And, the services received by Life Consultation Services consisted of individual therapy. Accordingly, on this record, we conclude that respondent-mother has failed to establish that her developmental disability was not reasonably accommodated during the proceedings below. See *In re Angel, B,* 659 A2d 277 (Me, 1995); *Jonathan Burrows, supra; Stone, supra*; *In re the Welfare of AJR, supra*; *In the Interest of Jamie LM,* 192 Wis 2d 767; 532 NW2d 471 (1995); *In the Interest of CM, supra*;

III

In summary, we affirm the termination of respondents' parental rights.

/s/ Martin M. Doctoroff
/s/ Myron H. Wahls
/s/ Michael R. Smolenski

[1] We make clear that no sexual abuse of the children by respondents was ever confirmed nor were allegations of sexual abuse made a part of either the subsequent petition or ultimate decision to terminate respondents' parental rights.

[2] In *In re Hatcher*, 443 Mich 426, 439, 444; 505 NW2d 834 (1993), our Supreme Court held that a party may not collaterally attack the probate court's exercise of its jurisdiction where a direct appeal was available. See also *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995); *In re Bechard*, 211 Mich App 155; 535 NW2d 220 (1995). In this case, the parties could have appealed the May 22, 1995 order making the children temporary wards of the probate court. MCR 5.993; MCL 600.861 and 600.863; MSA 27A.861 and 27A.863; see also *Hatcher, supra* at 438. The parties did not do so, nor did they seek any other available relief from this order. See *Hatcher, supra*; *Powers, supra* at 587. However, in light of the express stipulation of the parties that respondent-father preserved for subsequent appellate review any issue that might be raised in this matter, including issues raised during the adjudication hearing, we find *Hatcher* distinguishable from this case with respect to respondent-father and therefore consider the issues raised by respondent-father concerning the adjudication hearing. Because the issues raised by respondent-mother concerning the adjudication hearing are identical to those raised by respondent-father, we also consider respondent-mother's appeal of these issues. See MCR 7.216(A).

[3] Assuming without deciding that Cain's conduct in opening the refrigerator was an unconstitutional search, we conclude that any error in the admission of Cain's testimony concerning the refrigerator was harmless.

[4] The issue of whether the ADA applies to proceedings involving the termination of parental rights where the parents have developmental disabilities appears to be one of first impression in Michigan. Our own independent research reveals that courts in other jurisdictions have taken divergent views concerning this issue. Some courts have simply held that the issue was not properly before the court. See, e.g., *In the Interest of Jamie L.M.*, 192 Wis 2d 767; 532 NW2d 471 (1995); *In the Interest of C.M.*, 526 NW2d 562 (Iowa App, 1994); *New Mexico ex rel Human Services Department v Penny* J, 119 NM 328; 890 P2d 389 (1994); *Wright v Alexandria Division of Social Services*, 16 Va App 821; 433 SE2d 500 (1993). Some courts, without analysis or discussion of whether the ADA applies to proceedings involving the termination of parental rights, have simply addressed the merits of the issue and determined that a violation of the ADA was not established. See, e.g., *In re Angel B*, 659 A2d 277 (Me, 1995); *In re the Welfare of AJR.*, 78 Wash App 222; 896 P2d 1298 (1995); *Jamie LM, supra*; *In the Interest of CM, supra*; see also *In re Karrlo K*, 669 Conn Sup 101; 669 A2d 1249

(1994), aff'd 40 Conn App 73; 668 A2d 1353 (1996). Other courts have expressly assumed that the ADA applies to the termination of parental rights and then determined that a violation of the ADA was not established. *In the Matter of: Jonathan Burrows*, ___ Ohio App ___; ___ NW2d ___; 1996 Ohio App Lexis 2346; see also *Stone v Daviess Co Division of Children and Family Services*, 656 NE2d 824, 826, 829 (Ind App, 1996).. Finally, other courts have expressly held that the ADA does not apply to proceedings involving the termination of parental rights. See *In the Interest of Torrance P*, 187 Wis 2d 10; 522 NW2d 243, 244 (1994); see also *Stone, supra*.

In this case, respondent-mother phrases the question as whether "the ADA will supersede Michigan law" in proceedings involving the termination of parental rights. However, in support of this argument, respondent-mother has not cited or discussed any relevant caselaw, but rather has simply cited the ADA. Petitioner argues that the ADA does not apply to this case, but cites only Michigan caselaw concerning the termination of parental rights. Neither party has discussed the interplay of the Michigan termination scheme, the statutory standards, if any, applicable to petitioner in its provision of services during child protective or termination proceedings, and the issue of preemption. See *Stone, supra*. In light of the divergent views expressed by other courts and the lack of input from the parties in this case on this issue, we believe that it would be unwise for this Court to unilaterally decide this question at this time. See *People v Mateo*, ___ Mich ___; ___ NW2d ___ (Docket No. 96079, decided 7/31/96), slip op p 16. Accordingly, we emphasize that we do not decide in this case whether and to what extent the ADA impacts Michigan proceedings involving the termination of parental rights. Rather, that question awaits resolution for another day.