ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-235

AUGUST TERM, 2016

In re C.C., Juvenile	}	APPEALED FROM:
	}	
	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 16-2-15 Bnjv

In the above-entitled cause, the Clerk will enter:

In the underlying juvenile proceeding, mother filed a motion asking the court to direct the Department for Children and Families (DCF) to provide her certain accommodations to which she claimed she was entitled pursuant to the Americans with Disabilities Act (ADA). The family court denied mother's motion, explaining that the ADA is not directly applicable in termination of parental rights (TPR) proceedings and cannot be used as a defense to termination. See In re B.S., 166 Vt. 345, 351 (1997) (stating that "ADA does not directly apply to TPR proceedings"). Mother then moved for permission to the appeal the order pursuant to Vermont Rule of Appellate Procedure 5.1, and the trial court denied the request. Mother has renewed her request to this Court, arguing that there is a final order determining her lack of rights, the issue is separate from the merits of the TPR process, and that denial of her rights under the ADA will not be reviewable on appeal from a termination order.

We deny the request. Under V.R.A.P. 5.1(a)(1), a collateral final order appeal may be permitted if the order to be appealed "(A) conclusively determines a disputed question; (B) resolves an important issue completely separate from the merits of the action; and (C) will be effectively unreviewable on appeal from a final judgment." To the extent mother alleges that she was denied accommodations under the ADA, the court's order is not a conclusive determination of that issue. Further, to the extent mother is contending that DCF's lack of accommodation precluded her from progressing and therefore was a factor beyond her control, this issue is not completely separate from the merits of the action and will be reviewable on appeal from any termination order. Therefore, mother's request fails to meet the requirements of the collateral final order rule.

We do note, however, that although alleged ADA violations may not be raised as a defense to a TPR proceeding, In re B.S., 166 Vt. at 354, mother made her request prior to the termination petition being filed and regardless of the ADA's applicability the family court has jurisdiction to review the services being provided to mother. When custody is transferred to DCF under a temporary care order, as here, the court may issue an order that provides, among other things, that DCF "refer a parent for appropriate assessments and services, including a consideration of the needs of children and parents with disabilities, provided that the child's needs are given primary

consideration." 33 V.S.A. § 5308(e)(2)(C). Further, DCF has an obligation to include in its disposition case plan a "plan of services" and to describe how those services will effectuate the permanency goal. See 33 V.S.A. § 5316(b)(7). Therefore, the family court had authority to review the services that DCF was providing to mother and to ensure that those services were appropriate in light of the case plan goal and the child's needs. We remand for the trial court to consider the merits of the mother's motion for accommodations and services in light of the above.

Appeal dismissed; matter remanded for further proceedings consistent with this decision.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice