DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
TERRY CRABTREE, JUDGE

CA 06-155

November 1, 2006

ANGELA CHORBA

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES

APPELLEE

APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT
[NO. J04-749-3]

HONORABLE STACEY A. ZIMMERMAN, JUDGE

AFFIRMED

Angela Chorba appeals from an order terminating her parental rights in her daughter, A.L., who was born in December of 2002. For reversal, she contends that the trial court erred by not granting permanent custody of the child to her father's step-relatives as a less restrictive alternative to the termination of her parental rights. We affirm.

On August 30, 2004, A.L. and her two siblings were taken into emergency custody by appellee, the Arkansas Department of Human Services. Appellant had left the children with their father, Derrick Laws, who was unable to care for them. Probable cause was found, and the trial court subsequently entered an order placing A.L. with Sara and Jonathon Rhodes, Derrick Laws' step-aunt and uncle. A.L's siblings were placed in the custody of Derrick's mother and her husband, Mary and Andrew Rhodes. The children were adjudicated dependent neglected on November 22, 2004.

The case was reviewed at all appropriate intervals. The children were faring well, and A.L was able to visit her siblings on a frequent basis, as their respective homes were in close proximity to one another. However, neither appellant, who was incarcerated, nor Derrick maintained full compliance with the case plan. The permanency-planning hearing was held on May 19, 2005. Appellant was still incarcerated at that time, and Derrick was not complying with the case plan. The trial court ruled, pursuant to Ark. Code Ann. § 9-27-338 (Supp. 2005), that it was in the best interests of A.L.'s siblings not to terminate appellant's parental rights but for them to be placed in the permanent custody of Mary and Andrew Rhodes. As for A.L., the court stated:

> Now, [A.L.] is a little different story because she is not being cared for by a relative. She's being cared for by a step-relative, which does not, I believe, fall within the statutory definition of relative. So if the child's not being cared for by a relative then I have to go to choice number two, which is authorize a plan for termination of the parent-child relationship if it's in the best interest of the child. Now, the testimony is that [A.L.] is doing very well. ... I think that [A.L.] is very adoptable. I think it's in her best interest that she remain in her current placement. I also find that it's in her best interest to be separated from her siblings. ... She's only two and a half, and she's settled in very well and she's bonded to her foster parents. The CASA report states that she even calls Mr. and Mrs. Rhodes mommy and daddy, and she's not having any separation anxiety. I find that it's in her best interest that she have some permanency and that the goal with respect to [A.L.] be changed to termination.

The termination hearing was held on August 24, 2005. After hearing the testimony, the trial court terminated appellant and Derrick Laws' parental rights as to A.L. Only appellant has appealed the termination order.

Arkansas Code Annotated section 9-27-338(c) (Supp. 2005) provides in pertinent part:

> (c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest of the juvenile:

> (1) Returning the juvenile to the parent, guardian, or custodian at the permanency planning hearing if it is in the best interest of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home;
>
> (2) Authorizing a plan for the termination of the parent-child relationship so that the child is available to be adopted unless:
>
> (A) The juvenile is being cared for by a relative ... and termination of parental rights is not in the best interest of the juvenile.
>
> . . . .
>
> (4) Authorizing a plan to obtain a permanent custodian, including permanent custody with a relative, for the juvenile.

In reference to these provisions of the statute, appellant argues that the trial court erred by not granting permanent custody to Sara and Jonathon Rhodes, A.L's step-great aunt and uncle, instead of terminating her parental rights. In making this argument, appellant contends that the trial court erred in its interpretation of the word "relative" as not including a step-great aunt or uncle. Appellant refers us to Ark. Code Ann. § 25-16-1001(3) (Supp. 2005), concerning the hiring of relatives by public officials, where the word "relative" is defined as a "husband, wife, mother, father, stepmother, stepfather, mother-in-law, father-in-law, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, daughter, son, stepdaughter, stepson, daughter-in-law, son-in-law, uncle, aunt, first cousin, nephew, or niece." Although step-great aunts and uncles are not included in this definition, appellant argues that such persons should be considered relatives because other step-relatives are recognized in this statute. In opposition to this argument, A.L.'s ad litem refers us to the definition of "relative" found in the juvenile code at Ark. Code Ann. § 9-28-402(18), as meaning a "person within the fifth degree of kinship by virtue of blood or adoption." The ad litem thus reasons that the trial court's ruling was correct because Sara and Jonathon Rhodes were not related to the child by blood or adoption. On the other hand,

appellee maintains that we need not resolve this issue because it is being raised for the first time on appeal. We must agree with appellee.

When the trial court ruled at the permanency-planning hearing that Sara and Jonathon Rhodes were not included within the definition of "relative," appellant made no argument to the trial court that this term should be interpreted more expansively to include step-great aunts and uncles. Further, appellant did not bring this argument to the trial court's attention either prior to or during the termination hearing. As a result, the trial court was not given the opportunity to address the issue appellant now raises on appeal. It is well-settled that we will not consider arguments made for the first time on appeal. *Ford Motor Co. v. Arkansas Motor Vehicle Comm'n,* 357 Ark. 125, 161 S.W.3d 788 (2004). Because appellant did not raise this issue below, we affirm without reaching the merits of her argument.

Affirmed.

ROBBINS and NEAL, JJ., agree.