

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000103-ME
AND
NO. 2005-CA-000227-ME

J.M.

APPELLANT

v.

APPEALS FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 03-AD-00176

R.V.; J.V.; INFANT GIRL,
J.M.V., A CHILD, AKA J.M.V.

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, JOHNSON AND VANMETER, JUDGES.

KNOPF, JUDGE: J.M. brings these consolidated appeals from an order of the Fayette Circuit Court terminating her parental rights and granting the petition of R.V. and J.V. to adopt her child. We find that J.M. is estopped from raising any claim of error on appeal based upon her agreement with R.V. and J.V. and her sworn testimony consenting to the termination of parental rights and to the adoption. Hence, we affirm.

On December 12, 2003, J.M. gave birth to a daughter, now known as J.M.V. Prior to the birth, J.M. had agreed that R.V. and J.V. would adopt the child. R.V. and J.V. filed a

petition for adoption on December 15, and the trial court entered a temporary order granting them custody of the child. On December 18, J.M. executed a notarized document voluntarily surrendering her parental rights and giving consent to the adoption of J.M.V. by R.V. and J.V. However, on January 15, 2004, J.M. sent a written notification to R.V. and J.V. withdrawing her consent.

Thereafter, in May 2004, J.M. filed a motion seeking to set aside R.V. and J.V.'s adoption petition and seeking custody of J.M.V. The matter then proceeded to trial in December of 2004. On the third day of trial, December 16, the parties announced that they had reached a settlement agreement. J.M. testified, under oath, that she had agreed to rescind her revocation of consent and to a voluntary termination of her parental rights. J.M. further testified that she agreed to waive her right to appeal. The settlement agreement was also read into the record and J.M. informed the court that she had agreed to and was satisfied with its terms.

Based on this agreement, the trial court entered an order on December 17 terminating J.M.'s parental rights and granting R.V. and J.V.'s petition to adopt J.M.V. The trial court separately entered findings of fact and conclusions of law

the same date.¹ Notwithstanding the settlement agreement, J.M. appealed from the judgment.²

J.M. contends that her oral rescission of her revocation of consent failed to meet the writing requirements of KRS 199.500(1) and KRS 199.011(14). But contrary to J.M.'s assertion, this is not a case involving unpreserved or palpable error. Rather, J.M. specifically agreed, on the record and under oath, that she was waiving her right to appeal from the trial court's order terminating her parental rights. J.M. presents no grounds for setting aside that agreement.

Furthermore, J.M. presents no authority for the proposition that the trial court's failure to obtain her consent to the termination in writing renders her consent void. In fact, J.M. had already executed her consent to termination of parental rights on December 18, 2003. Her testimony in court merely rescinded her January 15, 2004 revocation of consent, and reinstated her prior written consent. While it might have been better practice to have J.M. execute a new written consent, her

¹ On January 4, 2005, the trial court entered "Amended Supplemental Findings of Fact and Conclusions of Law" to correct several typographical errors in its December 17 findings.

² J.M. filed separate notices of appeal from the December 17, 2004, findings and judgment, and from the January 4, 2005, order entering amended supplemental findings. These appeals were ordered consolidated by the motion panel.

consent is fully documented in the record. Consequently, J.M. is estopped from raising any claim of error on appeal.³

Accordingly, the order and judgment of adoption entered by the Fayette Circuit Court on December 17, 2004, is affirmed.

ALL CONCUR.

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GUARDIAN AD LITEM FOR
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J.M.V.

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³ See Calloway v. Calloway, 707 S.W.2d 789 (Ky.App. 1986), holding that a property settlement agreement dictated into the record and agreed to by the parties in open court meets the writing requirement of KRS 403.180.