ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION II

CA07-1289

March 19, 2008

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| MARIA DELPOZO<br>APPELLANT | AN APPEAL FROM SEBASTIAN COUNTY CIRCUIT COURT<br>[NO. JV2005-322] |
| v. | HONORABLE MARK HEWETT, JUDGE |
| ARKANSAS DEPARTMENT OF HUMAN SERVICES<br>APPELLEE | AFFIRMED |

Appellant, Maria Delpozo, consented to the termination of her parental rights in MG (born August 8, 1993). She now argues that the trial court should have inquired into whether her consent was knowing and voluntary and that there was insufficient evidence that termination was in MG's best interest. We hold that the first issue was not preserved for our review and that the trial court did not err in finding termination to be in MG's best interest. We therefore affirm the termination order.

The circuit court granted emergency custody of MG to DHS on May 3, 2005, based on an allegation by DHS that MG had been sexually abused by her stepfather. A probable-cause order was entered on May 26, 2005, and MG was found dependent and in need of services on July 29, 2005. The goal of the case was reunification. MG remained in DHS

custody for over a year, and a mid-2006 trial placement failed due to appellant's use of cocaine. On January 19, 2007, the court changed the goal of the case to termination of parental rights.

On February 16, 2007, appellant consented to termination of her parental rights. The consent document, which was signed by appellant and notarized, stated that her consent was freely and voluntarily given; that she believed termination to be in the best interest of her child; that she understood that her parental relationship with the child would be forever terminated; that she was not acting under duress; that she was represented by counsel throughout the proceeding; that she waived her right to notice of and participation in further hearings related to termination; and that she understood that her consent could be withdrawn within ten days.[1] DHS filed a petition to terminate parental rights approximately two months later. Appellant answered and admitted all of the petition's material allegations, including that termination was in MG's best interest. Appellant also stated in her answer that she consented to termination, had not changed her mind, and had no objection to the petition being granted.

Appellant did not attend the termination hearing. However, her counsel appeared and stated that appellant had not contacted her to change her mind about consenting to termination. Kathie Taber, a DHS caseworker, testified that appellant filed a consent to termination because MG did not want to return home. Taber also said that the goal of the case was adoption but that she was not aware if MG was currently in a home that expressed

[1] A consent to terminate parental rights may be withdrawn within ten days. Ark. Code Ann. § 9-27-341(g)(1)(A) (Repl. 2008).

an interest in adopting her. But, she said, MG had no health or behavioral problems that would make it difficult for her to be adopted. A colloquy between appellant's counsel and Taber, and between the ad litem and Taber, indicated that a couple living near MG had expressed an interest in adopting her. Taber testified that she would contact the couple.

The court ruled that termination was in MG's best interest; that appellant had consented to termination; that the consent had not been withdrawn; and that MG was readily adoptable. The order terminating appellant's parental rights was entered on September 20, 2007. Appellant filed a timely notice of appeal.

It is a ground for termination that the parent "has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval." Ark. Code Ann. § 9-27-341(b)(3)(B)(v) (Repl. 2008). Appellant contends that the phrase "subject to the court's approval" means that the court must conduct an inquiry into whether the parent's consent was knowingly and voluntarily given, much like the inquiry a criminal court must conduct when accepting a guilty plea. *See*, *e.g.*, Ark. R. Crim. P. 24.4 and 24.5 (2007). We cannot address this argument because it is being raised for the first time on appeal. *See Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005); *Walters v. Ark. Dep't of Human Servs.*, 77 Ark. App. 191, 72 S.W.3d 533 (2002). At no time during the proceedings below, including in a post-trial motion, did appellant ask the court to inquire into the validity of her consent or object that the court had not done so. Further, she did not claim that her consent was invalid or that she wished to withdraw it in any respect. In fact, she stood by her consent, despite having the opportunity to repudiate it in her answer to the termination

petition and at the termination hearing. On both occasions, her consent was reaffirmed by appellant or her counsel.

Appellant also has not borne her burden of demonstrating reversible error. *See Arrow Int'l v. Sparks*, 81 Ark. App. 42, 98 S.W.3d 48 (2003). She does not argue on appeal that her consent was involuntary or ill-considered, that she misunderstood the consent document, that the document was improperly drafted, or even that she wishes to withdraw her consent. She therefore has not shown that the outcome of this case could be affected if we did order the trial court to inquire into the validity of her consent.

We likewise reject appellant's argument that there was insufficient evidence that termination was in MG's best interest. The trial court considered whether MG was adoptable, and appellant admitted in her consent form and in her answer to the termination petition that termination was in MG's best interest. *See Culpepper v. Smith*, 302 Ark. 558, 792 S.W.2d 293 (1990) (stating that a party is bound by his own pleadings and cannot maintain a position inconsistent therewith); *J.M. Prod. v. Ark. Cap. Corp.*, 51 Ark. App. 85, 95, 910 S.W.2d 702, 707 (1995) (characterizing an admission in an answer as "undisputed evidence" of the fact admitted).

Affirmed.

GLADWIN and VAUGHT, JJ., agree.