

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLENE CASNER, ¹	§	
	§	No. 595, 1999
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
DIVISION OF FAMILY SERVICES, §	§	in and for New Castle County
	§	File No. 99-06-23TN
Petitioner Below,	§	
Appellee.	§	

Submitted: August 8, 2000
Decided: September 14, 2000

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices.

O R D E R

This 14th day of September, 2000, on consideration of the briefs of the parties, it appears to the Court that:

1) Carlene Casner is the natural mother of Lucy, who is two years old, and Sean,² who is one year old. In June 1999, the Division of Family Services filed a petition for termination of parental rights. At the time set for the hearing on that petition, Casner agreed to the termination of her parental rights in both children. In this appeal, Casner argues that her consent was invalid because it was not knowing and voluntary.

¹A pseudonym assigned by this Court pursuant to Rule 7(d).

²Pseudonyms assigned by this Court pursuant to Rule 7(d).

2) Immediately before the termination hearing was to begin, counsel for DFS told the court that it was unclear whether Casner would voluntarily relinquish her parental rights. Casner's attorney reported:

My client has indicated to me that she is willing to permit the Court to terminate her rights with regard to both [children]. I think that her problem is actually signing the papers. It's just difficult for her to do that.

The attorneys and the court agreed that, instead of signing a consent, Casner would be placed under oath and asked to respond to questions from the court concerning Casner's consent to termination.

3) Casner responded affirmatively to most of the questions. She did not understand it when the court asked whether she realized that "the child and you, for all intents and purposes, will exist as if you were and always had been strangers." Casner's attorney explained, "[t]hat means that legally you have no bonds together. That doesn't mean that you'll actually be a stranger to him." In a similar vein, the court asked whether Casner understood that she would have no right to know the identity of the adoptive parents. In fact, it was DFS's plan to place the children with Casner's aunt. In light of that plan, Casner's attorney added that, in this case, Casner probably would know who adopted the children. The colloquy continued:

Question: I think in this case there's some indication that you –

Counsel for Casner: She will know.

Question: – we know that it’s probably going to be the Smiths,³ but do you understand that –

Answer: Right. Yeah.

Question: That doesn’t have to be; that if that doesn’t work out and there’s another adoption, that you don’t necessarily have to even know who the parents are or where – the adoptive parents are or where they are.

Counsel for Casner: I don’t think that that’s necessarily going to happen. It’s one of those small percentage things that can happen.

Answer: Yes, ma’am, I understand.

4) Parental rights are sacred and deserve the same level of protection as other fundamental rights. A waiver of parental rights, to be effective, must be knowing, voluntary and intelligent.⁴ “The determination of whether there has been an intelligent waiver of [a fundamental] right ... must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the [person relinquishing the right].”⁵ In deciding on the validity of a waiver, the court must consider: (i) whether it was “the product of a free and deliberate choice rather than intimidation, coercion, or deception;”⁶ and (ii) whether it was “made

³A pseudonym assigned by this Court pursuant to Rule 7(d).

⁴See: *Lewis v. State*, Del. Supr., ___ A.2d ___ (2000).

⁵ *Id.* at ___ (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

⁶ *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1192 (1995)(quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.”⁷

5) In this case, several factors indicate that Casner’s waiver of parental rights did not meet this standard. First, Casner was unwilling to sign the waiver of parental rights form. That resistance, in itself, raises serious questions as to the voluntariness of the waiver, yet the trial court never questioned Casner about it.

6) Second, Casner was given conflicting information from the court and her counsel. The court asked Casner whether she appreciated the fact that she and her children would be like strangers and tried to explain that she would not have the right to know anything about their adoption and future lives. Casner’s counsel, in an apparent effort to minimize the impact of the court’s statements, explained that Casner would know where the children were going to be placed since they were going to be with Casner’s aunt. When the court again tried to emphasize that the placement could change, Casner’s counsel assured her client that the chances of that were small.

7) Third, Casner was pressured to decide quickly. DFS announced that, if Casner and the father agreed to the termination, the children could be moved to the aunt’s home that day; if not, the children would not be moved until some indefinite

⁷*Ibid.*

later time. In addition, the court advised that Casner must make up her mind promptly because, if there was going to be a trial, it had to begin by 9:45 a.m.

8) Considering the totality of the circumstances, the record does not support a finding that Casner knowingly, voluntarily and intelligently consented to the termination of her parental rights.

NOW, THEREFORE, IT IS ORDERED that the decision of the Family Court terminating Casner's parental rights on the basis of Casner's consent be, and the same hereby is, REVERSED. Jurisdiction is not retained.

By the Court:

/s/ Carolyn Berger
Justice