

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN H. LAND, JR., ¹	§	
	§	No. 7, 2001
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
MARY NELSON,	§	in and for Sussex County
	§	File No. 00-07-01TPR
	§	CPI No. 0024326
Petitioner Below,	§	
Appellee.	§	

Submitted: June 20, 2001
Decided: August 14, 2001

Before **HOLLAND**, **BERGER** and **STEELE**, Justices.

ORDER

This 14th day of August, 2001, on consideration of the briefs of the parties, it appears to the Court that:

1) Ryan H. Land, Jr. appeals from a decision of the Family Court terminating his parental rights with respect to his daughter. Father argues that: (i) Mother did not prove the statutory grounds for termination by clear and convincing evidence; (ii) his consent to the termination was not knowing or voluntary; and (iii) he was denied due process because he did not have an attorney at the termination hearing.

¹A pseudonym assigned by this Court pursuant to Rule7(d).

2) Father is serving a life sentence and was incarcerated before Daughter was born in 1988. Recently, Father made some effort to contact Daughter, but Stepfather and Mother did not cooperate, so Father's letters and phone calls did not reach her. Daughter has been living with Mother and Stepfather and their daughter since she was five months old. Stepfather filed a petition for adoption at about the same time as Mother filed the petition for termination of parental rights.

3) At the hearing on the two petitions, Father was unrepresented. It appears that he requested court-appointed counsel, but was told that the court does not appoint counsel for parents in private petitions for termination or adoption. Mother and Stepfather testified about Daughter's family life and her relationship with Stepfather. Father asked Stepfather a few questions, basically trying to find out why Stepfather had not communicated with Father. After Mother's direct testimony, the court granted Father's request for a brief recess. When the hearing resumed, Father and the court engaged in the following colloquy:

Court: All right. Are we ready to proceed?

Father: Your Honor?

Court: Yes, [Father].

Father: Under my own free will, I consent to [Stepfather] adopting [Daughter].

Court: You're consenting then to having your parental rights terminated, [Father]?

Father: Yes, Your Honor.

Court: Okay. And by terminating parental rights I will then, based on the information presented to me, you understand I would then grant the petition for adoption for [Stepfather]? Do you understand that?

Father: Yeah. I agree to the adoption.

Court: Okay. And you also understand that if your parental rights are terminated, what that legally means is that it's as if you were never the parent of that child, you have no parental rights. And when the child is an adult chooses to contact you or not that's totally up to the child, but legally it's as if you never were a parent of that child. Do you understand that?

Father: Yes.

* * *

Court: And do you have any questions?

Father: No, Your Honor.

After this exchange, the court adjourned the hearing and entered orders granting both petitions.

4) The first issue is whether Father's consent was knowing and voluntary. If it was, then the remaining issues on appeal are moot. Father argues that he was overwhelmed by the proceedings and did not understand the nature of his consent. Father says that his past persistence in trying to contact Daughter confirms that he was not acting in a "free and deliberate manner" when he changed position in the middle of the hearing.

5) It is settled law that a waiver of fundamental rights, including parental rights, must be knowing, intelligent and voluntary in order to be effective.² Father argues that his persistence in attempting to contact Daughter and his abrupt change of position during the hearing demonstrate that he was not acting freely when he agreed to the termination of parental rights.

²*DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1192 (1995); *Casner v. Division of Family Services*, Del. Supr., No. 595, 1999, Berger, J. (Sept. 14, 2000) (Order), 2000 WL 1508794.

6) Based on our review of the record we disagree. At the hearing, Father heard Stepfather describe his relationship to Daughter. Stepfather concluded his testimony on direct examination by saying, "...I fell in love with [Daughter] before I did my wife I love her with all my heart. If need be, I'd give my life for her. She is no different than my natural daughter and I've never thought of her any different...." Father then asked Stepfather why he had not responded to Father's letters by explaining how much he loved Daughter. Father said, "I wrote a letter to you. I told you in the letter that I wasn't going to let nobody adopt my daughter I didn't know. And you didn't write me a letter back saying, you know, I love your daughter this and that...."

7) Father apparently wanted to satisfy himself that his daughter would be adopted by a good man. After he heard Stepfather and Mother describe their family, and Stepfather's role as a supportive parent, Father decided to give his consent to the termination and adoption. There is nothing about the nature of the hearing, Father's conduct, or the consent colloquy to suggest that Father was coerced, confused, or overwhelmed. The consent colloquy establishes that Father was fully informed about the nature of the right being abandoned and the consequences of his decision.

Accordingly, we conclude that Father's consent was knowing, intelligent and voluntary. Father's valid consent renders moot his remaining arguments on appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice