

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN KELLEHER, ¹	§	
	§	No. 540, 1999
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
DEPARTMENT OF SERVICES FOR §	§	in and for New Castle County
CHILDREN, YOUTH & THEIR §	§	File No. 98-09-04TN
FAMILIES/DFS,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: June 6, 2000
Decided: July 7, 2000

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

ORDER

This 7th day of July, 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1) Brian Kelleher appeals from a decision of the Family Court terminating parental rights with respect to his fourteen year old daughter, Patricia. The Family Court found that Kelleher is mentally incompetent to provide for Patricia's needs and that termination would be in Patricia's best interest. Kelleher argues on appeal that the

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

trial court violated his due process rights by refusing to grant a continuance and proceeding with the hearing when, after becoming upset, Kelleher left the courthouse.

2) Two psychiatrists testified that Kelleher suffers from serious mental and physical illnesses including major depression, antisocial personality disorder, alcohol and drug dependency, and a serious progressive neurologic disorder. After hearing this and other evidence about Kelleher, the trial court announced its decision that Kelleher was “mentally incompetent and ... unable to discharge parental responsibilities in the foreseeable future.”²

3) Kelleher became upset and unruly after hearing the court’s ruling. Kelleher spoke out during the questioning of the next witness and the court took a brief recess. Kelleher’s counsel tried to calm him down and advised Kelleher to remain in court for the second part of the hearing. Despite that advice, Kelleher left the courthouse. When the hearing resumed, Kelleher’s counsel objected to the court’s proposal that the hearing continue in Kelleher’s absence. The trial court nonetheless proceeded with the portion of the hearing addressing Patricia’s best interest. Kelleher’s counsel was present and was instructed by the court to participate fully on his client’s behalf, which he did. At the conclusion of the hearing, the trial court announced its decision that it would be in Patricia’s best interest to terminate Kelleher’s parental rights.

²13 *Del. C.* §1103(a)(3).

4) Kelleher does not contest the Family Court's decision as to his lack of competence or Patricia's best interest. He argues that, by proceeding with the hearing after he departed, the Family Court violated his constitutionally protected due process rights.

5) Kelleher's argument lacks merit. There is no question but that Kelleher is entitled to due process when a fundamental right, such as the right to parent a child, is at stake.³ Kelleher waived the right to be present at the termination hearing, however, when he voluntarily left the courthouse, against the advice of the Family Court and his counsel.⁴ As a result, there was no deprivation of due process, and the only issue is whether the Family Court abused its discretion in denying a continuance. In light of Patricia's interest in obtaining a permanent home, and the fact that Kelleher left voluntarily while the hearing was in progress, we find that the Family Court acted well within its discretion.

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

BY THE COURT:

³ *Matter of Burns*, Del. Supr., 519 A.2d 638 (1986).

⁴ *See Crippen v. State*, Del. Supr., 1997 WL 398919.

/s/ Carolyn Berger
Justice