

No. 22-7011

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Charles Matthew Waters,

Petitioner

Vs.

Anita Marie Waters,

Respondent

Supreme Court, U.S.
FILED

JAN 17 2023

OFFICE OF THE CLERK

On Petition for a Writ of Certiorari to the Minnesota Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Whether Petitioner was deprived of due process when the trial court would not allow Petitioner's withdrawal of consent to an Order for Protection, prior to issue.

Whether it is a violation of Petitioner's due process rights to extend the protections of a "child" under *Minn. Stat. § 518B.01*, to a 20 year old man who is the biological offspring of a protected party, bypassing a right to trial to determine ownership of a contested, beloved pet.

Whether Petitioner's initial "consent" to an Order for Protection, ever included consent to surrender his pet cat to a third party adult.

II. PARTIES

All Parties appear in the caption of the case on the cover page. The Respondent information is:

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III. Related Cases:

There are no related cases.

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OPINIONS BELOW

The opinion of the highest state court to review the merits, the Minnesota Court of Appeals, appears at appendix A to the petition and is unpublished. A copy of the order of the trial court appears at appendix B, and is unpublished. The denial of rehearing, appears at appendix C.

JURISDICTION

The date on which the highest state court decided the case on the merits was July 13th, 2022.

A copy of that decision appears at appendix A.

A timely petition for rehearing was thereafter denied on October 18th, 2022, an IFP was granted the same day. Judgment Entered and Affirmed on October 24th, 2022, and a copy of those decisions appear at appendix C.

The deadline of 90 days from entry of judgment expires January 22nd, 2023.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Minn. Stat. 518B.01 Subd. 2. Definitions. As used in this section, the following terms shall have the meanings given them: (a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; sexual extortion within the meaning of section

2. 609.3458; or interference with an emergency call within the meaning of section 609.78, subdivision 2.
3. Minn. Stat. 518B.01 Subd. 6 (14), the court may “direct the care, possession, or control of a pet or companion animal owned, possessed, or kept by the petitioner or respondent or a child of the petitioner or respondent.”
4. Minn. Stat. 588.01 subd. 3 (2) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.
5. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) “the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact, voluntary; voluntariness is to be determined from the totality of the surrounding circumstances.”
6. U.S. Const. Amend § V “nor be deprived of life, liberty, or property, without due process of law”
7. *U.S. v. Gray*, 369 F.3d 1024 (8th Cir. 2004) “Withdrawal of consent need not be effectuated through particular ‘magic words,’ but an intent to withdraw consent must be made by unequivocal act or statement.” citing *United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001).
8. *U.S. v. Oyortiz*, 669 F.3d 439 (4th Cir. 2012) “Moreover, any consent given is valid until it is withdrawn by the defendant” *United States v. Lattimore*, 87 F.3d 647, 651 (4th Cir. 1996) (en banc).
9. *United States v. Throckmorton*, 98 U.S. 61 (1878) “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.”

STATEMENT OF THE CASE

This case presents a vital question regarding the nature of consent to an order, and the effect of clear withdrawal of consent prior to issuance. This case also addresses the extra-judiciary protections of a “child” under Minn. Stat. § 518B.01 when applied to adult biological offspring, capable of making and defending their own claim as a bona fide adult.

Both parties sought restraining orders against the other party. Under duress due to concealment of his child by Respondent, Petitioner agreed to the Order for Protection during a hearing on October 8th, 2021. “The Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact, voluntary; voluntariness is to be determined from the totality of the surrounding circumstances.” Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

The only provision Petitioner ever consented to, was regarding Respondent Anita Waters, specifically. There was no consent to any provision regarding any “child”, much less the contested pet of an adult offspring. U.S. Const. Amend § V requires Petitioner not “be deprived of life, liberty, or property, without due process of law”. Consent was not given to take the cat from Petitioner, nor was any finding of Domestic Abuse reached that would allow for it.

Shortly after this hearing October 8th, 2021, Petitioner discovered video evidence that proved the Respondent’s Petition for Order for Protection was fraudulent, sought for improper and abusive purposes. “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments” United States v. Throckmorton, 98 U.S. 61 (1878). Petitioner provided this evidence to the Court, and discussed it at length at the hearing on October 27th, 2021.

To be certain that there was no misunderstanding, Petitioner further contacted the Court

in writing on October 28th, 2021, to formally withdraw his consent to the Order for Protection. U.S. v. Gray, 369 F.3d 1024 (8th Cir. 2004) “Withdrawal of consent need not be effectuated through particular ‘magic words,’ but an intent to withdraw consent must be made by unequivocal act or statement.” citing United States v. Ross, 263 F.3d 844, 846 (8th Cir. 2001). Petitioner also filed a motion for sanctions for contempt under Minn. Stat. 588.01 subd. 3 (2) “deceit or abuse of the process or proceedings of the court by a party”, due to Respondent’s fraudulent filing. The Order for Protection was issued a week later despite withdrawal of consent. This order further demanded surrender of Petitioner’s cat to Respondent’s 20 year old adult son. Petitioner paid for the cat, was not repaid as agreed, and the adult son of Respondent never requested the cat from either Petitioner, or the Court.

Important to note is attorney for Respondent informed Petitioner on November 5th, 2021 that Respondent and her son agreed Petitioner could keep the cat, but never requested any amendment to the OFP. The cat has remained with Petitioner for a year and a half since, but can be taken at any time by Respondent via the order of Judge Westphal.

The Petition for OFP filed by Respondent Anita Waters, did not allege any acts that amount to Domestic Abuse as defined in Minn. Stat. § 518B.01. The Harassment Restraining Order granted to Petitioner Charles Waters under Minn. Stat. § 609.748, did in fact outline physical Domestic Abuse on the part of Respondent against Petitioner and their child.

Upon request for motion for reconsideration, the Trial Court stated that if Petitioner had wished to withdraw his consent, that it was the responsibility of the Petitioner to request a new hearing and provide the Respondent the opportunity to make new allegations not contained in

the initial petition. This was the position of the Appellate Court as well, who affirmed the decision of the Trial Court.

REASONS FOR GRANTING THE PETITION

The right to withdraw consent, is fundamental to the very nature of consent. “Moreover, any consent given is valid until it is withdrawn by the defendant” *U.S. v. Oyortiz*, 669 F.3d 439 (4th Cir. 2012) citing *United States v. Lattimore*, 87 F.3d 647, 651 (4th Cir. 1996) (en banc). The Trial Court relied entirely on consent that simply did not exist at the time the order was issued.

Even if believed, none of the accusations in Respondent Anita Waters’ Petition for Order for Protection amount to Domestic Abuse as defined in *Minn. Stat. 518B.01*. The OFP is causing real harm as it is being used to suggest abuse occurred that was not even accused. It is not the burden of the Petitioner to instruct the Court how to proceed, once consent was withdrawn. Consent was withdrawn due to fraud on the part of Respondent. “There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments” *United States v. Throckmorton*, 98 U.S. 61 (1878).

Respondent’s son was 20 years old when the cat was purchased by Petitioner. Respondent’s adult son made no direct claim to the cat whatsoever to Petitioner, or to the Trial Court. Nothing in *Minn. Stat. 518B.01* allows Ms. Waters to make a claim on behalf of another able bodied adult. There is no definition of “child” anywhere in chapter 518 inclusive, that allows for a “child” to be applied to an adult biological offspring. All definitions of “child”

found in chapter 518 inclusive, require the child be a minor under the age of 18. Petitioner, a neurologically disabled person, will lose a beloved pet if the order is allowed to stand.

CONCLUSION

There was no consent to the Order for Protection when it was issued, and no finding of Domestic Abuse whatsoever. As a result there can be no Order for Protection against Petitioner without depriving him of due process entirely. As the Order for Protection includes property, a cat, the 5th Amendment guarantees Petitioner a right to trial by jury. Consent was clearly withdrawn well prior to the issuance of the order, and it is not the responsibility of the accused to direct the Court how to proceed in prosecuting him, or direct the Respondent in what to allege falsely or otherwise.

Respondent's son is not a "child" by any definition found in the applicable chapter. Respondent's son made no effort to retrieve the cat. A cat is property for the purposes of the 5th Amendment. Petitioner has every right to a trial by jury to determine ownership of the cat. Due process in one matter, can not be denied by virtue of blood relation to an aggrieved party in an altogether separate matter. The OFP against Petitioner, must be reversed in its entirety.

 1-21-23
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