

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-2787

AMY SPAHR; MATTHEW CAIN

v.

AMY COLLINS; RAMONA MIRA

AMY COLLINS,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(No. 1-19-cv-00113)
U.S. District Judge: Honorable Maryellen Noreika

Argued July 8, 2024

Before: SHWARTZ, PHIPPS, and MONTGOMERY-REEVES, Circuit Judges.

(Filed: August 9, 2024)

OPINION*

Robert S. Bria, Esq.
Ronald G. Poliquin, Esq. [ARGUED]

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

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SHWARTZ, Circuit Judge.

Defendant Amy Collins appeals the District Court’s order denying her motion for summary judgment seeking qualified immunity on Plaintiffs Amy Spahr and Matthew Cain’s procedural due process claim. For the reasons set forth below, we will reverse.

I

Spahr and Cain resided together with their son and Spahr’s daughter. On January 17, 2018, Delaware’s Department of Services for Children, Youth and Their Families (“DSCY”) received a report alleging that Spahr and Cain’s children were living in an abusive and filthy household and that the children were told not to tell anyone about the conditions. Collins, a DSCY caseworker, went to the house to speak with Spahr and, when no one answered, left a note on the door for Spahr to contact her. In a subsequent

phone conversation, Spahr told Collins that she could not meet with her. Collins then went to the house with a police escort and assessed the house in Cain's presence.¹

When Spahr returned home that evening, she found Collins, Cain, another DSCY employee, and her father in the driveway. The parties dispute what happened next. Spahr claims that after Cain went back inside the house, Collins coerced her into signing a Child Safety Agreement (the "Agreement")² by (1) refusing to let her know where her children were; (2) telling her that DSCY would seek an order placing the children in foster care if she refused to sign;³ and (3) asking Spahr to sign it in the presence of her father on the driveway, even though Spahr told the caseworkers that she could not read the Agreement because it was dark outside. Collins claims that (1) she, the other DSCY employee, Spahr, and Spahr's father discussed the Agreement in a state vehicle; (2) Spahr had "as long as she needed to" review the document, Appellant's Br. at 10; (3) Spahr was not upset and voluntarily signed the Agreement; and (4) Spahr said that she would come to Collins's office the next day.

¹ Collins asserts that she obtained permission to enter the home from the owner of the property, Thomas Redden, who is Spahr's father, but Spahr claims that the DSCY pushed its "way through [] under threat of foster case." App. 654.

² Child safety agreements are not mentioned in the Delaware code, but they further the goals of protecting children "at imminent risk of out-of-home placement" by allowing children to reside with family members, rather than be placed in foster care, while DSCY investigates allegations of abuse or neglect. See Del. Code Ann. tit. 29, § 9003(a)(3)(b) (2023); see also id. § 9003(a)(4) (empowering the DSCY to implement case plans to place children outside of their home "in the least restrictive setting available and in close proximity to the child's home").

³ Cain also claims that DSCY told Spahr that if she did not sign the Agreement, DSCY would file for custody.

The Agreement, which was limited to thirty days, provided that the children would reside with other family members pending the DSCY’s investigation. Sometime after the Agreement was signed, Spahr and Cain attempted to revoke it, and in response, DSCY filed a petition for emergency custody, which a state court judge denied. As a result, the children were permitted to return home about three weeks after Spahr signed the Agreement.

Thereafter, Spahr and Cain brought, among other things, a procedural due process claim against Collins, and Collins moved for summary judgment on qualified immunity grounds. Spahr v. Collins, Civ. No. 19-113, 2022 WL 3700897, at *1 (D. Del. Aug. 26, 2022). The District Court (1) determined that it is “clearly established that parents have the right to not be coerced to relinquish custody of their children without due process of law,” id. (citing Isbell v. Bellino, 962 F. Supp. 2d 738, 750 (M.D. Pa. 2013)); and (2) denied Collins’s summary judgment motion on the procedural due process claim because it found a factual dispute as to whether Collins coerced Spahr to sign the Agreement, id. at *2.

Collins appeals the order denying her qualified immunity.

II⁴

A

Qualified immunity shields government officials from civil liability “insofar as their conduct does not violate clearly established statutory or constitutional rights of

⁴ The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. “When the defense of qualified immunity is raised and denied, a defendant is generally entitled to an

which a reasonable person would have known.” Orsatti v. N.J. State Police, 71 F.3d 480, 483 (3d Cir. 1995) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). To determine whether qualified immunity was properly granted or denied, we ask whether (1) the conduct violates a constitutional right, and (2) the right was clearly established when it was allegedly violated. Peroza-Benitez v. Smith, 994 F.3d 157, 165 (3d Cir. 2021). Courts may begin with either question, and an answer in the negative to either entitles the official to qualified immunity. Id. Here, we first examine whether the right at issue was clearly established.

To determine whether a right is clearly established, “we must define the right allegedly violated at the appropriate level of specificity.” Id. (internal quotation marks and citations omitted). “This requires us to frame the right ‘in light of the specific context of the case, not as a broad general proposition.’” Id. (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). Once we define the right, we look for “factually analogous Supreme Court precedent, as well as binding opinions from our own Court” to determine whether the right was clearly established. Id. If there is no such binding precedent, we examine whether there is a “robust consensus of cases of persuasive authority in the

immediate appeal under the collateral order doctrine so long as the denial turns on an issue of law.” De Ritis v. McGarrigle, 861 F.3d 444, 451 (3d Cir. 2017) (quoting Oliver v. Roquet, 858 F.3d 180, 187 (3d Cir. 2017)). “If the denial of qualified immunity turns on a genuine issue of fact, we lack jurisdiction to review” it. Minor v. Del. River & Bay Auth., 70 F.4th 168, 174 (3d Cir. 2023). Collins challenges the District Court’s legal conclusion that Spahr’s allegation of being coerced into signing the Agreement stated a violation of a clearly established right. Accordingly, we have jurisdiction over this question, De Ritis, 861 F.3d at 451, and exercise plenary review, Rush v. City of Philadelphia, 78 F.4th 610, 619 (3d Cir. 2023).

Courts of Appeals.” Fields v. City of Phila., 862 F.3d 353, 361 (3d Cir. 2017) (quoting L.R. v. Sch. Dist. of Phila., 836 F.3d 235, 247-48 (3d Cir. 2016)). “District court opinions may [also] be relevant to the determination of when a right was clearly established for [a] qualified immunity analysis.” Doe v. Delie, 257 F.3d 309, 321 (3d Cir. 2001). There need not be a case explicitly holding the specific conduct unlawful. Rather, “[t]he contours of the right must be sufficiently clear” such that a reasonable official would understand that her conduct was unlawful under the then-existing law. Saucier, 533 U.S. at 202 (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).⁵

The District Court defined the right here as “the right [of parents] to not be coerced to relinquish custody of their [minor] children without due process of law.” Spahr, 2022 WL 3700897, at *1. In doing so, the Court recited the right as a “broad general proposition” rather than “in light of the specific context of the case” as we require. Peroza-Benitez, 994 F.3 at 165 (quoting Saucier, 533 U.S. at 201). Here, Plaintiffs do not assert that child safety agreements themselves violate due process, nor do they identify what specific process they should have received before or after they were presented with the Agreement.⁶ Instead, Plaintiffs’ central assertion is that informing a

⁵ See also City of Tahlequah v. Bond, 595 U.S. 9, 12 (2021) (per curiam) (stating “[i]t is not enough that a rule be suggested by then-existing precedent; the rule’s contours must be so well defined that it is clear to a reasonable offic[ial] that h[er] conduct was unlawful in the situation [s]he confronted” (internal quotation marks omitted) (quoting District of Columbia v. Wesby, 583 U.S. 48, 63 (2018))).

⁶ Child safety agreements are not mentioned in the Delaware statutes or Delaware Family Court Rules, but the text of the Agreement here shows that it was effective for no longer than thirty days, and there is no dispute that a parent may revoke a child safety agreement and that DSCY can thereafter seek a court order to place the child in foster care if the suspicion of abuse remains unresolved at the time the agreement ends. Such

parent that the child will be placed in foster care if the parent does not sign the agreement is coercive and thereby renders the agreement involuntary and in violation of due process. As a result, in the context of this case, the right is best phrased as follows: a parent presented with a child safety agreement has the right to consider the agreement without being told that she faces the possibility that the state will petition a court for an order to place the child in foster care unless she signs the agreement.

Contrary to Plaintiffs' views, our opinion in Croft v. Westmoreland County Child and Youth Services, 103 F.3d 1123 (3d Cir. 1997), does not clearly establish this right. There, we observed that separating a parent and child from the family home "during the pendency of child abuse investigations absent any procedural safeguards raises a procedural due process issue." Id. at 1125 n.3; see also B.S. v. Somerset Cnty., 704 F.3d 250, 271 (3d Cir. 2013) (explaining that the state must follow procedural safeguards anytime the "state seeks to alter, terminate, or suspend a parent's right to the custody of [her] minor children" (alteration in original) (quoting McCurdy v. Dodd, 352 F.3d 820, 827 (3d Cir. 2003))). We explained, however, that caseworkers may immediately remove a child if they have "some reasonable and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse." Croft, 103 F.3d at 1126. Although we noted that telling a parent that his child will be placed in foster care if he did not leave the home during the pendency of the child abuse

limited duration voluntary agreements do not contemplate any interim court review of the children's placement with individuals of the parent's choice.

investigation is “blatantly coercive,”⁷ id. at 1125 n.1, that statement is dicta because it was not necessary to the “analytical foundations,” In re McDonald, 205 F.3d 606, 612 (3d Cir. 2000), of Croft’s holding that a parent has a viable due process claim when an official removes her child without “objectively reasonable suspicion of abuse.”⁸ 103 F.3d at 1126; see Mammaro v. N.J. Div. of Child Prot. & Permanency, 814 F.3d 164, 170 (3d Cir. 2016), as amended (Mar. 21, 2016) (similarly characterizing Croft’s holding).

When such objectively reasonable suspicion of abuse exists, Delaware law gives DSCY officials the authority to remove a child from a home. Del. Code Ann. tit. 29, § 9003(a)(3)(b) (2023). From a practical perspective, the official must then determine where to place the child. The child safety agreement provides one type of placement, and the foster care system provides the other.⁹ Informing a parent of those options, and the legal consequences thereof, is no more legally coercive than informing a criminal defendant offered a plea agreement of the maximum penalty he faces for his crimes absent the agreement. See United States v. Green, 388 F.3d 918, 923 (6th Cir. 2004) (explaining that “accurate information regarding the possible ramifications of proceeding

⁷ Moreover, Croft’s dicta must be read in the context of the case, namely one in which child welfare officials lacked an objectively reasonable basis to suspect abuse. 103 F.3d at 1126. The Court did not hold that it is coercive to offer a child safety agreement or to remove a child where there is such a basis to suspect abuse.

⁸ One district court also held that Croft’s discussion about procedural due process rights to be dicta. See Exel v. Govan, Civ. No. 12-4280, 2016 WL 1118781, at *4-5 (D.N.J. Mar. 22, 2016), aff’d, 708 F. App’x 82 (3d Cir. 2018) (nonprecedential).

⁹ See Del. Code Ann. tit. 13, § 2512 (explaining the circumstances under which, when “emergency custody or other emergency relief is sought by DSCY[], the [c]ourt may issue an ex parte order awarding emergency custody to DSCY[] and order removal of a child from the home”).

to trial cannot be construed as coercive” but “[r]ather[,] . . . is exactly the kind of accurate information regarding sentencing exposure which the defendant must have in order to make an informed decision about whether to accept a plea offer”). In short, if a child is subject to removal from his home based on objectively reasonable suspicion of abuse or neglect, then informing his parent of the legal consequences of failing to enter a child safety agreement, such as foster care placement, does not constitute illegal coercion. Even if we held that such conduct could constitute illegal coercion, which we do not, to say that it would be constitutionally improper to tell a parent the legal consequences of a decision was not clearly established in this circuit at the time of the events here.

Our sister circuit courts have also held that there is no due process violation when a child welfare official tells a parent that a child believed to be in an abusive situation will be removed from the parent’s custody and placed in foster care unless the parent agrees to a plan that places the child with a person of the parent’s choosing pending the completion of the investigation. See Smith v. Williams-Ash, 520 F.3d 596, 600 (6th Cir. 2008) (stating that there is no forbidden coercion when an official with legal authority over child welfare matters told parents that formal removal proceedings would commence unless the child was placed with a family member under a voluntary safety plan); Dupuy v. Samuels, 465 F.3d 757, 760-61 (7th Cir. 2006) (official with proper legal authority informing a parent that the child will be removed and offering a safety plan giving the parent the option of identifying where the child is placed does not violate due

process).¹⁰ Those courts explained that such plans are interim arrangements pending the completion of an investigation and reflect the parent’s understanding that the official is exercising her legal authority to (1) remove the child based upon a suspicion of abuse and (2) offer alternate placement arrangements for the child rather than remove the child without giving the parent a chance to provide input concerning the child’s interim placement.¹¹

Given the absence of Supreme Court precedent, a binding statement from our circuit, or consensus of authority from other circuits who have spoken on the topic, we cannot say that the law is clearly established that a child welfare official violates procedural due process when she informs a parent that her child is being removed from the home based upon an objectively reasonable suspicion of abuse and that the state will petition the court for an order to place the child in foster care unless the parent signs a

¹⁰ The Dupuy court explained, “[i]t adds nothing to say as the plaintiffs do that they did not really consent—that the state ‘coerces’ agreement to safety plans by threatening to remove the child from his parents’ custody unless they agree to the plan. It is not a forbidden means of ‘coercing’ a settlement to threaten merely to enforce one’s legal rights.” 465 F.3d at 762 (emphasis omitted).

¹¹ There is also a lack of agreement among the district courts. As stated previously, one district court also held Croft’s discussion about procedural due process rights to be dicta, Exel, 2016 WL 1118781 at *4-5, while three other district court cases have relied on Croft to hold that a child welfare official is on notice that it is coercive to tell a parent that failing to sign a child safety plan will lead to the child’s placement in foster care. None of these cases, however, examined whether Croft’s statement about coercion was dicta, nor do they acknowledge that the child objectively suspected of being abused was going to be removed from the premises regardless of whether the parent signed any agreement. See Isbell, 962 F. Supp. 2d at 749-50; Starkey v. York Cnty., No. 1:11-CV-00981, 2011 WL 11071762, at *8 (M.D. Pa. Sept. 21, 2011); Billups v. Penn State Milton S. Hershey Med. Ctr., No. 1:11-CV-01784, 2012 WL 1392294, at *19-20 (M.D. Pa. Apr. 23, 2012). These different views also suggest that the law on this subject is not clearly established.

child safety agreement that places the child with a family member or other responsible person. Therefore, the District Court erred in concluding that Collins was not entitled to qualified immunity.

III

For the foregoing reasons, we will reverse.

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PHIPPS, *Circuit Judge*, concurring in the judgment.

Constitutional due process requires notice and a meaningful opportunity to be heard before an impartial tribunal in connection with the government’s deprivation of a person’s life, liberty, or property.¹ A parent’s loss of physical custody of a child is unquestionably a deprivation of a constitutionally protected liberty interest.² Normally, under Delaware law, such a deprivation can occur only after the Department of Services for Children, Youth and Their Families, commonly referred to as ‘DSCYF,’ files a petition (giving notice) and there is a court hearing (an opportunity to be heard before an impartial tribunal). *See* Del. Code Ann. tit. 13, §§ 2511, 2512(b). In emergency situations, however, Delaware allows courts to issue *ex parte* orders upon a petition from DSCYF establishing probable cause to believe that the child is in actual or imminent danger, *see id.* § 2512(a), but such an order lasts no longer than 15 days in the absence of a hearing unless extended by the court for good cause, *see* Del. Fam. Ct. Civ. R. 65.2(a).

Amy Spahr lost custody of her children without the benefit of any of those processes. DSCYF did not petition for such relief beforehand (or promptly thereafter); there was no court hearing; and there was no *ex parte* order. In lieu of any of that process, DSCYF caseworker Amy Collins arrived at Spahr’s house unannounced and presented Spahr with a Child Safety Agreement, which upon her signing, relieved Spahr of physical

¹ *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (“An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and opportunity for hearing appropriate to the nature of the case.’” (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950))).

² *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“The liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.”); *Santosky v. Kramer*, 455 U.S. 745, 758–59 (1982) (“[A] natural parent’s desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right.” (internal quotation marks and citation omitted)).

custody of her children for the next 30 days – a period of greater duration than an *ex parte* order. After Spahr signed the agreement, there was no hearing to assess whether she did so voluntarily, knowingly, and intelligently.³ Indeed, Spahr now claims that she was coerced into signing the agreement, and that remains a fact in dispute.⁴ Without a hearing to ascertain that such an agreement – which bypasses the notice and opportunity to be heard otherwise provided by Delaware law – was obtained consensually as opposed to by coercion, fraud, or genuine misunderstanding (for instance, of a parent’s retained right to revoke the agreement), there is considerable room for error in the deprivation of a private interest of the highest order: the physical custody of one’s minor children. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (requiring that courts consider the private interest subject to deprivation and “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards” in addition to the governmental interests in play).

But even if Spahr’s procedural due process rights were violated – either by the deprivation of the physical custody of her children through coercion or by the absence of a hearing in front of an impartial tribunal to ascertain that she legitimately consented to the

³ *Cf. Zinermon v. Burch*, 494 U.S. 113, 139 (1990) (holding that a patient who was unable to provide informed consent – but who was deemed voluntarily admitted to a mental-health institution – stated a procedural due process claim based on his commitment without the benefit of procedural safeguards).

⁴ In finding that there was a genuine dispute of material fact as to whether Collins coerced Spahr to sign the Child Safety Agreement, the District Court considered Spahr’s deposition, in which she “repeatedly testified that Collins led her to believe that she either had to sign the Child Safety Agreement or her children would end up in foster care,” *Spahr v. Collins*, 2022 WL 3700897, at *2 (D. Del. Aug. 26, 2022); *see, e.g.*, Spahr Dep. 80:5–7 (App. 221) (“I was told if you don’t sign this we’re going to put your children in foster care.”). There is also a separate exchange in Spahr’s deposition, in which she recalled Collins indicating “if I didn’t sign it that they would get a court order and my children would go into foster care.” *Id.* at 77:8–11 (App. 218).

loss of physical custody of her children – Spahr’s claim against Collins fails on qualified-immunity grounds. That is so because neither this Court’s precedent nor a robust consensus of persuasive authority affords notice to Collins that her specific actions violated Spahr’s procedural due process rights, and those actions were not obviously unconstitutional.⁵ For that reason, I concur in the disposition of this appeal, which concerns only the individual-capacity claims against Collins and does not involve a broader challenge to a lack of process under Delaware law in connection with Child Safety Agreements.

⁵ See *Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (per curiam) (“The dispositive question is whether the violative nature of *particular* conduct is clearly established . . . in light of the specific context of the case[.]” (emphasis in original) (cleaned up)); *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (explaining that clearly established law must be “dictated by controlling authority or a robust consensus of cases of persuasive authority” (internal quotation marks omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011))); cf. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).