



2003

Recent Developments: Goldberg v. Miller: Guardian Ad Litem Fees May Not Be Characterized as Child Support

Jennifer Merrill

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Merrill, Jennifer (2003) "Recent Developments: Goldberg v. Miller: Guardian Ad Litem Fees May Not Be Characterized as Child Support," *University of Baltimore Law Forum*: Vol. 33 : No. 2 , Article 3.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol33/iss2/3>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

Goldberg v. Miller: Guardian *Ad Litem* Fees May Not be Characterized as Child Support

By: Jennifer Merrill

In a case of first impression, the Court of Appeals of Maryland held guardian *ad litem* fees may not be characterized as child support. *Goldberg v. Miller*, 371 Md. 591, 612, 810 A.2d 947, 960 (2002). In so holding, the court concluded the Maryland Legislature did not intend for guardian *ad litem* fees to be included in calculating child support awards as such inclusion would not be in the best interests of the child. *Id.* at 601, 810 A.2d at 953.

As a result of a heated divorce and child custody dispute between Robert and Mary Miller, the Circuit Court for Montgomery County appointed David Goldberg (“Goldberg”) as guardian *ad litem* for the Miller’s minor child in August of 1999. For more than a year after the initial appointment, Goldberg represented the parties’ minor child in several other proceedings related to the Millers’ custody battle. Robert Miller was adverse to Goldberg’s continuing appointment, but the circuit court struck down his objections.

After hearings were held regarding payment of the guardian *ad litem* fees, the court entered an award of \$21,728.00 to be paid to Goldberg by the Millers. Robert Miller was ordered to pay \$14,340.48 and Mary Miller was

ordered to pay the remainder. The day following this judgment, Robert Miller filed for bankruptcy.

In order to secure payment from Robert Miller, Goldberg requested the court to characterize the guardian *ad litem* fees as child support to prevent their eligibility for discharge in the bankruptcy proceeding. Goldberg argued that if the fees were characterized as child support, then Robert Miller’s federal retirement benefits would become eligible for garnishment in order to satisfy the debt.

In compliance with Goldberg’s request, the circuit court entered a Supplemental Order stating all fees awarded to him were intended to be in the nature of child support in accordance with the definition of child support within Volume 5 of the Code of Federal Regulations, section 581.102(d), the federal child support garnishment regulation. Robert Miller’s motion to vacate the Supplemental Order was subsequently denied. On appeal, the Court of Special Appeals of Maryland reversed the decision of the circuit court, holding the trial court had exceeded its authority by characterizing the guardian *ad litem* fees as child support.

The Court of Appeals of Maryland granted certiorari to

address whether the trial court possessed “the authority to treat guardian *ad litem* fees as child support.” *Goldberg*, 371 Md. at 596-97, 810 A.2d at 950. Considering Goldberg’s request to characterize the fees as child support was based on his desire to garnish Robert Miller’s federal pension under 5 C.F.R. § 581.102(d), the court began its analysis with an examination of the federal regulation. *Id.* at 598, 810 A.2d at 951-52.

The federal regulation expressly permits garnishment of a federal pension for child support obligations. *Id.* at 598-99, 810 A.2d at 951-52. The regulation allows attorney’s fees to be characterized as child support as long as three requirements are met under 5 C.F.R. § 581.307. *Id.* at 599, 810 A.2d at 951-52. The requirements set forth, “(1) the award of attorney’s fees must come through a ‘legal process’; (2) the ‘legal process’ must expressly describe the attorney’s fees as child support; and (3) the court issuing the legal process must possess the authority to treat attorney’s fees as child support.” *Id.* at 599, 810 A.2d at 952.

The court recognized the circuit court’s Supplemental Order and its explicit language charac-

terizing the fees as child support as satisfying the first two requirements under the regulation. *Id.* at 600-01, 810 A.2d at 952-53. Accordingly, the court focused on the third requirement regarding the authority of the circuit court to treat the fees as child support. *Goldberg*, 371 Md. at 601, 810 A.2d at 953.

Maryland's Legislature promulgated child support guidelines in 1989 to "provide courts with uniform criteria that they must consider in awarding child support." *Id.* at 604, 810 A.2d at 955. Aside from the "enumerated criteria" in the guidelines, the Legislature expressly provided health insurance and medical expenses may also be characterized as child support. *Id.* at 604-05, 810 A.2d at 955. Both the legislative history and the guidelines are void as to any reference to treatment of attorney's fees as child support. *Id.* at 607, 810 A.2d at 956. In view of the specificity of the Legislature's treatment of expenses that may be considered child support, the court determined the legislature did not intend to allow guardian *ad litem* fees to be included in a support award. *Id.*

As further support for the legislative intent to exclude guardian *ad litem* fees in a support award, the court looked to Section 12-103(a) of Maryland's Family Law Article. *Id.* at 606, 810 A.2d at 956. This provision allows the court to exercise its discretion to award counsel fees to "either party" in matters of child support, custody, or visitation. *Id.* However, counsel

fees under this provision are for the benefit of the aggrieved party, not the child, and do not include guardian *ad litem* fees. *Goldberg*, 371 Md. at 606, 810 A.2d at 956. Moreover, the fee award under this provision may not be characterized as child support. *Id.*

The court also noted Maryland's Family Law Article sets forth guardian *ad litem* provisions in Title 1 and not in the Title 12 child support provisions. *Id.* at 607, 810 A.2d at 956-57. In consideration of the statutory scheme and legislative history of child support awards in Maryland, the court concluded the circuit court did not possess the authority to characterize *Goldberg's* fees as child support. *Id.* at 608, 810 A.2d at 957.

Next, the court considered the public policy ramifications of allowing guardian *ad litem* fees to be characterized as child support. *Id.* at 610-611, 810 A.2d at 958-59. The court noted child support and alimony debts are legally enforceable through contempt proceedings in Maryland. *Id.* As a result, a parent that cannot meet the obligation may be jailed for failure to do so. *Goldberg*, 371 Md. at 610-611, 810 A.2d at 958-59. The court stated, "the possibility of receiving such a harsh penalty could lead to unjust consequences . . . [in that] the award of attorney's fees could result in imprisonment for the parent." *Id.* Furthermore, the requirement to pay the attorney's fees out of the support award could result in the financial needs of the

child going unmet. *Id.*

The ruling by the Court of Appeals of Maryland in *Goldberg* reflects the desire of the Legislature to protect the best interests of the child by mandating uniform child support awards. Additionally, the decision accurately reflects the legitimate policy concerns of allowing attorney's fees to be characterized as child support. However, the opinion also exemplifies the need to create a system for securing payment to guardian *ad litem* attorneys in Maryland. These attorneys perform an essential function in representing the needs of minor children in contested and high conflict domestic legal matters by acting as their guardian during proceedings. Without payment of fees, this valuable service to children may no longer be available during a time when it is most crucial.