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Laznovsky v. Laznovsky

The Psychiatrist-Patient Privilege Clearly Applies in Child Custody Cases, Barring Disclosure of Parent's Mental Health Records

By Scott H. Amey

The Court of Appeals of Maryland held that under the Maryland psychiatrist-patient privilege statute, a parent seeking sole custody of his or her minor children does not place his or her mental health at issue requiring disclosure of the parent's privileged mental health records. *Laznovsky v. Laznovsky*, 357 Md. 586, 745 A.2d 1054 (2000). In so holding, the court rejected the claim that a parent who asserts parental fitness has placed his or her mental health at issue, and therefore waived the psychiatrist-patient privilege. The court's holding recognized the reinstated psychiatrist-patient privilege regarding child custody cases in Maryland, and did not compel the discovery of privileged information.

In 1995, Mrs. Laznovsky filed for divorce and sought sole custody of the couple's two children. In response to Mrs. Laznovsky's complaint, Mr. Laznovsky also sought sole custody of the children. In 1994, the couple saw a psychiatrist. In addition, Mrs. Laznovsky had a long history of psychiatric treatment during the course of her marriage.

The Circuit Court for Talbot County awarded sole custody of the children to Mrs. Laznovsky and held that she did not waive the psychiatrist-patient privilege by attempting to obtain custody of the children. Mr.

Laznovsky appealed the decision, asserting that Mrs. Laznovsky did waive the psychiatrist-patient privilege by claiming to be a fit and proper person. The Court of Special Appeals of Maryland vacated the trial court's order and held that Mrs. Laznovsky waived the psychiatrist-patient privilege. The Court of Appeals of Maryland granted Mrs. Laznovsky's petition for a writ of certiorari.

The court began its analysis by examining whether a statutory psychiatrist-patient privilege is waivable in a child custody case. In its consideration, the court gave great weight to the legislative history surrounding the adoption of the privilege in Maryland. *Id.* at 357 Md. 594, 745 A.2d at 10584 (citing MD. CODE ANN., CTS. & JUD. PROC., § 9-109(b) (1974, 1998 Repl. Vol.)). In so doing, the court found that in 1977 the Maryland General Assembly intentionally repealed the exception permitting trial judges to compel discovery relating to a patient's mental or emotional disorder as related to a psychiatrist or psychologist in a child custody dispute. *Id.* at 595, 745 A.2d at 1059 (citing 1977 Md. Laws, 685, repealing MD. CODE ANN., CTS. & JUD. PROC., § 9-109(c) (1974, 1998 Repl. Vol.)).

The court's examination of the legislative history found that the

Maryland Legislature was fully aware of the ramifications of repealing the child custody exemption and determined that the privilege outweighed the best interests of the child in custody cases. *Id.* at 599-600, 745 A.2d at 1061. The court concluded that the Legislature's repeal of the exception was clear and unambiguous. *Id.* at 603, 745 A.2d at 1063.

The court then considered the intent of the Legislature when it repealed the exception that permitted a court to compel privileged psychiatrist-patient information in child custody cases. *Id.* at 603-04, 745 A.2d at 1063-64. The court observed that the Legislature created exceptions that dealt with the accountant/client privilege, privileges regarding patients of mental health providers who exhibit a propensity for violence, and spousal privileges in criminal cases involving abuse to minor children. *Id.* at 604-05, 745 A.2d at 1064. With these privileges, the court noted, the Legislature expressly created, and never repealed, their exceptions. *Id.* The court further stated that the subsequent repeal of the child custody exception, and failure to include child custody exceptions in similar statutes, was a clear indication that no express psychiatrist-patient privilege exception now applies in any

child custody case. *Id.* at 606, 745 A.2d at 1065.

The court then analyzed the laws of other states to determine whether there is a required disclosure of the privileged material when mental health is put at issue. *Id.* at 608-09, 745 A.2d at 1066. Although many states have adopted statutes similar to Maryland's repealed legislation, the court did find a few cases in which other courts recognized the psychiatrist-patient privilege in child custody cases. *Id.* When deciding whether a parent waived the psychiatrist-patient privilege in child custody cases, the court found two different approaches from Alabama and Florida. *Id.*

The Alabama rule states that a party waives their psychiatrist-patient privilege in a child custody case where the mental state of the party "is clearly in controversy, and a proper resolution of the custody issue requires disclosure of privileged medical records . . ." *Id.* at 609, 745 A.2d at 1066. In *Thompson v. Thompson*, a woman alleged to be an alcoholic was required to reveal her privileged medical records in a child custody case. *Id.* (citing *Thompson v. Thompson*, 624 So.2d 619, 620 (Ala. Civ. App. 1993)). The *Thompson* court held that the privilege must yield in custody cases because the parent's mental state is at issue. *Id.* (citing *Thompson*, 624 So.2d at 620).

The Indiana Supreme Court advanced the Alabama approach when it held "that the mere filing of a custody action places the parent's mental health at issue, thus waiving the

privilege." *Id.* at 609-10, 745 A.2d at 1066-67 (citing *Owen v. Owen*, 563 N.E.2d 605, 608 (Ind. 1990)).

In contrast, Florida courts have held that parties do not waive their psychiatrist-patient privilege when they claim parental fitness. *Id.* at 613-14, 745 A.2d at 1069. (citing *Peisach v. Antuna*, 539 So.2d 544, 546 (Fla. Dist. Ct. App. 1989)). The court distinguished *Peisach* from other cases in which the party asserted a claim concerning their mental health by stating that the party made a specific assertion of a mental condition in support of a claim. *Id.* at 615, 745 A.2d at 1069-70 (citing *Davidge v. Davidge*, 451 So.2d 1051, 1051-52 (Fla. Dist. Ct. App. 1984)).

The court concluded its analysis by relying on the 1977 legislative policy decision to repeal the psychiatrist-patient privilege exception for child custody cases. *Id.* at 618-19, 745 A.2d at 1071-72. The court determined that the Legislature made a policy decision that the importance of confidential mental health treatment communications outweighed any exception for child custody matters. *Id.* at 619-20, 745 A.2d at 1072. The court declared that it was unwilling to ignore the Legislature's commitment to the psychiatrist-patient privilege. *Id.* at 620, 745 A.2d at 1072.

In lieu of waiving the mental health privilege in child custody cases, the court, in dicta, described that a waiver of the psychiatrist-patient privilege is not the only way for the court to access a patient's medical health records. *Id.* at 619, 745 A.2d at 1072. The court determined that

the party can voluntarily furnish the information, or a court may order current mental health evaluations to decide fitness to parent. *Id.*

The Court of Appeals of Maryland has effectively given parents who have sought mental health assistance an equal playing field in child custody cases. Parents should not be restricted if they desire to seek treatment by the fear that their disclosed communications will be held against them in a court. Moreover, the Maryland lawyer now has a choice in deciding what, if any, privileged psychiatrist-patient information will be turned over to the court. In many circumstances, the attorney will have to determine if the release of the privileged information will work to the advantage or disadvantage of their client.