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# Recent Developments: In re: Mark M. 2000: A Trial Court May Not Delegate Its Judicial Authority to a Non-Judicial Agency or Person to Determine the Visitation Rights of a Parent

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***In Re: Mark M. 2000***

**A Trial Court May Not Delegate Its Judicial Authority to a Non-Judicial Agency or Person to Determine the Visitation Rights of a Parent**

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By Amanda Sprehn

The Court of Appeals of Maryland held that when determining the visitation rights of parents under Md. Code Ann., Fam. Law. § 9-101 (1999), a trial court may not delegate its judicial authority to a non-judicial agency or person. *In re: Mark M. 2000*, 365 Md. 687, 782 A.2d 332 (2001). Additionally, the court held, a parent can make a motion to compel a physical or mental examination of a child pursuant to Maryland Rule 11-105 and Md. Code Ann., Fam. Law. § 3-818, when there is demonstrated good cause for the examination and a showing that the exam will not be harmful to the child. *Id.* at 717, 718, 782 A.2d at 350.

On July 5, 1994, Helen M. ("Helen") gave birth to her son Mark M. ("Mark"). Mark lived with Helen and Donald M., the father of Mark's sister Mary M. ("Mary"), in their Montgomery County, Maryland, home. On March 21, 1995, the Montgomery County Department of Social Services ("DSS") filed a petition, asserting that Mark and Mary should be declared children in need of assistance ("CINA"). The petition alleged that physical abuse, neglect, and substance abuse occurred in the children's home. Shortly thereafter, during the Spring of 1995, the Juvenile Court found Mark to be a child in need of assistance and committed him to foster care. However, Helen fled

the state with Mark, which delayed Mark's foster placement with his paternal grandmother until June of 1998.

On June 16, 1999, Helen filed two motions in the district court. The first was a Motion for Order to Enforce Visitation, asserting her attempts to visit with Mark were denied unless she consulted with Mark's therapist, and the second Motion asked that Mark be evaluated by an independent therapist of her choosing. The district court denied both motions and held that visitation was to occur only when Mark's therapist recommended it. Helen appealed to the Court of Special Appeals of Maryland, which affirmed the district court's decision regarding both motions. On November 27, 2000, Helen filed a Petition for a Writ of Certiorari with the Court of Appeals of Maryland. The court granted her petition to determine whether, it was improper for a juvenile judge to order that visitation between Helen and Mark be withheld until Mark's therapist recommended it, and whether it was an abuse of discretion to refuse to allow Mark to be evaluated by an independent psychiatric expert.

The court of appeals began its analysis by first addressing the trial court's order that visitation was not to occur between Helen and Mark

until Mark's therapist recommended it. *Id.* at 705, 782 A.2d at 342. The court noted that a parent's interest in raising a child is a fundamental right, recognized by the United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000). *Id.* at 705, 782 A.2d at 342-43. However, the State also has an interest in caring for children, who cannot care for themselves, pursuant to the doctrine of *parens patriae*. *Id.* at 705, 782 A.2d at 343. Therefore, a parent's otherwise acknowledged right may be denied where evidence of abuse exists; because, "courts are required by statute to deny custody or unsupervised visitation unless the court makes a specific finding that there is no likelihood of further child abuse or neglect." *Id.* at 706, 782 A.2d at 343.

In reaching this conclusion, the court relied on its interpretation of Section 9-101, which sets forth guidelines for juvenile courts to follow when determining parental visitation rights in CINA proceedings. *Id.* at 707, 782 A.2d at 344. Section 9-101 of the Family Law Article states:

(a) *Determination by the court-* In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child is has been abused or neglected by a party to the proceeding, the court shall determine whether abuse

or neglect is likely to occur if custody or visitation rights are granted to the party.

*(b) Specific finding required-* Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child. *Id.* at 708, 782 A.2d at 344.

Therefore, “when a court has reasonable grounds to believe that abuse has occurred, as did the juvenile court in this case, visitation must be denied unless the court specifically finds that there is no likelihood of further abuse or neglect.” *Id.* at 708, 782 A.2d at 344.

In the present case, the court of appeals found that the juvenile court had properly exercised its discretion by denying Mark’s parents visitation after he was found to be a child in need of assistance. *Id.* However, when the district court declared that visitation was not to occur until Mark’s therapist recommended it, the district court improperly delegated its authority and committed error. *Id.* at 708, 782 A.2d at 344. According to the court of appeals, a proper interpretation of section 9-101(b) dictates that once a denial of visitation is deemed appropriate, the only method of supplying the child’s parents with visitation is through a subsequent court proceeding. *Id.* at 709, 782 A.2d at 345. Therefore, “the court must not permit another agency or person to perform the very task for

which the court has been so entrusted”. *Id.* at 710, 782 A.2d at 345.

The next issue the court addressed was whether the juvenile court abused its discretion by denying Helen her request to have Mark examined by a clinical child psychologist of her choosing pursuant to Rule 11-105 and Section 3-818. *Id.* at 710, 782 A.2d at 346. Both Rule 11-105 and Section 3-818 are silent with regard to independent medical examinations, unless they are made by the state at the direction of the court, or by the court’s order *sua sponte*. *Id.* at 713, 782 A.2d at 347. Thus, the court turned to statutory interpretation to ascertain the scope and breadth of examinations contemplated by the Maryland legislature. *Id.* at 710, 782 A.2d at 346.

The court found, that the legislative intent of Rule 11-105 and Section 3-818 was to protect the best interests of a child during a proceeding. *Id.* Therefore, it would be in the best interests of a child to allow any party, including a parent, to a CINA proceeding to submit a motion for an independent medical evaluation. *Id.* at 717, 782 A.2d at 350. However, the party making the motion must demonstrate good cause for the examination, and be able to show that the proposed examination will not be harmful to the child. *Id.*

In reaching this conclusion, the court emphasized that subjecting a child to numerous examinations could be harmful and have a very damaging effect on the rest of child’s life, clearly this would be against his or her best

interests. *Id.* at 718, 782 A.2d at 350. Therefore, the court of appeals held the district court did not abuse its discretion by denying Helen’s motion for an independent medical evaluation of Mark, because she failed to demonstrate the absence of harm such an evaluation could have on him. *Id.* at 719, 782 A.2d at 351.

The Maryland Court of Appeals holding in Mark M. 2000, establishes the bright line rule that trial courts can never delegate their judicial authority regarding visitation determinations, between a parent and child, in CINA proceedings. In addition, Mark M. 2000 establishes that a parent may request an independent medical evaluation of their child during a CINA proceeding, when the exam will not be harmful to the child and is supported with good cause. By doing so, the court emphasized the importance of adhering to the best interests of the child when making decisions during CINA proceedings.