Outside Counsel

Protecting Mental Health Professionals In Child Custody Cross-Fire

With ever increasing frequency, litigants who are unhappy with the outcome of custody evaluations and rulings are venting their frustrations against court-appointed mental health professionals by commencing lawsuits against them. Although some states have passed laws aimed at protecting mental health professionals from such backlash, New York remains one of the many states in which the Legislature has remained silent. Fortunately for mental health professionals who accept court appointments in New York, the judiciary has spoken where the Legislature has not; the quasi-judicial immunity of court-appointed mental health professionals has enjoyed a long and respected vintage in all of New York’s sister Departments and in the Court of Appeals.

Judges and those who perform similar functions are not liable to civil claimants for their judicial or quasi-judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously and corruptly. Concomitantly, New York State courts have extended this privilege to court-appointed forensic experts and treatment providers, including psychiatrists, psychologists, and social workers, so long as the conduct at issue occurred during the course of the judicial proceedings and it was reasonably related to the purpose of those proceedings. Court-appointed experts in criminal and civil proceedings are immune from suit for any reports, recommendations, evaluations, treatment, counseling, or testimony rendered in this context.

To illustrate, in Deed v. Conbrell, a disappointed custody litigant brought claims of malpractice and fraud against a forensic psychologist. The Fourth Department affirmed the Supreme Court’s dismissal of the action against the psychologist and held that the privilege of judicial immunity extended to the psychologist’s testimony, report and any evaluations, treatments, or recommendations made in furtherance of his court-appointed duties.

Notwithstanding the relative success of the doctrine of quasi-judicial immunity, limitations exist and the defendants still experience the various burdens of litigation.

Similarly, in Braverman v. Halpern, the First Department held that the plaintiff’s motion to vacate his default:

...was properly denied on the ground that the allegedly defamatory statements are nonactionable, since they are contained in reports concerning plaintiff’s psychological and emotional problems that were prepared by defendant as an expert witness in a judicial proceeding involving child custody and visitation in which plaintiff’s mental condition was pertinent.

In Hom v. Reubins, the plaintiff commenced an action against a court-appointed forensic psychiatric expert to recover damages for malpractice. The Supreme Court granted the defendant’s motion for summary judgment dismissing the complaint. The Second Department affirmed, and held that:

The defendant demonstrated his entitlement to summary judgment dismissing the complaint. The defendant has judicial immunity from suit regarding the work he performed as a court-appointed forensic psychiatric expert in connection with the plaintiff’s child custody litigation.

In Mosher-Simons ex rel. Estate of Eck v. County of Allegany, the plaintiff brought a wrongful death action alleging that the defendant-county was negligent in placing her child in the care and custody of the child’s maternal aunt. The Supreme Court denied the defendant-county’s motion for summary judgment dismissing the complaint and the defendant appealed. The Fourth Department reversed and held that the county had judicial immunity from liability for negligent placement of the child. In so holding, the court stated, as follows:

The issue before us is whether defendant can be held liable for negligence with respect to the placement of Jarrett with Mosher. We conclude that it cannot. Because defendant performed the home study in the custody proceeding at the direction of Family Court, it has judicial immunity with respect to the claim for negligent placement. Furthermore, because defendant acted in a discretionary rather than a ministerial capacity when it issued the home study that included positive representations with respect to Mosher, defendant is immune from liability.

More recently, in Colombo v. Schwartz, the defendant brought a libel action against, among others, a psychiatrist in connection with the work that he performed as a court-appointed expert in the plaintiff’s spousal support litigation. The Supreme Court granted the psychiatrist’s motion to dismiss the complaint and the plaintiff appealed. In holding that the psychiatrist was entitled to absolute immunity from suit, the Second Department stated, as follows:
The defendant...has judicial immunity from suit regarding the work he performed as a court-appointed psychiatric expert in connection with the plaintiff's spousal support litigation. Since all three causes of action insofar as asserted against [the defendant] are based on the contents of the report he made to the court, the claims are barred by this judicial immunity.13

The New York state trial courts steadfastly adhere to this rule. In Young v. Campbell, et. al., during the course of an ongoing and protracted child custody dispute, the plaintiff commenced an action against thirteen defendants including psychologists, psychotherapists and social workers who were appointed by the Family Court to evaluate the plaintiff and his family members and to provide mental health services to these individuals.14

Justice John J.J. Jones, Jr. of the Supreme Court, Suffolk County, granted the defendants’ respective pre-answer motions to dismiss and thus reaffirmed the rule that court-appointed mental health professionals are entitled to quasi-judicial immunity for services rendered in the furtherance of their court-appointed duties.15

Specifically, Justice Jones stated, as follows: [A] psychiatrist appointed by the court as the neutral forensic evaluator with the consent of the parties’ attorneys and the children’s Law Guardian in an underlying custody proceeding in Family Court has judicial immunity from suit for malpractice regarding the work he performed. Statements in papers submitted in connection with a proceeding for visitation alleging sexual, verbal and physical abuse by the plaintiffs were nonactionable as contained in a letter concerning the plaintiffs’ psychological and emotional problems prepared by an expert witness in a judicial proceeding. Generally, the doctrine of judicial immunity extends to those parties acting in a “quasi-judicial” capacity in the course of their performance of court appointed duties. This privilege is based upon the public policy that expert witnesses must be encouraged to perform public services without fear of harassment or threat of litigation. The plaintiff has failed to plead any exception that would warrant lifting the immunity. Based upon the foregoing, it is determined as a matter of law that the named defendants, having become involved with the plaintiff pursuant to appointment by the court as neutral forensic evaluators in the matrimonial/custody proceedings, are protected by the cloak of immunity from this lawsuit.16

No Guarantees
The news, of course, is not all good. Even though the majority of New York state actions seeking damages based upon court-appointed forensic evaluation and treatment are dismissed, as Justice Jones alluded in Young, dismissal is not guaranteed. In Pietra v. State, 71 N.Y.2d 792, 530 N.Y.S.2d 510 (1988), the Court of Appeals reminded us that in the unusual circumstance where a public servant “has stepped outside the scope of his authority” and acted in the clear absence of all jurisdiction or without a colorable claim of authority, there is plainly no entitlement to absolute immunity, even if the underlying acts are prosecutorial or quasi-judicial in nature.”17

Thus, court-appointed forensic evaluators and mental health professionals who act without any colorable claim of authority would not be entitled to absolute immunity, “even if [their] acts would otherwise have been considered quasi-judicial in nature and for that reason deserving of full protection.”18

Notwithstanding the relative success of the doctrine of quasi-judicial immunity, limitations exist and the defendants still experience the various burdens of litigation. Given the legislative silence on this issue, the courts of this state remain authorized to further limit the applicability of this defense at any time. Should the judiciary enact such limitations, mental health professionals will likely shy away from court appointments and public service in areas where their involvement is so critical.

Perhaps the time has come for the New York State Legislature to consider enacting legislation, as have other states, aimed at preventing unhappy child custody litigants from clogging the legal system with such frivolous suits once and for all.

1. For example, Florida and West Virginia have enacted laws aimed at protecting court-appointed mental health professionals. See W. Va. Code, §§5-7-21 (creating presumption of good faith for court-appointed licensed psychologists and psychiatrists conducting child custody evaluations); F.S.A. §61.122 (creating presumption of psychologist’s good faith).

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