

Dear Senate Inquiry - Shared Parental Responsibility Bill 2005

This is a my submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

Families oppose lawyers' immunity

A state bill would give lawsuit protection to attorneys for children in custody battles, but aggrieved parents want accountability

By JoAnna Daemmrich
sun reporter

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HAGERSTOWN -- Four and a half years ago, a father walked shakily out of the courthouse here, heartbroken. He had just failed to get custody of his 5-year-old boy, even though his ex-wife was engaged to a convicted child molester. "I honestly feel from the depths of my heart that my son will be in grave danger," the father wrote Washington County Circuit Judge Fred C. Wright III, imploring him to reconsider.

"What if you are wrong?" he went on in an emotional, 11-page letter in the court file. "What could you do for [my son]? Say you were sorry? It would not change his experience. It would not comfort him when he wakes up in the middle of the night."

Today, the father says his worst nightmare has come true, prompting him to join a state battle over the accountability of court-appointed lawyers for children. In this case, he believes his son's lawyer, whose job it was to investigate the case on behalf of the judge, favored the boy's mother and ignored critical evidence against her and her soon-to-be husband.

The General Assembly is considering emergency legislation to restore broad immunity to such lawyers, called "guardians ad litem," after Maryland's highest court ruled recently they could be sued for malpractice.

On one side are family law attorneys, who fear they will be hit with lots of lawsuits because their decisions almost always make at least one parent unhappy in bitter custody battles.

"Run, do not walk. ... Get out NOW!" Gaithersburg lawyer David S. Goldberg wrote in an e-mail urging fellow attorneys to refuse future court assignments as guardians - and to remove themselves from current cases.

On the other side are parents, who find they have little or no recourse if an attorney assigned to a child plays favorites, ignores or suppresses evidence or fails otherwise to advocate properly for the child.

'Terrible mistake'

"I want to highlight the terrible mistake the guardian made in my case and the consequence," said the 33-year-old father, a Pennsylvania constable, whose name is being withheld by The Sun to protect his son's identity. He plans to testify against the bill at a Senate committee hearing today.

His son, now 9, told Washington County authorities last month that his stepfather had sexually abused him and two friends, according to the Jan. 17 sheriff's report. The boy described abuse that began when he was 5, shortly after his mother married the convicted offender - and continued through last Christmas.

Larry Phillip Slack Jr., 44, is now in jail, charged with 28 counts of child abuse, records show. Slack could not be reached for comment; he was unable to make \$750,000 bail and has yet to notify the court of his chosen attorney.

"It's too late for my son. The damage is done," the father said. "I just don't want to see this happen to other kids."

Not many cases have such extreme outcomes, family lawyers say. The overwhelming majority of divorces that result in custody disputes are resolved without lengthy court battles. Only in a fraction of custody cases do courts have to intervene and assign an attorney to represent the interests of the child.

Unlike court-appointed lawyers who act in financial or estate cases, child guardians in custody disputes traditionally have enjoyed immunity from malpractice claims. But on Jan. 18, the Maryland Court of Appeals ruled that they should be treated the same as any other attorney.

That frightens family lawyers, who say their decisions often upset parents. Said Goldberg, the Gaithersburg lawyer: "One party or the other is going to be mad at you. We call it as we see it."

In Montgomery County, judges have been flooded with petitions from attorneys asking to be excused as guardians.

Maryland keeps no statistics on how often lawyers represent children in custody fights, said Pamela Cardullo Ortiz, executive director of the Department of Family Administration at the state's Administrative Office of the Courts. But should these attorneys quit in large numbers, she said, "it could impact the ability of the court to make good decisions in these cases. It enhances the quality of decision-making in very high-conflict cases when there's a child's attorney."

Del. Kathleen M. Dumais, a Montgomery County Democrat who introduced the emergency legislation in the House, said she feared fewer lawyers would sign up. Dumais, a family lawyer who has served as a guardian ad litem, said it's the children in the biggest custody fights who need an independent advocate the most.

"Many times, you're put in very high-conflict cases," she said. "Both parties feel so incredibly strongly, and there's going to be a judgment call. That's why I think some immunity is appropriate."

Guardians essentially should be seen as an extension of the judicial branch, she said - and, like judges, should not be held liable. In fact, these lawyers typically act on behalf of the judge, interviewing all parties, checking court, school and medical records, visiting homes.

'Just plain stupid'

Often, child guardians get paid reduced rates by parents, if they're paid at all, said Goldberg, who has served "40 to 50 times" in his 40-year career. Sometimes, he said, it's difficult to collect.

Representing children is a "noble endeavor," he wrote in his e-mail to fellow lawyers. But to do it when there's the likelihood of getting sued - which at the very least will lead to high malpractice insurance fees - is "just plain stupid," he said.

Eileen King, the Washington regional director of Justice for Children, disagrees. The nonprofit, which advocates for children in custody disputes that

involve abuse allegations, is lobbying against the immunity bill. As it is now written, said King, "they have set the bar so high it's hard to imagine a case going forward." Only a child can sue, and only in cases of "willful or reckless disregard." Otherwise, child guardians would be "immune from civil liability for any act or omission," according to the bill.

"How can the public have confidence in a professional group that thinks it's unfair to be held accountable for measurable harm they've caused?" said King.

Family courts have long been an "enclosed system," said King. Judges appoint child guardians they know; in turn, the guardians follow the judge's direction. Sometimes, said King, the children get left out of the equation.

That's what Elizabeth Ritter of Chevy Chase says she discovered in a bitter dispute with her ex-husband over child visitation rights. Ritter, herself a federal attorney, grew so disgusted with the way the guardian for her daughter handled the case that she sued him for malpractice. Her daughter, who has a different last name, was 3 when Ritter started the fight; now she is 11.

Ritter alleges that attorney Vincent Wills allowed "his friendship with the child's father to influence his judgment," according to her suit. Wills declined to comment.

Moreover, Ritter claimed Wills "failed to address the father's inappropriate touching" of her daughter - and went on to allow unsupervised visits. The final insult was a \$200,000 legal bill - much of it charged by Wills.

Two lower courts dismissed the case, ruling that guardians ad litem had some immunity. But Ritter persevered, fighting to the Court of Appeals.

"We all have canons of ethics," said Ritter, counsel for the U.S. Commodity Futures Trading Commission. "If I screw up, I'm liable for that. This is about doing your job as a lawyer, which I take very seriously."

She is hopeful the ruling will shed light on the guardian system, which she says has "too few checks and balances."

"These individuals are often unregulated and receive no training prior to their appointments," she said.

To the father of the Washington County boy, there are striking parallels. Like Ritter, he believes the court-appointed lawyer for his son overlooked critical evidence and favored the boy's mother.

When the father first sought custody in April 2001, he figured it would be quick and easy.

A surprise ruling

The father was a correctional officer at Hagerstown; his ex-wife's fiancé, Slack, had a criminal record. Slack had pleaded guilty in 1994 to two counts of child abuse for fondling an 8-year-old boy in Mount Airy and been sentenced to five years' probation and counseling.

But on the day of the custody trial, Oct. 15, 2001, the father was stunned by the report of his son's lawyer, according to an interview and his letter to the judge. Patricia A. Patton, a family lawyer in Hagerstown, wrote that the father allowed his son to play with toy guns, taught him to shoot a BB gun and showed him violent movies.

Patton did not return calls. In his letter to Wright, the father disputed Patton's report as distorted. He argued that he had taught his son gun safety and watched "John Wayne movies."

"It was my understanding in bringing the custody case that it would be decided if Mr. Slack posed an unreasonable threat to my son," he wrote to Wright. "Instead, I found my judgment and parenting skills on trial."

News of Slack's arrest shocked the judge and others involved in the custody case. Judge Wright, told of it in his chambers a week ago, somberly shook his head. "Sounds like he [Slack] turned out to be a bad apple," Wright said.

The judge said he did not recall the case. But his Oct. 16, 2001, decision appeared to be designed to "make the best of a bad situation," he said after being read the ruling.

In it, Wright ordered that Slack "refrain from any physical discipline or inappropriate touching of the child." And the judge forbade the father from showing any "X- or R-rated movies."

Like the father, the boy's mother (whose name is also being withheld to protect the child) said she's angry and hurt. But she defended her custody fight, saying she believed that Slack, whom she had met in church, had turned his life around.

"I can't read someone's mind," she said in a phone interview, adding "there were people who testified - therapists who had seen him for seven years, a pastor who couldn't have imagined this."

She believes "justice will be served." For now, she said, she is focused on helping her son.

The father, meanwhile, is trying to make sure the same thing doesn't happen again. His case has drawn the attention of Justice for Children, which is investigating with an eye toward a possible appeal.

"Here there is a history of conviction and a guardian talking about an acceptable risk," King said. "I think most people would agree that's outrageous."

Sun reporter Stephanie Desmon contributed to this article.

<http://www.baltimoresun.com/news/local/bal-md.abuse21feb21,0,6878933.story?coll=bal-local-headlines>

Thank you for reading my submission

Name: Ash Patil

Postal Address: PO Box 57, THIRROUL, NSW