

## Custody Disputes – Parent Reporting Child Abuse

### Avoiding Liability Bulletin - June 2011

...Suppose that a client enters into a professional relationship with a counselor or therapist and explains that her marriage is falling apart. The kids are being negatively affected and she needs someone to help her through this stressful situation. She describes herself as being depressed. Not long into the professional relationship, the client tells the practitioner that she is concerned about her daughter, who is 11 years of age. She suspects that the daughter may have been sexually molested by her husband, the father. The client brings the daughter in for evaluation and treatment. Before the practitioner can determine whether he or she has a reasonable suspicion of sexual abuse, the mother files a child abuse report with a child protective services agency. The child abuse investigation results in a finding that the abuse was not substantiated (the investigation report is “inconclusive”).

In the custody litigation, the father claims that the wife should not be awarded custody because of her attempts to manipulate the system so as to gain an advantage with the judge. How might or should the Court view the matter? If the wife made a lawful report of suspected sexual abuse of the child, the Court should not, solely because of such report, punish her in any way that affects her rights to custody or visitation. It must be remembered that the standard for reporting, both for mandated reporters and those who are “permissive” reporters, is not limited to knowledge (perhaps the result of an admission or an observation), but rather, includes situations where there is “reasonable suspicion” (or, depending upon state law, a similar term) of child abuse (e.g., sexual abuse by the father of a minor daughter). Many child abuse investigations result in an inconclusive finding – that is, the report is not sufficiently substantiated. In essence, there is simply not enough evidence to determine whether child abuse occurred. Such a result does not necessarily mean that the reporter did anything wrong.

Had the investigation resulted in a determination such as “unfounded,” and depending upon other circumstances (such as critical commentary by the investigator regarding the reporter), perhaps the reported abuse would be found to be false or inherently improbable. In such cases, the court may limit the reporting parent’s custody or visitation. The law may require that there be substantial evidence that the parent who reported the suspected sexual abuse knowingly made a false report. Each state’s laws will vary to some extent (as I often say, the “fine nuances of the law”). It may also have to be demonstrated to the court’s satisfaction that the reporter acted with the intent to interfere with the other parent’s lawful contact with the child. State laws dealing with custody may also require that the child abuse report be made during the pendency of a custody proceeding in order for the court to make an adverse decision against the reporter’s right to custody or visitation based solely upon his or her reporting of child abuse. Alternatively, state laws may be silent on some of these matters.

The fact that the patient brought the daughter to see a licensed mental health professional for

evaluation and treatment should not be used against the wife. While the father may allege that this too was part of the effort to position the wife in the custody battle, the mere fact of bringing the girl in for evaluation and treatment should not be able to be used against the mother (assuming that “bad faith” is not demonstrated). In summary, all that the mother needed in order to make a lawful report of child abuse was reasonable suspicion. To not make a report because of a fear that child abuse may not be found by the investigators (perhaps because of negligence, incompetence, or the lack of evidence), is not good for the safety of children. Thus, lawmakers in every state (I trust) have enacted immunity statutes that protect those who report child abuse, whether they are mandated reporters or not. There may be a requirement as a condition of immunity that the reporter acts in good faith – or, not in bad faith.

**Author:**

Richard Leslie