

## Child Custody and Mental Illness

### 1. Thesis Statement

Mental illness by itself is not sufficient reason to deny parents custody of their children. Many people with mental illnesses are still capable of properly parenting their children.

### 2. Scope

This paper will discuss how psychology is an inexact science and how the courts do not completely rely upon it to make child custody decisions. This paper will also address the fact that even if one has been diagnosed with a mental illness, it does not prevent one from retaining the custody of their children. There are more important factors, such as harm and detriment to the child that determine custody of children, and we cannot make assumptions that just because one is mentally ill they will harm their children.

This paper is not an exhaustive research into all the factors that determine child custody. It only focuses on how the courts have ruled in regards to some mental illness and child custody cases.

### 3. Argument

Parenting is a constitutional right that must be protected. By the 14<sup>th</sup> Amendment to the U.S. Constitution, people are guaranteed life, liberty and happiness. “No State shall . . . deprive any person of life, liberty, or property, without due process of law.”

*In Re Carmelita B.*, the court said that “Parenting is a fundamental right, and accordingly, is disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood.”<sup>1</sup>

The California Supreme Court has said that “Our society does recognize an ‘essential’ and ‘basic’ presumptive right to retain the care, custody, management, and companionship of *one’s own child*, free of intervention by the government”

and “the state may disturb an existing parent-child relationship only for strong reasons and subject to careful procedures.”<sup>2</sup>

In order to protect Constitutional rights, the mentally ill should only be denied custody of their children if they present a danger to their children or are unable to properly care for them. The court in *In re B.G.*, held that where custody of children was in issue, it requires a finding by the court that placement away from the parent “... is *essential* to avert harm to the child....”<sup>3</sup> (Italics added.)

Just because a person is mentally ill does not mean they cannot parent their children. Mental illness is not a barrier to child custody and it does not always hurt or harm a child. The court said *In Re Jamie M.* that “Harm to the child cannot be presumed from the mere fact of mental illness of the parent. . . .”<sup>4</sup>

“A psychotic illness can, but does not need to, interfere with an individual’s ability to be a good parent. Given well-timed, appropriate, and adequate education and resources, many individuals with psychotic illness succeed in parenting their children.”<sup>5</sup>

In the *Matter of Nereida S.*, the court said that termination of a mentally ill parent’s custody of their child is only warranted when their conduct presents an inability to care for their child. The court further went on to emphasize that it was the parent’s conduct and not their mental illness that should be the basis for a termination of parental rights.<sup>6</sup>

Further, mental health professionals should take special care when making mental illness diagnoses and judges should not blindly follow a mental health professional’s diagnoses. Psychology is an inexact science based upon theory and opinion. Diagnoses are difficult to standardize because there are no specific physical findings or laboratory data---just human behavior which constantly changes.<sup>7</sup>

The court in *Simms v. State, Dept. of Health & Rehab.*, described psychological testimony as psychobabble and said that it cannot be the basis for terminating a parent’s custody of a child. “[T]hat vague, ‘undeniable, but impertinent’

underpinning, formulated from testimony best described as psychobabble, cannot form the basis of an order that severs for all time the bonds of parent and child.”<sup>8</sup>

There is plenty of evidence showing that the courts are aware that psychology is not completely reliable. *In Re Carmelita B.* the court said that “[F]amily rights, both the parent's and the child's rights, should not be vulnerable to a too easy finding of mental illness.”<sup>9</sup>

Psychologists and psychiatrists are sometimes too quick to diagnose a person with a mental illness and do not always take the time needed to properly diagnose. The court *In Re Carmelita B.* noted that Dr. Vargas’ mental illness diagnosis of Mrs. B. was made after only one 1-hour examination. The court found that there was “no substantial evidence for a finding that Mrs. B. was mentally ill.”<sup>10</sup>

And in *Addington v. Texas*, the court said that abnormal behavior may seem like a mental illness but in fact may not be. “At one time or another every person exhibits some abnormal behavior which might be perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable.”<sup>11</sup>

In *Santosky v. Kramer*<sup>12</sup> the court said that “A finding of mental disability must be supported by the evidence of two experts. . . .” This is because the diagnoses of mental health professionals can be so variable. One professional may find there is a mental illness while the other may not.

Even if a person has been diagnosed with a mental illness, this diagnosis does not say how children will be affected. In *Re Jamie M.*, the court said this about a mother with a mental illness diagnosis. “The mere fact she is labeled a schizophrenic really tells us very little about her behavior and its affect [*sic*] on her children.”<sup>13</sup>

*In re Heather P.* the Court of Appeal said that detriment and harm to the child cannot be presumed because of mental illness of the parent. The court said, “It cannot be presumed that a mother who is proven to be ‘schizophrenic’ will

necessarily be detrimental to the mental or physical well-being of her offspring. There are innumerable eccentric parents whose behavior on certain occasions may be less than [sic] socially acceptable and yet they are loving and compassionate parents.”<sup>14</sup>

The court found that a psychologist’s opinion was insufficient to support a finding of detriment. The psychologist’s general statements did not show how the minor would be harmed.<sup>15</sup>

### Conclusion

Mental illness should not prevent a parent from parenting their children. Rather, conduct that is contrary to the well-being of the child should be taken into consideration and mental illness by itself should not prevent a parent from retaining custody of their children.

Mental illness is like a disability and as the handicapped are not denied custody of their children just because of their disability, the mentally ill should not be denied custody of their children just because of their mental illness.

The Americans with Disabilities Act prohibits discrimination against the mentally ill.<sup>16</sup> The mentally ill are often subject to overprotective rules and policies, discrimination and prejudice. People with mental disabilities are frequently precluded from participating in all aspects of society because of prejudice and discrimination.

The new amendment to the ADA in 2008 "makes it absolutely clear that the ADA is intended to provide broad coverage to protect anyone who faces discrimination on the basis of disability".

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<sup>1</sup> *In Re Carmelita B.*, 21 Cal.3d 482 (1978), 146 Cal. Rptr. 623

<sup>2</sup> *In re Kieshia E.*, 6 Cal.4th 68, 76 (1993), 23 Cal. Rptr.2d 775, 859 P.2d 1290

<sup>3</sup> *In re B.G.*, 11 Cal.3d 679, 699 (1974)

<sup>4</sup> *In Re Jamie M.*, 134 Cal. App. 3d 530 (1980), 184 Cal. Rptr. 778

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<sup>5</sup> Mary V. Seeman, "Intervention to Prevent Child Custody Loss in Mothers with Schizophrenia"  
<http://www.hindawi.com/journals/sprt/2012/796763/>

<sup>6</sup> Matter of Nereida S., 57 N.Y.2d 636, 640

<sup>7</sup> See Martin and Deidre Bobgan, *Psychoheresy* (1<sup>st</sup> ed. 1987)

<sup>8</sup> *Simms v. State, Dept. of Health & Rehab.*, 641 So.2d 957, 963 (1994)

<sup>9</sup> *Supra* note 1, at 489

<sup>10</sup> *Supra* note 1, at 492.

<sup>11</sup> *Addington v. Texas*, 441 U.S. 418 (1979) at page 427

<sup>12</sup> *Santosky v. Kramer*, 455 US 745 (1982)

<sup>13</sup> *Supra* note 4, at page 540

<sup>14</sup> *In re Heather P.*, 203 Cal. App.3d 1214, 1228 (1988)

<sup>15</sup> *Id.* at 1229-1230

<sup>16</sup> 42 U.S.C. 12101