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Matrimonial Matters

When mental illness leads to child neglect

Attorneys who work in family law will at times encounter people with psychological disorders. In fact, sometimes the problems occurring in our cases are rooted in a mental disorder of one or more of the parties. Mental illness is the issue in Ruth Joanna O.O. (Melissa O.), 149 A.D.3d 32 (1st Dept., 2017). In this case, the majority affirmed the Family Court decision determining the Respondent Mother (Melissa) had neglected the child, while two justices dissented

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Melissa, the mother of a three-month-old daughter, was found at 3 a.m. "walking in the middle of a Texas road, talking to herself ... [saying] that she had killed her husband, that she and her daughter were 'the devil' and that she also was Jesus's wife." Upon being taken to a Texas mental health facility, she was "non-compliant and refused medications." She was sent to inpatient treatment in Texas, but was later released with a prescription for an antipsychotic medication, which she later admitted she stopped taking.

Soon afterward, Melissa returned to New York with her child, and shortly thereafter, Melissa walked into the emergency room at St. Barnabas Hospital in New York City, requesting that her daughter "be checked." Melissa's behavior was reported to be "erratic" and she told ER workers that "she had been raped while in a psychiatric hospital in Texas."

She later told the ER personnel that a "Free Mason" ... "raped" her child, and also claimed that a "Free Mason" had raped her. Melissa stated in the ER that she thought her daughter had been raped by her cousin, claiming that the basis of her belief was that she had observed that a "cotton bud" lubricated with "Vaseline" went "high up" in the child's rectum when her mother was "dealing with the child's constipation."

At St. Barnabas, Melissa was diagnosed as having a "delusion of persecutory type." Melissa's sister told the psychiatrist that she was willing to have Melissa live with her, and Melissa was discharged with a prescription for Abilify, an antipsychotic drug, with a directive to follow up with outpatient mental health services. A month later, Melissa again went to St. Barnabas and asked for another evaluation because she did not believe she needed the prescribed medication. Although the staff wanted to get a "psych consult," Melissa left before it could be completed.

The Family Court considered considerable specific documentation and testimony regarding Melissa's condition and behavior, including that involving her daughter, and found that Melissa "suffers from a mental illness, which impairs her ability to care for [the child], and that her conduct in failing to take prescribed medication and follow up with outpatient mental health services constitutes neglect."

On appeal, the First Department affirmed the lower court's decision, stating, "The overwhelming evidence on the record ... showed that the mother was suffering from mental illness, that she lacked insight into her illness and need for treatment, and that her mental condition interfered with her judgment and parenting abilities, thus placing her infant daughter, who was totally dependent on the mother, at imminent risk of physical, mental, or emotional impairment."

Two of the appellate justices dissented, stating that the Family Court finding was "erroneous for two reasons. First, it finds neglect without a finding, or any support in the record for a finding, that the child was harmed or at imminent risk of harm. Second, it makes findings not supported by admissible evidence." Although agreeing that Melissa had a mental illness, the dissent argued "that finding alone is insufficient for a neglect finding as a matter of law." The dissent stated that the Family Court should not have considered some of the evidence, including records obtained

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from the Texas incident, and that no harm to the child was proven.

However, the majority maintained that the "risk of imminent harm" is "sufficient to sustain a neglect finding." The majority continued, "If would be irrational for the court, with knowledge of a risk of imminent harm to the child, not to act until actual harm is inflicted. This would be an absurd result. The child's safety and welfare should be the paramount concern and all necessary actions should be taken to prevent any harm to the child."

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