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RECENT DEVELOPMENT

IN RE MARIA P.: A PARENT'S DUE PROCESS RIGHTS ARE VIOLATED WHEN EXCLUDED FROM A CHILD IN NEED OF ASSISTANCE ADJUDICATORY HEARING WITHOUT THE BENEFIT OF A FACTUAL DETERMINATION THAT SUCH EXCLUSION IS WARRANTED AND IN THE BEST INTEREST OF THE CHILD.

By: Shahrzad Rezvani

The Court of Appeals of Maryland held that excluding a parent from a child in need of assistance (“CINA”) adjudicatory hearing during the child’s testimony, without the factual basis to support exclusion, is an abuse of discretion and a violation of the parent’s due process rights. *In re Maria P.*, 393 Md. 661, 904 A.2d 432 (2006). In so holding, the Court remanded the case to the juvenile court, stating that parents have a due process liberty interest in the care and custody of their child. *Id.* at 679, 904 A.2d at 433.

On September 20, 2004, Maria Gabriella P. (“Gabby”), age 12, told her mother, Matrida R. (“Matrida”), that a week earlier four men had raped her. Medical exams revealed that she was six weeks pregnant. The following day, Gabby stated that her stepfather, Victoriano, had actually raped her. Larissa Holstead (“Holstead”), of Montgomery County Welfare Services, was contacted because of the allegations against a family member.

Gabby’s pregnancy was terminated and Matrida subsequently obtained a temporary protective order. Holstead became concerned that Matrida did not believe Gabby’s allegations. This concern was furthered when Matrida failed to obtain a permanent protective order against Victoriano. Matrida refused to get a permanent protective order when she learned that Victoriano may be arrested if he did not appear at the hearing. Rather than obtain a permanent protective order, Matrida agreed to prohibit him from contacting Gabby. Gabby later overheard her mother stating she had forgiven Victoriano. In response, Gabby laid under a parked truck for thirty minutes. As a result of this incident, Matrida informed Holstead that she was concerned that she could not properly care for Gabby.

On November 9, 2004, Gabby disclosed that H. Goldames (“Goldames”), the boarder in her home, had raped her before she was raped by Victoriano. Holstead informed Matrida that Gabby could not return home until Goldames left. However, Matrida refused to ask him to leave because she did not have enough money to return his rent money.

As a result of Matrida’s decision to continue housing Goldames, Matrida requested that Gabby be placed in foster care. Gabby recanted the allegations against her stepfather when she was in foster care. Holstead was concerned that Matrida had pressured Gabby to do so. The Montgomery County Department of Health and Human Services filed a CINA petition in the Circuit Court for Montgomery County, sitting as a juvenile court, alleging that Gabby was a CINA pursuant to Maryland Courts and Judicial Proceedings Article section 3-801(f) (2006). At the adjudicatory hearing, Matrida was excluded from the courtroom during Gabby’s testimony because of the court’s concern that Gabby might not testify truthfully in the presence of her mother. Matrida was also not provided with a recorded copy of Gabby’s testimony. Based largely on Gabby’s testimony that she did not feel her mother believed her allegations, the court held that Matrida was “unable or unwilling” to properly care for Gabby and Gabby was determined to be a CINA who should remain in foster care.

After being excluded from Gabby’s adjudicatory hearing, Matrida appealed to the Court of Special Appeals of Maryland which affirmed the circuit court’s decision to exclude her. The Court of Special Appeals relied on Maryland Rule 11-110(b), which provides that only persons necessary or desirable may be present at the hearing. The Court of Appeals of Maryland granted Matrida’s petition for certiorari to determine whether the circuit court judge appropriately excluded Matrida from the adjudicatory hearing.

The Court of Appeals of Maryland began its analysis by examining Rule 11-110(b) and holding that a parent, as a party in a CINA proceeding, is considered a person whose presence is generally necessary under Rule 11-110(b). *In re Maria*, 393 Md. at 672, 904 A.2d at 439. In addition, the Court cited Maryland Courts and Judicial Proceedings Article section 3-801(f) which states that a juvenile court may only admit people having a direct interest in the proceeding, which includes a parent. *In re Maria*, 393 Md. at 672, 904 A.2d at 439.

In addition to the due process rights accorded to parties to litigation, the Court also finds the due process clause to be implicated because of a parent's fundamental right to raise a child. *In re Maria*, 393 Md. at 675, 904 A.2d at 441. This fundamental right, however, is not absolute. *Id.* The Court held that a child's best interests shall be considered and Matrída clearly has an interest in the care of her child. *Id.* Furthermore, when a state attempts to change the parent-child relationship, the due process clause is implicated. *Id.* at 676, 904 A.2d at 441 (citing *Wagner v. Wagner*, 109 Md. App. 1, 25, 674 A.2d 1, 12-13 (1996)).

Having established that Matrída is owed due process consideration, the Court next established the amount of process to which Matrída was entitled under the Fourteenth Amendment of the U.S. Constitution. *In re Maria*, 393 Md. at 672, 904 A.2d at 439. The motion to exclude Matrída from the hearing occurred immediately after the parties' opening statements. No testimony or exhibits were entered into evidence that showed the hearing judge considered Matrída's due process rights. *Id.* at 675, 904 A.2d at 441. The Court of Appeals thus criticized the circuit court's decision to exclude Matrída because the court had no factual basis on which it based its opinion. *Id.* at 672, 904 A.2d at 439.

In analyzing due process provisions under the Fourteenth Amendment to the U.S. Constitution and under Maryland law, the Court focused on the due process implications when a party is excluded from a hearing. *Id.* at 678, 904 A.2d at 442 (citing *Green v. North Arundel Hosp. Ass'n*, 366 Md. 597, 620-21, 785 A.2d 361, 375 (2001)). The Court implied that under appropriate circumstances, in a CINA proceeding, a juvenile court may exclude a parent during the testimony of a child. *In re Maria*, 393 Md. at 677, 904 A.2d at 442. However, the juvenile court's decision is restricted and must be exercised within applicable constitutional limitations. *Id.* In the matter of *In re Johnson*, the Court of Appeals of Maryland held that although juvenile proceedings are relatively informal, "the rules of practice, of procedure, of evidence, and standards of fairness must be observed." *In re Maria*, 393 Md. at 677, 904 A.2d at 442 (quoting *Johnson*, 254 Md. 517, 524, 255 A.2d 419, 422-23 (1969)). Furthermore, Matrída was not given a recorded copy of Gabby's testimony, which is inconsistent with practice in Maryland. *In re Maria*, 393 Md. at 678, 904 A.2d at 443. Maryland custody cases typically require that an excluded party be provided with a recorded copy of a child's testimony. *Id.*

The Court reversed the circuit court's decision to exclude Matrída from the adjudicatory hearing. *Id.* at 661, 904 A.2d at 432. In so holding, the Court ruled that Matrída's due process rights were violated when she was excluded from her child's CINA proceeding, which resulted in unfairness and prejudice to her. *Id.* at 663, 904 A.2d at 433.

The Court's decision is important because it mandated that an inquiry must be made into the exclusion of a parent from an adjudicatory hearing. The Court's decision implied that while a juvenile court does have the discretion to exclude unnecessary persons from a hearing, this discretion is limited. Despite the Court's rationale as to why the circuit court should not have excluded Matrída, its holding may not provide adequate protection for children who may be influenced by their parents' presence at a CINA hearing. This parental influence could cause the child not to receive adequate care and protection throughout his or her childhood. By providing a taped recording of the child's testimony to the parent, a court may satisfy the parent's due process rights while still protecting the child from parental influence.