

THE



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Protect the lawyers who protect Maryland's children

BY JOHN SPIEGEL

Legislation is pending before the General Assembly of crucial importance to one of the most vulnerable groups of Marylanders: children who are the subject of contested custody battles between their parents.

The pending legislation, which was drafted in response to the recent decision of the Maryland Court of Appeals in *Fox v. Wills*, would restore to Maryland judges the authority to appoint attorneys to represent the best interests of children.

Speaking in Annapolis last week, Pamela Cardullo Ortiz, a representative of the Maryland judiciary, described the appointment of these "best-interest attorneys" as one of the best tools a trial judge has to ensure

that custody trials protect children and focus on their real needs. "Give us back this tool," she said.

And for good reason. Best-interest attorneys serve primarily in high-conflict cases and function as the eyes and ears of the court. They build a relationship with their child clients and interview parents, teachers, therapists and other important figures in the child's life in order to reach thoughtful conclusions as to what is best for the child.

In court, these attorneys give voice to the child's views and advocate for the child's best interests. Montgomery County Circuit Judge Ann Sundt has testified that if courts lose the ability to appoint best-interest attorneys, it will set back the administration of justice in child custody cases by 20 years, weak-

ening many child-centered reforms instituted during the past two decades.

In order to protect the independence of these court-appointed best-interest attorneys, the bills also provide them with a limited form of immunity from malpractice liability so that they will not be subject to retaliation from disgruntled parents. This problem of retaliation is inherent in their job and must be addressed.

In almost every case, the best-interest attorney is compelled to advocate positions that anger one or both parents because, as the children whose interests they represent, these lawyers are caught in the crossfire of parental conflict. This is especially so in custody battles involving allegations of physical or sexual abuse of children because determining the truth of such alle-

gations can be difficult.

Under the pending legislation, attorney negligence or misconduct can still be punished. In particular, best-interest attorneys can be sued for "willful or reckless" conduct, and they are subject to attorney grievance proceedings and to motions for removal for unprofessional behavior.

Much of the passionate opposition to the bills comes from parents who feel outraged at the actions of best-interest attorneys and judges in their custody trials. Their accounts are indeed disturbing. Yet best-interest attorneys will say that in nearly every case, both parents give disturbing (and conflicting) statements.

That is what makes their job so difficult and exposes them to malpractice lawsuits in a way that differs from other attor-

neys, who are answerable only to their client.

The immunity provided for best-interest attorneys in these bills is not unique. For example, Maryland statutory law provides "immunity from civil liability or criminal penalty" to the court-appointed guardian for an alleged disabled person for decisions made without "malice or gross negligence."

The Maryland judiciary, numerous bar association groups and other professional organizations have joined to support the pending bills. The time is approaching for legislative action. Maryland's children need to be protected.

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