

Will a (mis)diagnosis of depression create custody issues in my divorce?

August 9, 2012 | by Einhorn Barbarito

Dear Ask the Attorney:

I was recently diagnosed with what my doctor called depression and anxiety. I soon after found out the cause was actually severe anemia and digestive problems which my doctor missed; I was misdiagnosed, but still on record as being depressive and dispensed Ativan and Prozac for my anxiety.

I am now worried that my husband will use this against me in an attempt to take full custody of my children as our marriage is extremely unsteady as well as unhealthy for me mentally which most likely brought on my ailments to begin with.

I am productive as far as working a full time job, caring or our children and our home, yet I still worry that he will attempt this.

Signed,

Curious

Our guest blogger today is Cimmerian A. Morgan, Esq. Mr. Morgan is an associate with Einhorn, Barbarito, Frost and Botwinick, PC in the family law and matrimonial department and has been involved in many custody dispute cases.

Dear Curious,

The mental health of a parent can be a relevant factor in custody disputes. However, you have no reason to be overly concerned so long as you take proactive measures to confirm that you were misdiagnosed. Documentation from a treating physician confirming the misdiagnosis would obviously be very helpful. Although one cannot predict with precision whether a spouse would attempt to use a misdiagnosis against his or her spouse, the prudent course of action would be for the spouse who was misdiagnosed to arm himself or herself as a protective measure with proof of the misdiagnosis.

One should also not automatically assume that a parent who is accurately diagnosed with depression and/or anxiety will be at a disadvantage in a potential custody dispute. The more important considerations relate to how the depression and/or anxiety affects that parent's caretaking of the children and the steps that parent is actively taking to address his or her mental health concerns. For example, if a parent who suffers from depression and/or anxiety proactively seeks treatment, takes medication if prescribed and properly cares for the children, that parent should generally not be disadvantaged in a custody dispute because of his or her diagnoses. However, if a parent suffering from depression and/or anxiety fails to seek treatment, refuses to take prescribed medication and allows his or her mental health condition to negatively affect his or her caretaking of the children, then that parent might well be disadvantaged in a potential custody dispute.

If you feel that you are likely headed for divorce litigation and a custody dispute, it would be wise to meet with a matrimonial attorney in advance so that proper steps are taken to prepare for that dispute. The decisions that are made by litigants, as well as the decisions that are not made, prior to the commencement of litigation are often of significant consequence in the outcome of the litigation.

Cimmerian A. Morgan, Esq.

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