

In re Adoption/Guardianship of Tatianna B., No. 36, September Term 2010.

EVIDENCE – EXPERT TESTIMONY – RULE 5-702

In a TPR proceeding, it was not an abuse of discretion for the juvenile judge to qualify a licensed clinical social worker as an expert in social work and, based on that social worker's training and experience, to permit that social worker to opine regarding the risk of future harm to the child at issue.

IN THE COURT OF APPEALS OF
MARYLAND

No. 36

September Term, 2010

IN RE ADOPTION/GUARDIANSHIP
OF TATIANNA B.

Bell, C.J.
Harrell
Battaglia
Greene
Murphy
Adkins
Barbera

JJ.

Opinion by Battaglia, J.

Filed: December 3, 2010

regarding the depth of Ms. McFarlane's experience with Tatianna B. would go to the weight of her testimony, not the admissibility of her testimony. *See Terumo Medical Corp. v. Greenway*, 171 Md. App. 617, 623-24, 911 A.2d 888, 891-92 (2006).

In so holding, we find succor in our jurisprudence, most recently in *In re Adoption/Guardianship No. CCJ14746*, 360 Md. 634, 759 A.2d 755 (2000), wherein we also considered the propriety of allowing a licensed clinical social worker to testify, in a TPR hearing, as an expert in clinical social work and to opine regarding the mother's chronic mental illness and its effect on the daughter's well-being. In determining that the judge had not abused his discretion in admitting the expert testimony, we observed that Section 19-101(f) of the Health Occupations Article defined the practice of clinical social work as, *inter alia*, "rendering a diagnosis based on a recognized manual of mental and emotional disorders," and concluded:

Unlike a licensed social worker, . . . a licensed *clinical* social worker[] is specifically authorized by the Legislature to render diagnoses based on a recognized manual of mental and emotional disorders. It is plain from the statutory language that the Legislature deems licensed clinical social workers capable of rendering diagnoses such as those made by [the licensed clinical social worker at trial].

Id. at 642, 759 A.2d at 759-60. We further noted that, "[t]he Maryland Code does not

⁵(...continued)

We shall not address Ms. M.'s argument, however, because it is not properly before us. Before the juvenile court, Ms. M. never asked the judge to conduct a *Frye-Reed* hearing, as her appellate counsel conceded during oral argument. *See* Rule 8-131 ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . .").

address specifically the admissibility of expert testimony by clinical social workers, and there is nothing . . . that bars a clinical social worker from expressing an opinion as to the existence of a mental disorder based on a recognized manual,” holding that the licensed clinical social worker “ha[d] extensive education and experience in the field of clinical social work, from which the trial court could properly conclude that he [was] qualified to testify as an expert.” We concluded that the trial court “did not abuse its discretion in allowing [the licensed clinical social worker] to testify as an expert witness and admitting his opinion testimony regarding the [mother’s] mental disorders.” *Id.* at 646-49, 759 A.2d at 762-63.

In conclusion, the juvenile judge did not abuse her discretion in qualifying Ms. McFarlane and in admitting her testimony regarding the risk of future harm were Tatianna B. to be returned to Ms. M.’s household.

**JUDGMENT OF THE
CIRCUIT COURT FOR
M O N T G O M E R Y
C O U N T Y A F F I R M E D .
C O S T S T O B E P A I D B Y
A P P E L L A N T .**