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**RECENT DEVELOPMENT:
*IN RE ADOPTION/GUARDIANSHIP OF TATIANNNA B.***

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IN RE ADOPTION/GUARDIANSHIP OF TATIANNA B.: A LICENSED CLINICAL SOCIAL WORKER PROPERLY QUALIFIED AS AN EXPERT WITNESS IN SOCIAL WORK MAY OPINE IN A TERMINATION OF PARENTAL RIGHTS HEARING REGARDING RISK AND SAFETY ASSESSMENT.

The Court of Appeals of Maryland held that once qualified as an expert witness in social work, a licensed clinical social worker may opine regarding the subject of risk and safety assessment. *In re Tatianna B.*, 417 Md. 259, 9 A.3d 502 (2010). Accordingly, the court concluded that a licensed clinical social worker may be qualified as an expert witness in the area of social work, provided he or she has received sufficient education, training, and experience pursuant to the Maryland Annotated Code, Section 19-302(e) of the Health Occupations Article (“Health Occupations Article”). *Id.* at 265, 9 A.3d at 505.

The issue in controversy arose from a Termination of Parental Rights (“TPR”) hearing held in the Circuit Court for Montgomery County on December 8, 2009. The case was brought by the Montgomery County Department of Health and Human Services on behalf of three-year-old Tatianna B. (“Tatianna”) against her mother, Hyacinth M. (“Ms. M”). At trial, the presiding judge qualified Dianna McFarlane (“McFarlane”), Tatianna’s social worker, as an expert witness for the State over an objection from the defense. McFarlane proceeded to testify to both her credentials as a licensed clinical social worker, as well as the factors she considered in her risk and safety assessment of Tatianna. The trial judge permitted McFarlane to opine as to whether Tatianna should be returned to the care of her mother based on that assessment, despite a second objection from the defense.

Ms. M filed a timely appeal claiming that the trial judge abused her discretion in admitting McFarlane’s testimony. Before the Court of Special Appeals of Maryland heard the case, the Court of Appeals of Maryland granted certiorari on its own initiative.

In order to determine whether the trial judge abused her discretion in qualifying McFarlane as an expert in social work and subsequently admitting her testimony, the Court of Appeals of Maryland

first examined the three prongs of Rule 5-702 of the Maryland Rules of Evidence, which sets forth the guidelines for admitting expert testimony. *In re Tatianna B.*, 417 Md. at 263, 9 A.3d at 504. The court stated that under the rule, the admissibility of expert testimony in a TPR hearing, including opinion, was to be determined by: 1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education; 2) the appropriateness of the expert testimony on the particular subject; and 3) whether a sufficient factual basis exists to support the expert testimony. *Id.*

The court then looked to section 19-301(2) of the Maryland Annotated Code, Health Occupations Article, which set forth the requirements for becoming a licensed clinical social worker. *In re Tatianna B.*, 417 Md. at 264, 9 A.3d at 505. The court found that in order to practice clinical social work, one must first have obtained a license and a master's degree in social work, as well as documentation of clinical course work from an accredited program. *Id.* The court also found that the Health Occupations Article required a form prescribed by the Board of Social Work documenting completion of at least two years as a licensee, at least 3,000 supervised hours after receiving a master's degree, and at least 144 hours of "periodic face-to-face supervision in the assessment, formulation of a diagnostic impression, and treatment of mental disorders and other conditions. . . ." *Id.* (citing MD. CODE ANN., HEALTH OCC. § 19-302(e) (West 2010)). Based on these requirements, the court concluded that a licensed clinical social worker is qualified to be an expert witness in the general field of social work. *In re Tatianna B.*, 417 Md. at 265, 9 A.3d at 505.

Under the second prong of Rule 5-702, the court considered whether a risk and safety assessment is an appropriate subject of expert testimony within the scope of social work. *In re Tatianna B.*, 417 Md. at 265, 9 A.3d at 505. The court first looked to the Code of Maryland Regulations ("COMAR"), which regulates the Montgomery County Department of Health and Human Services when investigating a report of suspected abuse or neglect, in order to identify the elements of a social worker's investigation. *In re Tatianna B.*, 417 Md. at 266, 9 A.3d at 506. The court observed that foremost among the listed responsibilities was a requirement that social workers "assess [the]

immediate safety and risk of maltreatment of children who are household or family members or in the care or custody of the alleged maltreater.” *Id.* (citing COMAR 07.02.07.07(2010)).

Finding that a social worker’s investigation is not complete until he or she has evaluated the factors relevant to the risk and safety assessment of the child in need of assistance, the court concluded that risk and safety assessment is an integral part of a social worker’s job. *In re Tatianna B.*, 417 Md. at 265, 267-78, 9 A.3d at 505, 507. The court held that a licensed clinical social worker, qualified as an expert witness, may testify regarding risk and safety assessment, provided that the third prong is satisfied by the existence of sufficient facts to support that testimony. *Id.*

Ms. M argued that McFarlane’s testimony was scientific evidence, which must be generally accepted under the *Frye-Reed* test in order to be admissible. *Id.* at 264 n.5, 9 A.3d at 507 n.5. The court, however, rejected Ms. M’s argument for failure to raise the *Frye-Reed* test at trial, and instead found that because McFarlane met each of the requirements set forth in section 19-301(2) of the Health Occupations Article, she was properly qualified to testify as an expert witness in the general area of social work. *Id.* The court concluded that the trial judge did not abuse her discretion by admitting McFarlane’s opinion testimony regarding risk and safety assessment, as it was deemed a subject within the scope of McFarlane’s expertise. *Id.* at 269, 9 A.3d at 508.

Finally, the court found that the third prong of Rule 5-702 was satisfied. *In re Tatianna B.*, 417 Md. at 265-67, 9 A.3d at 506-07. McFarlane was the sole social worker assigned to Tatianna’s case, for which she personally conducted all pertinent investigations, including continuous observation of Tatianna’s health and Ms. M’s behavior. *Id.* at 267, 9 A.3d at 506-07. The Court of Appeals of Maryland affirmed the trial court’s ruling, holding that the trial judge did not abuse her discretion in qualifying McFarlane as an expert witness in social work and by subsequently admitting her testimony regarding risk and safety assessment. *Id.* at 269, 9 A.3d at 508.

In this case, the Court of Appeals of Maryland addressed the narrow issue of the extent to which a social worker may testify as an expert under Maryland law. Despite the State’s concern that the lack

of a standardized test, such as *Frye-Reed*, to determine the validity of such testimony would dilute the standard for permissible expert testimony, the court relied on statutory language in making its determination. Risk and safety assessment is an integral part of a social worker's job, and they are now able to provide their opinion as an expert in court to pursue the best interest of the child. By allowing a social worker who works closely with the child to testify as to her professional observations, a juvenile at issue in a TPR hearing can benefit from more accurate representation of his or her circumstances and interests.