

## Guest Column

# COVID-19's impact on mental health and modifications of custody

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Guest Column

Any parent navigating the unique challenges of child custody during the pandemic will likely tell you that they are stressed and anxious. The impact of COVID-19 is being felt across almost every plane of our lives – particularly so while juggling transitions between households and home schooling.

Recent studies and articles issued by the Centers for Disease Control and Prevention and the National Center for Biotechnology Information have reported that some patients with a history of mental health issues have experienced a worsening of symptoms and increase in fear, anxiety and depression. Among those previously undiagnosed, many are reporting anxiety and depressive symptoms.

Parents now worry what happens when they or their former partner experience new or increased mental health symptoms and how this will affect their current custody order or agreement. Can or should they move for a modification based on their former partner's mental health struggles?

There is no hard-and-fast rule as to how mental illness affects custody modifications. The court's overriding concern in a custody modification is and remains a two-step determination of whether there has been a material change in circumstances affecting the minor child and then, if such a material change exists, whether it is in the best interests of the minor child to modify custody. *Wagner v. Wagner*, 109 Md. App. 1, 674 A.2d 1 (1996). Thus, a mental health illness does not necessarily disqualify a parent from having or sharing custody; however, it can influence the decision if their symptoms have adversely impacted the minor child.

In our pre-pandemic world, the Court of Special Appeals in *Gillespie v. Gillespie*, 206 Md. App. 146, 47 A.3d 1018 (2012) upheld a custody modification order arising out of the Circuit Court for Frederick County, which held that the worsening of a parent's mental health symptoms can be sufficient to constitute a material change to warrant a modification of custody.

The trial court had received evidence that the parent experiencing mental health symptoms was not in control of her conduct and lacked appropriate appreciation as to how her actions affected her minor children and was causing them trauma.

Based on these material changes, and after considering the best interests of the minor children, the trial court concluded that it was in their best interest to reduce the custodial time with their mother. It would, therefore, seem that a parent experiencing worsening mental health symptoms and exhibiting it in manners that adversely affect the minor children may be subject to reduced custody and access.

An important takeaway from the *Gillespie* case is that the trial court did not find that the mental health illness itself was the material change; rather, it was the worsening of the symptoms and adverse effects on the minor children that constituted the material change. *Id.*

Where there is no adverse impact on the children, the court may not be likely to act. *Rifka v. Dillenburg*, 2016 WL 7496580 \*31, an unreported case from the Court of Special Appeals, upheld a decision affirming that there was no material change where the mental health condition "was, and had always been, up and down; and there was no evidence that would have compelled the trial court to find that any decisions made by Mother as legal custodian caused any change in J.'s condition."

Because the worsening of a mental health condition can constitute a material change, it stands to reason that the improvement of symptoms can constitute a material change impacting custody. *Wettlaufer v. Wettlaufer*, 2016 WL 4076822, another unreported case from the Court of Special Appeals, held that the lower court erred by dismissing a complaint to modify where the basis of the material change was the paternal parent obtaining stability over his mental illness and in other areas of his life.

The trial court had determined that because father was "stable" at the time he signed the underlying custody agreement, no material change had occurred. The Court of Special Appeals held that this was error and that the "improvement of mental health over time can also constitute a material change." *Id.* at 4.

The Court reasoned that with the passage of time, the parent is in a better position to understand whether the mental health episode was a singular or isolated incident, and to demonstrate that a material change in the best interest of the child had occurred.

Given these rulings, a parent considering a modification of custody should carefully evaluate whether the other parent's mental health symptoms are having an adverse impact on the minor children.

If a parent is managing their condition, a court will be less likely to modify or deny custody. However, if the mental illness is having a serious effect on the minor child – such as placing their physical, emotional and mental safety at-risk, then the court will more likely look favorably on the parent requesting the modification.

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