

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - October 4, 2012

RANDALL T. ENG, P.J.
MARK C. DILLON
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2012-02728

DECISION & ORDER

In the Matter of Katelyn Anne Worysz, appellant, v James
Thomas Robert Ratel III, respondent.

(Docket No. V-15183-11)

Megan E. Woolley, Jericho, N.Y., for appellant.

Catherine C. DeSanto, Riverhead, N.Y., attorney for the child.

In a child custody proceeding pursuant to Family Court Act article 6, the mother appeals, by permission, as limited by her brief, from so much of an order of the Family Court, Suffolk County (Cheng, J.), dated March 9, 2012, as granted that branch of the father's motion which was to compel disclosure of her psychiatric records from November 2007 to the present. By decision and order on motion dated April 20, 2012, this Court granted the mother's motion to stay enforcement of so much of the order as granted that branch of the father's motion which was to compel disclosure of her psychiatric records from November 2007 to the present pending hearing and determination of the appeal.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, and the matter is remitted to the Family Court, Suffolk County, for an in camera inspection of the mother's psychiatric records from November 2007 to the present, and thereafter a new determination of that branch of the father's motion which was to compel disclosure of her psychiatric records from November 2007 to the present.

When a party's mental or physical condition is placed "in controversy" within the meaning of CPLR 3121(a), a notice may be served requiring that the party submit to a medical

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examination or make available for inspection relevant hospital and medical records (*see* CPLR 3121[a]; *Dillenbeck v Hess*, 73 NY2d 278, 286-287). While parties to a contested custody proceeding place their physical and mental condition at issue (*see Duval v Duval*, 85 AD3d 1096, 1097; *Torelli v Torelli*, 50 AD3d 1125; *Anonymous v Anonymous*, 5 AD3d 516, 517), the potential for abuse in matrimonial and custody cases is great, and the court has broad discretionary power to limit disclosure and grant protective orders (*see Wegman v Wegman*, 37 NY2d 940, 941; *Torelli v Torelli*, 50 AD3d at 1125; *Garvin v Garvin*, 162 AD2d 497, 499). Moreover, in this case, the mother's psychiatric records may contain embarrassing or potentially damaging material that is irrelevant to the issue of the mother's fitness as a parent.

This Court is vested with the same power and discretion as the Family Court, and may substitute its own discretion, even in the absence of an abuse of discretion (*see Matter of Sassower-Berlin v Berlin*, 31 AD3d 771, 772). Under the circumstances of this case, we conclude that, before determining that branch of the father's motion which was to compel disclosure of the mother's psychiatric records from November 2007, the Family Court should have conducted an in camera inspection of the subject records to determine the portions thereof, if any, that are material and relevant on the issue of the mother's fitness as a parent.

ENG, P.J., DILLON, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, appearing to read "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court