The Limits of What A Judge May Order to Stop Parents From Making False Allegations in Custody Battles

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Sometimes the most contentious issue in a divorce is not how to divide the parties' cash or assets, but rather how custody will be decided.

Many divorcing parents do not want to share parenting with their ex-spouse and are willing to go to great lengths to prevent any kind of shared custody arrangement. As a result, mothers and fathers have accused one another of everything from not getting the children to school on time to being a drug addict. In fact, in some instances, parents have accused each other of physically or sexually abusing their own children. Thankfully, our courts are equipped with multiple tools and competent resources to investigate the truth of such allegations and to make informed decisions which best serve the interests of the children.

But what happens when the court concludes, based on its own findings and with the input of various professionals that a parent's allegations are not substantiated and are not being made in good faith? What if the court determines that a parent is being willfully blind to the truth to the detriment of their own child's mental and emotional health?

According to two recent cases from the North Carolina Court of Appeals, a court is somewhat limited in what it can do to stop a parent from maintaining a belief in their allegations, no matter how outlandish or unfounded.

The Trial Court Decisions

In Peters v. Pennington, a 2011 case, the mother accused the father of sexually abusing the children. Even after investigations by the Department of Social Services ("DSS") and law enforcement, and an evaluation by a private therapist determined that the accusations were unfounded, the mother continued to insist that the children were being sexually abused. In Lueallen v. Lueallen, a 2016 case, the mother persistently accused the father of being physically abusive to their child, mentally unstable, and a drug addict.

In both Peters and Lueallen, the trial court definitively found that the mother's claims regarding the father's abuse or mental illness were unfounded and that the mother's continued insistence to the contrary, and her actions based upon those beliefs, were abusive and were damaging to the mental and emotional wellbeing of their child or children.

In reaction to the mother's conduct in <u>Peters</u>, and similarly in <u>Lueallen</u>, the trial court ordered the mother to submit to therapy aimed at having the mother accept the court's finding that the father had not engaged in the behavior the mother alleged. Further, in both cases, the trial court conditioned decisions regarding the mother's future visitation and custody of the children on her submitting to, and complying with, the ordered therapy.

The Court of Appeals Decisions

In each case, on appeal, the North Carolina Court of Appeals accepted the trial court's findings that the father had not engaged in the behaviors the mother alleged. However, the Court of Appeals concluded that it was improper for a trial judge to order the mother to <u>believe</u> that the father did not engage in the alleged abuse or drug use.

The Court of Appeals held that in circumstances like those in <u>Peters</u> and <u>Lueallen</u>, the trial court must make findings of fact regarding events which happened in the past, such as the father's behavior or his care of the children. Further, it is permissible for a trial court to order the parent or parents to take certain <u>actions</u> based upon the trial court's findings. However, it is impermissible for a trial court to order or force a parent to fully accept or to <u>believe</u> a view consistent with the court's findings.

The Court of Appeals pointed out that while a trial court cannot evaluate a parent's compliance with the court's order based on the parent's <u>beliefs</u>, the court may require a parent to conform their <u>behavior</u> and speech when dealing with their child or children to be consistent with the court's findings and conclusions. For example, if the trial court finds that no abuse has occurred and that the parent's continued allegations to the contrary are an effort to alienate their child from the other parent, the court can take into account the parent's conduct reflecting a continued insistence on his or her contrary version of the facts, when ruling whether such actions by the accusing parent are damaging to the children and require restrictions on that parent's visitation rights.

Noting that a new instance of allegations of sexual or physical abuse will begin a new cycle of DSS investigations into the case, the Court of Appeals held that in an effort to end such a cycle, a trial court may order that any therapist who may be conducting therapy based on the accusing parent's version of the facts, instead of the version found by the court, cease treating the child to avoid further confusion and harm to the child.

Conclusion

The decisions by the North Carolina Court of Appeals in <u>Peters</u> and in <u>Lueallen</u> underscore both the power of and the limitations on a trial judge when one parent makes unfounded allegations of abuse. When the trial court finds that one parent's allegations against another are false, are made in bad faith, and have resulted in damage to a child's mental and emotional health, while the trial court cannot force a mother or father to let go of their <u>belief</u> in those allegations, the trial judge can prevent a parent from harming the child by taking <u>actions</u> based upon their unfounded, and sometimes improperly motivated, allegations against the other parent.

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