At first blush, psychiatrists might consider a patient's psychiatric history in the court of law to be covered by doctor–patient privilege. In most circumstances, Ms. C's record of psychiatric consultation would be privileged. The common exceptions to privilege include reporting of child abuse, court-ordered examinations and, when the individual puts her mental condition at issue in litigation. In *Fuentes*, we have a completely different circumstance. The medical record, including the psychiatric consultation, was in the possession of the prosecution. The question became, not whether the record was privileged, but whether it should be turned over to the defense under the *Brady/Kyles* materiality standard.

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Necessary Services Must Be Proven Futile Before Parental Rights Termination

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The State Must Provide all Necessary and Reasonable Services to Correct Parental Deficiencies Before Declaring Parental Unfitness and Terminating Rights

In the *Matter of the Parental Rights of B. P.*, 376 P.3d 350 (Wash. 2016), the Supreme Court of Washington reversed an order of parental termination on the grounds of insufficient evidence demonstrating the futility of provision of attachment services to assist mother–child bonding. The court found that the state failed to meet the evidentiary standard of clear, cogent, and convincing evidence in arranging for all necessary services for correcting parental deficiencies before termination.

Facts of the Case

In 2011, B. P. was born addicted to methamphetamine and placed into foster care. The child's mother, Ms. O., entered an order of dependency, requiring mental health, parenting, addiction, and family services. She completed a residential treatment program where B. P. was placed into her care. Ms. O. relapsed, and B. P. was again placed into foster care. Then two years old, B. P. exhibited signs of aggression, disorganized behavior, and distress during multiple placements, particularly when confronted with changes in routine.

Ms. O. then gave birth to another child, A., and again entered residential substance abuse treatment. Visits with B. P. were reinstated, supervised by family therapist Lori Eastep, to determine whether the parent–child relationship could be repaired. With a pending termination hearing, Ms. O. completed her program and moved to transitional housing. She sought a continuance of the termination hearing to acquire more stable housing. She also alleged that the foster family was receiving family preservation services, which she and B. P. were not.

By the final dependency hearing, Ms. O. had completed all ordered services with only a minor rule violation. Therapist Eastep testified that she had provided "therapeutic visits" (distinguished from formal family therapy) for B. P. and Ms. O.

The state's case at the termination trial was that Ms. O. was unfit to parent B. P. because of B. P.'s emotional needs, though the adequacy of Ms. O.'s care for A. was not in question. Experts testified about negative consequences of multiple changes in caregiver relationships. Fact witnesses stated that Ms. O. needed time to work through past trauma and attain emotional stability and that B. P. had a disorganized attachment to Ms. O. (despite a secure attachment to the foster parents). A therapist testified that B. P. was at risk for attachment disorder and needed stability during this early developmental period. Others testified to Ms. O.'s need for external structure to provide consistent parenting and the requirement for continued intensive treatment in this early stage of addiction recovery. On the other hand, some testimony identified Ms. O.'s favorable prospects for continued sobriety.

Ms. O. testified that she was farther in her recovery than during the previous relapse and was receiving better treatment. She stated that she understood the harm she had caused B. P., but felt that she could provide optimal future care.

The trial court terminated parental rights noting that "all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future have been offered . . ." (*B. P.*, p

359). In the opinion of the court, transfer of care to Ms. O. would have negatively affected the mental health of B. P. based on the lack of a healthy attachment. Concern was noted that attachment services were not offered to B. P. and Ms. O., but the risk of attachment disorder was thought to be too high to wait for possible remediation of the relationship, and Ms. O. was found unfit to parent B. P.

Ms. O. appealed termination of parental rights, arguing that all necessary services were not provided, attachment could be formed, a stable living environment could be provided, she was fit to parent B. P., and termination was not in the child's best interest. The court of appeals affirmed; the Supreme Court of Washington reversed termination.

Ruling and Reasoning

In *B. P.*, the court found that the state had not proven that B. P. had been provided "all necessary and reasonably available services capable of correcting parental deficiencies" (*B. P.*, p 360). This is 1 of 6 statutory elements that must be proven by "clear, cogent, and convincing evidence" before parental termination in Washington (*B. P.*, p 360). Further, the court found that the lack of such evidence made the finding of parental unfitness invalid and violated Ms. O.'s due process clause protections.

The court noted "concerns about Ms. O.'s parental fitness and amenability to corrective services" but found that they were insufficient to justify termination (*B. P.*, p 361). The rationale included two similar cases in which parental termination was reversed when the state was found to have provided insufficient services (*In re Welfare of C. S.*, 225 P.3d 953 (Wash. 2010), and *In re Termination of S. J.*, 256 P.3d 470 (Wash. Ct. App. 2011)). Although the trial court record indicated that Ms. O. had mental health and substance abuse problems, there was no discussion of her capacity to parent A. Thus, the source of the difficulty with parenting B. P. was thought to have been a lack of emotional skills to ensure successful attachment with this particular child. The court stated that Ms. O. was entitled to a provision of attachment services, as such services had not been proven futile by the state. The court explained that Ms. O. was prevented from demonstrating her potential ability to bond with B. P., particularly given her relative success with other services provided. Based on such history and testimony, the court found that necessary attachment services were not offered and that such provision was not found to be futile.

Dissent

The dissent noted the potential negative effect of the reversal on B. P.'s development at five years of age. It claimed the "stability and permanence" that could be found in B. P.'s "complete and secure attachment to her foster parents" was crucially important for the child's emotional health (*B. P.*, p 365). The dissent noted that service futility had been underscored by the pressing needs of a young child for stability, where the timeline for remedy in the "foreseeable future" is shortened. It also claimed that all necessary services were provided in that Ms. Eastep's services were adequate and similar to those the foster parents received, despite the majority's opinion that specific attachment services were not offered. According to the evidence of her inability to provide for B. P.'s emotional needs, the dissent noted that Ms. O. was unfit to parent.

Discussion

The matter at stake is one of parental rights against a backdrop of the best interests of the child. In the United States, there is a constitutional right to parent one's children (*Troxel v. Granville*, 530 U.S. 57 (2000)). The State of Washington requires both statutory and constitutional prerequisites for termination of parental rights. The court weighed whether the state had provided substantial evidence to prove its termination case, as parental rights are the default until such a burden is proven by the state.

The question in this appeal was not what would be in the best interest of B. P., despite a 20th century theoretical change from the "tender years doctrine" to the "best interests standard." Instead, the court decided a matter of law regarding sufficient provision of evidence in the trial court and found that the burden had not been met.

The decision rested on a lack of finding the attachment services futile. The court required significant professional input into the narrow questions of whether attachment services had been truly provided and whether these specific services were uniquely required. Further, the conclusion of treatment futility required professional determination as to whether and when the mother might be sober and emotionally stable.

This case highlights the significant incongruence between the pace of the world and the pace of the courts. As noted by the dissent, in the period between

the trial court's decision and the reversal of termination, B. P. had aged three years and developed a stable and secure attachment to the foster parents. However, the appeals process reviews the court records to form an opinion, rather than weighing contemporary evidence. In this case, such review may have indicated that a reversal of parental termination would not have been in the best interest of the child's current emotional well-being.

It is paradoxical that, although the state had argued on behalf of the child's best interest that B. P. remain with her foster parents to provide immediate and necessary permanence at two and a half years of life, the appellate court's decision did not consider the child's mental health needs. This approach resulted in significant relational disruption for the child in the court's effort to protect the mother's rights. The decision underscores the mismatch between the pace of the courts and the rapid development of a very young child. Courts must determine how much to consider the mental health of the child when weighing the often conflicting needs of the child and the legal rights of the parent.

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Involuntary Administration of Medication in Mental Health Facilities

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The Maryland Statute for Involuntary Administration of Medication in Mental Health Facilities is Not Unconstitutional and Authorization for Involuntary Medication May Only Be Constitutionally Carried Out When There Is an "Overriding Justification"

In *Allmond v. Department of Health and Mental Hygiene*, 141 A.3d 57 (Md. 2016), Mr. Allmond challenged Maryland Code Health-General Article (HG) § 10-708(g) (2010), which provides the criteria for authorizing involuntary medications for an individual committed to a mental health facility. A panel, pursuant to the statute, approved the involuntary administration of medication to Mr. Allmond, and he appealed by requesting an administrative hearing. An Administrative Law Judge (ALJ) of the Office of Administrative Hearings found that authorization for involuntary medication was satisfied under certain criteria; that decision was affirmed by the Circuit Court for Howard County. The Court of Appeals of Maryland granted a writ of *certiorari* to review the constitutionality of certain provisions of Maryland's procedures.

Facts of the Case

Mr. Allmond, diagnosed with schizophrenia since his mid-20s, was charged with first-degree murder after his girlfriend's strangled body was found on September 1, 2011. After an evaluation by the Department of Health and Mental Hygiene (DHMH), the Circuit Court of Baltimore City determined that Mr. Allmond was incompetent to stand trial, committing him to Clifton T. Perkins Hospital Center.

During his hospitalization, Mr. Allmond repeatedly refused psychotropic medications, despite exhibiting symptoms such as paranoia, delusions, hallucinations, and disorganized thinking. He preferred nondrug treatments, including psychotherapy and group therapy. Although he remained symptomatic, he maintained good behavior until a medical treatment meeting on September 3, 2014. During that meeting, after it was suggested that he receive psychotropic medications, Mr. Allmond became agitated and attempted to assault a staff member.

Following this incident, Mr. Allmond's psychiatrist requested that a clinical review panel be convened, pursuant to HG § 10-708, to assess the possibility of involuntary administration of medications to Mr. Allmond. The panel approved the request for involuntary administration of medications for 90 days; he did not appeal.

Mr. Allmond's psychiatrist requested a reconvening of the clinical panel shortly before the 90-day period expired. The panel again approved involuntary administration of medications to Mr. Allmond for 90 days. After this decision, Mr. Allmond requested an administrative hearing before an ALJ to appeal the panel's decision. The ALJ concluded that sufficient criteria for involuntary medication were met; this decision was affirmed by the Circuit Court for Howard County.