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Opinion No. 09-95

Release of Minor's Medical Records

QUESTION

Can the release of a minor's medical records that is permitted pursuant to Tenn. Code Ann. §§ 36-6-101, 103, and 110, be prevented if the release is to a parent defined as "abusive" in Tenn. Code Ann. § 36-6-101(4)?

OPINION

Yes. Insofar as the same statutes that grant parents rights to their children's medical records also permit the court to prohibit the release of these records when it determines that release would not be in the best interests of the child, the records could be protected from abusive parents.

ANALYSIS

Tennessee Code Annotated Title 36, Chapter 6, governs child custody and visitation determinations. Part 1 of the Chapter contains general custody provisions as they relate to "suit[s] for annulment, divorce or separate maintenance." Tenn. Code Ann. § 36-6-101(a)(1). Subsequent provisions in the Chapter address other proceedings that require resolution of a custody determination between parents to their minor children. *See* Tenn. Code Ann. § 36-1-106(a). Specifically, Tenn. Code Ann. § 36-1-101(4) provides that there is a rebuttable presumption when making a custody determination that it is "detrimental to the child and not in the best interest of the child to award sole custody, joint legal or joint physical custody" to a parent who has perpetrated abuse "within the family" as abuse has been defined in Tenn. Code Ann. §§ 39-15-401 (abuse or neglect), 39-15-402 (aggravated child abuse and neglect), or child sexual abuse as defined in 37-1-602(a)(3). *See* Tenn. Code Ann. § 36-6-101(4).

Once the Court has made a custody determination, the Tennessee Code provides that the parent without primary custody is entitled to certain rights with respect to the child. Specifically, Tenn. Code Ann. §§ 36-6-101(a)(3)(E), 103, and 110(a)(5) provide that parents with whom the minor child is not residing, at the time that the child is not in their possession, have the right to obtain that child's medical records from the child's doctor or health care provider.

You have asked whether these parents who are generally entitled to their minor children's medical records pursuant to Tenn. Code Ann. §§ 36-6-101, 103, and 110, can be prohibited from obtaining them if they have committed the abuse described in Tenn. Code Ann. § 36-6-101(4): abuse or neglect as defined in Tenn. Code Ann. § 39-15-401, aggravated child abuse and neglect as defined in Tenn. Code Ann. § 39-15-402, or child sexual abuse as defined in Tenn. Code Ann. § 37-1-602(a)(3).

The three above-referenced Code provisions providing for the release of a child's medical records further provide that a court may prohibit that release when in the best interests of the child. Specifically, Tenn. Code Ann. § 36-6-101(a)(3) which grants to a parent "during periods when the child is not in that parent's possession," the right to "receive copies of the child's medical, health or other treatment records directly from the physician or health care provider who provided such treatment or health care," states that this right "may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child." Tenn. Code Ann. § 36-6-101(a)(3)(E) and (I). Furthermore, Tenn. Code Ann. § 36-6-103(b) provides, "Any judge having jurisdiction over the custody of such child may close the medical records of the child to the requesting parent upon a showing that the best interests of the child will be harmed if the records are released." Finally, Tenn. Code Ann. § 36-6-110(b) would permit the court to deny non-custodial parents their right "to receive copies of their child's medical records directly from the child's doctor or other health care provider," when there is a "showing that such denial is in the best interests of the child." Tenn. Code Ann. § 36-6-110(a)(5) and (b).

Though the statutes do not contain language specifically prohibiting a parent who has committed abuse from obtaining their children's medical records, it is likely that such a restriction will be in the child's best interest. Title 36, Chapter 6, currently recognizes that abuse committed by a parent will create a rebuttable presumption that *custody* with that parent is not in the child's best interest. *See* Tenn. Code Ann. § 36-6-101(4). Thus, insofar as the statutes permit a court to prohibit the release of a child's medical records after making a determination of the child's best interests, the statutes do provide a means by which the child's medical records can be protected from parents who have committed the types of abuse defined in Tenn. Code Ann. §§ 39-15-401, 39-15-402, or child sexual abuse as defined in Tenn. Code Ann. § 37-1-602(a)(3).

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