

SET UP TO FAIL: DISABLED PARENTS IN THE FAMILY REGULATION SYSTEM

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This Article highlights some of the many challenges that disabled parents face in the family regulation system. Using one mother's case, as documented by a New York Family Court Judge following a termination of parental rights trial, I surface the assigned child welfare agency's limited and binary approach to mental health concerns, failure to provide appropriate services to parents with intellectual and developmental disability, and failure to address the trauma of parents involved in the family regulation system. I argue that the issues surfaced in the case of Ms. M. are emblematic of the broader failures of the family regulation system, case workers, state agencies, and others in the context of working with parents with disabilities.

Introduction

The family regulation system, also called the child welfare system,¹ is a site of disparate treatment and discrimination for parents with disabilities.²

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1. For deeper explanation on the choice to use the phrase “family regulation” rather than “child welfare” to discuss the system at issue in this paper, please see Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT: YOUTH & FAMILY NEWS (June 16, 2020, 5:26 AM), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/4448> (describing the child-welfare system as “more accurately referred to as the ‘family regulation system’”).

2. See, e.g., Rebecca Rebbe et al., *Prevalence of Births and Interactions with Child Protective Services of Children Born to Mothers Diagnosed with an Intellectual and/or Developmental Disability*, 25 MATERNAL CHILD HEALTH J. 626, 633 (2021); Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM, no. 2, 2022, at 37, 62; Sarah Lorr, *Disabling Families*, 76 STANFORD L. REV. 1255, 1276 (2024). Please note that, in accordance with the mixed preferences of people with disabilities, this Article uses both person-first and identify-first language. Compare Lydia X.Z. Brown, *The Significance of Semantics: Person-First Language: Why It Matters*, AUTISTIC HOYA (Aug. 4, 2011), <https://www.autistichoya.com/2011/08/significance-of-semantics-person-first.html> (advocating for the use of identity-first

The question of how and why this discrimination occurs has been addressed with increasing frequency in recent years.³ This Article contributes to that strain of scholarship by focusing specifically on the ways one family regulation agency in the state of New York failed to assist a parent with disabilities.⁴ By training attention squarely on a single case, this Article endeavors to illustrate the central ways the family regulation system can shortchange parents with disabilities. Moreover, the selected case is especially useful to elucidate systemic failures because the court itself identifies agency failures in the case.

This Article focuses on the case of Ms. M and the Kings County Family Court's finding that the state agency assigned to provide her services failed to provide "diligent efforts to encourage and strengthen the parental relationship" with the child as required by New York law.⁵ In January 2014, Ms. M gave birth to her daughter Angalee, but shortly after, the New York City Administration for Children's Services ("NYC ACS") removed Angalee from her mother.⁶ Just over one year after Angalee's removal, the Kings County Family Court determined that Ms. M had neglected Angalee and her sister "by failing to treat her mental illness."⁷ After the court entered a finding of neglect, the court required that Ms. M "continue with her mental health services (counseling) and the anger management component of such counseling until deemed not therapeutically needed."⁸ Ms. M was also "directed to submit to a psychiatric evaluation and to comply with all

language), with Dan Olmsted, *Olmsted on Autism: "Retards" and "Autistics"*, AGE OF AUTISM (Aug. 20, 2008, 5:33 AM), <https://www.ageofautism.com/2008/08/olmsted-on-au-1.html> (advocating for the use of person-first language).

3. See, e.g., Lorr, *supra* note 2; Robyn M. Powell, *Legal Ableism: A Systematic Review of State Termination of Parental Rights Laws*, 101 WASH. U. L. REV. 423 (2023); Joshua B. Kay, *The Americans with Disabilities Act: Legal and Practical Applications in Child Protection Proceedings*, 46 CAPITAL U. L. REV. 783, 788 (2018); Robyn M. Powell, *Safeguarding the Rights of Parents with Intellectual Disabilities in Child Welfare Cases: The Convergence of Social Science and Law*, 20 CUNY L. REV. 127, 141 (2016) [hereinafter Powell, *Safeguarding the Rights*]; Charisa Smith, *Finding Solutions to the Termination of Parental Rights in Parents with Mental Challenges*, 39 LAW & PSYCHOL. REV. 205 (2014-2015).

4. See *In re Catholic Guardian Servs. (Angalee M.S.)*, No.:B-17xxx/16, 2018 WL 3341429 (N.Y. Fam. Ct. 2018).

5. See N.Y. SOC. SERV. LAW § 384-b(7)(a), (f) (McKinney 2024).

6. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *1.

7. *Id.* at *2 (describing that Ms. M's alleged failure to treat her mental illness "resulted in an act of domestic violence" against Angalee's father and "an assault against a police officer while visiting Angalee in the hospital").

8. *Id.* at *2 (quoting a Dec. 7, 2015 dispositional order).

recommendations from the evaluation, including medication management.”⁹ The court evidently anticipated that Ms. M might dispute her need for medication and directed that the parties return if, after an evaluation, there was a disagreement about the need for medication.¹⁰

Catholic Guardian Services, the agency assigned to provide services to Ms. M, filed a petition to terminate her parental rights to Angalee in September 2016.¹¹ In the winter of 2017-2018, the court held a ten-day trial on the question of whether to terminate Ms. M’s parental rights.¹² Under New York law, this required a “threshold” finding that the state engaged in sufficient efforts to “encourage and strengthen the parental relationship” between Ms. M and Angalee.¹³ Only if the state had met its burden could the court move to the second part of the inquiry, asking if the agency could provide grounds to terminate Ms. M’s parental rights to Angalee.¹⁴

The termination trial included evidence from Ms. M and a doctor qualified as an expert in psychology and forensic psychology.¹⁵ In addition to the testimony of Ms. M and the doctor, the record before the court included agency case records, prior court orders, an evaluation of Ms. M by the testifying expert, and records from Ms. M’s therapy sessions.¹⁶ The court determined that the agency failed to engage in diligent efforts to reunify Ms. M and Angalee and accordingly declined to terminate their parent-child relationship.¹⁷ In so doing, the court’s decision shed light on three failings common to family regulation agencies that work with disabled parents.

What follows is a catalogue of the three central ways that the assigned foster care agency failed to provide Ms. M and Angalee with appropriate supports and services, as documented by a New York Family Court Judge following the trial to terminate Ms. M’s parental rights. In making this catalogue, I argue that the failures in Ms. M’s case are emblematic of the broader failures of the family regulation system, case workers, state agencies, and others working with parents with disabilities. Specifically, I highlight the agency’s failures to provide meaningful, appropriate mental health care; to address Ms. M’s history of trauma and provide a trauma-informed approach

9. *Id.*

10. *Id.*

11. *Id.* at *1.

12. *Id.* (“The sole cause of action for TPR litigated by the agency is permanent neglect.”).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at *3. Yet, “no witness from the agency testified.” *Id.* at *2.

17. *Id.*

to interaction and treatment;¹⁸ and to provide tailored services for her disability required by the Americans with Disabilities Act (“ADA”).¹⁹ I consider each failure in turn.

I. Failure to Provide Meaningful Mental Health Care

Ms. M’s case exemplifies the family regulation system’s failure to provide meaningful, quality mental health care for parents with known mental health diagnoses. Indeed, as the court recounts, “the agency’s case record shows no clear evidence that the agency ever engaged in a meaningful assessment of Ms. M.’s needs or the factors that led” to her involvement in the system in the first place.²⁰ Not only is a meaningful assessment of Ms. M’s mental health needs mandated under New York law,²¹ it is the obvious first step for an agency working toward reunifying a parent and child. But in Ms. M’s case, it appears that the agency—like many others in the family regulation context—fell prey to the discriminatory yet “common stereotype that people with psychiatric disabilities are dangerous.”²²

As the court stated, NYC ACS “provided information accessible to the planning agency which should have led to a clinical decision to make further assessment and inquiry of her trauma history.”²³ Nonetheless, the agency failed to undertake “an appropriate clinical assessment of Ms. M.”²⁴ Despite “the stalled nature” of Ms. M’s case, the agency never revisited a 2014 psychiatric evaluation.²⁵ Though Ms. M. recalled participating in multiple evaluations during her case, the court found “no indication in the record that the agency provided input to the evaluator(s) at the time the evaluations were

18. See Sarah Katz, *Trauma-Informed Practice: The Future of Child Welfare?*, 28 WIDENER COMMONWEALTH L. REV. 51, 53-56 (2019).

19. Though not the focus here, the Americans with Disabilities Act (ADA) is deeply important to parents with disabilities in the family regulation system. I have previously written at length about the ADA’s application to family regulation cases. See Sarah H. Lorr, *Unaccommodated: How the ADA Fails Parents*, 110 CAL. L. REV. 1315, 1321-22 (2022).

20. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *3.

21. See N.Y. SOC. SERV. LAW § 409-e (McKinney 2024) (requiring an assessment of the child and his or her family circumstances within thirty days of placing a child in foster care).

22. NAT’L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* 79-80 (2012), <https://www.ncd.gov/assets/uploads/reports/2012/ncd-rocking-the-cradle.pdf>; *id.* at 97-98.

23. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *4.

24. *Id.* (noting that, if the agency had undertaken an appropriate assessment, “it would very likely have found that she suffered from a disorder related to her past trauma that could have been treated with services other than what the agency already had her doing”).

25. *Id.* at *3.

done; sought to obtain the evaluations; or ever discussed their results and implications for case planning with the evaluator(s) or Ms. M.”²⁶

These basic failures of casework reveal an agency unwilling to work with or appropriately serve a client in clear need of support. Perhaps even more distressing than the lack of services, though, was the case planner’s care to document Ms. M’s “irate . . . rude, disrespectful, and obnoxious” behavior.²⁷ As the court described, “[t]he story told in these records, and argued by petitioner in this litigation, is that Ms. M. has a *fatal character flaw*: she is a bad person and a bad mother, and there is nothing more the agency could have done to remedy her problems.”²⁸ Significantly, this view of Ms. M demonstrates an understanding of disability grounded in both eugenic thinking and the belief that disabled people are inherently flawed and cannot grow.²⁹

The court’s decision also evinces an agency that, although uninterested in obtaining meaningful clinical support for its client, was nonetheless preoccupied with her use of medication to treat her mental health diagnosis. In the court’s words,

To the extent that the agency was interested in the details of Ms. M.’s mental health treatment, the evidence of this interest was limited to notes documenting its efforts to determine whether or not she was taking medication—certainly a necessary inquiry, but not nearly sufficient to truly understand if her service plan was working for her.³⁰

Combined with its narrow focus on medication, the agency’s fixed view of Ms. M’s mental health not only represents a failure to provide mental

26. *Id.*

27. *Id.* at *4.

28. *Id.* (emphasis added).

29. Powell, *Safeguarding the Rights*, *supra* note 3, at 141 (“[C]hild welfare policies, practices, and adjudications are based—implicitly and at times, explicitly—on the postulation that parents with [an] intellectual disabilit[y] are inherently unfit because of their disability.”); *see also* Kate Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 559-61 (2021) (listing contemporary examples of continued stigma against disabled people).

30. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *3.

health care³¹ but suggests a belief that Ms. M could not be helped.³² Indeed, as the court identified, it seemed that the agency believed Ms. M “has a fatal character flaw” and that nothing could be done to support her or help her regain her parenting relationship. The agency’s view that a mental health diagnosis or certain behaviors render someone a “bad person and a bad mother”³³ is grounded in bias and a discriminatory view of disabled persons.³⁴

II. Failure to Acknowledge and Address Trauma

This Part explores the agency’s refusal to acknowledge and address Ms. M’s trauma history as part of her mental health treatment and service plan. The agency’s failure to recognize her trauma and to offer meaningful, appropriate support is related to its myopic view of Ms. M’s mental health diagnosis and medication needs explored in Part I. Trauma can be both an antecedent to and result of involvement in the family regulation system.³⁵ Indeed, even courts have agreed with research showing that removing a child from their parent may be “more damaging to the child than doing nothing at all.”³⁶ The agency’s failure to grapple with or even acknowledge Ms. M’s trauma history is especially distressing because trauma is so intertwined with experiences in the family regulation system.

31. See K. Kamenov et al., *The Efficacy of Psychotherapy, Pharmacotherapy and Their Combination on Functioning and Quality of Life in Depression: A Meta-Analysis*, 47 PSYCH. MED. 414, 422-23 (2017) (“The present meta-analysis demonstrates that the combination of psychotherapy and pharmacotherapy is significantly better than any of the treatments alone for both functioning and [quality of life].”).

32. See *supra* note 28 and accompanying text.

33. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *4.

34. Cf. Charisa Smith, *Making Good on an Historic Federal Precedent: Americans with Disabilities Act (ADA) Claims and the Termination of Parental Rights of Parents with Mental Disabilities*, 18 QUINNIPIAC HEALTH L.J. 191, 200 (2015) (“[P]arents with mental disabilities . . . are often typecast as perpetrators of child maltreatment and not offered the opportunity to find the root of the alleged maltreatment and reunify their family.”).

35. Tricia Stephens, *Traumatic Experiences and Perceptions of Parenting Self-Efficacy: A Mixed-Methods Study of Poor Black and Latino Mothers with Single and Multigenerational Child Welfare System Involvement 2* (May 2015) (Ph.D. dissertation, New York University Silver School of Social Work) (ProQuest); Lorr, *supra* note 2, 1294-98 (documenting and collecting sources showing that family separation creates trauma); Eli Hager, *The Hidden Trauma of “Short Stays” in Foster Care*, MARSHALL PROJECT (Feb. 11, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/02/11/the-hidden-trauma-of-short-stays-in-foster-care>; Vivek Sankaran et al., *A Cure Worse than the Disease? The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161, 1167 (2019).

36. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 204 (E.D.N.Y. 2002).

According to the court in Ms. M’s case, “the agency had more than enough credible information that Ms. M.’s behavior might be the expression of a trauma- and stressor-related disorder.”³⁷ In addition, “The agency was aware that she had been adopted at an early age and had been in and out of psychiatric hospitals from the time she was 10 until the age of 18.”³⁸ She was also a survivor of intimate partner violence.³⁹ Despite this background and the growing awareness of trauma among social service agencies—both its prevalence and the related need to screen for trauma-related problems—nothing was done to screen Ms. M or to provide her with trauma-related treatment.⁴⁰ Even more problematic than a mere failure to screen or treat Ms. M, the court noted a broader failure: despite screening children for trauma, “there does not appear to be a universal, mandated approach in this jurisdiction to working with birth parents around the trauma that *they* might have experienced.”⁴¹

III. Failure to Provide Services Tailored to Disability

This case also represents the broadly observed failure of most family regulation agencies and service providers to offer services related to a

37. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *4.

38. *Id.*

39. *Id.*

40. *Id.* at *4 (“That at the relevant time period ACS did not require petitioner to conduct a trauma assessment of parents like Ms. M. does not provide the agency a diligent efforts safe harbor.”). The court noted,

Social welfare agencies have, in recent years, paid increased attention to the prevalence of trauma in their client populations and developed ways to screen for and treat trauma-related problems. For example, ACS now screens all children who enter family foster care for trauma using a nationally-recognized screening tool. The purpose of the screening is to assist foster care agencies in providing appropriate, effective, individualized services.

Id. (citing NYC ADMIN. FOR CHILDREN’S SERVS., FY 2017: FOSTER CARE STRATEGIC BLUEPRINT STATUS REPORT 8 (n.d.), <https://www1.nyc.gov/assets/acs/pdf/about/2017/BluePrint.pdf>).

41. *Id.* (“Experts in social work and mental health have estimated that between 30 and 60 percent of maltreated children have caretakers who have experienced domestic violence (let alone other forms of trauma). They urge front-line professionals to understand that parents might ‘exhibit posttraumatic reactions in court or when interacting with their children or case managers,’ and that referrals for proper evaluation and treatment can be critical.” (quoting NAT’L CHILD TRAUMATIC STRESS NETWORK, BIRTH PARENTS WITH TRAUMA HISTORIES AND THE CHILD WELFARE SYSTEM: A GUIDE FOR JUDGES AND ATTORNEYS 2 (2011), https://www.nctsn.org/sites/default/files/resources//birth_parents_with_trauma_histories_child_welfare_judges_attorneys.pdf)).

parent's intellectual disability.⁴² It is well-recognized that for parents with intellectual disabilities, “services need to be responsive to the parents’ individual needs” and “must consider the special learning needs of the parent.”⁴³ Indeed, in Ms. M’s case, a court-requested evaluation “recommended that Ms. M.’s treatment providers be made aware of her cognitive challenges” and that Ms. M be referred “to a community-based agency specializing in working with individuals with cognitive limitations, where she could receive a further, more thorough cognitive assessment and job training and job placement assistance.”⁴⁴ Instead, however, the agency failed to follow up with the doctor’s recommendations and—even more stark—the Court observed that “there is no indication anywhere in the case records in evidence that the agency took steps *to obtain the evaluation or read it*—even though the agency knew that it was being conducted.”⁴⁵ In Ms. M’s case, then, the problem went well beyond the failure to provide tailored services and likely amounted to a failure to even heed the results of a court-ordered evaluation.

Conclusion

The court overseeing Ms. M’s case understood that the agency was “setting Ms. M up for failure.”⁴⁶ Indeed, the court recognized and documented the bias and inhumanity with which the agency treated Ms. M. While the court did not terminate Ms. M’s rights in this proceeding, the statistics of overinclusion and disparate family separation of disabled parents and their children⁴⁷ remind us that her challenges are far from singular. Instead, Ms. M’s case is but one example of a state foster care agency failing to adequately support the needs of a disabled mother. Ms. M’s case suggests that if the family-regulation system does not change, parents with disabilities

42. Sandra T. Azar et al., *Practices Changes in the Child Protection System to Address the Needs of Parents with Cognitive Disabilities*, 7 J. PUB. CHILD WELFARE 610, 612 (2013) (describing the critical need for collaboration between caseworkers and other service providers for parents); Sandra T. Azar & Kristin N. Read, *Parental Cognitive Disabilities and Child Protection Services: The Need for Human Capacity Building*, J. SOCIO. & SOC. WELFARE, Dec. 2009, at 127, <https://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=3476&context=jssw> (describing needed human capacity building and organizational development to support parents’ needs).

43. *Parents with Intellectual Disabilities*, THE ARC (Mar. 1, 2011), https://thearc.org/wp-content/uploads/forchapters/Parents%20with%20I_DD.pdf.

44. *In re Catholic Guardian Servs.*, 2018 WL 3341429, at *5.

45. *Id.* (emphasis added).

46. *Id.* at *7.

47. *See supra* note 2 and accompanying text.

will continue to experience family separation at disproportionate rates. At minimum, parents within the system should be given meaningful and personalized mental health care; system actors should account for trauma and provide trauma-informed approaches to interacting with and supporting parents; and parents with intellectual disability should be offered tailored services as required by the ADA.