Diagnosis in Family Law Forensic Psychology

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In forensic psychology and forensic assessment in family law matters, there is no patient and no treatment. This stands in contrast to clinical psychology and clinical assessment in which there is, indeed, a patient and, if indicated, a diagnosis. Forensic psychologists most frequently become involved in family law matters when the Court orders a child custody evaluation or another form of forensic assessment for the purpose of determining what is in the best interests of children. While the definition of “best interests” may vary from state to state in the same manner that the family code varies from state to state, invariably the best interests of children includes elements of how they are parented, whether the parenting is effective and appropriate and whether the children are being raised in a psychologically safe and psychologically stable environment.

It is tempting for for family law attorneys to seek diagnosis in child custody disputes and for the psychologist to offer them. Diagnoses are discrete and are defined by specific criteria as set forth in the Diagnostic and Statistical Manual of Mental Disorders. Diagnosis may be seen as a way to explain, in a brief and parsimonious manner, what is “wrong”. On the surface, diagnoses appear objective (they are, in reality, frequently subjective) and they are seen as providing powerful and compelling statements about individuals. Imagine, for example, that there is a parent who, upon custody evaluation, is not given a diagnosis where their co-parent is given a diagnosis of Bipolar Disorder. On the face of it, it may appear that this would argue for the children’s best interests being fostered by being primarily in the custody of the parent who did not merit a diagnosis based upon their symptoms. As is so often the case, surface appearances can be deceiving. Things that seem to summarize complex issues in a neat and tidy way are often misleading, reductionistic and overly simplistic. They are examples of a powerful form of bias – Oversimplification Bias. Often this fails to present the complete and nuanced picture that is so critical to quality forensic work, particularly in the arena of child custody and child custody evaluations.
So why is diagnosis problematic in forensic psychology in family law? Provision 4.6 (c) of the Model Standards of Practice for Child Custody Evaluations, promulgated by the Association of Family and Conciliation Courts states “Evaluators recognize that the use of diagnostic labels can divert attention from the focus of the evaluation (namely, the functional abilities of the litigants whose disputes are before the court) and that such labels are often more prejudicial than probative. For these reasons, evaluators shall give careful consideration to the inclusion of diagnostic labels in their reports. In evaluating a litigant, where significant deficiencies are noted, evaluators shall specify the manner in which the noted deficiencies bear upon the issues before the court.” In their landmark 1997 article on the irreconcilable differences between clinical and forensic roles published in 1977, Greenberg and Shuman advise against the use of diagnosis in forensic matters. Diagnosis reduces complex phenomena to simplistic labels. When simplistic labels are applied to humans, many important elements of who that human being is, many nuanced aspects of who that human being is, disappear. Certainly, everyone has met people who are depressed. Some depressed people function well despite their depression. Others are functionally disabled by their depression. While both are depressed and while both, upon clinical assessment may merit a diagnosis of major depression, they are clearly functioning in different ways. In child custody work, what is important is to describe how someone functions, how someone parents, how someone interacts with his/her children and how someone thinks about parenting. Forensic psychologists in family law matters are most helpful to the Court when they focus on behavioral elements of parenting and co-parenting. Diagnosis does not offer this kind of information. Some people with low-grade depression are significantly impaired in their parental functioning while others with major depression are able to parent competently. Using diagnosis as a short cut to depicting complex human beings is inappropriate in child custody evaluations. Moreover, because an essential element to the best interests of children and, therefore, custody evaluations and family law forensic work, has to do with interactions and relationships between children and their parents, diagnosis lacks the richness, the breadth and the probative focus to be useful.