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Parental Alienation: The Problem (Part One of a Two-Part Series)

By Ashish S. Joshi

Ideally, a divorcing couple aspires for a healthy closure of a marriage. Yet when a marriage has produced children, a post-divorce parent-child relationship continues to exist and necessitates that the parents, despite their divorce, continue to co-parent the child. At the healthiest end of this spectrum, a child has positive relationships with both parents and desires time with each of his or her parents. The majority of post-divorce children fit into this category. At the other end of this spectrum is an unhealthy, pathological situation wherein a child rejects a parent. Where the rejection is unequivocal, strident, without guilt or ambivalence, absolute and without justification, we encounter the phenomenon known as “parental alienation.”

For litigants who are caught up in the tentacles of the alienation monster and attempt to seek redress from the family court system, the words of the actor Alec Baldwin ring true: “to be pulled into the American family law system in most states is like being tied to the back of a pickup truck and dragged down a gravel road late at night. No one can hear your cries and complaints, and it is not over until they say it is over.”¹

Parental Alienation: What’s in a Name?

The Michigan Court of Appeals has defined parental alienation as “[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent.”² It is a “mental condition in which a child – usually one whose parents are engaged in a high-conflict separation or divorce – allies himself or herself strongly with an alienating parent and rejects a relationship with the ‘target’ parent without legitimate justification.”³

Experts have used different terms to describe parental alienation.

⁴ For example, in their book published by the American Bar Association, Stanley Clawar, a sociologist, and Brynne Rivlin, a social

worker, used the terms “programming,” “brainwashing,” and “indoctrination” when describing the behaviors that cause parental alienation.⁵ The authors explained that these behaviors

“...hinder the relationship of the child with the other parent due to jealousy, or draw the child closer to the communicating parent due to loneliness or a desire to obtain an ally. These techniques may also be employed

to control or distort information the child provides to a lawyer, judge, conciliator, relatives, friends, or others, as in abuse cases.”⁶

Another expert, Dr. Richard Warshak, has used the term “pathological alienation” to mean:

...a disturbance in which children, usually in the context of sharing a parent’s negative attitudes, suffer unreasonable aversion to a person or persons with whom they formerly enjoyed normal relations or with whom they would normally develop affectionate relations.⁷

Recently, the Nebraska Supreme Court affirmed a district court’s holding a parent in contempt of violating the Court’s parenting time orders. The Nebraska court found the custodial parent to have used “passive aggressive techniques” in undercutting the non-custodial parent’s relationship with the children.⁸ While the words “parental alienation” were not used by the Nebraska court, the discussion of the custodial parent’s strategies leave little room for doubt that the Court was addressing parental alienation. The consensus amongst the courts, experts and mental health professionals appears to be that parental alienation “refers to a child’s reluctance or refusal to have a relationship with a parent without a good reason.”⁹

As to how parental alienation takes place, Dr. Amy Baker’s research describing seventeen of the most prevalent alienating strategies is widely used and accepted by mental health professionals.¹⁰ These include: badmouthing, limiting contact, confiding in the child, asking the child to spy on the target parent, referring to the target parent by first name, withholding important information from the target parent and undermining the authority of the target parent. Not all strategies have to be present for alienation to occur.

In terms of the severity of the symptoms or behaviors that are manifested in the child, parental alienation can be termed as mild, moderate, or severe.¹¹ Mild parental alienation “means that the child resists contact with the target parent but enjoys the relationship with

that parent once parenting time is underway.”¹² Moderate parental alienation “means that the child strongly resists contact and is persistently oppositional during parenting time with the target parent.”¹³ Severe paren-

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tal alienation “means that the child persistently and adamantly refuses contact and may hide or run away to avoid being with the target parent.”¹⁴

Parental Alienation versus Estrangement

While the common denominator in both parental alienation and parental estrangement is the child’s refusal to have a relationship with one of his or her parents, the distinguishing feature of parental alienation is that the child’s rejection of the target parent is without legitimate justification. If, for example, a parent was abusive, the child’s rejection of that parent is for a good reason. Most mental health professionals term this legitimate rejection of a parent by a child as estrangement.

While estrangement may also result in a child rejecting a parent and may necessitate court and therapeutic intervention, it does not necessarily negate the concept of parental alienation. The existence of the former does not necessarily mean absence of the latter. At times, experts may find that despite a pattern of abuse or neglect demonstrated by a rejected parent, there also exists evidence of parental alienation. These cases are known as “hybrid” cases. In evaluating a case for presence of alienation and/or estrangement, it is important to look for evidence supporting the reason for rejection. If abusive or neglectful behavior is alleged of a parent, it is important to look for independent evidence supporting this behavior. It is important to look at the relationship as it existed prior to the divorce and/or separation. If the father is being accused of having an anger problem, was this complaint made by the child (not the spouse) before the separation and/or divorce? If the mother is being accused of neglect, did this problem manifest before the divorce and/or separation? Were there findings made by Child Protective Services that corroborate the allegations of abuse? Are there witnesses who have witnessed the abusive behavior of the accused parent? Why is this

important? It is important because in a forensic setting – such as a courtroom – a fact finder is asked to determine a more objective “truth” than what practicing clinicians and therapists are asked to evaluate behind closed doors.

At times, a “policy argument” is thrown around positing that parental alienation is nothing but a gambit that has been generated to protect abusive fathers from being accountable for their actions. Sometimes this strawman of an argument is taken to preposterous levels. For example, one of the well known detractors of parental alienation wrote a letter to the Diagnostic and Statistical Manual, Fifth Edition (DSM-5) Task Force alleging that advocates of parental alienation include “father’s rights’ groups who don’t like to be interfered with when they are sexually abusing their children.”¹⁵ The detractor subsequently withdrew his statement, saying, “I apologize for suggesting that all fathers who accuse mothers of [parental alienation syndrome] are sexually abusing their children. That was clearly an overstatement that I retract.... I do not deny that parental alienation occurs and that a lot of people are hurt when there is an alienator.”¹⁶ Abuse, of course, should not be condoned; when proven, it has to be met with swift and effective action. However, in a forensic setting, it may be difficult at times to distinguish estrangement from alienation. “Determining when a child’s negative feelings about one parent are rational or irrational is more often than not quite challenging. In some respects, the process is similar to differentiating a non-bizarre delusion from a persistent, justified worry.”¹⁷ A child who has been alienated typically “has a false belief that the rejected parent has been abusive or neglectful. Children with false beliefs about events that never actually occurred may develop false memories ... memories of non-events.”¹⁸ In evaluating a case for the presence of alienation and/or estrangement, the court appointed evaluators and/or experts must investigate whether the reasons given for contact refusal are true, accurate and/or justified. Fortunately, there is good research that shows how to do it.¹⁹

A thorough investigation into allegations of abuse is necessary not only to rule out the possibility of estrangement but also to understand alienation. Domestic violence is about control and domination. A perpetrator of domestic violence is likely to continue his or her “violent” pattern by controlling the children also. Research has demonstrated that “abusive ex-partners are likely to attempt to alienate the children from the other parent’s affection (by asserting

blame for the dissolution of the family and telling negative stories), sabotaging family plans (by continuing criticism or competitive bribes), and undermine parental authority (by explicitly instructing the children not to listen or obey).²⁰ A parent who has been found to be abusive or controlling and domineering is more likely to continue his or her harassing and controlling pattern by manipulating the children to turn against the victim parent.²¹

Another differentiating aspect between estrangement and alienation is the level of rejection of a parent by the child. An alienated child is polarized in his or her views of the rejected parent. The target parent is characterized as horrible; the preferred parent is praised as “perfect.” The level of polarization in severe alienation cases is pathological. While non-alienated children recover quickly from whatever caused their resentment, alienated children “never” “ever” want to see the target parent. Though it sounds counter-intuitive, research shows that an alienated (and non-abused) child may be more negative toward the rejected parent than a child who was actually abused:

“It is remarkable that abused children frequently remain attached to their abusive parents, whom they might perceive as charming and charismatic. ... a maltreated child may have ambivalent feelings toward the abusive parent; however, the alienated child almost always has highly negative attitudes toward a non-abusive parent.”²²

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Parental Alienation versus Parental Alienation Syndrome

Courts often face a battle of experts on the topic of “parental alienation syndrome.” A parent who is accused of engaging in alienating behaviors may present expert opinion that “parental alienation syndrome” has no scientific underpinning and therefore, the court must disregard any and all evidence of parental alienation. This is a red herring.

The term “Parental Alienation Syndrome” was formulated by a child psychiatrist Richard Gardner. Dr. Gardner explained:

“the parental alienation syndrome is a disorder that arises primarily in the context of child-custody disputes... It results from the combination of a programming (brainwashing) parent’s

indoctrinations and the child's own contributions to the vilification of the target parent...."23

Dr. Gardner's formulation of Parental Alienation Syndrome was lauded by some and criticized by others. The criticism that was levied at Dr. Gardner mainly consisted of "ad hominem and shoddy scholarship" that found him pilloried.24 However, since Dr. Gardner's formulation of the Parental Alienation Syndrome in the mid eighties, several mental health professionals and researchers, working independently of Dr. Gardner, have studied the behaviors that are considered as alienating behaviors and reached a consensus that parental alienation is real and it constitutes "child abuse."25 The Clawar / Rivlin's study that was published by the American Bar Association in their book titled *Children Held Hostage*, Dr. Richard Warshak's description of a pattern of coercive control and domination by a parent, Leona Kopetski's research, Barry Bricklin's work and Johnston / Kelly's paper referring to parental alienation as "an insidious form of emotional abuse of children that can be inflicted by divorced parents," all ultimately culminated into a proposal that parental alienation be included in DSM-5.26

The difference between the term parental alienation and "parental alienation syndrome" is that Dr. Gardner's definition focuses solely on the child's behavior after he or she has been successfully alienated from the targeted parent. Whereas parental alienation "focuses on the behavior and actions of the aligned parent, rejected parent and the child."27 As the Connecticut Superior Court acknowledged, the "strategies" of alienation are "scientifically present and reliable, and thus pass the ...Daubert test."28 In an informal poll of members of the Association of Family and Conciliation Courts conducted in 2010, 98 percent of the 300 respondents responded affirmatively to the question: "Do you think that some children are manipulated by one parent to irrationally and unjustifiably reject the other parent?"29 While the "parental alienation syndrome" may continue to generate controversy, there is virtually no disagreement amongst the mental health professionals on parental alienation.

DSM-5: A Recent Clarification from the Horse's Mouth

Another argument lobbed against parental alienation is that it is not included in the "bible" of mental disorders – the DSM-5. Hence, the argument goes, it must not be good science. This is another red herring. Prior to the publication of DSM-5, "there was a proposal to

include parental alienation disorder as a new diagnosis.”³⁰ The members of the DSM-5 Task Force “never said that they doubted the reality or the importance of parental alienation.”³¹ “However, they concluded that parental alienation did not meet the standard definition of a mental disorder, that is, ‘the requirement that a disorder exists as an internal condition residing within an individual.’”³² Accordingly, the DSM-5 Task Force “said that parental alienation should be considered an example of a relational problem because it involves a disturbance in the child’s relationship with one or both parents.”³³

Recently, two of the authors who contributed to DSM-5 along with Dr. William Bernet of Vanderbilt University School of Medicine, published a paper in the peer reviewed Journal of the American Academy of Child & Adolescent Psychiatry.³⁴ The authors pointed out that “one of the new terms introduced in the DSM-5 was ‘child affected by parental relationship distress’ (CAPRD).”³⁵ The authors elaborated that their purpose of publishing the article was “to explain how clinicians and researchers can use the new terminology of CAPRD.”³⁶ They pointed out that “since two of the authors of [the] article” wrote the chapter on “Other Conditions” in the DSM-5, their article was consistent with the structure, content, and intentions of the DSM-5.³⁷ The authors proposed that the CAPRD category should be used by clinicians “when the focus of clinical attention is the negative effects of parental relationship distress on a child in the family, including effects on the child’s mental or medical disorders.”³⁸ The term “parental relationship distress,” authors pointed out, includes behaviors such as “persistent disparagement of one or both parents by the other parent.”³⁹ Typically, as a result of such behaviors, “a child affected by parental relationship distress displays impaired functioning in behavioral, cognitive, affective, and/or physical domains. Examples of behavioral problems include oppositionality and the child’s reluctance or refusal to have a relationship with a parent without a good reason (parental alienation).”⁴⁰ Examples of “cognitive problems” may include the child “adopting the false belief that the rejected parent is evil or dangerous (parental alienation).”⁴¹ The authors clarified that “children who experience parental alienation almost always fulfill the definition of CAPRD.”⁴² The concept of parental alienation is covered by DSM-5. The psychological damage associated with parental alienation has been well researched and documented.⁴³ Heeding the clarion call of

anguished parents and frustrated mental health professionals, courts around the country have intervened in the cases involving parental alienation. In part two of this article, I will discuss the issue of court interventions – what courts can and should do when faced with parental alienation.

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Endnotes

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- 4. 4 See the discussion in Lorandos D, Bernet W, Sauber R, Overview of Parental Alienation in Lorandos D, Bernet W, Sauber R, eds. Parental Alienation: The Handbook for Mental Health and Legal Professionals, Charles C. Thomas; 2013, pg. 8.**
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30 *Supra* 10 at 575. 31 *Ibid*.

32 *Ibid*.

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34 *Id.* at 571-579. 35 *Id.* at 571.

36 *Id.* at 572.

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38 *Ibid*.

39 *Ibid*.

40 *Ibid*.

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