

WHY ALIENATION CASES GO SIDEWAYS IN COURT

Family Law cases where parental alienation is present are difficult and the court often gets them wrong. There are several reasons for this, and having an understanding of them should be able to help to manage them.

There are two systemic reasons. The first is that the Family Law court always favors the status quo. That is why, in modification hearings, one must show a “substantial change of circumstance” in order to get the court to make a change. When alienation is present and a child is alienated, that child’s resistance to seeing that parent is essentially part of the status quo. The reasons for the resistance is another matter, but the child not wanting to see a parent, for whatever reason, is the state of affairs that is brought to the court.

The second systematic reason is that the Family Court system is biased - properly so towards the protection of children from danger. The purpose of this bias is very understandable as children definitely need to be protected from danger and abuse. The problem is, when parental alienation is present, this bias is manipulated and exploited. When targeted or unfavored parents are falsely accused of wrongdoing as an explanation for why the child does not want to see the parent, the court is obligated to “err on the side of caution” to make certain that the child is not being abused and is safe.

These two reasons are built into the system and must be appreciated and then overcome. The most reliable way to do this is through the presentation of massive and overwhelming evidence that, (1) the status quo is the environment where the child is being psychologically abused, and (2) that the child is actually living in an environment with the alienating or favored parent that warrants protection for the child. Getting these two points across unavoidably requires expert testimony to educate the court accordingly. One of the biggest mistakes made at this point is to not provide adequate massive and overwhelming evidence. Attorneys will sometimes say that the Judge has “heard enough” and that further testimony is not needed. In my experience, this failure to “connect the dots” for the Court, assuming that it is clear, is one of the most common mistakes made by otherwise competent family lawyers. The points must be made, made again and then made again via fact witness testimony as well as expert testimony. The specifics of how this is done is beyond

the scope of this handbook, however the important point to take away is that this cannot be “over done.”

This leads me to the next problem, which is not systemic to the Family Court, but is systemic to the phenomenon of parental alienation. The problem I am referring to is that the phenomenon of parental alienation is, in its nature, counter-intuitive. The alienated child, after all, looks very close to the alienating or favored parent. The alienating parent often presents as being in control, concerned and protective of the child. The targeted or unfavored parent, who has typically been falsely portrayed as being unstable, unsafe or even dangerous, has been traumatized by not only the loss of their children, but also by the betrayal of the system that is supposed to see the truth and protect their children. They have been doubly traumatized, and they often look it. They may come across as overly emotional and angry, which then plays into the alienating parent’s false portrayal of them.

The solution to this counter-intuitive bias is massive and overwhelming evidence that is designed to educate the court, both with expert opinion, but also with carefully scripted fact witness testimony that comports with the expert testimony. This combination of fact witness testimony, in concert with expert testimony that basically explains it, is the combination most likely to open the court’s eyes as to what is actually occurring.

This leads me to the final point. That is, the alienating parent must be exposed as being the alienating parent. Their behavior must be revealed and their distortions and lies must be exposed. The most common error made in this respect is that the alienating parent is not attacked in this manner. Instead, the targeted parent defends them self only. In my opinion, without successful exposure of the behavior and character of the alienating parent, the court is unlikely to get it right and order a remedy that will actually work.