



# TEMPORARY NO-CONTACT ORDERS:

## The Necessary Ingredient for Effective Reunification in Cases Involving Parental Alienation

BY ASHISH JOSHI

On January 28, 2020, the Michigan Court of Appeals issued a published opinion in a case involving parental alienation wherein it affirmed a trial court's award of sole physical and legal custody to a target parent along with a temporary no-contact order that restrained the alienating parent from having any unsupervised contact with the child. In *Martin v. Martin*, the Court, similar to several other courts around the country, refused to get drawn into the meaningless controversy surrounding the "Parental Alienation Syndrome" and instead focused its attention on the alienating parent's *behaviors*:

[Mother] ... essentially contends that 'parental alienation' is junk science. While there may be a dispute in the scientific community about whether there is diagnosable, pathological condition called parental alienation syndrome...there is no reasonable dispute that high-conflict custody disputes frequently involve acts by one parent designed to obstruct or sabotage the opposing parent's relationship with the child.<sup>1</sup>

### Parental Alienation: A Form of Emotional Abuse That Should Not Be Tolerated

Parental alienation is not a new phenomenon; the mental condition has been described in the legal cases since the early 19<sup>th</sup> century and in the scientific literature since the 1940s.<sup>2</sup> The concept of parental alienation has been acknowledged and addressed by English-speaking courts for the last 200 years. One of the most widely accepted definitions of the condition 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."<sup>3</sup>

When we peel the layers of this definition, three salient features of the phenomenon come to the light. First, parental alienation can be conceptualized as a mental condition present in the *child*, i.e., the child has a distorted or false belief that the rejected or disfavored parent is "evil," "dangerous," or somehow unworthy of love or affection. Second, the child's rejection of the alienated or target parent is *without legitimate*

*justification*. And this is the key distinction: if there is a documented history of the rejected parent being abusive or severely neglectful, the child's rejection of that parent could be legitimate and if so, it would not be a case of parental alienation. Third, it is important to note that the rejected parent is not expected to be a "perfect" parent and may even have contributed to the child's dislike or hatred of him or her. More often than not, a rejected parent reacts to the alienation dynamic in frustration, even anger. But such *reaction* to the sabotaging and breakdown of the parent-child relationship should not be confused with its *causation* and the essential feature of parental alienation remains that the child's rejection of the alienated parent is far out of proportion to anything that parent has done.<sup>4</sup>

In defining parental alienation, family courts have focused on behaviors manifested by an alienating parent and the signs of alienation in the affected child. In *Meadows v. Meadows*, the Michigan Court of Appeals defined parental alienation by focusing on the behaviors of an alienating parent: "[t]he process of one parent trying to undermine and destroy to varying degrees the relationship that the child has with the other parent."<sup>5</sup> On the other hand, in *McClain v. McClain*, the Tennessee Court of Appeals defined the condition by focusing on the mental condition of the child: "The essential feature of parental alienation is that a child...allies himself or herself strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification."<sup>6</sup>

In another case, in *J.F. v. D.F.*, the New York Supreme Court attempted to define parental alienation by borrowing a chapter from the elements of the tort of intentional infliction of emotional distress and defined the condition to require that "(1) the alleged alienating conduct, without any other legitimate justification, be directed by the favored parent, (2) with the intention of damaging the reputation of the other parent in the children's eyes or which disregards a substantial possibility of causing such, (3) which proximately causes a diminished interest of the children in spending time with the non-favored parent and, (4) in fact, results in the children refusing to spend time with the targeted parent either in person, or via other forms of communication."<sup>7</sup>

Experts, too have used different terms to describe these behaviors.<sup>8</sup> For example, Dr. 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.<sup>9</sup> The authors explained that these behaviors

[h]inder 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.<sup>10</sup>

Dr. Richard Warshak, a clinical professor of psychiatry, has used the term “pathological alienation” that results from such alienating behaviors:

[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.<sup>11</sup>

At times, courts have used terms other than parental alienation to criticize the very behaviors underlying the condition but have chosen to call it by another name. For instance, in *Martin v. Martin*, the Nebraska Supreme Court found a custodial parent to have used “passive aggressive techniques” in undercutting the non-custodial parent’s relationship with the children.<sup>12</sup> While the words “parental alienation” were not used by the Nebraska court, its detailed discussion of the custodial parent’s alienating behaviors and strategies leave little room for doubt that the court was addressing the phenomenon of parental alienation. In the end, 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.”<sup>13</sup> And regardless of the varying definitions of parental alienation, or even the nomenclature, the consensus amongst the courts is that “there is no doubt that parental alienation

exists.”<sup>14</sup> More importantly, courts agree that it “is a form of emotional abuse that should not be tolerated.”<sup>15</sup>

## Repairing the Damaged Relationship Between the Alienated Child and the Target Parent: The Stark Dilemma

Once a court makes a finding of parental alienation, it thereafter must make a decision as to what legal and mental health interventions are mandated in the best interests of the child. In making this decision, courts often face what British Columbia Justice Bruce Preston termed “a stark dilemma.”<sup>16</sup> The court must weigh and balance the long-term benefits of repairing the parent-child relationship versus the temporary “degree of emotional cost, such as creating psychological trauma or provoking the child’s destructive behavior” by removing the child from the custody of an alienating parent and/or enforcing a temporary period of no-contact between the two.<sup>17</sup> More than ten years ago, Justice Preston wrestled with this dilemma:

The probable future damage to M. by leaving her in her mother’s care must be balanced against the danger to her of forcible removal from the strongest parental connections she has...I conclude that the forcible removal of M. from her mother’s and her grandmother’s care has a high likelihood of failure, either because M. will psychologically buckle under the enormous strain or because she will successfully resist re-integration with her father.<sup>18</sup>

The Court of Appeals weighed in on the other side of this “stark dilemma,” disagreed, and found that the obligation of the Court to make the order it determines to be in the best interests of the child “cannot be ousted by the insistence of an intransigent parent who is ‘blind’ to her child’s interests... The status quo is so detrimental to M. that a change must be made in this case.”<sup>19</sup> Family courts around the country, recognizing the severe psychological toll wreaked by parental alienation on the children, are increasingly open to providing aggressive but necessary intervention. In February of 2020, an Indiana family law court entered an opinion wherein it found that the father had engaged in severe parental alienation and domestic and family abuse. Given that the child was over 16 years of age, the Court recognized that the time was of essence in reuniting the child with the mother, the target parent. The Court provided *immediate* and *effective* intervention: it gave the mother sole legal and primary custody, ordered the mother and the child to participate in a specialized reunification program that is designed for the alienation dynamic, ordered a 90-day no-contact period between the father and the child, and ordered the father to cooperate and comply with the recommendations of the reunification counselors.<sup>20</sup>

These decisions are not outliers; they are examples of family court judges who are finally realizing that adopting the

“conservative” approach by doing the same old thing, again and again, but expecting a different result not only guarantees severe frustration but enables alienation. For instance, in 2017, the Tennessee Court of Appeals affirmed a circuit court ruling wherein the court, upon making a finding of severe parental alienation, ordered no-contact between the minor child and the alienating parent (the father) “for at least 90 days” beginning with a reunification program.<sup>21</sup> In addition, the alienating parent’s future parenting time with the child was conditioned upon the parent’s compliance with the rules and recommendations of the reunification program counselor and the aftercare professional.<sup>22</sup> As the Court found, the seemingly harsh but temporary no-contact period was a necessary step to not only give the children a realistic hope at reunification but also to protect them from continued alienating behaviors. The Court reasoned that the traditional therapy, counseling, education, parenting coordination.... the same old methods to counter alienation had yielded zero results and made a bad case far worse over a period of time:

That’s what we’ve been doing for nigh on 16 years. We’ve been working on this and working on it and we’ve been to counselors and therapists and doctors and courts and more counselors and different therapists and more doctors and court. It’s a merry-go-round upon which we have all been for many, many years and it did not work. I have no reason to believe it’s ever going to work in the future.<sup>23</sup>

The Court realized that the temporary, 90-day no-contact period together with a specialized reunification program was “most likely to result in a change in the pattern of parental alienation and therefore in the best interest of the children.”<sup>24</sup> Such measure was necessary to facilitate reunification of alienated parents with alienated children and to “reduce the potential for sabotage.”<sup>25</sup>

In *Martin*, the Michigan Court of Appeals found that exposure to parental alienation is “‘psychologically very dangerous’ for the children and...[has] ‘long-term effects’ on their future relationships.”<sup>26</sup> In such situations, a court has two tasks at hand: first, and most important, protecting the child from further psychological abuse through the continued alienating behaviors, and second, repairing the damaged relationship between the child and the rejected parent. Before settling on the options available to repair a damaged relationship, the Court must promptly ensure that the child is protected and removed from the environment where s/he was exposed to alienating behaviors. Because “continuation along the current path will only leave [the] child with a warped and unhealthy relationship with [the alienating parent], resting on a shared base of fear, loathing and anxiety, and no relationship with [the target parent].”<sup>27</sup>

## Temporary No-Contact Orders Are Necessary and Warranted in Alienation Cases

Alienated children suffer from severe behavioral, emotional, and cognitive impairments.<sup>28</sup> Specialized reunification programs (which are radically different from “therapy”) are designed to repair the damaged relationship between alienated parents and the children. They often require a temporary no-contact period between the favored parent and the children together with the parent’s compliance with some conditions before the resumption of regular contact. Resumption of contact is dependent upon the favored parent’s willingness and demonstrated ability to modify his or her alienating behaviors—behaviors that would no doubt sabotage the gains made during the reunification program in an absence of a no-contact order. Also, “optimal timing” to resume regular contact would depend on a number of factors, “such as the favored parent’s ability to modify behaviors that create difficulties for the children, the children’s vulnerability to feeling pressured to realign with a parent, the duration of the alienation or estrangement prior to the Workshop, and the favored parent’s past conduct and compliance with court orders.”<sup>29</sup>

In cases of severe parental alienation, experienced and knowledgeable clinicians recommend “a period of 3-6 months before regular contacts resume” between a formerly favored parent and the child “to allow a child to consolidate gains and work through the numerous issues that arise in living with the rejected parent free from the influence of the favored parent.”<sup>30</sup> While the regular (unsupervised) contact is held off for a limited period, therapeutically monitored contacts between a formerly favored parent and child may occur sooner.<sup>31</sup>

It is critical to understand why family courts order the temporary no-contact periods between the favored parent who has been found to have engaged in alienating behaviors and the child. When contact resumes, it usually occurs first during sessions with a professional who can monitor its impact upon the child who is going through (or has just been through) a reunification program. Such precautions are necessary because research demonstrates that it is *very* hard for alienating parents to change their behaviors. If contact is restored prematurely or without proper safeguards, the children become “re-alienated,” reverting to their old behaviors and back to rejecting the target parent.<sup>32</sup> The pathology of parental alienation is so severe that some alienators “chose to go for months “without seeing [their] children or working towards meeting conditions for renewal of contact.”<sup>33</sup> Some refuse to cooperate with court orders and want “no contact with [the] children because [they] take their [the children’s] reconciliation with [the target parent] as a personal rejection.”<sup>34</sup> Some “chose to cut off all contact with [the child] and said that when the boy turns 18 he could choose to renew contact.”<sup>35</sup>

## Separating Children from an Alienating Parent is Not Traumatic

Research demonstrates that alienation abates when children are required to spend time with the parent they claim to hate or fear.<sup>36</sup> Despite this, lawyers, GALs, LGALs, children’s counselors and other professionals predict dire consequences to children if the court fails to endorse their strong and strident preferences to avoid a parent. Usually such predictions “are vulnerable to reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory.”<sup>37</sup> A court, when presented with such “sky is falling” predictions should remember the following three facts: (1) no peer-reviewed study has documented harm to severely alienated children from the reversal of custody, (2) no study has reported that adults, who as children complied with expectations to repair a damaged relationship with a parent, later regretted having been obliged to do so, and (3) studies of adults who were allowed to disown a parent find that they regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents.<sup>38</sup>

Professionals who attempt to persuade courts to not separate children from an alienating parent (or oppose a temporary no-contact order between the alienating parent and the children) generally cite attachment theory to support their predictions of “trauma” or psychological damage to children. Such arguments are flawed, misleading, and “rooted in research with children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other—often severely traumatic—reasons.”<sup>39</sup> A consensus of leading authorities on attachment and divorce shows that this theory does not support generalizing the negative outcomes of traumatized children who lose *both* parents to a case involving parental alienation, where children leave one parent’s home to spend time with their other parent, under a court order.<sup>40</sup>

Further, attorneys for targeted parents should challenge these experts to unpack their evocative jargon if they attempt to dissuade a court from intervening in an alienation case by using terms like “trauma” and “attachment.”<sup>41</sup> When these experts predict that the child will be “traumatized,” what they usually mean is that the child will be “unsettled.”<sup>42</sup> Such pessimistic predictions not only lack empirical support but are willfully blind to the well-documented benefits of removing a child from an alienating parent whose behavior is considered psychologically abusive.<sup>43</sup> Sure, removing a child from a drug-infested household would no doubt cause anxiety to the child and the whole experience maybe unsettling. But would a court or protective services workers hesitate to remove a child from a home when confronted with strong evidence of drug-abuse or other dangerous behaviors manifested by a parent? Science tells us—and courts have agreed—that parental alienation is psychological abuse. Research has demonstrated

that the harms associated with psychological abuse or maltreatment are equal and sometimes more than other forms of abuse, including physical and sexual abuse.<sup>44</sup>

Effective interventions—including separating the child from an alienating parent and temporarily suspending contact between the two—provide experiences that help uncover the positive bond between the child and the targeted parent. “These experiences can help [the children] to create a new narrative about their lives, one that is more cohesive, more hopeful, and allows them to begin to see themselves in a new place.”<sup>45</sup>

In *Martin*, the Michigan Court of Appeals acknowledged how alienation behaviors are alarming and psychologically abusive:

[T]hese are not minor disputes over contempt and parenting time. These are matters that could have a significant effect on the child’s life, including on her long-term mental and emotional health: having to maintain the perception of hatred and contempt toward her father—which she may or may not share with her mother—will undoubtedly affect her mental and emotional health as well as her long-term relationship with her father.<sup>46</sup>

Given the significant damage to children who remain alienated from a parent, removing the child from an alienating parent’s custody and entering a temporary no-contact order between the two is ultimately “far less harsh or extreme than a decision that consigns a child to lose a parent and extended family under the toxic influence of the other parent who failed to recognize and support the child’s need for two parents.”<sup>47</sup>

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## Endnotes

- 1 *Martin v. Martin*, Michigan Court of Appeals No. 349261 (January 28, 2020), FN 2.
- 2 See e.g., *Westmeath v. Westmeath*: The Wars Between the Westmeaths, 1812-1857, in Lawrence Stone, *Broken Lives: Separation and Divorce in England, 1660-1857*, 284 (1993); David M. Levy, *Maternal Overprotection* 153 (1943).
- 3 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. 5.
- 4 Bernet, W., Introduction to Parental Alienation in Lorandos D. & Bernet, W., eds. *Parental Alienation: Science and Law*, Charles C. Thomas; 2020, pg. 1-2 (Forthcoming publication).
- 5 *Meadows v. Meadows/Henderson*, 2010 WL 3814352 (Mich. App.) (Unpublished).
- 6 *McClain v. McClain*, 539 S.W.3d 170, 182 (2017).
- 7 *J.F. v. D.F.*, 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U).
- 8 Lorandos D., Bernet W., Sauber R., *supra.*, pg. 8.
- 9 Clawar, S. & Rivlin, B., (2013), *Children Held Hostage: Dealing with Programmed and Brainwashed Children*, Washington, DC: American Bar Association Section of Family Law.
- 10 *Id.* at 15.
- 11 Warshak, R. (2006), Social science and parental alienation: Examining the disputes and the evidence. In R.A. Gardner, S.R. Sauber & D. Lorandos (Eds.), *The International Handbook of Parental Alienation Syndrome: Conceptual, Clinical and Legal Considerations*, pg. 361.
- 12 *Martin v. Martin*, 294 Neb. 106 (2016).
- 13 Bernet W., Wamboldt M., Narrow W., Child Affected by Parental Relationship Distress, *Journal of the American Academy of Child & Adolescent Psychiatry*, pg. 575
- 14 *J.F. v. D.F.*, *supra.*
- 15 *McClain v. McClain*, *supra.* at 200.
- 16 *A.A. v. S.N.A.*, [2007] BCSC 594 (Can.).
- 17 Warshak, R. (2010), Family Bridges: Using Insights From Social Science to Reconnect Parents and Alienated Children, *Family Court Review*, Vol. 48 No. 1, 48-80, 49.
- 18 *A.A. v. S.N.A.*, *supra.* at 84-87.
- 19 *A.A. v. S.N.A.*, [2007] B.C.J. No. 1475; 2007 B.C.C.A. 364; 160 A.C.W.S. (3d) 500, at 8.
- 20 *In Re the Marriage of Wright and Wright*, Monroe County Circuit Court VIII (State of Indiana), Cause No: 53C08-1804-DC-000203 (February 6, 2020).
- 21 *McClain v. McClain*, *supra.* at 183.
- 22 *Id.*
- 23 *Id.*, at 210.
- 24 *Id.* at 211.

- 25 *Id.*, at 213.
- 26 *Martin v. Martin* (Michigan), *supra*, at 3.
- 27 *Id.*, at 5.
- 28 Warshak, R., Severe Cases 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. 5.
- 29 Warshak, R. (2010), *supra*, at FN 95.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*, at 69.
- 33 *Id.*
- 34 *Id.*
- 35 *Id.*
- 36 Warshak, R. (2015), Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy, *Professional Psychology: Research and Practice*, 46(4), 235–249.
- 37 *Id.*
- 38 *Id.*, citing Baker, A.L.J. (2005) The long-term effects of parental alienation on adult children: A qualitative research study. *American Journal of Family Therapy*, 33, 289-302.
- 39 *Id.*, citing Ludolph, P.S. & Dale, M.D. (2012). Attachment in Child Custody: An Additive Factor, Not a Determinative One. *Family Law Quarterly*, 46, 1-40.
- 40 *Id.*
- 41 *Id.*
- 42 *Id.*, citing Zervopoulos, J.A. (2013). How to Examine Mental Health Experts. Chicago, IL. American Bar Association.
- 43 Clawar S. & Rivlin, B., *supra*.
- 44 Spinazzola, J., et. al., Unseen Wounds: The Contribution of Psychological Maltreatment to Child and Adolescent Mental Health and Risk Outcomes. 6 *Psychol. Trauma: Theory Res. Prac. & Pol'y*, no. S1, 2014, at S18.
- 45 *Id.*, citing Norton, C.L. (2011). Reinventing the Wheel: From Talk Therapy to Innovative Interventions. In C.L. Norton (Ed.), *Innovative Interventions in Child and Adolescent Mental Health*. New York, NY: Routledge, pg. 2.
- 46 *Martin v. Martin* (Michigan), *supra*, at pg. 9.
- 47 Warshak, R. (2015), *supra*, at 244.

