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PARENTAL ALIENATION AND DOMESTIC VIOLENCE: TWO SIDES OF THE SAME COIN

Part One of Two

BY ASHISH S. JOSHI

Child abuse and domestic violence come in many forms—physical, social, sexual, and emotional. For the past 34 years, family courts, including Michigan courts, have acknowledged parental alienation as emotional or psychological abuse of a child and have entered orders, decrees, and opinions to address this abusive behavior and put a stop to it.¹ One of the most challenging aspects of litigating or adjudicating a case involving allegations of parental alienation (PA) is the presence of allegations of domestic violence (DV). There is often an interplay between the claims of PA and the claims of DV. In some cases, the issue of DV may be the 800-pound gorilla in the courtroom when it is raised to either detract, defend against, or justify claims of PA. In other cases, they are the opposite sides of the same coin and PA, similar to DV, is a part of the Family Violence dynamic.

The fundamental concept of the PA theory is that children who are alienated reject a parent because they have been brainwashed, programmed, or manipulated by the other parent (and/or third parties) to hold false beliefs and distorted perceptions about the rejected parent. The detractors of the PA theory often put up a strawman argument and claim that the theory *assumes* that any child who rejects a parent must be alienated. For instance, some professionals have argued: “Parental alienation syndrome further assumes that a child’s strong alignment with one parent while rejecting a relationship with the other parent is without legitimate justification, including situations in which there is child abuse.”² The PA theory “assumes” no such thing. It is important to debunk this strawman argument and explicitly acknowledge that not only is this argument false, but it deliberately distorts the PA theory. In responding to such strawman argument, it is also important for a practitioner to educate the court that it is not possible to determine based solely on the rejecting behavior of a child whether that child is alienated or estranged. An evaluator or clinician who claims that *all* children who reject a parent are alienated or claims that it is possible to make a determination regarding whether a child is alienated *solely based on the child’s behavior* is making a fundamental clinical error. While a child’s polarized view of his or her parents and absolute rejection of

a parent may generate a hypothesis of parental alienation, an evaluator or clinician must consider the total clinical picture before making a determination of whether parental alienation exists. Such determination cannot be made without considering the attitudes, perceptions, actions, and omissions of all the parties—the child, the rejected parent, and the favored parent.

Further, PA is the result associated with alienating behaviors that are manifested by a parent (and/or third parties). While alienating behaviors may not always result in severe PA—an absolute and complete rejection of a parent—they still impact the child and the targeted parent in many negative ways. Even “mild” PA could lead to outcomes including the child feeling abandoned and experiencing anger against or rejection of the targeted parent for unjustifiable reasons; the child suffering from depression; academic decline; and physical ill effects, such as high blood pressure.³

PA or DV? A False Dichotomy

There appears to exist a meme of misinformation: Men who successfully defend against accusations of abuse or DV and thereafter win custody are “batterers” and “abusers with custody.”⁴ Given that the majority of states employ rather low standards of proof to “substantiate” or “indicate” a child abuse allegation during the initial investigation, this is a preposterous assertion and an example of ideology masquerading as science. And despite the typical low evidentiary standard utilized to “substantiate” a child abuse allegation, four out of five abuse reports are so lacking in any verifiable support, that these allegations do not satisfy even the low bar necessary for a substantiation.⁵ Nevertheless, DV exists and so does child abuse and neither should be condoned. The problem lies in the binary thinking: “us versus them” mentality, the either-or approach, and the false dichotomy. Courts do not ignore the evidence of DV or abuse when asked to make a finding of PA. Nor do they ignore evidence of PA (or alienating behaviors) when asked to adjudicate DV or abuse allegations. Both PA *and* DV are a part of the equation that a court is supposed to resolve when asked to rule in the best interests of a child.

For instance, Dr. Amy J. L. Baker and her colleagues have come up with the Five-Factor Model⁶ as a methodology to determine whether a child who is aligned with one parent while rejecting the other has been alienated.⁷ It is only when *all* five factors are present that one can conclude that the child is alienated. Factor 3 of this model requires that the now rejected parent did not engage in abuse, neglect, or demonstrate seriously deficient parenting of the type and magnitude that could reasonably be expected to cause a child to reject a parent. This requires a fact-finder to investigate what exactly is the rejected parent alleged to have done to the child and whether such action (or omission) justifies the child's rejection of the parent.

Five Reasons Why Allegations of DV or Child Abuse Must be Thoroughly Investigated

Cases involving allegations of PA often involve allegations of abuse as well. It is often alleged by the favored parent that the rejected parent “deserves” being rejected or that the child's rejection of the parent is justified.⁸ Hence, it is important that allegations of abuse—physical, psychological, or sexual—or neglect are properly and thoroughly investigated at the outset. As Dr. Baker explains, “it is important to determine whether formal child abuse investigations concluded that the rejected parent had in fact engaged in any form of maltreatment.”⁹ This is important for several reasons.

Firstly, DV or child abuse is a serious matter and such abusive behavior should neither be ignored nor condoned. A child who has been subjected to severe abuse or who has witnessed a persistent pattern of DV may reject the abusive parent not because of any indoctrination by the other parent, but because of the psychological and cognitive harm that such abusive behavior wreaks on the child's psyche. Consider for instance, the case of *Jillian EE v. Kane FF*¹⁰, where a New York appellate court affirmed a trial court's rejection of a father's allegations of parental alienation. The trial court awarded custody to the mother because of a documented history of domestic violence, which explained and justified the mother's efforts to keep the child away to protect him from the father's violent behavior. The court determined that while the mother had made some efforts in driving the father away from the child, she did it for “a valid reason—to protect him from the father's violent behavior.”

Secondly, not all conduct that is alleged to be abusive rises to the level of DV. If the acts complained of do not rise to the level of DV and fit squarely within the statutory definition of the term, they should not be considered for the purposes of rebuttable presumption that many states have in favor of the victim and against the abuser for an award of custody.¹¹

Thirdly, false allegations of abuse or DV are not uncommon in contentious divorce and child-custody proceedings. It is important to investigate these allegations to ensure that they have merit. For instance, in *Delekta v. Delekta*, the Michigan

Court of Appeals affirmed a trial court's denial of a mother's motion to change the custody of the parties' two children because, as the mother alleged, the father had “physically and emotionally abused them.”¹² The Court found that the mother had “called in 17 complaints [to the Child Protective Services] between April of 2009 and April of 2018,” “making false accusations” against the father, that “no evidence substantiated [mother's] ... allegations of domestic violence or abuse,” and that it was logical for the trial court to consider the presence of parental alienation.¹³ Other family courts around the country have similarly found that “unfounded domestic abuse allegations does not demonstrate a pattern of domestic violence” and have also noted how false allegations are often made “right before scheduled court hearings.”¹⁴

Interestingly, while some acts of abuse or DV are perceived as inexcusable and unjustifiable (e.g., choking a spouse or a romantic partner or a child), other abusive acts are sometimes perceived as more “socially acceptable.” A study conducted by Dr. Jennifer Harman and her colleagues, found that although PA behaviors are perceived negatively by adults, they are somehow more “acceptable” when mothers do them than when fathers do them.¹⁵ As we will see in part 2 of this article, like other forms of family violence, PA behaviors are never justified—they are abusive to both the child and the targeted parent.¹⁶

Fourthly, treatment interventions differ when comparing PA cases with those involving abuse or neglect and it is important to rule out child maltreatment on the part of the rejected parent before making a decision of the treatment intervention. The treatment should be tailored to the cause of the ruptured or damaged parent-child relationship. If the rejected parent *actually* engaged in abuse or neglect of the child (not just alleged by the favored parent and/or child) then the appropriate treatment in such circumstances would be the one designed for abusive parents, not alienated parents. For instance, “abuse-specific treatment models,” such as Alternatives for Families: A Cognitive Behavioral Therapy (AF-CBT) “are designed to decrease the reliance on punitive parenting styles of an abusive parent and increase the use of non-punitive behavior management strategies on the part of the parent, while simultaneously helping the child process the trauma from the abuse.”¹⁷ But such abuse-specific treatment model would be ill-suited, if not catastrophically counter-productive, for alienation cases. For an alienation-specific treatment is designed to gently but firmly confront the child's false beliefs and distorted perceptions about the rejected parent and to provide him or her with tools and opportunities to correct such false and distorted thoughts and feelings. Such treatment attempts to provide experiential opportunities for the alienated parent to once again function as a safe, loving, and available attachment figure for the child.¹⁸ It would be contraindicated to put an abused child in an alienation-specific treatment and vice versa.

Finally, in cases involving PA, allegations of DV or abuse are likely to continue to be made by the favored parent or the child as an excuse for the child's resistance to or rejection of the rejected parent. It is important that the court and the court-involved professionals fully address this issue at the earliest opportunity to make findings of fact and resolve it one way or the other.

Past History of DV Does Not Trump or Eclipse Present Evidence of PA

While it is rare to come across a situation where a hybrid case of alienation and estrangement, involving past allegations of abuse or DV, turns into a pure alienation case, it is by no means impossible.¹⁹ Even in cases where there is a bona-fide history of DV, it's not *fait accompli* that a court will see this evidence as a danger to the child and therefore award primary custody to the victim of such DV. For instance, a Washington court acknowledged that though the father had admitted assaulting the mother during the marriage, the father did not pose a present danger to the parties' daughter and declined to grant the mother's request that the father undergo a certified domestic violence program prior to visitation with his daughter.²⁰ The court evaluated the matter and considered the totality of circumstances: the father's proactive efforts to undergo psychiat-

ric treatment for domestic violence counseling for over a year prior to trial, the signs of parental alienation in the child, and the mother's harassment of the father by sending letters to his friends which included allegations against the father.

Similarly, the Supreme Court of Alaska affirmed a trial court's ruling that awarded the father sole legal and primary custody of child and awarded the mother supervised visitation despite the father having a history of domestic violence.²¹ The evidence supported finding that the father successfully rebutted Alaska's statutory presumption that a parent with a history of perpetrating domestic violence should not be awarded sole legal or sole physical custody. And it was also determined by the trial court that it was in the child's best interest to be in the father's sole custody. The court determined that the father's acts though problematic were "situational" and that he posed no threat of committing future acts of domestic violence. Nor did he pose a danger to the child. On the other hand, the court was alarmed by the mother's behaviors that demonstrated parental alienation and how her behavior interfered with the relationship between the father and the child.

Evidence of ongoing severe PA behaviors have raised more alarm for courts than evidence of DV or abusive conduct in the remote past—irrespective of gender. For instance, a Washington court of appeals affirmed the trial court's decision to modify the parenting plan and make the mother the primary

residential parent where the court found that the father had made repeated allegations of abuse, none of which were substantiated.²² The court found that while the mother had engaged in DV in the past, there was no recent evidence of DV. Instead, the court was more concerned with the father's unfounded concerns about the mother, his "abusive use of conflict," and having "engaged in parental alienation which has created a danger of serious damage to the child's psychological development."

Importance of Making and Preserving a Proper Record Post *Pohlman*

The Michigan Court of Appeals' recent decision, *Pohlman v. Pohlman*, demonstrates how attorneys representing survivors of DV must ensure that the DV allegations are properly raised, investigated, and preserved.²³ Failure to properly raise the allegations of DV at the outset may limit the appropriate remedy not just at the trial level, but also at the appellate level. From a PA vantage point, unless these allegations are investigated—and investigated at the earliest opportunity—such allegations may continue to be made in court, in therapy, to court-involved professionals (such as the Friend of the Court or Guardian ad Litem), and so forth. If not properly investigated and adjudicated at the trial level, it may be difficult to assess such allegations at the appellate level. As this panel of the Court of Appeals of Minnesota found:

"The issue of domestic violence has been difficult to assess. On the one hand, the Court did not make a finding of domestic abuse. On the other hand, [mother] had documented bruising on her face. [Father] denied physically assaulting [mother]. He has no known history of violence and [his previous wife] denies that violence occurred in their marriage. [Mother] reports that [his previous wife] told her about [father's] violence but that [his previous wife] is too scared to tell publicly. The evaluator could not substantiate this concern."²⁴

The appellate court ultimately affirmed the trial court's decision which did not find the allegations of DV to be credible, especially in light of its finding that the mother demonstrated a "pattern of making vague reports of abuse and neglect and then denying responsibility for the subsequent Child Protection investigations"—"a pattern often...associated with parental alienation dynamics as the child gets older and can voice his 'wishes.'"²⁵

Another reason to properly investigate allegations of domestic violence or abuse at the earliest opportunity is that such allegations may also continue to be made as an excuse to justify violation of court-ordered parenting time or visitation orders. And the more such allegations are repeated, the higher the risk that "it may become a truth in the mind of the child

(as well as in the belief systems of the legal and mental health professionals) even if it never actually happened."²⁶

In his recent book on parent-child reunification, Dr. Stanley S. Clawar, a certified clinical sociologist, discusses cases that exemplify intentionally false reports of abuse in divorce cases—in one case, a mother filed 15 accusations, all came back "unfounded." Custody was finally shifted to the father, but it was too late; he had committed suicide.²⁷

Counterintuitive Feature of Abused Children: They Want a Relationship with the Abuser

A highly counterintuitive feature of PA is that most abused children continue to seek a relationship with their abusive parent. On the other hand, alienated children (who were never abused) strongly reject a relationship with the targeted parent. How does one address this apparent conundrum? One way to address this conundrum is to acknowledge just how rare and unusual it is for a child to actually reject a parent, especially in a vehement manner without any ambivalence as typically occurs in cases involving parental alienation.²⁸ As Dr. Baker clarifies:

"Even children who have been beaten, molested, and abandoned by a parent generally do not behave in a callous and extreme manner when dealing with an abusive parent. It is well known among those in the field of child maltreatment that despite the abuse and neglect experienced at the hand of a parent, most children want to maintain a relationship with the abuser."²⁹

This counterintuitive phenomenon of abused children wanting to maintain a relationship with their abuser is referred to as "bonded to the abuser" by the researchers.³⁰ It strongly supports the premise that children form and maintain attachment relationships with their caregivers, even abusive caregivers. Why? "They cannot help but do so because they are hard-wired to form a preferential relationship with a caregiving adult who is likely to protect them from danger."³¹ The abusive caregiver's maltreatment does affect the bond between the caregiver (parent) and the child, but what is affected is the *quality* of the attachment, not its existence. An understanding of this counterintuitive feature of PA is essential for any mental health or legal professional who is tasked with the duty to evaluate a case for the presence of PA. This can counter the false but commonly-held beliefs that children typically reject "bad" parents or that if a child is rejecting a parent it *must* be because the parent did something to "deserve" it. As important as it is to remember that just because a child rejects a parent does not mean that the child is alienated, it is equally important to acknowledge and remember how aberrant and rare it is for a child to truly reject a parent.

About the Author

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Endnotes

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- 5 *Id.*, at 342.
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- 11 See e.g. *Oates v. Oates*, 2010 Ark.App. 346 (“our statute requires that a person engage in a pattern of domestic abuse; if the acts did not rise to the definition of domestic abuse, they cannot be considered for purposes of the presumption.”)
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- 23 *Pohlman v. Pohlman*, No 344121, 2020 WL 504775 (Mich. Ct. App. Jan. 30, 2020). The decision is currently being considered for certiorari by the Michigan Supreme Court.
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