

M I C H I G A N FAMILY LAW JOURNAL

A PUBLICATION OF THE STATE BAR OF MICHIGAN FAMILY LAW SECTION • KRISTEN L. ROBINSON, CHAIRPERSON

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VOLUME 54 NUMBER 6, JUNE/JULY 2024



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FALSE POSITIVES OF PARENTAL ALIENATION IN CHILD CUSTODY EVALUATIONS

BY ASHISH JOSHI

Conducting child custody and parenting time evaluations is one of the most complex, challenging, stressful, and sometimes risky professional endeavors that mental health professionals undertake.¹ “The possibility of a state board or ethics complaint is also higher in this work than in any other subspecialty of clinical or forensic practice.”² The risk of an ethical violation increases when an evaluator morphs from being an “impartial scientist” into an advocate for a parent, succumbing to biases that may lead him to misconstrue, exaggerate, distort, or fabricate data. In such situations, claims of parental alienation exacerbate the risks involved and pose a minefield of potential ethical violations for mental health professionals.

Nothing evokes more passion or rage in a parent than to feel they have been alienated from and unfairly restricted in their contact with their child.³ By the same token, nothing evokes more frustration and fury in a parent who has been vilified by being falsely accused of “parental alienation.”

Evaluators, when faced with a case involving claims of parental alienation, should be prepared to devote significant time and effort to the case and check their biases. Parental alienation cases are not only chock-full of allegations and accusations that require careful sifting through records and facts but also involve commonly held misconceptions about the theory of parental alienation and the underlying research in mental health and social sciences. Since 1990, there has been considerable discussion and debate regarding Parental Alienation and “Parental Alienation Syndrome” in the mental health and legal professional literature. Most of the discussion regarding parental alienation has consisted of the typical dialogue among practitioners and scholars regarding the family dynamics involving child alignment, for example: the criteria for diagnosing parental alienation, the pathways by which parental alienation comes about, the relative culpabilities of the favored and targeted parents; the prevalence of parental alienation in custody and parenting time litigation; appropriate and effective interventions; role of professionals; and preventive measures. However, the discussion of parental alienation has been a lightning rod for controversy, vitriol, *ad hominem* attacks on professionals, and has featured an unusual level of misinformation and deceptive propaganda.

An overwhelming majority of mental health and legal professionals accept the basic premise of the theory of parental alienation, i.e., that some parents manipulate or indoctrinate

their children to dislike or fear the other (targeted) parent. Similarly, an overwhelming number of court decisions around the country, including Michigan, accept the fundamental premise of the parental alienation phenomenon.⁴ Nevertheless, misinformation about parental alienation is frequently presented in legal proceedings regarding divorce, custody, parenting time, and ancillary matters. For instance, when one side wants to present expert testimony on how a parent’s alienating behaviors are harming the child’s wellbeing and destroying the child’s relationship with the other parent, the opposing side attempts to preclude or undermine such testimony by making one or more of the following arguments: that the parental alienation theory has no scientific underpinnings, is not generally accepted by the scientific community, not endorsed by professional organizations, not included in DSM-5, and is “junk science.” And so, the propaganda of misinformation begins. Sometimes the trial court conducts a *Daubert* (or *Frye*) hearing to discharge its gatekeeping obligation. On other occasions, a court may rule that it does not wish to invest judicial resources in determining the scientific underpinning (or the alleged lack thereof) of “PAS” and “Parental Alienation,” but would rather focus its attention on the behaviors of the parents and the best interests of the children.

However, the phenomenon of parental alienation is not nebulous as many detractors make it appear. It can be identified with the careful, thoughtful, and methodical approach. As the Five-Factor Model — *one* forensic tool that could be used to determine whether the family dynamics involve alienation, but not the *only* tool — teaches us, the key issue supporting the possible presence of parental alienation is a child’s *disproportionate* rejection of a parent and an irrational motivation for such rejection. The next task is then to determine how the irrational motivation developed. Proper investigation and assessment are needed in all investigations and an investigation focused on parental alienation is no exception to the rule. Utilizing good data and technique, incorporating various sources of information, considering bias, implementing appropriate psychological testing and psychometric tools, careful consideration of the baseline parent-child relationship, and following ethical principles and professional codes of conduct helps evaluators formulate solid opinions that are based on facts and science.

Bad Behavior Does Not Equal “Parental Alienation:” The Risk of False Positives

On occasion, however, evaluators—even the good, competent ones—may get it wrong. Research has demonstrated an inverse relationship between clinical or educational experience and judgment accuracy.⁵ This is because as evaluators become more experienced, they rely more on confirmatory biased hypothesis testing based on prior experience, rather than on actuarial data. And in doing so, they rely on informal, intuitive, “gut feeling” processes, as a way of understanding the examinee-parents rather than science-driven explanations.⁶ The more experienced an evaluator is, the greater the risk that he is inherently prone to overestimate the accuracy of his predictions.

Concluding that parental alienation exists in a case where it really does not, results in false positive identifications and fuels concerns about the application of the parental alienation theory in family law cases.⁷ “False positive identifications of parental alienation can occur with respect to a parent’s alienating behaviors, a child’s alienation from a parent, or both.”⁸ For example, false positive identifications of a parent’s alienating behaviors can occur when the parent’s behavior is mistakenly interpreted as undermining or potentially undermining a child’s positive regard for the other parent. Another potential risk of a false positive finding arises when a parent-litigant’s personality *trait* (e.g., a narcissistic personality trait) is misconstrued as a psychological *disorder*, and without adequate analysis of how such a trait prevents the parent from loving or caring for the child.⁹ Yet another risk of a false positive finding arises when an evaluator orients himself at the outset to perform a “Resist Refuse Dynamics”



(RRD) evaluation — a term primarily used in connection with alienation/estrangement dynamics — when the evaluator has been ordered to perform a custody and parenting time evaluation, which is far broader in scope. Anchoring himself to the concept of undertaking a “RRD assessment” at the outset of an evaluation, an evaluator could fall prey to the overly simplistic, false binary choice: either parent A must be abusive towards the children or parent B must be alienating the children. When the proverbial hammer is the only tool in an evaluator’s toolbox, all issues start resembling “nails” of the Resist Refuse Dynamics spectrum.

False positives may also occur where an evaluator, having succumbed to confirmatory biases, is on a hunt for “alienating behaviors,” while being willfully blind to alternative explanations for such behaviors. Dr. Richard Warshak provides an example of a situation where a simplistic understanding of a specific behavior may result in false positive conclusion about alienating behavior: a parent giving a child a cell phone and instructing the child to call when he or she feels like speaking.¹⁰ The significance of this behavior depends on the context in which it occurs and how the child subsequently uses the phone given by the parent. For example, has the parent who provided the phone planted in the child a false belief that the other parent is dangerous? Has the parent instructed the child to call 911 if the other parent did anything that the child did not like, such as disciplining the child for rude or disrespectful behavior? Has the parent instructed the child to use the phone to record the other parent? Has the parent repeatedly encroached on the child’s time with the other parent by frequently calling and texting the child? Has the parent attempted to undermine the child’s relationship with the other parent? If so, these would be the examples of alienating behaviors and in that context, providing the phone to the child would be a continuation of the pattern of alienating behaviors.¹¹ But if all that the parent did was to provide a cell phone to the child and instruct the child to call when he or she felt like speaking to the parent, that behavior by itself would not rise to the level of being an alienating behavior.

The term “parental alienation” refers either to the state of the relationship between a child and a parent whom the child rejects without good cause or to the child’s attitudes and behaviors that reflect an unreasonable aversion to a parent with whom he or she formerly enjoyed normal relations.¹² However, it is possible that a parent can engage in negative, “alienating” behaviors — for example, persistently disparaging the other parent — without the child becoming alienated from the parent who is the target of such negative behavior. Alienating behaviors do not *always* result in parental alienation. For instance, in a New York case of *J.F. v. D.F.*, even though three experienced experts concluded that the mother had alienated the children, the court, rejecting the experts’ conclusions, opined, “There is not an iota of evidence that any one of three daughters are alienated from

their father.”¹³ By the same token, another court in New York concluded that a child’s rejection of a parent was a justified response and not due to alienation.¹⁴

A child’s alienation from a parent can arise from factors independent of, or in combination with the favored parent’s behavior. For instance, the child could be reacting to abuse, gross mistreatment, severe mental illness, witnessing domestic violence, or substance abuse.¹⁵ Further, negative behavior toward a parent, such as denigrating, complaining, and resisting contact, is insufficient by itself to identify a child as “alienated.”¹⁶ Experts identify seven criteria that distinguish negative behaviors of moderately or severely alienated children from negative behavior that does not indicate moderate or severe levels of parental alienation. A child with moderate or severe parental alienation displays negative behavior that meets all the following criteria:¹⁷

- a. The behavior is chronic rather than temporary and short-lived;
- b. The behavior is frequent rather than occasional;
- c. The behavior occurs in most situations rather than only in certain situations;
- d. The behavior occurs without displays of genuine love and affection toward the rejected parent;
- e. The behavior is directed at only one parent;
- f. The behavior does not reflect typical dynamics for the child’s state of development;
- g. The behavior is disproportionate to and not justified by the rejected parent’s past or current behavior.

Conversely, a child’s normative negative reaction to a parent may be caused by: “(a) parental separation; (b) behavior reflecting a difficult temperament or emotional problems; (c) reluctance to leave a parent who needs emotional support; (d) situation-specific resistance to being with a parent; (e) feeling closer to or having more rapport with one parent; (f) feeling more comfortable in one’s parent’s home, either because of differences in parenting styles or in the emotional atmosphere of the home; and (g) typical adolescent psychological functioning.”¹⁸ A case involving parental alienation requires careful review of these factors when making case determinations on custody and parenting time. Dr. Warshak warns that “greater accuracy in expert opinions on parental alienation will increase confidence of courts in the value of such opinions—conforming to public policy that promotes healthy parent-child relationships, even after divorce.”¹⁹

When an identification of parental alienation is incorrect, the false determination generally hinges on either erroneously concluding that a child is alienated, failing to recognize that a child’s rejection of a parent is a justifiable response, and wrongly concluding that the parent has engaged in a campaign of alienating behavior.²⁰ Dr. Warshak found that “just as some courts have found that some experts’ conclusions that a par-

ent abused a child were biased and incredulous... courts have [also] found that some experts failed to adequately consider reasonable alternative explanations to the opinion that a child was alienated, or to the opinion that a parent had engaged in alienating behavior.”²¹ The failure to properly attribute parental alienation “can be traced to poor understanding of parental alienation, insufficient efforts to reduce bias, or both.”²²

Evaluators should note that not all bad parenting behavior results in “parental alienation.” For instance, there is an important distinction between isolated instances of bad behavior and systemic pattern of bad behavior.²³ And while questionable (even deplorable) parenting behaviors need to be addressed and corrected, such remedial measures do not have to equate the remedies for severe alienation cases — such as protective separation of the child from the alienating parent, followed by a temporary no-contact period or supervised visitation between the alienating parent and the child.

Again, the case of *J.F. v. D.F.* is instructive on this front. Prior to the court’s final determination, it had made the following temporary findings:

- (1) there was a prior positive relationship between the daughters and their father;
- (2) the mother had “badmouthed” the father to professionals and told the children there was an order of protection and, as a consequence, the children could not get out of a car apparently at their father’s home;
- (3) the mother over-scheduled the children, limiting the father’s contact;
- (4) the mother’s gift of a cell phone to their oldest daughter and telling her to call the mother if she needed or wanted to was evidence of the mother suggesting that the father was dangerous;
- (5) the mother was engaged in conduct that painted the father as “unloving,” even though those words were never spoken by the mother, because the mother let the children choose who to live with, and advocated for a change in residency that the children desired, was designed to make “the dad look like he was an ogre;”
- (6) the mother was inappropriately confiding in the children when she told them “if you don’t like the schedule, call your attorney instead of trying to mitigate the situation;”
- (7) the mother withheld medical information from the father relating to several medical episodes involving the daughters; and,
- (8) the mother’s suggestion that the father should have rules for viewing television at his home, and

commenting that he does not correctly do laundry, were evidence that she was “undermining his authority.”

But despite making these findings, the court concluded that the parental alienation was “mild” and that “dad is engaged in some of the exact same alienating behavior that mom did,” adding that such behavior included “badmouthing” and “scheduling one banquet on mom’s time for his house.”²⁴ Extolling on New York’s long history of the concept of parental alienation, the court commented that “[t]he judicial refrain is unmistakable: a concerted effort by one parent to interfere with the other parent’s contact with the child is so inimical to the best interests of the child, that it, per se, raises a strong probability that the interfering parent is unfit to act as a custodial parent.”²⁵ However, the court was careful in making a distinction that “occasional adverse statements, even made in the presence of children, and the occasional failure to communicate about scheduling treatment sessions, while deplorable behavior calculated to antagonize the other parent, did not countenance a finding of change of circumstances sufficient to change custody.”²⁶

The *J.F. v. D.F.* court explained that ultimately a trial judge looks to the child to determine whether the deliberate actions by a parent to sabotage a targeted parent’s access to the child has *affected that child’s relationship with the targeted parent*.²⁷ The New York court found “no overwhelming evidence of any of the 17 alleged signs of alienation that the experts presented.”²⁸ It found that the instances of questionable behavior by the mother were too few and far between to affect the children’s relationship with the father. More importantly, the court found that what the father saw as “rejection” of him by his children was not the same as “alienation:”

The father in this case sees ‘rejection’ in the emotional reaction of the children to him and acknowledges that the children, based on the time they spend with him, eventually show no signs of rejection. He admitted that time with his children is not the crux of his complaint. ‘That’s not the problem,’ he testified. Instead, he complains that his older daughter is ‘rude’ when he tells her to put her phone away until she is done with her homework. His middle daughter is ‘disrespectful’ when she is told to do chores. In this court’s view, there is no equivalence between teenagers being ‘rude’ or ‘disrespectful’ to a parent - an irritating, but maturing ritual for teenagers - and ‘alienation’ of a child from that parent. The father also seems acutely overly sensitive and jealous that when his daughters are with their parents in public, the children tend to favor and gravitate to their mother. In this court’s view, these behaviors by the daughters

are not evidence of rejection of their father. Maturing teenaged daughters can easily have a greater affinity for their mother without rejecting their father. Less-tender behaviors of hugging and kissing, cited by the father as evidence of alienation, can be just as credibly equated with normal growth and development of teenage daughters. In addition, there is no evidence in this record that the mother ever violated the visitation agreement and no evidence — with the minor exception of the sprained ankle incident - that she ever advised her daughters not to visit their father.”²⁹

To sum up, evaluators should be careful in assessing the family dynamics of alienation and be cognizant of children’s behaviors that could be misconstrued as signs of “parental alienation.” These are: normal reactions to parental separation, behavior reflecting a difficult temperament or emotional problems, behaviors related to neurodivergence or special needs, reluctance to leave a parent who needs emotional support, situation-specific resistance to being with a parent, feeling closer or having more rapport with one parent, feeling more comfortable in one parent’s home, either because of differences in parenting styles or in the emotional atmosphere of the home, and typical adolescent psychological functioning. As Dr. Warshak states, “even when the child credits genuine negative behavior by the parent as the reason for rejecting the parent, parental alienation is manifested if the degree of rejection is out of proportion to the alleged wrongdoing, particularly when considered in the context of the history of the parent’s love and devotion to the child’s welfare.”³⁰

Parental alienation is an egregious assault on the family dynamic. Getting it wrong can do just as much damage as leaving a child entrenched with the alienating parent. Before reaching a finding of “parental alienation,” an evaluator must leave no stone unturned in generating alternative hypotheses and engaging in an aggressive attempt to disconfirm such hypotheses. If not, the evaluator risks a false positive finding of “parental alienation,” which may result in not just misleading the court, but also in significant, long-lasting damage to the family under evaluation.

About the Author

Ashish Joshi is a trial lawyer and the owner of the law firm, Joshi: Attorneys + Counselors, P.C. Mr. Joshi’s practice specializes in cases involving family violence. He has been admitted to practice law in Michigan, New York, District of Columbia, and India. He serves as a Senior Editor of Litigation, a journal published by the Section of Litigation of the American Bar Association. He is the author of Litigating Parental Alienation: Evaluating and Presenting an Effective Case in Court (ABA, 2021).

Endnotes

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- 2 *Id.*
- 3 *Id.* at 109.
- 4 See e.g., *Poag-Emery v Emery*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2014 (docket No. 318401); *Harner v Harner*, unpublished per curiam opinion of the Court of Appeals, issued January 23, 2018 (Docket No. 338746); *Prisk v Prisk*, unpublished per curiam opinion of the Court of Appeals, issued May 16, 2017 (Docket No. 335755); *Schoenheide v Shaw*, unpublished per curiam opinion of the Court of Appeals, issued October 20, 2022 (Docket No. 360658); *Stevens v Watts*, unpublished per curiam opinion of the Court of Appeals, issued November 17, 2009 (Docket, No. 287017); *Cornell v Cornell*, unpublished per curiam opinion of the Court of Appeals, issued June 1, 2004 (Docket No. 251107); *Martin v Martin*, 331 Mich App 224 (2020).
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- 7 Warshak, Richard A., *When Evaluators Get It Wrong: False Positive IDs and Parental Alienation*, Psychology, Public Policy, and Law 26(1), 54–68 (2019).
- 8 *Id.* at 54.
- 9 See *Tutak v Tutak*, unpublished per curiam opinion of the Court of Appeals, issued April 18, 2013 (Docket No. 312557).
- 10 *Warshak*, supra, at 63.
- 11 See e.g., *McRoberts v. Superior Court of Los Angeles County*, B234877 (Cal. Ct. App. Jun. 19, 2012)
- 12 *Warshak*, supra, at 57.
- 13 *J.F. v. D.F.*, 61 Misc.3d 1226(A), 2018 N.Y. Slip Op. 51829(U); also see *Capes v. Capes*, 870 NW2d 448 (North Dakota, 2015)
- 14 *A.E. v. S.E.*, NY Law Journal, Dec. 11, 1990 (No. O-1433-90, Fam. Ct. N.Y. Westchester County, Nov 19, 1990).
- 15 *Warshak*, supra, at 57.
- 16 *Id.* at 58
- 17 *Id.*
- 18 *Id.* at 57.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.*
- 22 *Id.*
- 23 *Parfet v Lennen*, unpublished per curiam opinion of the Court of Appeals, issued on February 24, 2022 (Docket No. 356164) (A parent calling the other parent “a piece of shit” and “a fucking loser” in some instances, but not, as the court found, feeding the children “a constant diet of vitriolic comments” about the other parent).
- 24 *J.F. v. D.F.*, 61 Misc. 3d 1226(A), 112 N.Y.S.3d 438 (N.Y. Sup. Ct. 2018).
- 25 *Id.*
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*
- 29 *Id.* at 23.
- 30 *Warshak*, supra.