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The Alienated Child

Courts try a team approach when children turn against a parent.

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ON APRIL 19, 2007, celebrated actor Alec Baldwin is reported to have left a voicemail for his 11-year-old daughter which was later circulated on the Internet and in the media. "You've insulted me for the last time," he yelled. "You would never dream of doing [this] to your mother..."

Efforts that have been undertaken and proposed to mend strained relations when a child is reluctant to or will not visit with a parent after separation or divorce is the topic of this article.

The alienated child has been described as a child who expresses persistently unreasonable negative feelings and beliefs toward a parent that are significantly disproportionate to the child's actual experience with that parent.[1] Estranged children, unlike alienated children, have been described as children who reject a parent as a consequence of that parent's own history of behaviors and conduct. Estranged children frequently "present with a mix of intense anger towards the abusive parent and subconscious fear of retaliation that can induce phobic reactions to that parent, like alienated children do."[2] Aligned children have been described as children who exhibit a clear preference for one parent and eschew all but limited contact with the other parent.[3]

A Discredited 'Disorder'

The term, "parental alienation syndrome," or PAS, was coined in 1985 by psychiatrist Richard A. Gardner to describe behaviors that he observed in the context of a custody dispute and labeled a diagnosable disorder. He identified three components of PAS: (1) the child's obsessive hatred of a target parent, frivolous and absurd complaints against that parent justified by parroting "borrowed scenarios," and lack of ambivalence or guilt toward the hated parent; (2) a vindictive parent who consciously or unconsciously brainwashes the child into this indoctrinated stance; and (3) false allegations of child sexual abuse

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generated by the vindictive parent, generally the mother, and the alienated child.[4] Dr. Gardner maintained that PAS was present in approximately 90 percent of all custody cases and that PAS constituted an example of folie a deux or folie a trois.[5]

Dr. Gardner's "treatment" for PAS was the abrupt removal of the child from the house of the purported alienator with a transfer of custody to the rejected parent. The child was then to be subjected to reverse brainwashing. Only after a period of no contact with the former primary custodian could there be any contact, and then only by way of supervised visitation.[6]

PAS has been criticized as "junk science."[7] Dr. Gardner's "syndrome" has been roundly rejected by mental health professionals, bar and bench.

New Models and Case Law

Expressions such as "redesigning," "rethinking" and "reformulating" heralded the arrival of new models developed to deal with the alienated, estranged and aligned child. Under the new formulation, children may become alienated, not only because of the behaviors of the "beloved parent," but also, as a result of the behaviors of the "rejected parent." There may also be other factors including the child's developmental stage, his or her reaction to the divorce itself and/or parental conflict.[8]

New York courts have been applying the new models, epitomized by the utilization of interdisciplinary team approaches. The team may be so elaborate as to consist of a court-appointed separate law guardian to represent each child, a mental health forensic evaluator to assess the family dynamic and pathology, separate therapists for each parent and child, a case manager, and/or a parenting coordinator. The team may operate during the pendency and after the conclusion of the court proceedings with the objectives being to rehabilitate the broken parent-child relationship, broker contact and communication between the rejected parent and the child who resists visitation and alleviate the dysfunction in the family. The extent of the team and of each team member's role depends on the severity of the antipathy (and the ability to pay fees).

In *L.S. v. L.F.*, Justice Jeffrey Sunshine utilized the team approach

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where, post-divorce, the 12-year-old daughter of the parties was reluctant to visit with her father.[9] Prior to the judgment of divorce, the court had appointed a law guardian for the child and a mental health forensic evaluator. As part of the stipulation of settlement, the child was required to see a treating therapist. The therapist was assisting with the parent-child antipathy, but the situation did not improve.

A hearing was held, and the judge had an in camera interview with the child. Justice Sunshine concluded that not only were both parents contributing to the tumult and the child's reluctance to visit with her father, but also, the child was "part and parcel of the post divorce discord between the parties."[10]

This family was already working within the team model. The child was required to see her therapist. The law guardian continued to function post-divorce. Justice Sunshine added a parenting coordinator to the team whose role would be to:

> "[A]ssist the parties in establishing regular visitation with the child, the ultimate goal being overnight parent child time consistent with the stipulation, judgment and this decision. It is anticipated that the coordinator will meet with the parents and child bi-weekly at the beginning of the process, expanding to monthly, and hopefully assisting the parties and child in re-establishing meaningful parent time."[11]

The parent coordinator could act as "an accurate reporter of events leading up to visitations, plans and hopefully successful visits...[and] as a go-between for the parents and child to assure that there are open lines of communication."[12] The court recalendared the case for six months later to assess the success of these measures, thereby keeping control of the case.[13]

In *Mark L. v. Gail S.*, Justice Elaine Stack, too, utilized the team approach.[14] There, the court found that the mother was proactively alienating two daughters and preventing them from having any normal relationship with their father. The father's behaviors were also a contributing factor. Years of efforts by several judges, mental health professionals and a law guardian had

not succeeded in changing the mother or father's behaviors, and the children, although high functioners in school, were severely anxious.

Lamenting that this would be an appropriate case for a change in custody, Justice Stack, nevertheless, did not transfer custody, based on her assessment that the children were in too delicate a condition for that. Reasoning that the children were so bonded to the mother that a change in custody would serve to punish them for their mother's transgressions, Justice Stack, instead, implemented a detailed and costly interdisciplinary team approach, but she warned the mother that changes in custody, under case law, can occur at any time adding, ominously, "even in this family...."[15]

Under the court's approach each of the children was to be enrolled in therapy separately and individually. The father was to enter therapy for assistance in anger management and parenting skills as a component of a custody and visitation order but not as a precondition for visitation (since the one is permitted and the other is not under our case law).[16] The mother was to enter therapy to endeavor to differentiate between her anger and disappointment at the father and the children's right to have a relationship with him. The mother was further directed to "examine the reasons for her deliberate alienation of the children against the father and put an end to it."[17]

The team leader was to be a mental health professional, appointed to serve as a parenting coordinator and the coordinator of all of the therapies. Each participant was required to sign releases so that the individual therapists could discuss with him the participation of the parties and the children in the court-ordered therapies. The parenting coordinator was charged with insuring that the schedule of parental access by the father was adhered to by the mother and that she ceased her negative conduct. The parental coordinator was also charged with addressing all changes to and interference with the parenting schedule. The father, a physician, was directed to pay 90 percent of the cost of the team's intervention.[18]

Boon or Bane?

Potential negatives of the team approach—intrusive, coercive, expensive, without empirical basis and potentially counterproductive and the source of boomerang—are conspicuous. These pitfalls have been analyzed by the researchers in the field.

Carol S. Bruch, professor at the University of California Davis School of Law, has observed that, like Dr. Gardner before them, the proponents of the team approach "go far beyond their data as they craft recommendations for extended, coercive, highly intrusive judicial interventions."[19] Like in the New York cases, the parties are directed to waive significant rights to confidentiality and other privileges. The parenting coordinators and other team members are directed to play "quasi-judicial" roles. The costs of paying for the team are astronomical.

Ms. Bruch asks why, when the state does not intervene and impose grief counseling on a minor child or surviving spouse who loses a parent absent behavior that provides an independent basis for coercive intervention, such as those imposed by laws regulating neglect, abuse, and criminal behavior, must it intervene to fix damaged or lost relationships in living dysfunctional families?[20]

How About 'Benign Neglect'?

Some researchers have even questioned whether the team approach has the opposite effect to that which is intended, namely, to further rather than stem parent-child antipathies. Judith S. Wallerstein, a psychologist and authority on the effects of divorce, has recommended "allowing natural maturation to take its course and to avoid overzealous intervention to break these alliances, which are usually strengthened by efforts to separate the allies."[21] Ms. Wallerstein has reported that of 131 children in her study of divorcing California families, the "children's alignments with a parent were transient, with every child later abandoning his or her harsh position, mostly within one or two years and all before the age of eighteen."[22] She further has reported that the children remained with their primary caregivers throughout, "yet were profusely apologetic to the parents they had previously treated so badly."[23]

Matthew J. Sullivan and Joan B. Kelly, psychologists and researchers, have reported that "there is clinical support but no empirical research demonstrating that by letting go of the relationship, the rejected parent and child will at some later time reconcile and restore the relationship."[24] Janet R.Johnston and her co-authors have reported that "the long-term outcomes are a matter of conjecture and currently unknown."[25]

Conclusion

The dynamics of alienation, estrangement and alignment in the context of a custody dispute are all alike: Each consists of a child, a "beloved" parent and a "rejected" parent. The antipathy may be transient or long-lasting. The cause does not lend itself to simple answers. Long-term outcomes of the "redesigned" "rethought" and "reformulated" well-intended approaches remain a matter of conjecture. What is not a matter of conjecture, however, is that the problem of the "alienated, estranged or aligned child" poses a unique challenge for bench, bar and mental health professionals.

1. Carol S. Bruch, "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases," 35 Fam. L. Q. 527, 542 at fn. 57 (2001).

2. Janet R. Johnston, "Rethinking Parental Alienation and Redesigning Parental-Child Access Services for Children who Resist or Refuse Visitation," at 5. Paper submitted at International Conference on Supervised Visitation, Staatsinstitut fur Fruhpadagogik, Munich, Germany, July 9-10, 2001. Paper constitutes a summary of the joint work of a task force especially convened to study the problem of children who become alienated from their divorcing parents. The task force included: Steven Friedlander, Ph.D., Janet R. Johnston, Ph.D., Joan B. Kelly, Ph.D., Margaret Lee, Ph.D., Nancy Olesen, Ph.D., John Sikorsky, M.D., Matthew J. Sullivan, Ph.D. and Marjorie Gans Walters, Ph.D.

3. Id. at 4.

4. Richard A. Gardner, "The Parental Alienation Syndrome" (1992).

5. American Psychiatric Association DSM IV §297.3 describes "folie a deux" as a shared psychotic disorder in which a second or further person in a close relationship with a primary person comes to share the delusional beliefs of that person, who already suffers from a psychotic disorder, most commonly, schizophrenia. Dr. Gardner expands the phrase to, "folie a trois," to include a therapist, often female, according to Dr. Gardner, "harboring deep-seated hostility towards men, hostility so strong that they will seize upon every opportunity to vent their rage on them." This therapist supports the concerned parent and the complaining child. See, Gardner, supra, note 4 at 146-149.

6. Gardner, supra, note 4 at 226-228.

7. See, e.g., Alayne Katz, "Junk Science v. Novel Scientific Evidence: Parental Alienation Syndrome, Getting It Wrong in Custody Cases," 24 Pace L. Rev. 239 (2001).

8. See, e.g., Philip M. Stahl, "Understanding and Evaluating Alienation in High-Conflict Custody Cases," 24 Wisc. J. Fam. L. 1 (2003). Dr. Stahl describes the new models as "clinical" (i.e., multiple causes may contribute to an effect) and Dr. Gardner's model as "linear" (a single cause with an obvious effect). See also, Judith S. Wallerstein and Joan B. Kelly, "Surviving the Breakup—How Children and Parents Cope With Divorce" (1980).

9. *L.S. v. L.F.*, 10 Misc3d 714 (Sup. Ct., Kings Co., Sunshine, J., 2005).

10. Id. at 718.

11. Id. at 727.

12. Id.

13. Id.

14. *Mark L. v. Gail S.*, NYLJ, May 30, 2006, p. 24, col. 1 (Sup. Ct., Nassau Co., Stack, J.).

15. Id. at 26. Accord, *John A. v. Bridget M.*, 16 AD3d 324 (1st Dept. 2005), where the First Department modified a Family Court order by changing custody from prime custodian mother to non-custodian father, endorsed therapeutic intervention and warned the mother that she could lose custody if she continued to engage in the complained of alienation in the future.

16. See, e.g., *Zafran v. Zafran*, 28 AD3d 753 (2d Dept. 2006), which holds that while a court may not condition a parent's application for visitation upon attendance in therapy, court-directed therapy may properly be made a part of a visitation order. The Second Department reiterated that the therapy requirement in *Zafran* "[w]as imposed as a component of the court-ordered program of temporary visitation, which is perfectly permissible."

17. *Mark L. v. Gail S.*, supra, note 14 at 26.

18. The First Department has utilized monetary sanctions as a deterrent in extreme cases of alienation. In *Rodman v. Friedman*, 33 AD3d 400 (1st Dept. 2006), it imposed self-executing fines if the mother, already found to have engaged in alienation, failed to comply with court-ordered visitation and therapy in the future. Justice Jacqueline W. Silbermann conditioned maintenance and child support on a teenage boy's compliance with a visitation schedule in *Bragar v. Bragar* (unreported decision after first financial trial, dated Oct. 28, 1999). At the conclusion of the second financial trial between the parties, Justice Silbermann went further and found that the alienation was so extreme as to constitute egregious misconduct warranting a reduction in equitable distribution. *Bragar v. Bragar*, 227 NYLJ 119, p. 19, col. 4 (Sup. Ct., New York Co., Silbermann, J., 6/21/2002).

19. Bruch, supra, note 1 at 543.

20. Id. at 546 et seq.

21. Id. at 548 quoting Judith S. Wallerstein, Julie M. Lewis and Sandra Blakeslee, "The Unexpected Legacy of Divorce—A 25 Year Landmark Study," 116-117, 125 (2000); see also, Judith S. Wallerstein and Joan B. Kelly, "Surviving the Breakup—How Children and Parents Cope With Divorce," 77-80 (1980).

22. Id. at 547.

23. Id.

24. Id. at 545 quoting Matthew J. Sullivan and Joan B. Kelly, "Legal and Psychological Management of Cases With an Alienated Child," 39 Fam. Ct. Rev. 299 at 313-314 (2001).

25. Id. quoting Janet R. Johnston, Marjorie Gans Walters & Steven Friedlander, "Therapeutic Work With Alienated Children and Their Families," 39 Fam. Ct. Rev. 316, 329 (2001).