

Parental Alienation And Reconciliation Therapy: Moving Toward Healthy Families

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ABSTRACT

The public policy of the Commonwealth of Pennsylvania is to assure reasonable and continuing contact with both parents and the sharing of rights and responsibilities of child rearing.² Furthermore, in Pennsylvania custody cases, there is no presumption that custody should be awarded to a particular parent.³ However, where one parent can successfully alienate the other from the child, the alienating parent may be able to change that assumption. The alienated or rejected parent will probably be assigned to reconciliation therapy before any unsupervised visits can begin. However, navigating the mental health system is not easy, and if an ineffective reunification counselor is found, reunification may not be successful. Because there is no protocol for reunification therapy, it will often be difficult for the court to tell if reunification therapy has failed or rather if an ineffective therapist has stalled the process, often to the disadvantage of the child. However, alienation should be distinguished from estrangement, stemming from legitimate reasons, such as abuse or maltreatment of a child.

In Pennsylvania, custody is guided by the sixteen custody factors enumerated in 23 Pa.C.S.A. §5328(a) in determining a custody arrangement in the best interest of the child. The first of the enumerated factors considers which party is more likely to permit and encourage frequent and continuing contact between the child and another party.⁴ Judges have the discretion to flip custody schedules where one party withholds access, but might not do so if custody has been withheld altogether in cases where one party has had no contact with the child for a sub-

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2. *Frank v. Frank*, 833 A.2d 194, 198 (Pa. Super. 2003).

3. See 23 Pa.C.S.A. §5327 (P.P. 2017).

4. 23 Pa.C.S.A. §5328(a)(1) (P.P. 2017).

stantial period of time. Accordingly, custody litigants are frequently at the mercy of helping professionals in mending the relationship between themselves and their alienated child. Hopefully, with a fundamental understanding of the helping sciences and a basic framework for reconciliation therapy, it should be easier to select a reunification therapist who will not stall the process, further hurting the rejected parent's custody case and chances of reunification.

THE HELPING SCIENCES

Many different degrees are awarded in the field of psychology, with varying specialties and educational requirements.⁵ Individuals can earn an undergraduate degree in psychology. They would then have a Bachelor's Degree (BA) in psychology, which is all that some positions require, perhaps such as paraprofessionals in substance abuse treatment. At the graduate level, a Master's Degree (MA) in psychology can be earned. This could be in clinical psychology, organizational psychology, etc., or a Master of Social Work (MSW). Practicums are usually required along with this course of study to give some real life experience. Master's level graduates with a clinical background are generally called therapists and conduct marital and family therapy, individual and couple counseling, group therapy, or perhaps play therapy with children. Each state has its own requirements regarding licensure for the different degrees (where licensure is available for a particular degree), as well as licensing requirements for using different titles such as psychologist.⁶ After or instead of a Master's Degree, a PhD in psychology could be pursued. This is considered a doctorate, where one would be called a doctor, but is not a medical doctor. A PhD in psychology, commonly called a psychologist, often conducts therapy using various modalities such as psychoanalysis or cognitive behavioral therapy, but may focus on administering psychological testing such as the MMPI or any other scored psychological tests. Some psychologists focus on conducting scientific research. Another degree, a PsyD is similar to a PhD in clinical or therapeutic practice. On a separate track is the medical doctor.⁷ An MD is awarded, and the educational track is generally from college to medical school to residency with perhaps a fellowship after residency. The medical doctor or MD can prescribe medicine for psychological disorders such as depression or ADHD, etc. This medical doctor in the field of psychology, commonly called a psychiatrist, could also conduct therapy, but would probably meet with a patient for a shorter period of time, just for the purpose of medication prescription and management. A psychiatrist in private practice would mainly conduct therapy and prescribe medicine, whereas a medical doctor employed at a hospital and medical school would probably also teach and conduct research.

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5. See generally 63 P.S. §1903 *et seq.* (2010, P.P. 2017) for licensure requirements for social workers and counselors.

6. See generally 63 P.S. §1202 *et seq.* (2010, P.P. 2017) for licensure requirements for psychologists.

7. See generally 63 P.S. §422.2 *et seq.* (2017) for licensure requirements for medical doctors.

cases of parental alienation in particular, there is a knowledge base that experts should understand to assist families affected by parental alienation as many aspects of parental alienation are counterintuitive.⁸ A review of the literature on parental alienation (some of which is summarized in this article) as well as ongoing training in different therapeutic modalities (such as Eye Movement Desensitization and Reprocessing (EMDR), Dialectical Behavioral Therapy (DBT), and hypnotherapy to name a few) may be useful. Family therapy should also be explored as parental alienation is a group dynamic played out by the various family members. Some therapists actually believe that traditional therapy techniques in the face of parental alienation may cause more harm than good and should be halted until reunification is successful.⁹

RECONCILIATION THERAPY

A reunification therapist should not prolong the alienation especially after a court order mandating reunification. Specifically, the reunification therapist should not align with the alienating parent, who is probably hoping to drag out the reunification process as long as possible so that the rejected parent will either go away having become frustrated with the child who is seemingly rejecting him or her or run out of money. This nightmare scenario is not difficult to imagine as reunification therapy offers no standards. Furthermore, mental health professionals may fail to adequately define objectives or goals in reunification therapy. Additionally, if the wrong evaluator is appointed to the case who has no knowledge of the often counterintuitive facts of parental alienation, a host of errors can be set in motion that will be extremely difficult to challenge or overcome.¹⁰ For example, an inexperienced therapist may suggest delaying reunification, possibly denying the child valuable relational and interpersonal problem-solving skills that will be needed later in life, such as the ability to discern what constitutes healthy interpersonal relationships.¹¹ Essential social and emotional skills developed from working out and resolving problems in relationships can be significantly disrupted when a child is empowered to walk away from conflict in primary relationships rather than to work through interpersonal issues.¹² Here, time is of the essence, and the longer parental alienation persists, the more difficult it is to reverse.¹³

The goal of reunification therapy should be to (re)build the relationship between the child and rejected parent, allowing the rejected parent and child to get to know

8. Miller, S.G. (2012), *Clinical reasoning and decision making in cases of child alignment: Diagnostic and therapeutic issues* in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 8-46). New York, NY: Routledge.

9. See Sauber, S.R. (2010). *Why forensic evaluations are more effective than traditional psychotherapy in helping alienated children*. Presented at the Canadian Symposium for Parental Alienations Syndrome, Mt. Sinai School of Medicine, New York, U.S.A.

10. Bone, J.M. & Sauber, S.R. (2013), *The Role of the Mental Health Consultant*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 71-89). New York, NY: Routledge.

11. Lebow, K. (2013), *Supporting Targeted Parent*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 129-148). New York, NY: Routledge; Baker, J.L. & Andre, K. (2013), *Psycho-Education for Children in Loyalty Conflict*, in A. Baker & S.R. Sauber (Eds.), *Working with alienated children and families: A Clinical Guidebook* (pp. 149-165). New York, NY: Routledge.

12. Albertson-Kelly, J. & Burkhard, B. (2013), *Family Reunification in a Forensic Setting*, in A. Baker & S.R. Sauber (Eds.), *Working with alienated children and families: A clinical guidebook* (pp. 232-251). New York, NY: Routledge; Rabiaga, J. & Baker, A.J.L. (2013), *Psychotherapy with Adult Children of PAS*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 252-273). New York, NY: Routledge.

13. Gottlieb, L.J. (2013), *Structured Family Therapy In PAS*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 209-231). New York, NY: Routledge.

each other in a positive and structured environment, and then perhaps transitioning into supervised visits, before resuming or beginning a normal unsupervised visitation schedule when therapeutically indicated. The focus should not be on building a relationship between the reunification therapist and the child as in individual therapy, but instead on building skills between the rejected parent and child to facilitate a successful reunification. Ideally, the reunification therapist should meet with both parents and the child, collaborating with any individual therapists of the various family members. Trying to conduct both reunification therapy and individual therapy with the child or any of the family members would be similar to a therapist's conducting both individual therapy and a custody evaluation for the court. The difference is that individual therapy should remain confidential, whereas the custody evaluator, like the reunification therapist, would report his or her findings to the court.

The reunification therapist should ideally meet with both the rejected parent and child as soon as possible, but certainly by at least the third or fourth weekly session after reunification therapy has commenced and then weekly thereafter. This is because it will be very difficult, if not impossible, to foster a normalized relationship between the rejected parent and child on a monthly or even biweekly basis. Additionally, failing to include the rejected parent in weekly reunification sessions could convey the message to the child that the rejected parent is bad, further alienating the child. Therapists that do not have time for this commitment should not take these cases in light of the harm and repercussions they could cause. The reunification therapist will also want to meet occasionally with the alienating parent for input as he or she will likely be trying to sabotage the reunification process. Accordingly, both parents will need to feel understood and supported by the reunification therapist. Participation of the alienating parent in reunification therapy will be especially important in an effort to educate the alienating parent about the ongoing psychological consequences of this behavior on the child. Effective co-parenting or individual therapy can also help parents with additional support systems in an effort to take some of the stress inherent in an adversarial custody and divorce process off their child.¹⁴

Without a framework in place, an inexperienced counselor may side with the alienating parent without even meeting the rejected parent such as sending therapeutic updates only to the alienating parent. An inexperienced counselor may even treat only the child and alienating parent, not even attempting to include the rejected parent. This is because the alienating parent will probably be transporting the child to all therapy sessions. Therefore, the alienating parent is in the best position to fight for the sympathy of the reunification therapist, probably seeking a partial mental health professional, possibly wanting to change therapists if he or she doesn't find one. On the other hand, the rejected parent will probably be more open to an unbiased mental health professional, wanting to find a therapist who is able to make progress, replacing one who is stalling the reunification process. However, reunification will obviously be severely compromised when only one perspective exists, as the child and alienating parent will often misrepresent events, which is why it might be beneficial for all outside therapy to stop for the child until the reunification therapy is successful.¹⁵

14. See Milspaw, A. & Vesell H., Co-parenting vs. Parallel Parenting, *The Pennsylvania Lawyer*, January/February 2017.

15. Albertson-Kelly, *supra* note 12.

In addition to the reunification therapy, the child will eventually need to be treated for the emotional abuse he or she has endured, including unhealthy boundaries with the alienating parent such a parentification (viewing the child as an extension of oneself) and unhealthy enmeshment at a time when the child should have been developing his or her own identity.¹⁶ This is because while it may not leave any visible scars, emotional abuse is child abuse, where love from the alienating parent has been conditional based on rejecting the targeted parent.¹⁷ Furthermore, when children are forced to reject a parent in the absence of a good reason to do so, their moral and character development may become compromised as they are essentially being taught to lack empathy and integrity.¹⁸

This will be a stressful process for the child as the alienating parent is generally adamantly against the reunification process. Accordingly, the child may then act out from stress, feeling guilty and responsible for the feelings of the primary caregiver, especially any perceived abandonment by that parent. The feelings of the rejected parent, even if not voiced, will not be lost on the child, and it is normal for a child to feel some natural empathy for the primary caretaker. As a result, the child may appear to be reacting negatively to the reunification. However, if the child acts out, it should not necessarily be presumed that reunification has failed, especially in cases where the child has been empowered to make decisions (such as whether to visit with a parent) that a child is ill-equipped to make and where the reunification process involves taking this decision-making power back from the child.¹⁹ Most importantly, without the threat of sanctions from the court supporting and backing the reunification process, it is highly unlikely that severe alienation can be reversed. This is because as soon as the alienating parent senses balance being restored in terms of a healthy relationship with both parents, this parent may try to sabotage the reunification, possibly refusing to deliver the child to treatment or lodging more abuse or criminal complaints to be investigated.²⁰ Accordingly, the court needs to act swiftly in dealing with the obstructive parent with whom the child lives through sanctions, especially the award of attorney fees and costs to the rejected parent.²¹ Needless to say, it may not be an inexpensive process, and therefore many may consider the option of proceeding without legal counsel.

THE PRO SE PARTY

The court system is not easily navigated (even sometimes by attorneys) in light of different and sometimes conflicting local rules in different counties, but especially by the pro se litigant. In representing themselves, pro se litigants may be forced to sign an affidavit swearing their knowledge of applicable statutes, evidence, and case

16. Rabiega, J. & Baker, A.J.L. (2013), *Psychotherapy with Adult Children of PAS*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 252-273). New York, NY: Routledge.

17. Baker, J.L. & Andre, K. (2013), *Psycho-Education for Children in Loyalty Conflict*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 149-165). New York, NY: Routledge.

18. *Id.*

19. Albertson-Kelly, *supra* note 12.

20. Baker, A.J.L. (2013), *Introduction*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 1-7). New York, NY: Routledge.

21. 23 PA.C.S.A. §5323(g) (P.P. 2017). See Judge Philip Marcus, *Parental Alienation, Contact Refusal and Maladaptive Gatekeeping: How to Prevent Contact Failure*, a paper presented at International Society of Family Law Conference, July 2017.

law, as well as local and state rules of procedures, with various monetary and criminal penalties prescribed for signing a false affidavit.²² While the affidavit may ultimately be unenforceable and unconstitutional, it still may be perceived as a barrier to entry into custody litigation by the pro se litigant who is without funds to retain an attorney.

In its 1973 decision in *Boddie v. Connecticut*, the United States Supreme Court found that where judicial proceedings become the only effective means of resolving a dispute at hand, the denial of a litigant's access to this process raises concerns for its legitimacy so that to exclude litigants from the only effective forum to settle their disputes is a violation of due process.²³ In short, litigants must have a meaningful opportunity to be heard where no other forum exists to settle disputes so that the states owe each individual the process, which in light of the values of a free society, can be characterized as due. Not to do so and instead block a pro se party who has no knowledge of the law from access to the court may be unconstitutional.

Many would-be pro se litigants may understandably feel the need to wait until they can afford an attorney instead of tackling the legal system themselves. Accordingly, rejected parents may put off filing for custody for many months or years until they can collect the needed attorney fees. In the meantime, if the alienating parent is able to withhold custody for any period of time, reunification in custody may be a long and arduous process.

ALIENATION & THE CUSTODY PROCESS

Pennsylvania law requires a complete analysis of all 16 custody factors in light of current evidence before a custody ruling can be issued.²⁴ It constitutes error of law for a trial court to fail to place its reasoning regarding the 23 Pa.C.S.A. §5328(a) factors either on the record or in a written opinion.²⁵ Furthermore, a parent's ability to care for a child is to be based on facts existing at the time of the hearing, not an earlier time.²⁶ Past conduct is relevant only where it is indicative of ongoing behavior that will have a negative effect on the child.²⁷ The court will also consider some criminal conduct of a parent before making an order of custody.²⁸ However, custody orders are always temporary in nature and subject to change if new circumstances affect the best interest of the child.

In reviewing the custody factors, it becomes evident where successfully withholding access could favor an alienating parent. For example, custody factor three considers the parental duties performed by each party on behalf of the child.²⁹ No matter how much rejected parents wish to pitch in, if they are prevented from doing so, it will hurt their custody case. Custody factor four considers the need for stability and continuity in the child's education, family life and community life.³⁰ Clearly, factor four would also favor alienating parents who would easily be able to prove that they have been a more consistent and stable factor in a child's life. Courts

22. See Dauphin County Entry of Appearance as a Self-Represented Party.

23. *Boddie v. Connecticut*, 401 U.S. 371 (1971).

24. *M.E.V. v. F.P.W.*, 100 A.3d 670 (Pa. Super. 2014).

25. See *J.R.M. v. J.E.A.*, 33 A.3d 647 (Pa. Super. 2011).

26. See *Brooks v. Brooks*, 466 A.2d 152 (Pa. Super. 1983).

27. See *Witmayer v. Witmayer*, 467 A.2d 371, 376 (Pa. Super. 1983).

28. 23 Pa.C.S.A. §§5329, 5330 (P.P. 2017).

29. 23 Pa.C.S.A. §5328(a)(3) (P.P. 2017).

30. 23 Pa.C.S.A. §5328(a)(4) (P.P. 2017).

generally discourage the disruption of established relationships for a child.³¹ Furthermore, if alienating parents are scary enough, they can probably easily get children on board for the alienation process, who at this point may believe the rejected parent has abandoned them. Not surprisingly, alienating or abusive parents are frequently seen as the parent whom the child must please, but this enmeshed relationship should not be mistaken for a healthy, warm or loving one.³² While an alienated child often presents as rude, angry, and even aggressive toward the rejected parent (sometimes making side glances at the alienating parent for cues), clinical literature consistently reports that a child who has actually been abused is likely to cling and be protective of the abusive parent, often wanting to repair the relationship and forgive the abuser, frequently denying or minimizing past abuse.³³ Accordingly, custody factor seven, the well-reasoned preference of the child, based on the child's maturity and judgment, may also favor the alienating parent.³⁴ While mature children with a healthy relationship with both parents may be able to help pick a custody schedule under which they can thrive, children who have been alienated from one parent should not be asked if they wish to see that parent. Similarly, children should not be empowered with decisions that are not age-appropriate such as whether they wish to attend school. This is because often children cannot see the long-term implications of their decisions and so should not be forced to play the role of parent.

In a custody battle simply communicating to the rejected parent that if he or she shows up at the house where the child lives, he or she will be charged with trespassing or harassment may be enough to gain the upper hand. If the alienating parent is then successful with a trespassing or harassment charge based on these threats or is able to acquire a Protection From Abuse Order (PFA) and possibly also subsequent indirect criminal contempt (ICC) on the PFA at the beginning of the alienation process, custody factor eight which considers the attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm, may also favor the alienating parent.³⁵ If enough of a criminal record can be built up to leverage against the rejected parent in any upcoming custody proceedings, it most likely will garner the attention of the court, which will want to err on the side of caution in protecting the child from any suspected abuse. Factor nine, which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs, and factor ten, which party is more likely to attend to the daily physical, emotional, developmental, education and special needs of the child, again support the stability of the child in staying with the alienating parent.³⁶ Factor thirteen, the level of conflict between the parties and the willingness and ability of the parties to cooperate with one another, could also be used against the rejected parent, perhaps through no fault of his or her own, but just because of the

31. See *Tomlinson v. Tomlinson*, 374 A.2d 1386, 1389 (Pa. Super. 1977).

32. Miller, *supra* note 8.

33. Baker, A.J.L., & Schneiderman, M. (2015). *Bonded to the abuser: How victims make sense of childhood abuse*, New York, NY: Rowman & Littlefield; Clawar, S.S., & Rivlin, B.V. (2013), *Children Held Hostage: Identifying brainwashed children, presenting a case, and crafting solutions* (Second ed.), American Bar Association; Gottlieb, L.J. (2012), *Parental alienations syndrome: A family therapy and collaborative systems approach to amelioration*, Springfield, IL: Charles C. Thomas.

34. 23 Pa.C.S.A. §5328(a)(7) (P.P. 2017).

35. 23 Pa.C.S.A. §5328(a)(8) (P.P. 2017).

36. 23 Pa.C.S.A. §5328(a)(9) and (a)(10) (P.P. 2017).

discord and chaos created through the alienating process.³⁷ In *Wiseman v. Wall*,³⁸ the Superior Court said that a factor to consider in awarding shared custody is whether a minimal degree of cooperation between the parents is possible. Finally, factor fifteen, the mental and physical condition of a party or member of a party's household, should work against the alienating parent, but any mental illness of the alienating parent will probably be difficult to detect, especially in a court setting.³⁹

A parent could also try to relocate the child without court permission, hoping that the court will not want to relocate the child again once the child has settled in the new locale. If the new locale is far enough away, this would obviously work to prevent contact with the parent left behind. Relocation factors are governed by 23 Pa.C.S.A. §5337(h) and generally support stability and continuity of the primary custodian. Another scenario sometimes used to accomplish the withholding of custody is the fabrication of allegations of sexual abuse. While a child who has been sexually abused may show certain symptoms, extreme stress from a highly contested and litigated custody battle could also cause similar symptoms. Additionally, if a child has been sexually abused in the past, this abuse could be projected onto and attributed to another individual, especially someone with poor boundaries. This is because a child who was sexually abused has not been permitted to have healthy boundaries. Accordingly, the perpetrator of any abuse may not be clear and should not always be assumed to be the rejected parent, if sexual abuse did occur. This is especially true where there have been no criminal convictions or positive CYS abuse findings. In *J.R.M. v. J.E.A.*,⁴⁰ the Superior Court found that in the absence of a determination that the child would suffer a detrimental impact by having unsupervised visits with the noncustodial parent, the trial court should have entered an order granted unsupervised periods of partial custody. A parent is seldom denied visitation except where there are severe mental or moral deficiencies that constitute a real and grave threat to the welfare of the child.⁴¹

In summary, the rejected parent is likely to win no more than partial or supervised custody, given the weaknesses of his or her case. This is because a court is unlikely give primary custody to a parent or party who has had no contact with the child for any period of time in an attempt to create stability for the child, despite the fact that parental alienation could be considered a form of abuse to the child as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition.⁴² As such, it is imperative that parental alienation be understood by those who come into contact with it.

PARENTAL ALIENATION: THE SCIENTIFIC LITERATURE

Seventeen parental behaviors have been associated with alienation because they induce a child to unjustifiably reject the other parent.⁴³ They include badmouthing

37. 23 Pa.C.S.A. §5328(a)(13) (P.P. 2017).

38. *Wiseman v. Wall*, 718 A.2d 844 (Pa. Super. 1988).

39. 23 Pa.C.S.A. §5328(a)(15) (P.P. 2017).

40. *J.R.M. v. J.E.A.*, *supra* note 25.

41. See *In Commonwealth ex rel. Sorace v. Sorace*, 344 A.2d 553 (Pa. Super. 1975); See also *Rosenberg v. Rosenberg*, 504 A.2d 350, 352 (Pa. Super 1986).

42. V61.20 (Z62.820) Parent-Child Relational Problem, V61.21 Neglect of Child, V61.29 (Z62.898) Child Affected by Parental Relationship Distress, V61.9 Relational Problem related to a mental disorder or general medical condition. Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, American Psychiatric Association (2013).

43. Baker, A.J.L. & Fine, P.R. (2013), *Educating Divorcing Parents*, in A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 8-46). New York, NY: Routledge.

the other parent, limiting contact with a parent, withdrawal of love/getting angry when the child is positive toward the other parent, telling the child that the targeted parent does not love him or her, forcing the child to choose/express loyalty, telling the child that the other parent is dangerous, confiding in the child about adult relationships, limiting photographs of the other parent, forcing the child to reject the other parent, cultivating dependency on the alienating parent, asking the child to spy on a parent, telling the other parent that the child does not love him or her, referring to the other parent by his or her first name, referring to someone else as "mom" or "dad," having the child keep secrets from the other parent, and changing the child's name. In the most severe cases of parental alienation, the alienating parent may be suffering from a personality disorder, such as borderline personality disorder, narcissistic personality disorder, anti-social personality disorder, or a combination. The mentally ill parent may block access of the other parent to the child for years on end based on frivolous reasons and may repeatedly violate court orders allowing access, where no repercussions exist. Some parental alienation experts believe that in the most severe cases of alienation, custody should be reversed so that the minor child is no longer suffering ongoing abuse in the primary custody of the alienating parent. This is also because outpatient reunification therapy probably will not work in the most severe cases of parental alienation where the derogatory comments and loyalty conflicts are never-ending. Where the child is constantly being bombarded with derogatory comments about the rejected parent or punished for any positive statements made about that parent, the child may need to be moved to neutral ground, such as a boarding school or a treatment center, for reunification to be successful.⁴⁴ Children are acutely aware of parental cues and will only feel free to love both parents if the parents feel positively toward one another.⁴⁵ When given permission by the favored parent, children will often easily engage with the other parent.⁴⁶ Failing this, children will become prey to loyalty conflicts, where alienation will likely erode the child's critical thinking skills as the child is forced to blindly accept ideas not consistent with his or her own experience out of fear of losing the love and approval of the primary caretaker.⁴⁷

Alienating parents with a personality disorder will probably be master manipulators, allowing them to present well, unlike rejected parents who have not seen the child in some time and may, as a result, be in an ongoing crisis state. Accordingly, rejected parents may present as stressed, anxious, agitated, afraid, and angry, with poor eye contact and pressured speech. They may also appear to the evaluator or fact-finder as paranoid or delusional with their stories of alienation. In stark contrast, many individuals with serious mental disorders, such as sociopaths and borderlines, can convincingly mimic normal behavior and can be deceptively charming, presenting as cool, calm, collected, and therefore much more convincing.⁴⁸ However, despite their initial charm, personality disordered individuals will probably not be able to put the needs of their child first. Alienating parents with a personality disorder will also probably not be able to tolerate rejection, dissent, or separation from their

44. Miller, *supra* note 8.

45. Goldberg, W. & Goldberg, L. (2013). Psychotherapy with Targeted Parents. In A. Baker & S.R. Sauber (Eds.), *Working with Alienated Children and Families: A Clinical Guidebook* (pp. 108-128). New York, NY: Routledge.

46. Albertson-Kelly, *supra* note 12.

47. Baker, *supra* note 43.

48. Miller, *supra* note 8.; Vesell H., Mental Illness and the Legal System. *The Pennsylvania Lawyer*. January/February 2016.

child. Often alienating parents cannot contemplate the value of the other parent and may not be able to see in shades of gray, minimizing any faults of their own, painting a bleak picture for the mental health of their children.⁴⁹

Unfortunately the court process itself may further shun the already rejected parent, especially where no interim orders for custody exist allowing the rejected parent to see the child during the custody battle. In *T. B. v. L.R.M.*,⁵⁰ ongoing appeals stalled a custody order approximately eight years so that when a stay on visitation was finally lifted, the court, instead of ordering unsupervised periods of partial custody as it previously had done, was forced to order visitations in a structured, therapeutic setting. This was due to what the court recognized was an unfortunate delay in bringing the matter to resolution, in part created by the internal mechanisms of the court system, which ultimately affected the best interest determination.

Where reconciliation therapy is ordered, the withholding parent, dealing with a mental illness, emotionally unstable, or perhaps in an effort to hide abuse, may delay agreeing to a therapist or schedule therapy as far into the future as possible, often forcing the rejected parent to return to court.⁵¹ Because it is not normal to totally cut off one side of the family, it is not hard to imagine that other forms of abuse may exist for the child in addition to the emotional abuse of the alienation itself. One study found a significant proportion of adult children of parental alienation were also the victims of physical or sexual abuse perpetrated by the alienating parent.⁵² Accordingly, any effective treatment of severe parental alienation would also require treatment of not only the alienation in reconciliation therapy between the child and the rejected parent, but also treatment of any mental illness or personality disorder of the alienating parent.⁵³ This is because strong parenting skills on the part of the targeted parent taught in reconciliation therapy may not alone neutralize the toxic effects of an obstinate alienator.

As psychological and emotional abuse of a child can have lifelong implications, with symptoms such as depression, anxiety, relationship problems, and suicide, allowing months or years to pass without effective intervention can be a tragic mistake. Furthermore, stress from loyalty conflicts between parents can lead to bullying and impact academic performance, concentration, and ability to learn.⁵⁴ Adults alienated as children may also suffer psychological consequences from the alienation, such as low self-esteem, depression, anger, resentment, their own relationship problems, and the use of drugs and alcohol in an effort to cope with these issues.⁵⁵

One study found that two-thirds of children of divorce are vulnerable to severe emotional and behavior disturbances and that the single variable that accounted for the healthy adjustment of the remaining one-third was parents who develop a cooperative, shared parenting relationship.⁵⁶ However, all is not necessarily lost in an adversarial court system because alienation can be modulated where the alienating parent understands that there will be sanctions from the court for enlisting the co-

49. Rabiega, *supra* note 16.

50. *T.B. v. L.R.M.*, 874 A.2d 34 (Pa. Super. 2005) (*appeal denied*).

51. Navarro, Joe. *Dangerous Personalities*. New York: Rodale, 2014.

52. Rabiega, *supra* note 16.

53. Miller, *supra* note 8.

54. Baker, *supra* note 17.

55. Judge Philip Marcus, *Parental Alienation, Contact Refusal and Maladaptive Gatekeeping: How to Prevent Contact Failure*, a paper presented at International Society of Family Law Conference, July 2017.

56. Rabiega, J. & Baker, A.J.L. (2013). Psychotherapy with Adult Children of PAS. In A. Baker & S.R. Sauber (Eds.), *Working with alienated children and families: A clinical guidebook* (pp. 252-273). New York, NY Routledge.

operation of a child in parental alienation, such as reversing custody or financial consequences for non-compliance with court orders.⁵⁷

ALIENATION AND THE DEPENDENCY PROCESS

If a parent has been successful in alienating the other parent from any contact with the child for six months, their parental rights could be terminated.⁵⁸ Specifically, grounds for involuntary termination exist if a parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition has either evidenced a settled purpose of relinquishing parental claim to a child or has failed to perform parental duties.⁵⁹ The court must examine the totality of circumstances in each instance.⁶⁰ However, where the evidence establishes a failure to perform parental duties or a settled purpose to relinquish parental rights, the court is obligated to engage in three lines of inquiry: “(1) the parent’s explanation for his or her conduct; (2) the post-abandonment contact between parent and child; and (3) the effect of the termination of parental rights on the child pursuant to Section 2511(b).”⁶¹ If the court determines that the parent’s conduct warrants termination of parental rights, the court will engage in the second part of the analysis pursuant to section 2511(b), making a determination as to what is in the best interest of the child.

The standard in Pennsylvania for the termination of parental rights is 42 Pa.C.S.A. §6351(f), (f.2) and (g) (P.P. 2017), where the moving party has the burden of showing that a termination of parental rights would serve the best interest, safety, permanency, and well-being of the child. The termination of parental rights must serve the developmental, physical and emotional needs and welfare of the child by clear and convincing evidence.⁶² The court must decide whether a termination of parental rights would destroy an existing, necessary and beneficial relationship, such as emotional bonds.⁶³ The continuity of relationships is important to a child, for whom severance of close ties is usually extremely painful.⁶⁴ However, when evaluating a parental bond, the trial court is not required to use expert testimony as 23 Pa.C.S.A. §2511(b) does not require a formal bonding evaluation. Furthermore, there is no statutory requirement nor is there any Pennsylvania appellate decision that permits or requires the testimony or preference of the child to be placed on the record as an integral part of the termination proceeding.⁶⁵ Contrary to a custody case where an older child is given an opportunity to express his or her preferences, in a termination of parental rights proceeding, there is no such right.⁶⁶

Accordingly, a parent’s basic constitutional right to custody of his or her children can be subverted upon a parent’s failure to fulfill parental duties, as every child has a right to proper parenting.⁶⁷ That said, the absence of a parent for six months may not be a true gauge of abandonment where one party has been successfully alien-

57. Albertson-Kelly, J. & Burkhard, B. (2013). Family Reunification in a Forensic Setting. In A. Baker & S.R. Sauber (Eds.), *Working with alienated children and families: A clinical guidebook* (pp. 232-251). New York, NY Routledge.

58. 23 Pa.C.S.A. §2511(a)(1)m (P.P. 2017).

59. *Id.*

60. *In re E.S.M.*, 622 A.2d 388, 392 (Pa. Super. 1993).

61. *In re Adoption of Godzak*, 719 A.2d 365, 367 (Pa. Super. 1998).

62. 23 Pa.C.S.A. §2511(a)(5) and (b) (P.P. 2017); *See also In re J.D.W.M.*, 810 A.2d 688 (Pa. Super. 2002).

63. *In re C.S.*, 761 A.2d 1197 (Pa. Super. 2000); *In re E.M.*, 620 A.2d 481, 484 (Pa. 1993).

64. *See In re C.S.*, *supra* note 62 at 1202; *See also In re C.P.*, 901 A.2d 516, 523 (Pa. Super. 2006).

65. *In re B.L.L.*, 787 A.2d 1007, 1014 (Pa. Super. 2001).

66. *In re A.R.*, 837 A.2d 560 (Pa. Super. 2003).

67. *In re J.T.*, 817 A.2d 505 (Pa. Super. 2002).

ated. However, it should be noted that a petition to terminate a natural parent's rights filed by one parent against the other is only cognizable when it is accompanied by a prospective stepparent's intention to adopt the child.⁶⁸

The Pennsylvania Supreme Court has found that, although there is no easy definition of parental duties, it is related to the child's needs with a positive duty that requires affirmative performance.⁶⁹ There is a duty to show an interest in one's child and an obligation to perform parental duties based on that interest. *In re C.M.S.*, the Superior Court would not abrogate this duty, even where the mother would not disclose the whereabouts of the child, as the father had not shown a "reasonable firmness" to overcome the obstacles placed in his path.⁷⁰ However, *in re Adoption of S.H.*, the Pennsylvania Supreme Court found that as long as a parent uses "all available resources" to maintain a parental relationship, the court will not terminate parental rights.⁷¹ In summary, when deciding whether a parent has made sufficient effort to maintain contact with his or her child, the court must consider the circumstances in which the parent finds himself or herself.

CONCLUSION

If the rejected parent has no criminal background, one that does not raise concerns for co-parenting, or criminal charges seemingly only spawned in retaliation for a custody filing, interim orders should be issued where indicated for at least partial custody periods in pending custody disputes to prevent and discourage further alienation. This is because cases of parental alienation are generally replete with false allegations to tip the scale against the targeted parent. It can then take months, if not years, to overcome these false allegations. Interim orders are especially important where the rejected parent has the capacity and ability to co-parent.

Not surprisingly, many people are forced to forgo enforcing their custody rights to the detriment of their children. Furthermore, scientific studies are replete with the hardships reaped upon children from broken homes with missing parents, where parental alienation is often passed on inter-generationally.⁷² This is because most, if not, all relationships are modeled from a child's primary relationships. There is also a high price to be paid by society for parental alienation and psychological abuse of children, in terms of its court, healthcare, and prison systems. This is because when children are not properly raised, either through neglect, abuse or poor character development, it may well become the task of society as a whole to later raise them properly through its public institutions. Furthermore, no child should be forced to reject a loving parent simply because various unfounded accusations have been levied against that parent.⁷³ Surely, if seeing an alienated child were as simple as applying for child support, the most powerless members of our society, its children, would benefit, in terms of their health and well-being, which is just as important as their financial maintenance.

68. See 23 PA.C.S. §2512(b).

69. See *In re Burns*, 379 A.2d 535, 540 (Pa. 1977).

70. *In re C.M.S.*, 832 A.2d 457, 464 (Pa. Super. 2003) (*appeal denied*).

71. *In re Adoption of S.H.*, 383 A.2d 529, 533 (Pa. 1978).

72. Rabięga, J., *supra* note 16.

73. See Lebow, *supra* note 11.