

Parental Alienation in Custody Disputes  
By Joel R. Brandes

Parental alienation was first recognized in New York custody cases by the Appellate Division in *Entwistle v. Entwistle* (61 A.D.2d 380, 402 N.Y.S.2d 213 (2d Dep't 1978)). There, the mother consented to the entry of judgment of divorce after the parties stipulated that she would retain custody of the children, subject to visitation rights of the husband. The stipulation also provided that she "shall have the right to remove her residence together with the children to Greenwich, Connecticut; subject to the approval of the Court". Within one month after the judgment was entered, she remarried, took the children, and moved to Illinois, without informing the husband of her, or the children's location. She then commenced a proceeding in Illinois to register her New York divorce judgment and to redefine the husband's visitation rights. The husband made an application in Supreme Court to punish her for contempt for willfully failing to comply with the visitation provisions of the judgment of divorce and to transfer custody of the children to him, based upon the visitation improprieties. The Appellate Division directed that a hearing be held with respect to the father's application. In its decision, it stated: "... that the respondent's very act of preventing the two children of tender age from seeing and being with their father is an act so inconsistent with the best interests of the children as to, per se, raise a strong probability that the mother is unfit to act as custodial parent." (See also *Rosenstock v Rosenstock*, 162 AD3d 702 ,78 N.Y.S.3d 384 (2nd Dept 2018)).

Parental alienation must be distinguished from "Parental alienation syndrome", a disorder termed by child psychiatrist [Richard A. Gardner](#). (["Recent Trends in Divorce and Custody Litigation"](#) (PDF). Academy Forum, Volume 29, Number 2, Summer, 1985, p. 3-7.) According to Dr. Gardner, parental alienation syndrome occurs when one parent deliberately or unconsciously attempts to alienate a child from the other parent. The parent who programs the child brings about the destruction of the bond between the other parent and the child. It is characterized by a cluster of eight symptoms that appear in the child. These include a campaign of denigration and hatred against the targeted parent; weak, absurd, or frivolous rationalizations for this deprecation and hatred; lack of the usual ambivalence about the targeted parent; strong assertions that the decision to reject the parent is theirs alone (the "independent-thinker phenomenon"); reflexive support of the favored parent in the conflict; lack of guilt over the treatment of the alienated parent; use of borrowed scenarios and phrases from the alienating parent; and the denigration not just of the targeted parent but also to that parent's extended family and friends. (Gardner, R.A., *The Parental Alienation Syndrome*, Second Edition (1998)).

Parental Alienation Syndrome is not generally accepted in the scientific community, as it is not an approved term or diagnosis in the field of psychiatry. No New York court has allowed the admission of testimony concerning Parental Alienation Syndrome. It is not a diagnosis

included in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders. (See *Montoya v. Davis*, 156 A.D.3d 132, 66 N.Y.S.3d 350, n.3 (3d Dep't 2017)).

Nevertheless, New York courts have repeatedly recognized the effects of alienating behavior by a parent on children in custody and visitation determinations (See *Matter of Krier v Krier*, 178 A.D.3d 1372, 116 N.Y.S.3d 808 (4<sup>th</sup> Dept.,2019)) by changing custody of the child and suspending visitation.

In *Karen B. v. Clyde M.*, the Family Court found that the mother programmed her daughter to accuse the father of sexually abusing the child so that she could obtain sole custody and control or even preclude any contact that the father might have with his daughter. It held that a parent who denigrates the other by casting false aspersions of child sex abuse and involving the child as an instrument to achieve his or her selfish purpose is not fit to continue in the role of a parent. It found that it would be in the child's best interests that her custody be awarded to her father. (151 Misc. 2d 794, 574 N.Y.S.2d 267 (Fam. Ct. 1991) sub nom. *Karen PP v. Clyde QQ*, 197 A.D.2d 753, 602 N.Y.S.2d 709 (3d Dep't 1993)).

In *James Joseph M. v. Rosana R.*, (32 A.D.3d 725, 821 N.Y.S.2d 168 (1st Dep't 2006)), the Appellate Division affirmed an order that awarded custody to the father with supervised visitation for the mother. It found that the mother had engaged in a repeated and escalating pattern of interference in the father's relationship with the child immediately after the parties separated. She repeatedly made false allegations of abuse at his hands, which subjected the child to repeated interviews with law enforcement and medical personnel and included an invasive gynecological examination. The child was coached by the mother to confirm these false allegations to governmental and medical personnel. These actions, including her repeated calls to the police, could only serve to traumatize the child. The Appellate Division held that supervised visitation for the mother was warranted given her consistent pattern of detrimental behavior.

In *Matter of Gerber v Gerber*, (133 A.D.3d 1133, 21 N.Y.S.3d 386 (3d Dept.,2015)) the father testified at length regarding the change in the children's demeanor following entry of the prior custody order including their refusal to engage in any activities with him, participate in family dinners, wear clothes that he had purchased for them or respond to his repeated efforts to engage them in conversation and attempt to build a positive and respectful parent-child relationship. According to a clinical psychologist who performed a court-ordered evaluation of the parties and children, the mother, readily "blame[d] all of the difficulties for the children and the family on [the father]," "consistently portrayed herself as a victim," failed to "take any responsibility for any problems in the marriage or with the children" and "did not recognize any role for herself in the conflicts that affect[ed] the children." The psychologist opined that the mother's negative "remarks and behavior influence[d] the children to disrespect [the father] and resist participating in a healthy relationship with him." A court-referred family counselor testified

that the children, who eventually refused to participate in the counseling sessions, shared a “distorted reality” with their mother--one in which they possessed no positive experiences with or memories of their father--and opined that, during the time that he was counseling the family, the mother actively engaged in a “campaign of negativity and denigration” that was directed at alienating the children from their father. According to him, the children “were powerfully motivated by [their mother’s] behavior” within the family unit and, to that end, understood “what they need[ed] to do” when they were with their father, i.e., refuse all attempts on his part to interact with them. He characterized this parental alienation as “moderate to severe.” In light of the overwhelming evidence of parental alienation, and considering the traditional factors, the Appellate Division affirmed the award of sole legal and physical custody to the father, which suspended all contact between the mother and the children for six months and then ordered therapeutic visitation. (See also *Matter of Nieves v. Nieves*, (176 A.D.3d 824, 111 N.Y.S.3d 673 (2d Dep’t 2019))

In *Matter of Krier v Krier*, (178 A.D.3d 1372, 116 N.Y.S.3d 808 (4<sup>th</sup> Dept.,2019)) the child had refused to have any contact with the father in the four years since the parties’ divorce, and the parties offered conflicting lay and expert testimony whether the mother had caused the child’s alienation from the father. The Appellate Division found that the court properly weighed the custody factors and found that all weighed in favor of placement with the father except the child’s wishes. Although the child was 15 years old at the time of the hearing, the court properly determined that his wishes were not entitled to great weight since the child was so profoundly influenced by his mother “that he cannot perceive a difference between” the father’s abandonment of the marriage and the father’s abandonment of him and that it was in the child’s best interests to reside with the father despite his wishes to the contrary. The father’s expert testified that the type of conduct in which the mother engaged resulted in the child becoming alienated from the father. It concluded that there was a sound and substantial basis for the determination for an award of sole custody to the father. (See also *Matter of Vargas v Gutierrez*, 155 A.D.3d 751, 64 N.Y.S.3d 76, 78 (2 Dept., 2017)).

### Best Interest of the Child

Where a parent intentionally interferes with the visitation rights of the non-custodial parent to the extent it harms the child, the rights of the non-custodial parent will yield to the best interest of the child.

In *Lew v. Sobel*, (46 A.D.3d 893, 849 N.Y.S.2d 586 (2d Dep’t 2007)) the Appellate Division found while one parent’s alienation of a child from the other parent is an act inconsistent with the best interests of the child the children’s bond to the alienating parent was so strong that a change of custody would be harmful to the children without extraordinary efforts by both parents and extensive therapeutic, psychological intervention. Thus, there was no basis to disturb the Supreme Court’s determination that a change of custody would not be in the children’s best interests. However, given the evidence and the Court’s determination that

the mother deliberately had interfered with the father's visitation rights, it directed the father to pay 50% of his child support obligation to the mother's attorney, to be held in an escrow account until the mother could certify, to the satisfaction of the Supreme Court, her compliance with the visitation provisions of the order, and the absence of her interference with the father's visitation rights.

In *Sullivan v. Plotnick*, (145 A.D.3d 1018, 47 N.Y.S.3d 329 (2d Dep't 2016)) the Appellate Division held that while one parent's alienation of a child from the other parent is an act inconsistent with the best interests of the child, the child's bond to the alienating parent, and her alienation from the father, was so strong, that a change of custody would be harmful to her. There was no basis to disturb the Family Court's determination, made after a hearing and an in-camera interview with the child, that a change of custody would not be in the child's best interests. Moreover, giving due consideration to the wishes, age, and maturity of the parties' daughter, it was a provident exercise of the Family Court's discretion to decline to mandate visitation with the father where the child, who was 14 years old at the time of the court's determination, had a strained relationship with the father and was vehemently opposed to any form of visitation with the father. Thus, the court properly vacated all prior orders directing parental access for the father. However, the evidence adduced at the hearings justified a suspension of the father's obligation to make future child support payments. There was evidence that the mother deliberately frustrated the court-ordered therapeutic visitation in many ways, including unnecessarily canceling a number of sessions, discussing the court proceedings and the therapeutic visits with the children, and telling the son that it was up to him as to whether he participated in the therapeutic visits, and referring negatively to the father in the presence of the children. These deliberate efforts by the mother influenced the children to view visitation with the father negatively and contributed to the failure of therapeutic visitation. The mother failed to make an effort to have a therapist address the children's negative feelings toward their father and made no effort to assist the children in restoring their relationship with the father. The evidence supported the finding that the mother, by her example, her actions, and her inaction, manipulated the children's loyalty, encouraged the estrangement of the father and children, and deliberately frustrated visitation.

### Conclusion

New York courts deal with alienating behavior by a custodial parent by changing custody of the child and suspending visitation. Where a custodial parent interferes with the visitation rights of the non-custodial parent to the extent that visitation with the non-custodial parent would be harmful to the child, visitation will not be ordered but the right of the custodial parent to child support may be suspended.

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