



## Court Intervention in **Child Alienation** Cases

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**P**revention of the disintegration of families is such an important goal that judges, traditionally cautious, practical, and careful, can be enlisted to actively try to reverse the effects of a family's crisis.

When it appears that a child has been alienated from a parent, or soon will be, the necessity for judicial action is especially powerful. This article highlights the psychological issues involved in alienation, the remedies recommended by the mental health community, and the case law establishing the legal authority for court orders to address this critical problem in families.

### Why It Matters

The severing of a relationship between a parent and a child compromises a child's healthy development and is an emotionally devastating experience for the family. There is a substantial body of psychological literature that

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demonstrates significant negative short-term and long-term consequences for children who become alienated from one parent in the context of a divorce. Research studies, clinical observation, and case reviews show that alienated children suffer from an array of emotional problems. At the very least they begin to have distorted views about personal relationships and poor reality testing, they can become manipulative and callous in ways that compromise their interactions with others, and they have separation and identity issues. Alienated children are at far greater risk for adjustment difficulties and emotional distress than children from litigating families who have not become alienated.<sup>1</sup> There is also evidence that the impact of alienation is long lasting. Low self-esteem, self-blame,

and guilt are reported by adults who were alienated as children.<sup>2</sup>

### **Alienation: What It Is And What It Is Not**

The term alienation, which has become a part of the lexicon of high conflict divorce, is frequently misunderstood and misused. At its core, alienation is about a child's disturbed behavior, not about a parent's behavior, and it involves a profound change in a child's reaction to a previously loved parent. This reaction typically occurs in the context of an acrimonious divorce in which the child has been exposed to a great deal of anger and conflict and suddenly begins to reject one parent and become intensely aligned with the other parent. The child's anger at the parent is not based on the reality of what has actually

happened between the parent and the child, despite what they may claim. In the most severe cases of alienation, the relationships in the family become completely polarized. There is a good, loved parent and a bad, hated parent. The child has lost the freedom to love both parents.

Although often attributed to “brainwashing,” alienation is a complex phenomenon that is caused by a convergence of factors. A history of intense marital conflict, a separation that is humiliating for one parent, persistent denigration of one parent by the other, the personalities of the parents, a child that is vulnerable in one way or another, and aligned professionals and aggressive litigation can all contribute to the creation of this problem. While the persistent denigration by one parent of the other is a necessary pre-condition for alienation, it is rarely the only factor that drives this process.

Some children rapidly become severely alienated from one parent and refuse contact completely, while others become aligned with one parent and want only limited contact with the other. Initially, these latter children may not completely reject the other parent, though the underlying dynamic of polarized family relationships is present. If the issues in these families are not addressed however, the children are at risk of becoming alienated. Therefore it is critical not only to identify the already alienated children but also those children who present with milder or more moderate signs of becoming alienated.

Alienation is *not* what has been identified as “realistic estrangement” or “justified rejection.” There are times when children reject a parent

for good reasons, such as when the parent has been violent, abusive, or neglectful or has demonstrated several parenting deficiencies. In these cases the child’s rejection of the parent does not reflect unreasonable or unfounded anger toward a previously loved parent. Rather, the rejection is a healthy response to the parent’s damaging behavior.

Hostility, denigration, and other expressions of anger by one parent toward the other during a high conflict divorce should also be distinguished from alienation. Parents in these cases frequently attack one another and say nasty and vindictive things. Accusations of alienation

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quickly follow. However, while this behavior is far from optimal, it is not alienation. Alienation is about the disturbed behavior of a child and the transformation of the parent-child relationship. Anger is about parental behavior and is observed in many high conflict cases. That is, when a child rejects and refuses contact with a parent, alienation is present. When a parent becomes hostile and attacking, it is bad behavior but not alienation. This is one of the most critical concepts to understand.

### **What the Court Can Do**

There is a consensus in the mental health field about how to improve our approach to alienation cases. While in some cases the alienation may be so severe that they are resistant to intervention, in many others the

court can have a significant positive impact on the family. Knowing full well that these cases are extremely complicated and range from severe to moderate to mild, there is agreement that they require:

**Early identification** is indisputably necessary in these families. Time is of the essence and delay in identifying alienated children, or those at risk, reduces the likelihood of successful intervention. A child’s refusal to visit or the suspension of visits is a “red flag,” particularly if the parent and child previously did things together before the separation and if there are no clear indicia of realistic estrangement. While a full forensic evaluation may be useful in some cases, early identification of the problem should not await such an evaluation. Instead, careful inquiry and prompt intervention is crucial in these families.

**Strong and consistent judicial case management is essential.** The court has credibility and authority and the respect of all parties and must play an important role in these cases. Unless the court provides direction, establishes expectations, monitors the family regularly, and ensures consequences for violations of court orders, the likelihood of successfully overcoming the alienation is low.

**Clinical interventions** must be crafted and ordered by the court and should be structured and responsive to the specific needs of each family and include both parents and the children. A family systems approach to treatment should be utilized with a team of clinicians, objectives of treatment/intervention should be established, and minimum periods of time for treatment should be delineated by the court. Clinicians who work with the family must be

knowledgeable about alienation. If they are not, intervention can be useless or even destructive.

**Collaboration between the court and mental health professionals** is necessary to identify critical issues and to structure interventions and orders that integrate the perspectives of the psychological and legal professions. Any intervention plan should be informed by clinical insights and implemented through the court's authority.

**Contact with the rejected parent must not be suspended**, even if it requires therapeutic involvement or the presence of another person (not supervision). The moment contact stops, the risk of entrenchment increases.

Mental health professionals agree that remedying a case of alienation is challenging at best but not impossible. The collaborative and multi-pronged approach outlined here offers the best opportunities for addressing the serious problems that these cases present.

### Authority for Court Intervention

New York family law reflects an historic interplay between the legal and mental health communities and underscores the authority and responsibility of courts to compel parties to participate in, to facilitate their children's participation in, and to pay for mental health treatment. In *Wolfson v. Minerbo*, 108 A.D.2d 682 (1st Dept. 1985) the First Department "insist[ed]" that the parties "meaningful[ly]" comply with a Family Court order that "directed that the parties and the children submit to counseling and that the father pay the costs therefor" "so that a reasonable relationship can be reestablished between father and children." The court also directed "that petitioner

pay for all future counseling sessions." The Second Department joined the First Department in *Resnick v. Zoldan*, 134 A.D.2d 246, 248 (2d Dept. 1987), directing "the parties and their daughter to undergo a program of psychiatric counseling under the court's direction and supervision in an effort to attempt a gradual assumption of visitation." Since then, the appellate and trial courts have repeatedly directed parties to participate in some form of psychotherapy.<sup>3</sup>

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Courts have also monitored the parties' attendance in treatment. In *Mark-Weiner v. Mark*, NYLJ 8/24/01, p. 18, c. 4 (New York Co., Gische, J.), the Supreme Court required the defendant to provide "proof that he is actively involved in such therapy" in the form of a bill marked paid or other receipt for services. In *Singer v. Peters*, 284 A.D.2d 152 (1st Dept. 2001), the court held that, with the parties' consent, the Supreme Court was entitled to review the therapist's notes and to obtain the testimony of the therapist to determine the parties' "participation and progress in the therapeutic process." *Singer*, 284 A.D.2d at 152.

Trial judges, with the approval of appellate courts, have been involved in selecting the "nature" of the therapy or the "manner in which [it] will be accomplished." *Scheuering v. Scheuering*, 27 A.D.3d 446, 811

N.Y.S.2d 100 (2d Dept. 2006). In *LR v. AZ*, N.Y.L.J. 7/31/09, p. 26, c. 1 (New York Co., Drager, J.), the court ordered the appointment of an "intervention therapist" to assist the parties in finding a "cognitive-behavioral" therapist to provide short-term treatment for the child. Where the therapy selected by a parent "was neither consistent nor effective," the Second Department ordered the parent to enroll the child "in intensive and consistent therapy with a child psychiatrist, with the goal of repairing the relationship between the father and the child so that visitation could resume in the future." *Stebelsky v. Schleger*, 135 A.D.3d 774 (2d Dept. 2016).

The Appellate Divisions have made that trial courts responsible to use their remedial authority to ameliorate the damage caused by alienation of children. In *Schnee v. Schnee*, (New York Co., Tolub, J. 1999, n.o.r.), the children were "extremely alienated from the mother" and did not want to "re-establish a relationship with their mother." Nonetheless, the trial court refused to order the parties and the children into previously agreed-upon therapy "where to do so will serve no useful purpose" because both the father and the children refused to attend therapy. "There is no magical ruling that this court can render which will make these children want to re-establish a relationship with their mother ... . The court is not unsympathetic to the plaintiff's plight, but can do little to award her the relief she really requests, her children's love and respect. Even a judge has no such power." The First Department disagreed. Noting that the experts unanimously recommended continued therapy at least for the children if not the entire family, the court held that the "record does not presently

support” the denial of family therapy, and remanded on that issue among others. 268 A.D.2d 392, 700 N.Y.S.2d 839 (1st Dept. 2000) (*italics added*). In *Rodman*, the Supreme Court ordered the mother to bring the “alienated” child to therapy and visitation and imposed fines for her failure to do so. The First Department affirmed. In *Wolfson*, the court found that neither party was participating in therapy in good faith. The Second Department “insist[ed] that there be a meaningful effort by both parties to participate in the counseling process so that a reasonable relationship can be reestablished between father and children.” In *Zafran v. Zafran*, 306 A.D.2d 468 (2d Dept. 2003) (*Zafran I*), the trial court ordered temporary visitation to be implemented by a court-appointed case manager. The alienating father refused to cooperate with the court-ordered therapeutic supervised visitation and “undermined the court’s efforts to facilitate unsupervised visitation.” The father next resisted an update of the court-ordered forensic evaluation. *Zafran v. Zafran*, 28 A.D.3d 753, 754 (2d Dept. 2006) (*Zafran II*). The trial court, growing frustrated, denied the mother’s motion to hold the father in contempt, but “terminated” all visitation. On appeal, the Second Department reversed, directing the lower court to reconsider the issue of contempt and suspending the visitation, reasoning that termination of the father-daughter relationship was not in the daughter’s best interests. Since the daughter’s interests also were at stake, the court found that contempt, not termination of visitation, was an appropriate vehicle for addressing the father’s recalcitrance. 28 A.D.3d at 757. By contrast, in *Rodman*, the trial court decided not to hold the mother in contempt but,

rather, to direct her to comply with its prior orders, and the appellate court affirmed that exercise of discretion.

The trial court decisions in *Schnee* and *Zafran* express the view that there are limits to what courts can do to repair fractured families. The appellate courts in each case and both courts in *Rodman* took a different tack, saying, in effect, that courts had to exhaust the remedies that the trial courts had at their disposal. Implicit in these appellate decisions is the hope that with the assistance, and if need be, the coercive power of the court, mental health professionals can help to repair severely damaged parent-child relationships. It is unclear what the appellate court in those cases would have done if the father in *Zafran* or the children in *Schnee* continued to refuse to participate in therapy in the face of enforcement of the court’s contempt powers. Perhaps those appellate courts would reach the conclusion as, it seems, the trial courts did, that there is nothing more that the courts can do for these families. But the appellate courts are insisting that we have to try and mental health professionals, with the backing of the law, have provided us with a treatment plan that may help in some cases.

### Recommendations for Triage

Attorneys with an alienation case should move early in the case for orders which insure that contact between the rejected parent and the child(ren) continues and that mental health services which specifically address alienation are immediately implemented. The motion is more likely to succeed if it is supported by an affidavit from a mental health professional, experienced in parental alienation, who identifies specifically the reasons for the initial assessment

of alienation and a plan for addressing the problem. That affidavit should highlight the justification for prompt action.

### Conclusion

The case law and the psychological literature underscore the urgent need for both judicial case management and rapid mental health intervention in alienation cases. If we are successful, in the long run the demands on the courts from alienation cases may be reduced. More importantly, however, this approach has the best chance of reducing the serious emotional damage that occurs in families when alienation continues unabated.

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1. Fidler, BJ and Bala, N. (2010). Children Resisting Postseparation Contact with a Parent: Concepts, Controversies and Conundrums. *Family Court Review*, 48 (1), 10-47.

2. Baker, A.J. L. (2007). *Adult Children of Parental Alienation Syndrome, Breaking the Ties that Bind*. New York: W. W. Norton & Company.

3. The following is a partial list of cases. *Rodman v. Friedman*, 33 A.D.3d 400 (1st Dept. 2006) (parties ordered “to abide by the court’s orders regarding ... therapy”); *Thompson v. Thompson*, 41 A.D.3d 487 (2d Dept. 2007) (the trial court “may direct a party to submit to counseling as a component of visitation”); *Anne S. v. Peter S.*, 92 A.D.3d 483 (1st Dept. 2012) (father to “continue intensive treatment”); *SMZ v. SDZ*, NYLJ 3/28/97, p. 31, c. 4 (New York Co., Silberman, J.) (counseling is the “one remedy that may salvage” the situation); *JF v. LF*, 181 Misc.2d 722 (FC, West. Co. 1999), aff’d. 270 AD2d 489 (2d Dept. 2000) (finding that the mother alienated the children from the father, the Court changed custody to the father and ordered that the children be in therapy “with an appropriate therapist with experience in parental alienation and that the parents cooperate in such therapy” and “that both parties participate in their own individual therapy, if recommended”); *LS v. LF*, 10 Misc.3d 714 (SC, Kings Co., 2005, Sunshine, J.) (court appointed a parenting coordinator to assist the parties and child to reestablish meaningful parenting time and directs parties to pay equally so that both have vested interest in the outcome and responsibility for their past conduct).