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# PARENTAL ALIENATION AND DOMESTIC VIOLENCE: TWO SIDES OF THE SAME COIN

## Part Two of Two

BY ASHISH S. JOSHI

The difference between coarse and refined abuse is as the difference between being bruised by a club, and wounded by a poisoned arrow.

—Samuel Johnson

In part one, I discussed how important it is for a court or an evaluator to thoroughly investigate allegations of parental alienation (PA) or domestic violence (DV) at the earliest opportunity, certainly prior to making a finding of PA or DV. After my article was published, the Domestic Violence Committee (of which I am a member) published a response to my article.<sup>1</sup> On the face of it, the Committee's response appears reasonable. It is hard to argue with the title of their article, "Facts Matter in Custody Cases Involving Parental Alienation and Family Violence." *Of course*, facts matter; as I argued in part one of my article, not only do the facts matter, but they *must* be properly and thoroughly investigated.

But then the Committee's response created a strawman—suggesting that I argued that the allegations of DV "are easily proven in a custody dispute." Having created this strawman, the Committee's response thereafter proceeded to demolish it with gusto. It argued that proving DV "is challenging" and "that failure to prove family violence does not mean that violence did not occur."<sup>2</sup> I do not dispute that proving DV (or for that matter, PA) might be challenging in litigation. A judicial finding of DV or PA could have severe, significant, and life-changing consequences—for the children, the alleged victim, and the alleged perpetrator. In addition, important rights, including federal constitutional rights and liberty interests are at stake when adjudicating DV allegations. Therefore, it should not come across as a surprise that proving DV in an adversarial legal system is challenging.

I am troubled by the Committee's absence-of-evidence-is-not-the-evidence-of-absence argument. There are two problems with this argument. First, the argument implies that an accusing party's failure to discharge the requisite burden of proof should somehow be seen for something else than a failure. This leads to a never-ending "what if" scenarios that might provide fodder for conspiracy theories, but are of little value to a cold, clinical, forensic setting of a courtroom. Sec-

ond, and more importantly, such thinking often leads to unwarranted presumptions and compromised decisions in court and therapy where an alleged victim or affected individual is treated as a victim of abuse *despite there being no evidence of abuse*. For instance, a child who is given "therapy" for being "traumatized" by sexual, physical, or emotional abuse in absence of any evidence, risks severe and long-lasting adverse consequences as a result of such therapy. Behavioral science and cognitive experts have warned us about the risks and ill effects of therapeutic interventions (such as Play Therapy) in the hands of incompetent or overzealous therapists, especially when applied to the children of whom no findings of abuse have been made.<sup>3</sup> As Lewis Carroll pointed out, in *Through the Looking Glass*, one *can* believe impossible things—and it helps if you practice. As the Red Queen said, "Why sometimes, I've believed as many as six impossible things before breakfast."

I am even more concerned about the Committee's statement, "Recent research demonstrates that courts rarely believe victims and children when they raise concerns about abuse in their family law cases, giving rise to both acute and long-lasting harm to children."<sup>4</sup> This argument that courts rarely believe victims of DV and child abuse stems from a research paper authored by Joan Meier and her colleagues, which the Committee cites in its article. Recently, in a peer-reviewed article published by the American Psychological Association, Dr. Jennifer Harman and Dr. Demosthenes Lorandos exposed the serious conceptual and methodological problems of the Meier study, its misrepresentation of the research pertaining to parental alienation, and the flawed and faulty interpretation of the study's findings, which was plagued with confirmation bias.<sup>5</sup> The Harman & Lorandos' peer-reviewed research not only failed to find support for Meier's unfounded claims, but instead made findings that were *opposite of what Meier and her colleagues reported*. A family law practitioner should think twice and hard before citing the Meier study in support of

the flawed argument that courts disregard evidence of DV or abuse. Such argument has no merit. As Harman & Lorandos point out:

“In conclusion...our results soundly disconfirmed nearly all the findings we tested from Meier...This ... raises concerns about the validity of Meier et al.’s data and conclusions that can be drawn from it... Unfortunately, Meier et al. ... have been extensively disseminating their findings to media and policy makers, have failed to discuss the limitations of their report, have been presenting their findings as definitive proof, and have been communicating to the public that abused mothers are losing custody of children to abusive father...Such messaging propagates stereotypes about men being abusive and women being victims, both of which were not supported in our study.”<sup>6</sup>

As Harman & Lorandos point out, there are (and always will be) parents who claim they are being alienated from a child when they are not, just as there are parents who claim they are being abused when they are not. Family courts do not take claims of PA or DV at face value. Nor should they. These

claims must be evaluated based on the evidence presented, regardless of gender. And proving them in court might be challenging—as it should be.

### **Parental Alienation *Is* Family Violence**

The concepts of DV and PA are intertwined: Causing PA is a form of DV. The abuser—the alienating parent—continues to control the children post-divorce or separation and alienate them from the ex-spouse as a way to punish the former partner. PA causes significant psychological and emotional harm to children. The concept of DV encompasses acts or behaviors that cause mental or emotional or psychological injury. In adjudicating custody disputes, Michigan courts have adopted the definition of “Domestic Violence,” as found in the Domestic Violence Prevention and Treatment Act, MCL 400.1501 *et seq.*, and applied it to the custody factor, MCL 722.23(k).<sup>7</sup> DV is defined as:

“the occurrence of any of the following acts by a person that is not an act of self-defense:

- (i) Causing or attempting to cause physical or mental harm to a family or household member.

- (ii) Placing a family or household member in fear of physical or mental harm.
- (iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- (iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

The interplay between PA and family violence has been studied and documented. In her 2018 peer-reviewed research paper, Dr. Jennifer Harman and her colleagues found that PA is “[t]his complex form of aggression [that] entails a parental figure engaging in the long-term use of a variety of aggressive behaviors to harm the relationship between their child and another parental figure, and/or to hurt the other parental figure directly because of their relationship with their child.”<sup>8</sup> Other experts too have found that “abusive ex-partners are likely to attempt to alienate the children from the other parent’s affection (by asserting blame for the dissolution of the family and telling negative stories), sabotaging family plans (by continuing criticism or competitive bribes), and undermine parental authority (by explicitly instructing the children not to listen or obey).”<sup>9</sup>

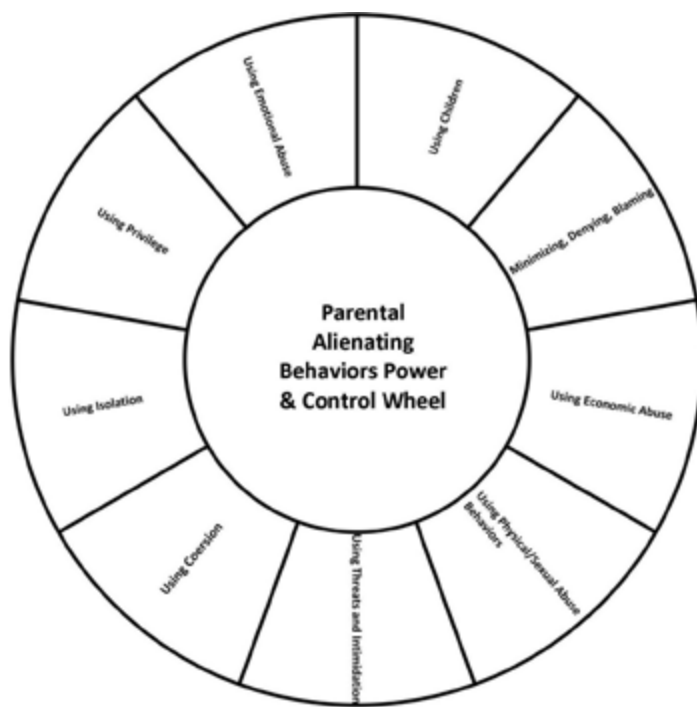
Researchers have conceptualized alienating behaviors as a form of family violence, both as child abuse and intimate partner violence because the ultimate alienation of a child is primarily a result of abusive behaviors of an alienating parent.<sup>10</sup> Severe alienating behaviors are a form of family violence—these behaviors constitute a form of child abuse resulting into a psychiatric disorder (CARPD) and “parent-child relationship problem” as described in DSM-5.<sup>11</sup> As we attempt to understand the pathology and sequelae of parental alienating behaviors, it would be helpful to examine the power and control wheel used in the Duluth Model, which is the most widely known protocol for intervening in cases of domestic violence.<sup>12</sup> The wheel is a well-known measure used by the DV advocates and clinicians to conceptualize the behaviors used by perpetrators of DV or intimate partner violence. The Duluth Model has its roots in feminist theory and contributed a great deal to the understanding of family violence in both research and practice.<sup>13</sup> Dr. Harman and Dr. Mandy Matthewson have adapted the Duluth Model in a gender-neutral manner to conceptualize and present parental alienating behaviors.<sup>14</sup>

The figure<sup>15</sup> below, a gender-neutral Harman-Matthewson adaptation of the Duluth power and control wheel, illustrates the power and control aspects of parental alienating behaviors. The researchers combined the *post-separation power and control wheel*, the *abuse of children wheel*, and the *power and control wheel* from the Duluth Model because the behaviors used by alienating parents are represented in all of them. As these re-

searchers explain:

“The wheels were designed to depict violence between two adults, but A[lienating] B[ehaviors] are more complicated due to the children also being victims and, oftentimes, the weapons used against the alienated parent. As a consequence, this form of family violence can be very complicated due to the number of people who can be involved; it is not just two parents because it often involves children as well as extended family members (e.g., grandparents) and other third parties (e.g., teachers, family friends).”<sup>16</sup>

The category of parental alienating behaviors is classified into emotional abuse; coercion; threats and intimidation; physical and sexual abuse; using isolation, minimizing, denying, and blaming; using privilege; using economic abuse; and using children.



It can be argued that parental alienating behaviors are tantamount to child abuse. Child abuse is a broad and amorphous term, but is generally defined as a specific form of harm to children that is *significant* and may be attributed to *human agency* that is proscribed, proximate, and preventable.<sup>17</sup> Family courts have viewed these behaviors as a form of “emotional abuse that should not be tolerated.”<sup>18</sup> Courts have also acknowledged that such behaviors can cause “a child lifelong suffering.”<sup>19</sup> Mental-health professionals have cautioned us that alienating behaviors that cause parental alienation constitute child psychological abuse.<sup>20</sup> Indeed, experts have found that the tactics used by alienating parents are often tantamount to extreme psychological maltreatment of children.<sup>21</sup>

So severe are the PA behaviors and their effect on the children's emotional and psychological wellbeing that it is plausible that a court may grant custody to a parent who is the target of parental alienating behaviors *even if that parent was once guilty of engaging in abusive behavior or DV*. But it is not because the courts choose to ignore evidence of DV or abusive behavior. Rather it is because they give greater weight to the concern for protecting the child from the ongoing PA behaviors compared to the risk of reoffending by a parent with a prior history of DV.<sup>22</sup>

Consider the dreadful facts before the Ohio Court of Appeal in the case of *Habo v. Khattab*.<sup>23</sup> The appellate court affirmed the trial court's award of custody to the father despite his conviction for DV. The appellate court disagreed with the mother's argument that the trial judge simply ignored the evidence of DV. Instead, the appellate court found that the trial judge duly considered father's conviction and gave it appropriate consideration and weight when evaluating the best-interest factors. The trial judge however was more concerned about the mother's alienating behaviors, which were abusive in their own right and included calling the police alleging she was abused by father (the police did not find any abuse) and locking the children in her bedroom because she was, unreasonably, afraid that the father would kidnap them. Particularly troubling to the trial court was an incident which was tape recorded by the mother and which she put forward as evidence of the father's "abusive" behavior:

"[Contrary to the mother's characterization of the incident], the tape showed the mother being 'hysterical and screaming at father in front of the children, 'Don't hurt my kids' over and over again. At one point, mother yelled 'Don't hurt my kids' 12 times in a row...while mother was engaging in these histrionics, father could be heard in the background calmly telling the children to 'get in the car' and telling mother, 'I will take the children to school. You will see them after school.' ... [T]he tape actually showed it was mother's 'hysteria' that caused the children to become upset and to resist being put in the car by father. After father was struggling to get the children in the car for about 20 minutes, mother called the police reporting domestic violence. The trial court found mother's actions that day were further evidence of her efforts to alienate the children from father."<sup>24</sup>

The trial court was especially alarmed at how the mother's alienating behaviors were causing the children to reject their father and significantly harming the children's relationship with the father. The court first considered the baseline relationship between the father and the children, which was healthy and loving and found that all three children "were affectionate with father and eager to spend time with him." But in a matter of months, the court found that the children's at-

titude toward their father changed drastically. When the father arrived to pick the children up for his visitation, the oldest child, in their mother's presence, became "hysterical, crying, and screaming that she was not going with father and that he would hurt her." The court noted that the mother did nothing to stop their outbursts. Instead, the mother told the children that they had to visit their father or she would be arrested. Also, she told the children that "she did not blame them if they did not want to see father and that she [mother] would go to the Supreme Court to keep them from ever having to live with [the father]." The court found that the children's refusal to visit with father was not due to fear of him, but, instead "was a 'game' to them" and the children were observed "smiling and smirking while screaming that father had abused them, which the trial court had also seen during its in-camera interviews." In granting custody to the father, the court found the mother's actions rose to the level of "extreme parental alienation."

Emotional abusive behavior attacks a child's emotional and social well-being, and can include spurning, terrorizing, isolating, corrupting or exploiting, and denying emotional responsiveness.<sup>25</sup> Dr. Jennifer Harman and her colleagues describe how alienating parents have been documented to engage in emotionally abusive and psychologically aggressive behaviors such as:<sup>26</sup>

- Terrorizing the children by derogating the targeted parent and creating fear in children that the targeted parent might be dangerous or unstable;
- Reject, shame, or make the child feel guilty for showing any loyalty or warmth toward the targeted parent or the targeted parent's extended family;
- Ridicule them for showing the targeted parent affection;
- Withdraw love and affection when the child talks positively about the targeted parent;
- Reward the child for rejecting the targeted parent (e.g., not saying hello at a sporting event);
- Encouraging the child to use the same derogatory label that the alienating parent uses to describe the targeted parent; and
- Making the children throw away all clothing, gifts, or reminders of the targeted parent after they return from visits with them.

In an extreme example of shocking emotional abuse, two mental health professionals reported an alienating parent as having conducted a "burial ceremony" with the children to symbolically "bury" their living father in order to start their "new" family.<sup>27</sup> A yet another common tactic utilized by alienating parents that tantamount to emotional abuse is gaslighting. Gaslighting "refers to the presentation of false information to the victim with the intent of making them doubt their own

memory or perception. Alienating parents will rewrite history, or use events that the child recalls and then exaggerate or fill in with details that never happened in an attempt to distort the child's memory about the [targeted parent] and the [targeted parent's] relationship with them and/or the [alienating parent] (e.g., brainwashing).<sup>28</sup> They will send e-mails or written correspondence that rewrite past events in order to create a new version of reality that is self-serving and geared toward their goals. They will create a paper trail of "proof" to support their version of reality and for future use in litigation.

Consider the Florida case of *Schumaker v. Schumaker*, where the father who had committed child abuse and DV, turned around and accused the mother of engaging in DV.<sup>29</sup> The court found that the father had filed false and misleading DV allegations against the mother and had attempted to misled the court in an attempt to gain custody of the children. Not only did the father make false and fabricated allegations of DV against the mother, he also engaged in severe parental alienating behaviors:

"The Father has throughout these proceedings attempted to partially alienate the minor children and the Court has grave concerns about the children having primary residence ever with the Father. The

Father has consistently made degrading and obscene comments about the Mother. The Mother had a previous child out of wedlock prior to this marriage and the Father has made sure the minor children of this marriage know the circumstances of their half-sister's...out of wedlock birth and routinely refers to the Mother in derogatory terms. The Father has told the minor son...that he does not have to listen to his mother and made derogatory statements about... half-sister."

Concluding that the father was in need of "in-depth parental alienation counseling," and needs to "clean up his act," the trial court awarded the residential custody of the children to the mother and gave the father very limited visitation.

Another gaslighting strategy is for the alienating parents to accompany the child to his or her medical appointments and to provide inaccurate information about the targeted parent so that the information is recorded in the medical records—e.g., claims of drug abuse, sex abuse, alcoholism, domestic violence, pornography addiction, etc. The goal is to have third parties (who for all ostensible purposes are professional, neutral, and have no stake in the underlying divorce or custody litigation) memorialize the allegations in their records. Unfortunately,



such gaslighting behaviors can be very effective and can work for the alienating parents to not only hoodwink professionals but to also turn them into unwitting, but powerful, allies:

“Representatives from social systems, such as social workers, mental health professionals, guardian ad litem[sic], teachers, medical providers, and police officers, can be ‘blinded’ by the A[lienating] P[arent]’s stories and engage in legal and administrative aggression against the [targeted parent] on behalf of them. Social system representatives often have negative biases about the [targeted parent] (e.g., gender or racial biases), poor training in the identification of parental alienation and/or human development (e.g., a belief that children never lie), and will often stop at nothing to limit or interfere with contact or a relationship between the [targeted parent] and the child.”<sup>30</sup>

## Outcomes of Family Violence

PA, similar to DV or intimate partner violence, leaves scars. Children subjected to parental alienating behaviors have been subjected to or have witnessed abuse and these children are at risk for a host of negative outcomes such as having shorter lifespans; developing internalizing behavior problems such as depression, anxiety, and social withdrawal; developing externalizing behaviors such as aggression and acting out; poorer academic performance and physical health; neurological damage; physical health problems including cancer, cardiac disease, and asthma; as well as other mental problems.<sup>31</sup> These outcomes are not just limited to a particular country or culture, they are evident across different countries and cultures.<sup>32</sup>

The harm of PA to a targeted parent is no different than other forms of intimate partner violence. Targeted parents have reported being diagnosed with posttraumatic stress disorder due to the behaviors of the alienating parent; depression; anxiety; loss of employment; homelessness; inability to form new relationships; and suicidality.<sup>33</sup> The rejection from their children and the ensuing fight in courts to save their parent-child relationship takes a heavy emotional, physical, and financial toll on the targeted parents. Mental health professionals have coined the term “ambiguous loss” to refer to incomplete or uncertain loss, such as when a loved one is physically present but psychologically absent (e.g., a parent with Alzheimer’s disease), or when someone is physically absent but psychologically present (e.g., kidnapped children).<sup>34</sup> Targeted parents experience such ambiguous loss for their alienated children—these children may be physically present during their parenting time but may be psychologically unavailable or even be hostile or downright cruel to their targeted parent. Such ambiguous loss goes largely unrecognized by society, resulting in what is termed as “disenfranchised grief.”<sup>35</sup>

PA and DV are two sides of the same coin. It is a mistake to think about these concepts in binary terms. As psychiatrist William Bernet summarized it, “[t]he solution is not to argue one extreme or the other, but to find ways to distinguish real domestic violence from real PA.”<sup>36</sup> Ironically, denial of PA “is reminiscent of the societal-level denial of the existence and prevalence of domestic violence and the abuse of children in the United States and Canada at the start of and throughout the 20th century.”<sup>37</sup> Such baseless denial detracts attention away from a serious public health crisis that is affecting an estimated 22 million or more fathers and mothers and their children in the U.S. and millions more across the world.<sup>38</sup>

## About the Author

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## Endnotes

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