

# Parental Alienation Disorder in South African Family Law

By Bertus Preller – Family and Divorce Law Attorney

Father's Rights activists in the USA have been attempting to have Parental Alienation Disorder added to the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM V), the American Psychiatric Association's "bible" of diagnoses.

Parental Alienation Syndrome explains a child's estrangement from one parent or allegations of abuse at the hands of one parent by blaming the other. The theory, developed by the late Richard A. Gardner, M.D., portrays the preferred parent as an evil "alienator" who is virtually solely responsible for turning a vulnerable child against their estranged parent. Parental alienation syndrome occurs when one parent's efforts to consciously or unconsciously brainwash a child combine with the child's own bad-mouthing of the other parent. In severe cases, the child won't want to see or talk to the alienated parent.

Parental Alienation Syndrome is a disturbance in the child who, in the context of divorce, becomes preoccupied with deprecation and criticism of one parent, which designation is unjustified or exaggerated or both. Parental Alienation Syndrome arises primarily from a combination of parental influence and a child's active contribution to the campaign of deprecation, factors which may mutually reinforce one another.

Parental Alienation Syndrome may be divided into three categories – severe, moderate and mild. Although there is actually a continuum, and many cases do not fit neatly into one of the three classifications, the differentiation is important. The alienation of the child is gradual and consistent. It becomes worse if the child has no time with the targeted parent. Time is on the side of the alienating parent. Children who are exposed to Parental Alienation Syndrome may develop mental illnesses; it can have profound long-term consequences. Studies of adults who had been victims of Parental Alienation Syndrome when they were young showed that the Parental Alienation Syndrome impacted on their ability to trust and to believe in things like honesty and openness and those relationships with members of the opposite sex can work. Parents should be able to trust each other but children who had been victims of Parental Alienation Syndrome believed that the alienated parent could not be trusted. The studies showed that, as the persons concerned had grown up and severed ties with the alienating parent, they discovered that many of the things that they had been told by that parent were not true. They discovered that the targeted parent was not as bad as they had been led to believe and, in some cases, that he was in fact 'a good guy'. The young person then found himself or herself in the position that he or she could no longer trust the alienating parent but at the same time could not trust the targeted parent. In many of the cases, the studies showed that the person concerned was maladjusted and failed in inter-personal relationships. Typically, when a child is aware of the alienation it is not happy.

Parental alienation syndrome is not a gender specific issue. It was once believed women were the main perpetrators of parental alienation, but no longer almost 50% are men. Perpetrators who are men tend to be narcissistic, characterized by a sense of entitlement, arrogance and low empathy. Female alienators often have borderline personalities, marked by insecurities, neediness, a strong fear of abandonment and chronic emptiness.

When it comes to parental alienation the focus should be on the child who has a right to equal time with both father and mother.

Making parental alienation a disorder instead of a syndrome has nothing to do with whether or not you have a "uterus, divorce papers and bruises." Most mothers put their children's needs first. Most fathers do the same.

It is trite in family law that the 'best interests' of each child is paramount in determining the contact and care of and access arrangements to such child. Such interests have been described as 'an elusive concept'.

In determining what is in the best interests of the child, the Court must decide which of the parents is better able to promote and ensure his physical, moral, emotional and spiritual welfare. This can be assessed by reference to certain factors or criteria which are set out hereunder, not in order of importance, and also bearing in mind that there is a measure of unavoidable overlapping and that some of the listed criteria may differ only as to nuance. The criteria are the following:

- the love, affection and other emotional ties which exist between parent and child and the parent's compatibility with the child;
- the capabilities, character and temperament of the parent and the impact thereof on the child's needs and desires;
- the ability of the parent to communicate with the child and the parent's insight into, understanding of and sensitivity to the child's feelings;
- the capacity and disposition of the parent to give the child the guidance which he requires;
- the ability of the parent to provide for the basic physical needs of the child, the so-called 'creature comforts', such as food, clothing, housing and the other material needs – generally speaking, the provision of economic security;
- the ability of the parent to provide for the educational well-being and security of the child, both religious and secular;
- the ability of the parent to provide for the child's emotional, psychological, cultural and environmental development;
- the mental and physical health and moral fitness of the parent;
- the stability or otherwise of the child's existing environment, having regard to the desirability of maintaining the *status quo*;
- the desirability or otherwise of keeping siblings together;
- the child's preference, if the Court is satisfied that in the particular circumstances the child's preference should be taken into consideration;
- the desirability or otherwise of applying the doctrine of same sex matching;
- any other factor which is relevant to the particular case with which the Court is concerned.

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