# Parental Alienation: Buzz Word or Critical Issue?

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"So how many of you are Yankees fans?" The question is posed to a classroom full of school-aged children in Northern New Jersey in mid-October, when World Series hopes are alive and expectations high. The vast majority of the young audience raises its hand in unison. "And how many of your parents are Yankees fans?" The number of raised hands barely changes.

Now let's think about our favorite cousin. Chances are that your parents were close to his or her parent. Now how many of you have a relative that you can't stand? Chances are your parents didn't like them either.

Or how many of us tout and advertise that we are "Super Lawyers"? Do we really believe this or do we simply want to create the perception?

In 2011, it is estimated that we spent $412 billion dollars in advertising revenue[2]. All of this is done because advertising has proven to be an effective way to manipulate perceptions. The power of suggestion has been around forever. Its impact on children in separation and divorce cases has become a specialty in the field of psychology.

This phenomenon of a child's susceptibility to suggestion and social influence from parents or other relatives is not surprising. Indeed, as one of the leading authorities on the psychology of alienated children writes, "[t]he idea that parents can change the way children think, feel and behave is the basic premise of the parental guidance industry, of many schools of psychotherapy, and of an entire branch of the

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[2] Global ad revenue seen rising 5.4 percent in 2011, Reuters (2010), http://www.reuters.com/article/2010/12/05/magnaglobal-idUSN0513556820101205, accessed January 7, 2013.

science of child development." RICHARD A. WARSHAK, PH.D., DIVORCE POISON xix HarperCollins Publishers, Inc. (2010). Notwithstanding the global acceptance of such significant parental influence, family law practitioners and judges alike continue to struggle with the idea of one parent "alienating" their child from the other parent. It is a term that has become overused and misused by family law practitioners: **parental alienation.**

As family law practitioners we must rise to the challenge of familiarizing ourselves with the scientific data regarding parental alienation, educate our clients and judges and ensure that we utilize the right experts to address the issue. Parental alienation seems to be the *diagnosis du jour* of family law custody cases yet there is no definition or real guidance on how best to handle these matters. Practically speaking, litigants cannot afford extensive litigation, therapy, and expert costs associated with complex parental alienation cases. Courts are already overburdened and do not have the resources to take on long protracted trials. They are the most toxic and emotionally draining cases with the potential for significant long-term devastation if not handled properly.

This article will attempt to address the legal implications of parental alienation by relying heavily upon developing scientific data. It will also include practical tips in helping to identify and avert parental alienation as it unfolds or develops. We hope to assist families and judges in moving these cases to a more positive place especially considering the near impossibility of our court system being able to carve out the time needed to properly address these cases. There is no silver bullet in resolving these cases and there is no one kind of parental alienation. We do know, however, that the

longer a case lasts, the more likely the alienation will persist and the more difficult it will be to reverse; early detection is key. See Steven Friedlander & Marjorie Gans Walters, When A Child Rejects A Parent: Tailoring The Intervention to Fit the Problem, 48 FAM. CT. REV. 98, 108 (2010).

It is also important to explain the nomenclature that will be used throughout this article, as there is a lack of consistency in the publications. The parent who has maintained a relationship with the child(ren) will be called the **favored parent**, **aligned parent** or **alienating parent**. The parent who no longer has a bond with the children, and is necessarily alleging parental alienation, will be called the **rejected parent**, **disfavored parent**, or **alienated parent**. These terms will be used interchangeably throughout this article.

**The Applicability of Scientific Standards**

When we think of a custody case, we immediately invoke the "best interests of the child" standard. See, N.J.S.A. 9:2-4. Matters of parental alienation must be handled differently. We must not be afraid of working with the developing social science studies on the topic. Our gateway to relying on such a scientific approach is New Jersey Rule of Evidence 702, which states that "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." N.J.R.E. 702 (2012). This rule applies not only to jury trials but to bench trials as well, when a judge is the trier of fact. See N.J. DYFS v. Z.P.R., 351 N.J. Super. 427, 439 (App. Div. 2002). The Comment to N.J.R.E. 702 makes clear that "proferred expert testimony should not

be rejected merely because it cannot be said that such testimony is unassailable and totally reliable, because in some areas. . .scientific theory of causation has not yet reached general acceptance." Id., see also Rubanick v. Witco Chemical Corp., 125 N.J. 421, 449 (1991).

Furthermore, the "Frye Standard," named for Frye v. United States, 293 F. 1013 (D.C. Cir. 1923) remains the standard in New Jersey in cases in which scientific evidence is to be introduced. See State v. Harvey, 151 N.J. 117, 169-170 (1997). This standard affords three ways a proponent of scientific evidence can prove its general acceptance and reliability: "(1) by expert testimony as to the general acceptance, among those in the profession, of the premises on which the proffered expert witness based his or her analysis; (2) by authoritative scientific and legal writings indicating that the scientific community accepts the premises underlying the proffered testimony; and (3) by judicial opinions that indicate the expert's premises have gained general acceptance." Id. at 170. This necessarily directs the inquiry to N.J.R.E. 803(c)(18): Learned Treatises, which reads as follows:

> [t]o the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by testimony or by judicial notice. If admitted, the statements may not be received as exhibits but may be read into evidence or, if graphics, shown to the jury.

N.J.R.E. 803(c)(18) (2012). Thus, the second way to prove acceptance under Frye, "legal writings," is permitted even if an expert witness fails to acknowledge it is authoritative, so long as the reliability of the authority is established by other testimony or judicial notice. See Lyndall v. Zaboski, 306 N.J. Super. 423, 428 (App. Div. 1997), cert. denied 153 N.J. 404 (1998). However, even after qualifying as a learned treatise,

a text may still be excluded from evidence under N.J.R.E. 403 if the danger of prejudice outweighs its probative value.

This evidence refresher course is necessary because there is no definition of parental alienation in our New Jersey Court case law. A LexisNexis search of New Jersey cases for the term only yields 19 cases and none of those gives a definition of parental alienation or even factors to consider. Accordingly, we must take a more scientific approach to these cases.

Sister states have also struggled to define parental alienation and identify its impact on the matrimonial arena. For example, the Court of Appeals of Arkansas has held that alienation existed when a mother refused to keep the child's father apprised of medical information, to have the child ready for visitation or to spend time with his father, and did not permit the father the first right to babysit the child when she was away. Sharp v. Keeler, 256 S.W.3d 528 (Ark. App. 2007). In Ryder v. Mitchell, 54 P.3d 885 (Colo. 2002) a therapist testified that one parent's false accusation of child abuse by the other parent constituted parental alienation, but the Supreme Court of Colorado was only faced with a question of fiduciary duty.

Perhaps the most unabashed attempt at defining parental alienation is the Appellate Court of Connecticut's adoption of psychologist Ira Turkat's definition: "parental alienation syndrome occurs when one parent campaigns successfully to manipulate his or her children to despise the other parent despite the absence of legitimate reasons for the children to harbor such animosity." Balaska v. Balaska, 130 Conn. App. 510, 521 (Conn. App. Ct. 2011), quoting I. Turkat, Parental Alienation

Syndrome: A Review of Critical Issues, 18 J. Am. Acad. Matrimonial Law 131, 133 (2002-2003).

**The Search for a Working Definition of Parental Alienation**

Before definitively identifying what parental alienation *is* it is helpful to decipher what it is *not*. First, alienated children's behavior is not justified. Justified rejection due to a parent's egregious behavior is known as estrangement. Even the most extreme estrangement situations are not comparable to alienation. The two words should not be used interchangeably. As psychologist Barbara Jo Fidler, Ph.D. and child representation expert Nicholas Bala, Esq. have written, "even abused children are likely to want to maintain a relationship with their abusive parents." Barbara Jo Fidler & Nicholas Bala, Children Resisting Postseparation Contact with a Parent: Concepts, Controversies and Conundrums, 48 FAM. CT. REV. 1, 11 (2010). Second, the child's behavior is not proportionate to the rejected parent's shortcomings or mistakes. Once again, such proportionality is justified estrangement. As Fidler and Bala explain, "it is truly abusive behavior or extremely compromised parenting that differentiates alienation from a realistic estrangement." Id. at 15. Lastly, alienation is not a poor relationship that has developed over time. A child who has always had a negative relationship with a parent and rejects them accordingly is estranged, not alienated.

By process of elimination, we find our working definition for parental alienation: "a child's strong resistance or rejection of a parent that is disproportionate to that parent's behavior and out of sync with the previous parent-child relationship." Id. at 6. Inherent in this definition is the idea that alienation represents a *change* in the parent-child relationship, which usually coincides with either the separation, divorce, or the decision

to divorce. This definition necessarily recognizes the three contributing factors the late Richard Gardner, who is credited with first coining the term "parental alienation syndrome" in 1985, emphasized: "parental brainwashing, situational factors, and the child's own contributions." R.A. Gardner, The Parental Alienation Syndrome, (2 ed. 1998).

Gardner called parental alienation a "syndrome" or "disorder," a labeling which has become controversial among mental health professionals. Parental Alienation is not included in the Fourth edition of The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) and, despite an intensive lobbying campaign, it will not be recognized in the updated DSM-V due out in 2013, either. See David Crary, Parental Alienation Not A Mental Disorder, American Psychiatric Association Says, HUFF. POST., September 21, 2012. The inclusion was so controversial that Dr. Darrel Regier, vice-chair of the DSM-V Task Force, told the Associated Press that he received more mail regarding [Parental Alienation] than on any other proposed diagnosis. Timothy M. Houchin, MD et al., The Parental Alienation Debate Belongs in the Courtroom, Not in DSM-5, 40 J. AM. ACAD. PSYCHIATRY LAW 1, 127 (2012). Perhaps the most relevant argument amidst the controversy, for purposes of this article, was the position that the proposal was driven by money hungry custody attorneys: "it lines the pockets of both attorneys and expert witnesses by increasing the number of billable hours in a given case." Id. at 130. Opponents to parental alienation syndrome or disorder being included in the DSM-V do not believe children should be diagnosed and labeled with a mental disorder. Nevertheless, there is a recognition that alienation by a parent in child custody cases exists. From a practical standpoint, it does not matter to family law

attorneys nor judges whether parental alienation is recognized as a mental disorder or syndrome. Its exclusion from the DSM is merely semantics for what we know exists in families.

Since we, as attorneys, have spent years perfecting the art of applying "factors" and "elements," it is helpful to have such a checklist when defining parental alienation. Thus, attorneys, judges and mental health professionals should turn to the following eight primary factors that "must be identified in the child":

(1) Campaign of denigration;

(2) Weak, frivolous or absurd rationalizations for the deprecation;

(3) Lack of ambivalence;

(4) The "independent thinker" phenomenon (child claims these are his/her own, and not the alienating parent's beliefs);

(5) Reflexive support of the alienating parent in the parental conflict;

(6) Child's absence of guilt over cruelty to, or exploitation of, the alienated parent;

(7) Presence of borrowed scenarios; and

(8) Spread of rejection to extended family and friends of the alienated parent.

Fidler & Bala, supra, 48 FAM. CT. REV. 1 at 12.

**The Spectrum of Alienation**

Experts recognize that "pure or "clean" cases of child alienation and realistic estrangement (those that *only* include alienating behavior on the part of the favored parent or abuse/neglect on the part of the rejected parent, respectively) are less common than the mixed or "hybrid" cases, which will be explored later on. Id. at 15.

That said, a review of the factors will help practitioners decipher how severe a case of alienation, if at all, we are dealing with.

(1) **Campaign of denigration**: this attribute has been called the most "prominent" aspect of parental alienation. See AMY J. L. BAKER, ADULT CHILDREN OF PARENTAL ALIENATION SYNDROME 49, W.W. & Norton Company (2007). Fidler & Bala explain that an alienated child's "tone and description of the relationship with an alienated parent is often brittle, repetitive, has an artificial, rehearsed quality, and is lacking in detail. The child's words are often adult-like." Fidler & Bala, supra, at 16. Children may begin to assert their "constitutional rights" to privacy and freedom from the rejected parent.

(2) **Weak, frivolous or absurd rationalizations for the deprecation**: this goes back to the disproportionate responses of children to an alienating parent's mistakes or shortcomings. "Although there may be some kernel of truth to the child's complaints and allegations about the rejected parent, the child's grossly negative views and feelings are significantly distorted and exaggerated reactions." Joan B. Kelly & Janet R. Johnson, Alienated Children in Divorce: The Alienated Child: A Reformulation of Parental Alienation Syndrome, 39 Fam. Ct. Rev. 249, 254 (2001). This often starts with the report that the child is "just not comfortable" being with a parent absent explanation. Weak rationalizations may include a child's refusal to eat a parent's food, wear certain clothes or perform homework in a parent's home because that parent traditionally did not prepare meals, buy the clothing or participate in schoolwork.

(3) **Lack of ambivalence**: Children will believe that the favored parent is 100% good while the rejected parent is 100% bad. Their custodial preferences are clear that they want nothing to do with the rejected parent.

(4) **The "independent thinker" phenomenon (child claims these are their own, and not the alienating parent's beliefs)**: Fidler and Bala write that children's memories are so influenced that "if shown video or photographs [depicting happy times with the rejected parent] they will claim the images have been doctored or they were just pretending." Fidler & Bala, supra, at 16. The child will insist that the rejection is his or her own idea and will specifically report that he or she was not coached to say it.

(5) **Reflexive support of the alienating parent in the parental conflict**: Fidler and Bala recognize that children may develop "an anxious and phobic-like response" as a result of their being "influenced to believe the rejected parent is unworthy and in some cases abusive." Id. at 16.

(6) **Child's absence of guilt over cruelty to, or exploitation of, the alienated parent**: this often means that the child has no gratitude for the rejected parents' contributions to their rearing, and claims to have no recollection. A truly alienated child can be "rude and disrespectful, even violent, without guilt." Fidler & Bala, supra, at 16.

(7) **Presence of borrowed scenarios**: mental health experts are not so unrealistic as to posit that there are any perfect parents. However, "[i]n child alienation, the aligned parent puts a spin on the rejected parent's flaws, which are exaggerated and repeated. "Legends" develop and the child is influenced

to believe the rejected parent is unworthy and in some cases abusive." Fidler & Bala, supra, at 16. The child may use words and terms that are identical to the favored parent's usage.

(8) **Spread of rejection to extended family and friends of the alienated parent**: Warshak explains that some children even go so far as to reject the affection of a family pet they once loved, if the pet is viewed to be "aligned" with the rejected parent. RICHARD A. WARSHAK, PH.D., DIVORCE POISON 50 HarperCollins Publishers, Inc. (2010). There are often changes in the relationships with the extended family.

A display of all or even the majority of these factors in a child represents a "pure" severe case of parental alienation, which must be handled with extreme care. However, such cases are exceptionally rare. In a study of 55 children ranging in age from 2.5 to 18 years, 85% proved to be "hybrid" cases "including some with significant components of estrangement" and only 15% proved to be "uncomplicated or pure cases of alienation." Steven Friedlander & Marjorie Gans Walters, When A Child Rejects A Parent: Tailoring The Intervention to Fit the Problem, 48 FAM. CT. REV. 98, 109 (2010). Friedlander and Walters differentiated between cases of "alignment" (wherein the child has a "proclivity or affinity for a particular parent" that is "a normal development phenomenon" and "not. . .divorce specific"); "enmeshment" (wherein the "psychological boundaries between the enmeshed parent and child have not been fully and adequately established" and "the child has had developmentally inappropriate difficulty separating from the parent");and "alienation," and noted that the majority of the cases were "hybrid

cases" Id. at 100-106. See also Deirdre Conway Rand, Ph.D., The Spectrum of Parental Alienation Syndrome, 15 AM. J. FORENSIC PSYCH. 15 (1997).

**Possible Remedies and the Problem with Therapy**

Just as there is a broad spectrum of alienation severity, there is also a broad spectrum of possible remedies. The United States Supreme Court has recognized that parents have a fundamental right to an unfettered relationship with their children. See Lehr v. Robertson, 463 U.S. 248 (1983). New Jersey Courts have also recognized that "security, peace of mind, and stability are every child's right." Tahan v. Duquette, 259 N.J. Super. 328, 336 (App. Div. 1992). In order to advocate for our clients we must be extremely careful in selecting our experts, as well as our treating mental health professionals.

When a custodial expert is retained, he or she is bound by the provisions of the Specialty Guidelines for Psychologists Custody/Visitation Evaluations. The New Jersey Board of Psychological Examiners states that "allegations of acts of abuse by either parent or allegations of impairment of either parent require *specialized knowledge* and assessment skills above and beyond the general expertise required in custody evaluations." BOARD OF PSYCHOLOGICAL EXAMINERS, DIVISION OF CONSUMER AFFAIRS, NJ DEPARTMENT OF LAW & PUBLIC SAFETY, SPECIALTY GUIDELINES FOR PSYCHOLOGISTS CUSTODY/VISITATION EVALUATIONS (1993) (emphasis added). Furthermore, the Board's guidelines make clear that "under no circumstances should a treating psychologist agree to assume the role of evaluator. .[i]f the psychologist is now or has been a therapist for any member of the family, the psychologist does not assume the role of evaluator in a custody case." Id.

It is not unusual in a case of alienation that the parties and children will find fault with the treating therapists and evaluators. The children may complain about the family therapist and refuse to return claiming that the therapist is on the side of the rejected parent. Courts, grasping for solutions, may seek to change the roles of therapists and evaluators while the matter is pending. In order to ensure that no one's professionalism is being challenged, adhere to the Specialty Guidelines.

Much has been written about what types of therapy are available for children who are rejecting their parents. See, e.g., Fidler & Bala, supra; Richard A. Warshak, Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children, 48 Fam. Ct. Rev. 48 (2010). Joan B. Kelly, Commentary On "Family Bridges: Using Insights from Social Science to Reconnect Parents and Alienated Children (Warshak, 2010), 48 FAM. CT. REV. 81 (2010). Gardner cautioned that family therapy interventions are extremely delicate, "a therapist working with a [parental alienation] case often only has one chance to be effective." GARDNER, SAUBER & LORANDOS, THE INTERNATIONAL HANDBOOK OF PARENTAL ALIENATION SYNDROME, Charles C. Thomas Publisher, LTD. (2006). Gardner found that such interventions are often "no-win" if they involve any of the following:

(1) Trying to reason with the rejected child and convince him that the alienated parent really isn't that bad.

(2) Trying to confront the rejecting child with the reality that this parent has not done anything wrong.

(3) Trying to directly, or inadvertently, undermine the coalition between the child and the alienating parent by questioning or challenging the charges or beliefs expressed by the alienating parent.

(4) Trying to challenge the alienating parent in a direct confrontation of power struggle.

Id.

Fidler & Bala further caution that "therapy, as the primary intervention, simply does not work in severe and even in some moderate alienation cases. . **.therapy may even make matters worse to the extent that the alienated child and favored parent choose to dig in their heels and prove their point, thereby further entrenching their distorted views**." Fidler and Bala, supra at 33 (emphasis added). The counter-productivity of therapy is particularly applicable to individual therapy for the children. A study of 42 children from 39 families who were "resisting or refusing visitation during their treatment in the context of a custody or access dispute with an average duration of almost a decade" found that those "who had been forced by court orders to see a successive array of therapists of reunification counseling were, as young adults, contemptuous and blamed the court or rejected parent for putting them through this ordeal." Janet R. Johnston & Judith Roth Goldman, Outcomes of Family Counseling Interventions with Chidlren who Resist Visitation: An Addendum to Friedlander and Walters, 48 FAM. CT. REV. 112-113 (2010). It is counterintuitive to our court system that therapy, particularly for a child, could be harmful or exacerbate the problem. Much of the scientific data supports this and should be brought to the court's attention.

## The Role of the Court

So if the Court shouldn't necessarily order therapy, then what *is* the role of the Courts? As always, the Court's primary concern is the best interests of the child: "it is the public policy of this State to assure minor children of frequent and continuing contact with **both parents** after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy." N.J.S.A. 9:2-4. As the New Jersey Supreme Court stated almost 60 years ago, the Court's paramount consideration is the child's safety, happiness, and physical, mental and moral welfare. Fantony v. Fantony, 21 N.J. 525 (1956). ""Welfare" of the child includes many elements and concerns more than the physical well-being resulting from the furnishing of adequate food, clothing and shelter. It concerns, *inter alia*, the spiritual and social welfare of the child. The "desire" of the child to reside with either parent has, on occasion, been over-emphasized on the grounds of his so-called happiness. Happiness does not denote that state of mind which results from untrammeled or unchecked conduct. There should be no confusion between an unrestrained liberty or license which results in no check upon the child's conduct and the happiness which results from a well-adjusted mental outlook and genial social relationship. Sheehan v. Sheehan, 51 N.J. Super. 276, 292 (App. Div. 1958).

By this point, it should be clear that a loving relationship with **both parents** is always in the best interests of the child, absent the justified estrangement discussed earlier. However, Warshak cautions that these matters should be handled extremely carefully:

> it is important to balance careful scrutiny with openness to new ideas. Judicial responses to children who reject a parent are best governed by a multifactor

> individualized approach. A presumption that allows children and one parent to regulate the other parent's access to the children is unsupported by research. A custody decision based solely on the severity of alienation leaves children vulnerable to intensification efforts to poison their affections toward a parent. Concern with possible short-term distress for some children who are required to repair a damaged relationship should not blind us to the long-term trauma of doing nothing.

Richard A. Warshak, Alienating Audiences from Innovation: the Perils of Polemics, Ideology, and Innuendo, 48 FAM. CT. REV. 153 (2010). Warshak also described what he considers to be the four options for families with severely alienated children (which, again, is rare and requires that the Court determines that "a child's rejection of a parent is unwarranted and not in a child's best interests"):

(1) Award or maintain custody with the favored parent with court-ordered psychotherapy and in some cases case management

(2) Award or maintain custody with the rejected parent, in some cases with court-ordered or parent-initiated therapy

(3) Place children away from the daily care of either parent

(4) Accept the child's refusal of contact with the rejected parent.

Warshak, Family Bridges, supra at 49-50. However, Warshak cautions that each option "has advantages and drawbacks and raises controversial issues regarding the proper reach of the law with respect to the rights of parents and children." Id. at 50.

Unfettered parenting time is essential in cases where parental alienation is, or may be, present. The children should have parenting time that allows them to spend uninterrupted time with the rejected parent. Often times, the favored parent insists on constant contact, via telephone calls, text messages, email /or Skype. The rationale is the children are "uncomfortable" with the rejected parent and need the assurances from

the favored parent. A truly alienated child is really being pressured from the favored parent and may feel the need to "report" the rejected parent's shortcomings. Limiting contact may relieve some of the pressure and allow the rejected parent to rebuild the relationship. A court order that prohibits such contact can take the pressure off the children.

Experts agree that it is imperative for the rejected parent to remain in contact with the children without the influence of the aligned parent. See, e.g., WARSHAK DIVORCE POISON, supra at 236. In her study of adult children of parental alienation children, Baker found that creating opportunities for the child to spend time with the targeted parent is key: "[alienated] children need an excuse to spend time with the targeted parent in order to avoid the wrath of the alienating parent." BAKER, supra, at 233. However, getting a Court Order that forbids contact from the alienating or aligned parent during the rejected parent's time is only the tip of the iceberg.

The courts are next faced with the question of how to enforce such an Order. Often, it is as simple as putting money where the mouth is. There is a line of cases dating back to 1909 which states that a Court may decrease child support for a custodial parent so as to force that parent to comply with unfettered parenting time for the noncustodial parent. See von Bernuth v. von Bernuth, 76 N.J. Eq. 200 (1909); Daly v. Daly, 39 N.J. Super. 124 (1956); Smith v. Smith, 85 N.J. Super. 462 (1964). Baker found that these sanctions or consequences can also be helpful in compelling the children to attend mandated parenting time as children will be given "an excuse (to help the alienating parent avoid the sanctions) and can, therefore, be freed from the

responsibility of appearing to choose or want this time with the targeted parent." BAKER, supra, at 233.

In the most true, severe cases of parental alienation, unfettered parenting time may not be enough. Or, in some circumstances, it might be an option if the children are old enough to refuse to go. In such severe cases, a temporary or permanent change of custody might be necessary. If a parental relationship causes emotional or physical harm to the child, a court is authorized to restrict or even terminate custody. Wilke v. Culp, 196 N.J. Super. 487 (App. Div. 1984).[3] Although this might sound extreme, mental health professionals have found that "in the severest of cases which may present as such at the outset or later after various efforts to intervene have failed, custody reversal may be the least detrimental alternative for the child." Fidler and Bala, supra at 35. Another option is for the Court to order "a prolonged period of residence with the parent, such as during the summer or an extended vacation. . .and *temporarily* restricted or suspended contact with the alienating parent." Id. at 28 (emphasis in original).

In sum, the role of the Court is "educational—an authoritative figure making clear to both parents how their behavior is affecting their children. The exhortations of a judge—setting out clear expectations and consequences for failures to comply—can move many parents and children, who may also be interviewed by the judge." Id., citing Warshak, Family Bridges, supra at 50.

[3] The idea of "harm" was recently explored in the unpublished decision of New Jersey Division of Youth and Family Services v. C.O., No. A-2387-11T2, (App. Div. Decided November 27, 2012) wherein the Appellate Division affirmed Judge Mizdol's holding that a mother's false allegations of child sexual abuse on behalf of the father, and her convincing the child that the allegations were true, constituted abuse and neglect. Judge Mizdol held that it did and modified residential custody to be with the father so as to avoid further injury to the child. The Appellate Division affirmed. (A copy of this unpublished decision is attached hereto.)

## The Decision to Walk Away

The potential damage to a rejected parent emotionally and financially is devastating. In many ways, it is akin to the loss of a child. For many, the stamina and support needed by the rejected parent cannot be sustained over years of litigation. Parents may make the Solomon-like decision that their child may be better off without them in the hopes that somewhere down the road, the relationship will rekindle or that once the child is outside the sphere of the favored parent, efforts will be made to reunite.

Amy J. L. Baker's study of adult children who were once affected by alienated children serves as a compelling call to action for the field of family law. Baker interviewed 40 adults between the ages of 19 and 67 years of age, all of whom felt that alienation was "a formative albeit traumatic aspect of their childhood." BAKER, supra, at 11. When interviewed as adults, Baker found that remarkable percentages of her sample experienced the following:

(1) Low self-esteem (65%)

(2) Depression (70%)

(3) Drug and alcohol problems (35%)

(4) Lack of trust (40%)

(5) Alienation from their own children (50%)

(6) Divorce from their own marriages (57.5%)

Id. at 180-191. Baker also noted the following "less prominent effects of parental alienation:...problems with identity and not having a sense of belonging or roots; choosing not to have children to avoid being rejected by them; low academic and career

achievement; anger and bitterness over the time lost with the alienated parent; and problems with memory." Id. at 191. Baker also reported that "while most of the adults distinctly recalled *claiming* during childhood that they hated or feared their rejected parent and on some level did have negative feelings, they did not want that parent to walk away from them and secretly hoped someone would realize that they did not mean what they said." Fidler and Bala, supra at 21, citing BAKER, supra.

Dr. Warshak also focuses much of his writing on a rejected parent's choice to "give up" on having a relationship with their child. He calls this "counterrejecting." WARSHAK DIVORCE POISON, supra at 236. While Warshak recognizes that it is natural, particularly in the early stages, for a rejected parent to avoid the children just as they avoid him, Warshak cautions that such counterrejecting "breaks contact. . .which is so crucial to resisting and reversing alienation"; "[s]tings the children who, despite their overt belligerence, at some level continue to need [the rejected parent's] love and acceptance" and; "sets [the rejected parent] up to be seen by the children. . .as the bad guy who caused the alienation. Id. Fidler and Bala also note that "[r]ejected parents often react with passivity and withdrawal in an effort to cope with the parental conflict that may pre-date separation. . .these reactions may reinforce the allegations made against them by the alienating parent and the child, including abandonment, disinterest and poor parenting." Fidler & Bala, supra at 20.

Herein lies the reason why we, as attorneys, must advocate not just zealously but delicately and efficiently for our clients and their children. The consequences to adult children of alienation should be a call to the bench that while "walking away" may be the easier path for now, its long term effects make it worth the effort to "fight the

fight". We must not "cry alienation" when it is not there. We must not seek remedies that are known to be counterproductive. We must rely on the scientific evidence that exists. If we do in fact identify parental alienation in its true, severe form, it behooves us to preserve the parent-child relationship that our Constitution so patently seeks to protect.

**Practical Tips**

Each case of alienation is different. There is no fool-proof remedy or solution or quick fix. The experts do not all agree on the appropriate solution to the problem, but developing social science data suggests we need to handle these matters differently than your "average" custody case.

The suggestions below are for lawyers and judges involved in cases that suggest parental alienation as defined above. These suggestions do not apply to true cases of estrangement based on a realistic rejection.

**Practice Tips for Lawyers**

**Practice Tip #1:** Before being quick to label a child's behavior or a familial situation as "alienation," be sure to examine the history of the relationship. There must have been a *change* in the relationship in order for alienation to be present. If trying to establish alienation, provide proof that the relationship was once good by supplying to the court photographs, videos, emails, text messages and cards from happier days.

**Practice Tip #2:** If your client raises alienation, ascertain what the children will provide as their greatest complaint about your client's parenting and deal with it head on. Are the acts complained of exaggerated? Do the acts justify the rejection? Would these

acts be considered detrimental to the child if the parents were still in a healthy relationship?

**Practice Tip #3:** When determining whether parental alienation exists in a given case, focus not on the wrongdoing of the alleged alienating parent, but on the behavior being exhibited by the children. The analysis should include application of the eight factors discussed above. Submit certifications from individuals that have witnessed the change in behavior of the children, including family members, clergy, neighbors and friends. Attacks on a parent accused of alienating children puts the case into the he said/she said arena and loses sight of the effect this behavior may be causing the children.

**Practice Tip #4**: When consulting with clients who may be estranged from their children or in the earlier stages of alienation, advise them to do their best to maintain contact. It is important for a rejected parent to maintain ties, particularly early in the divorce process. This can be very painful for the parent, but the longer there is no contact between the rejected parent and the child, the more difficult it will be to reunify them. Also provide them with resources to better understand what is happening in their family dynamics. Divorce Poison by Richard A. Warshak, Ph.D. and the DVD "Welcome Back, Pluto" are some of the best primers for attorneys, judges and litigants in addressing this matter. Finally, recognize that the rejected parent is inevitably having strong emotional difficulties dealing with the situation. Encourage them to seek professional help during the process to handle the grief and work on their parenting skills. During these times, it is near impossible for the rejected parent not to react poorly to the situation at hand. Poor responses will only reinforce the alienating parent and the children's campaign against the parent.

**Practice Tip #5:** Early on in the matter, you want to educate the court about what parental alienation is. Hire a mental health expert in parental alienation who can submit a certification to the court describing parental alienation without opining about the family in question. This expert should also educate the court about the learned treatises are accepted in the field and provide these documents to the court. Note, however, that this expert should not later evaluate the family. You want to avoid any potential conflict.

**Practice Tip #6:** If you have identified what you believe to be alienation, or the beginnings of same, ask the court to appoint a *Guardian Ad Litem* for the children. This will help the court stay abreast of the children's developments especially as the case will most likely become a moving target. Some believe a lawyer would be a better *Guardian Ad Litem* rather than a mental health expert who may focus on healing the family rather than complete the task of reporting the facts for the court's benefit.

**Practice Tip #7:** When selecting mental health experts and treating therapists, we must ensure that they are familiar with parental alienation and the developing social science data. These are not routine best interests custody evaluations. The Specialty Guidelines for Psychologists Custody/Visitation Evaluations mandate that the evaluator have specialized knowledge.

**Practice Tip #8:** The mental health expert and the treating therapist are not one in the same. It is essential that treating psychologists are permitted to care for our clients, not evaluate.

**Practice Tip #9:** Unless a child has serious mental health issues, try to avoid providing individual therapy for the child. This is absolutely counterintuitive but most of the social science supports this. If the matter is one of alienation, the child already has distorted

views of the rejected parent. The therapist may ultimately become an unwitting advocate for the child further entrenching the alienation. Most importantly, do not allow the treating psychologist to opine on custody. Only an evaluator who has met with the entire family can provide such an opinion.

**Practice Tip #10:** If there are allegations of undue influence by a parent during the other's parenting time, ask the court to provide for "no contact" during the rejected parent's designated time. If a "no contact" order is entered during your client's parenting time, ask the court to provide strong sanctions for noncompliance. If granted, this could prevent an enforcement application down the road.

**Practice Tip #11:** Ask the judge to meet the parties and interview the children early on in the litigation. The children should know that they do not make the custody decision.

**Practice Tip #12:** On a *pendente lite* basis, ask the court to order some form of parenting time or consistent contact between the rejected parent and the children. Try to avoid a situation where contact between the children and the rejected parent is suspended or eliminated. Requesting a change in custody early on in the litigation (despite, perhaps, a client's urgings) is often not appropriate. Courts will want to save this for the last resort after all other options have been explored. Often times the "threat" of a change in custody may in and of itself reinforce and further entrench the children's rejection.

**Practice Tips for Judges**

**Practice Tip #1:** Try and assess the case as early as possible whether the matter could potentially be one involving elements of alienation.

**Practice Tip #2:** Familiarize yourself with the current learned treatises concerning parental alienation. Surround yourself with experts that specialize in parental alienation, including family therapists and custody evaluators.

**Practice Tip #3:** Appoint a *Guardian Ad Litem* who is familiar with the scientific data regarding parental alienation.

**Practice Tip #4:** Set up mechanisms for litigation funding for the family therapy, *Guardian Ad Litem*, and mental health experts. Ordering a court-appointed evaluation by an expert in parental alienation early on in the litigation may be the best spent money for the family. If the funds are not designated early, the favored parent will use the inability to finance litigation as an excuse to delay the matter.

**Practice Tip #5:** If the case appears to be one with elements or nuances of parental alienation, meet with the children in chambers. Impress upon them that the court makes the decisions, not the children and that children are better served in life with the presence of both parents. Emphasize that you expect your orders to be obeyed and that there will be consequences for non-compliance. Communicate to the children that failure in establishing a relationship with both parents is not an option.

**Practice Tip #6:** Be cautious when ordering counseling. Individual therapy for a child already carrying distorted views about the rejected parent can only worsen the situation. Therapists become advocates for their patient and indirectly make custody recommendations. Do not rely upon an individual therapist's recommendations about parenting time even when it seems the most efficient way to address the issue.

**Practice Tip #7:** If you suspect alienation, be wary of allegations of abuse, complaints brought to the Division of Child Protection and Permanency (DCP&P formerly DYFS),

and concerns raised by school officials on behalf of the children. Alienated children become adept at manipulating the system.

**Practice Tip #8:** Most importantly, ENFORCE YOUR ORDERS SWIFTLY AND UNEQUIVOCALLY. When parents and children learn that the court is not enforcing its own orders, they will not respect the court or the law.

**Practice Tip #9:** The hardest thing a court will do is to remove children from a favored parent. You will be told that the child will despair, go into deep depression, have suicidal ideations or the children will run away. These prognostications will be made by well-meaning individuals who are not familiar with the entire family dynamic. Removal from the favored parent should be done after a finding of parental alienation and all other options have been explored and failed.

## Conclusion

As practitioners and judges versed in this developing social science area, hopefully, we can avert progressive alienation through providing the right advice, handling matters quickly and making swift decisive decisions on behalf of children. I am continually astounded when attorneys refuse to counsel their clients to "try something" when there has been a breakdown in a parent/child relationship. Children take sides to protect their parents and protect themselves from losing both parents in a divorce or separation. Children sense the loss of a parent and express anger and resentment, often parroting one of their parents. Parents may divorce, but children should not a parent. We should not stand by clients who refuse to encourage a parental relationship, absent real abuse. Hopefully, we can repair parent/child relationships giving children a better chance for a happy and healthy future.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2387-11T2

NEW JERSEY DIVISION OF
YOUTH AND FAMILY SERVICES,[1]

Plaintiff-Respondent,

v.

C.O.,

Defendant-Respondent,

and

S.H.,

Defendant-Appellant.

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IN THE MATTER OF A.H., a minor.

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Submitted October 10, 2012 - Decided November 27, 2012

Before Judges Fisher, Alvarez, and Waugh.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FN-02-292-10/FN-02-333-10.

Swenson & Doyle, attorneys for appellant (James M. Doyle, of counsel; Jane M. Personette, on the brief).

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[1] Effective June 29, 2012, the Division was renamed the Division of Child Protection and Permanency. L. 2012, c. 16.

Jeffrey S. Chiesa, Attorney General, attorney for respondent Division of Youth and Family Services (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Mary Zec, Deputy Attorney General, on the brief).

Joseph E. Krakora, Public Defender, Law Guardian, attorney for minor (Sandra Tataje, Assistant Deputy Public Defender, on the brief).

Gregory E. Lake, attorney for respondent C.O., joins in the brief of respondent Division of Youth and Family Services.

PER CURIAM

Defendant S.H. (Sally[2]) appeals the Family Part's December 6, 2011 order finding that she had subjected her daughter A.H. (Amy) to "abuse or neglect" within the meaning of N.J.S.A. 9:6-8.21. We affirm.

I.

We discern the following facts and procedural history from the record on appeal.

Sally and C.O. (Charles) had a brief romance which ended several months before Amy was born in November 2006. Because of Sally's resistance to allowing Charles to have any parenting time with Amy, there was protracted litigation in the Family Part. The judge handling the non-dissolution matter expressed concern about Sally's desire for control that was not

[2] We use pseudonyms to refer to the individuals in this case for the purpose of clarity.

necessarily in Amy's best interest. Because of the litigation, Charles was not able to have any contact with Amy until shortly before her first birthday, at which time he began supervised parenting time. Charles was eventually accorded unsupervised parenting time on a weekly basis.

Amy came to the Division's attention on April 6, 2010, after Sally took Amy to Hackensack University Medical Center and reported that Amy had disclosed that Charles had inserted a vibrating device into her vagina the previous day. When a Division caseworker and a police detective interviewed Sally at the hospital, they learned that the alleged assault had taken place during parenting time in New York State, where Charles resides. Consequently, the police investigation was referred to the police in the county in which Charles resided, and the initial child abuse investigation was referred to the county's Child Protective Services (CPS) agency. The Division, however, remained involved because Amy was a New Jersey resident.

The police in New York concluded that there was no evidence of abuse. That conclusion was based, in part, on the following: (1) Amy's physical examination revealed no signs of abuse, (2) Sally and her mother gave conflicting accounts concerning Amy's alleged disclosure and their actions, and (3) interviews with guests at a party attended by Charles and Amy at the time of the alleged abuse produced no evidence supporting the allegation.

Both the Division and the CPS agency also concluded that there had been no sexual abuse. In addition to the results of the medical examination, those determinations were based, in part, upon the following: (1) photographs taken of Amy's genital and anal area on April 5 did not show any injury in the vaginal area,[3] (2) a video of the party attended by Charles and Amy during the visit at issue showed Amy playing happily and in no visible distress, and (3) the conclusion by the Center for Evaluation and Counseling (CEC) that it could not validate allegations of sexual abuse and its concerns that statements made by Amy had been prompted by Sally.

While the investigation was taking place, Sally continued to make additional allegations of sexual and other abuse against Charles, none of which were substantiated. Sally also insisted that Amy have an additional invasive physical examination and tests that were, in the Division's opinion, unwarranted in light of the results of the initial physical examination. The results of the additional examination and testing involved no indication of sexual abuse.

The Division ultimately concluded that Sally's continuing conduct was harmful to Amy. Consequently, it filed a complaint for care and supervision on May 13. A Family Part judge issued

[3] Pictures were taken by Amy's maternal grandfather both before and after the visit at issue.

an order to show cause on May 13. The order gave joint legal custody to Sally and Charles, but residential custody of Amy was transferred to Charles. The Division was awarded "care and supervision." The Law Guardian Program was directed to assign a law guardian for Amy. The order also directed that the parties and Amy participate in evaluations by CEC.

The return on the order to show cause was June 29. Case management conferences were held in July, August and September. The fact-finding hearing began with opening statements in November and continued on twelve trial days during December (two days), January 2011 (one day), February (three days), March (four days), April (one day), and July (one day). A total of sixteen witnesses testified, of whom seven were mental health professionals.

On December 6, 2011, Judge Bonnie J. Mizdol issued a written opinion in which she determined that the Division had sustained its burden of proof. She summarized her conclusions as follows:

> Based on the totality of the evidence, it is clear to this Court that [Sally] has exhibited a pattern of reckless disregard and that harm to [Amy] has resulted. [Amy] has been subjected to repeated unnecessary medical, physical and psychological examinations. [Sally] has disregarded the fact that her conduct would cause [Amy] harm by planting suggestive seed after seed to elicit disclosures of sexual abuse which simply did not exist. The Court finds that

> [Sally] attempted to shape and manipulate the child's behavior to further her goal to isolate [Charles] from any meaningful parental relationship with his daughter. Defendant refused to accept the findings of New York Child Protective Services, New York law enforcement, or the Center for Evaluation and Counseling.
>
> The defendant's pattern of conduct demonstrated a substantial adverse effect upon her child. With overt and covert attempts she enlisted [Amy], through behavioral modification, to co-join with her to achieve a goal of destruction of [Charles'] relationship. This conduct clearly jeopardized [Amy's] health, safety and welfare.

The judge entered an order finding that Sally had abused and neglected Amy.

On March 9, 2012, a different Family Part judge entered an order terminating the Title Nine, N.J.S.A. 9:6-8.21 to -8.73, litigation. Amy was continued in the joint legal custody of both parents. By consent of the parties, Amy remained in Charles' residential custody, pending the completion of a best interests hearing to be held under the parties' non-dissolution case. This appeal followed.

II.

On appeal, Sally argues that the trial judge erred in finding that she had abused or neglected Amy. Her argument has essentially two aspects. First, she contends that the judge's factual findings are not supported by the record and that the

judge should not have found that her conduct was harmful to Amy. Second, she also argues that, even if the record supports the judge's findings, the judge should not have found abuse or neglect, but should instead have continued the Division's involvement without making any finding as to abuse or neglect. In addition, Sally argues that her constitutional rights were infringed because the judge did not conduct the hearing on consecutive trial days.

A.

The Division filed its complaint pursuant to Title Nine, which is concerned with "noncriminal proceedings involving alleged cases of child abuse or neglect." N.J.S.A. 9:6-8.22. In such actions, the Legislature has provided that "the safety of the children shall be of paramount concern." Ibid.

Title Nine provides in relevant part that an abused or neglected child includes one

> whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . .
>
> [N.J.S.A. 9:6-8.21(c)(4).]

The language in N.J.S.A. 9:6-8.21(c)(4) concerning failure "to exercise a minimum degree of care" has been interpreted by our Supreme Court as referring to "conduct that is grossly or wantonly negligent, but not necessarily intentional" and "reckless disregard for the safety of others." Dep't of Children & Families, Div. of Youth & Family Servs. v. T.B., 207 N.J. 294, 305-06 (2011) (quoting G.S. v. Dep't of Human Servs., 157 N.J. 161, 177-79 (1999)); see also N.J. Div. of Youth & Family Servs. v. S.N.W., 428 N.J. Super. 247, 254-56 (App. Div. 2012). Such conduct can include failure to take a "cautionary act." T.B., supra, 207 N.J. at 306-07. Simple negligence, however, does not qualify as abuse or neglect. Ibid.

The standard of proof in a Title Nine case is "a preponderance of the evidence." N.J.S.A. 9:6-8.46(b)(1). At a fact-finding hearing, "only competent, material and relevant evidence may be admitted." N.J.S.A. 9:6-8.46(b)(2). The Supreme Court has made it clear that

> [b]oth the fact-finding hearing and the dispositional hearing are critical stages in Title Nine proceedings. Those hearings must be conducted "with scrupulous adherence to procedural safeguards," [N.J. Div. of Youth & Family Servs.] v. A.R.G., 179 N.J. 264, 286 (2004), and the trial court's conclusions must be based on material and relevant evidence, N.J.S.A. 9:6-8.46(b), (c). The witnesses should be under oath and subject to cross-examination. [N.J. Div. of Youth & Family Servs.] v. J.Y., 352 N.J. Super. 245, 265 (App. Div. 2002). As

> concisely stated by the court in J.Y., "this critically important part of the business of the Family Part demands meticulous adherence to the rule of law." Ibid. Just as important, the trial court must state the grounds for its disposition. N.J.S.A. 9:6-8.51(b).
>
> [N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 401 (2009).]

As we recently stated in N.J. Div. of Youth & Family Servs. v. R.M., 411 N.J. Super. 467, 474 (App. Div.), certif. denied, 203 N.J. 439 (2010):

> We ordinarily accord great deference to the discretionary decisions of Family Part judges. Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009) (citing Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006)). Similar deference is accorded to the factual findings of those judges, when they are based on the taking of testimony. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). A judge's purely legal decisions, however, are subject to our plenary review. Crespo v. Crespo, 395 N.J. Super. 190, 194 (App. Div. 2007); Lobiondo v. O'Callaghan, 357 N.J. Super. 488, 495 (App. Div.), certif. denied, 177 N.J. 224 (2003).

B.

The issue before Judge Mizdol was whether Sally's conduct in and around April and May of 2010 subjected her daughter Amy to abuse or neglect as defined in N.J.S.A. 9:6-8.21(c). There was no allegation, and certainly no proof, that Sally's purpose was to harm Amy. Instead, the Division's contention was that the effect of her conduct in repeatedly and aggressively

asserting baseless allegations of sexual and other abuse against Charles was harmful to Amy.

Based upon our review of the trial record, as informed by the judge's factual and credibility findings, we conclude that Judge Mizdol's finding that Amy was harmed by her mother's conduct is fully supported by the record. In addition to the stress of the several investigations, Amy was photographed by her relatives with her genitals exposed on several occasions, including at least once prior to the alleged abuse; Sally insisted on an additional physical examination and testing after the first examination was negative; and Amy was noted to have an enhanced knowledge of sexual matters for a child her age. That harm warranted the change in residential custody from Sally to Charles, subject to the conditions in the order terminating the Title Nine case.

The more difficult issue is whether the conduct that caused the harm was properly characterized as "abuse or neglect." The proofs at trial focused on whether Sally's conduct amounted to a "failure . . . to exercise a minimum degree of care . . . (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof . . . ." N.J.S.A. 9:6-8.21(c)(4). As outlined above, such conduct must amount to more than mere negligence. T.B., supra, 207 N.J. at 306-07. The conduct must

rise to the level of conduct that is "grossly or wantonly negligent" or "reckless." Id. at 306. The trial judge characterized Sally's conduct as "reckless."

Contrary to Sally's assertion, there is no requirement that the parent actually anticipate that harm will result from the conduct at issue.

> Conduct is considered willful or wanton if done with the knowledge that injury is likely to, or probably will, result. McLaughlin v. Rova Farms, Inc., 56 N.J. 288, 305 (1970). Because risks that are recklessly incurred are not considered unforeseen perils or accidents in the eyes of the law, actions taken with reckless disregard for the consequences also may be wanton or willful. Ibid.; Egan v. Erie Railroad Co., 29 N.J. 243, 254-55 (1959). So long as the act or omission that causes injury is done intentionally, whether the actor actually recognizes the highly dangerous character of her conduct is irrelevant. See McLaughlin, supra, 56 N.J. at 305. Knowledge will be imputed to the actor.
>
> As our previous cases have recognized, the difference between merely negligent conduct and wanton and willful misconduct cannot be described with mathematical precision. Ibid. "Like many legal characterizations, willful misconduct is not immutably defined but takes its meaning from the context and purpose of its use." Fielder v. Stonack, 141 N.J. 101, 124 (1995). The label turns on an evaluation of the seriousness of the actor's misconduct. McLaughlin, supra, 56 N.J. at 306. Although it is clear that the phrase implies more than simple negligence, it can apply to situations ranging from "slight inadvertence to malicious purpose to inflict injury."

> Id. at 305; Krauth v. Israel Geller and Buckingham Homes, Inc., 31 N.J. 270, 277 (1960) (stating wantonness is an advanced degree of negligent misconduct).
>
> Essentially, the concept of willful and wanton misconduct implies that a person has acted with reckless disregard for the safety of others. Fielder, supra, 141 N.J. at 123; McLaughlin, supra, 56 N.J. at 305. Where an ordinary reasonable person would understand that a situation poses dangerous risks and acts without regard for the potentially serious consequences, the law holds him responsible for the injuries he causes. Ibid.
>
> [G.S., supra, 157 N.J. at 178-179.]

Sally asserts that the trial judge "did not endeavor to explain precisely how [her] pursuit of a clear answer as to whether or not [Amy] had been sexually abused constituted grossly or wantonly negligent behavior." The judge, however, found that Sally had in fact received a clear answer, but that she "refused to accept the findings of New York Child Protective Services, New York law enforcement, or the Center for Evaluation and Counseling." The reckless disregard found by the judge stemmed not from Sally's efforts to rule out sexual abuse, an aim shared by the Division staff and all others involved in investigating the initial allegations, but rather from her refusal to recognize a clear answer once she had one and her continued, baseless assertions that Charles had abused Amy. The judge further found that Sally intentionally engaged in

behaviors well beyond the scope of determining whether Amy had been abused.

> [Sally] has disregarded the fact that her conduct would cause [Amy] harm by planting suggestive seed after seed to elicit disclosures of sexual abuse which simply did not exist. . . . [Sally] attempted to shape and manipulate the child's behavior to further her goal to isolate [Charles] from any meaningful parental relationship with his daughter.

Sally argues that the conclusion that she prompted Amy is contrary to the evidence, pointing to the testimony of CEC evaluator Laurie Silverman, M.A., that Sally presented as though her concerns were genuine. CEC clinician Stephanie Kurilla, M.A., also testified that she did not think that Sally was telling Amy that she had been sexually abused. However, the judge also heard testimony and reviewed exhibits supporting the assertion that Sally was, in fact, prompting Amy. The judge's factual finding that there was prompting is appropriately supported in the record.

Division supervisor Kelly Nestor testified that by April 13, Division caseworker Sylwia Rhein was reporting

> concerns . . . based on [Sally] subjecting [Amy] to multiple interviews regarding the sexual abuse, multiple medical exams, gynecological exams, photographing the child's vaginal area before and after visits with her father, videotaping the child and consistently asking her questions regarding the sexual abuse, and her continuous calls to the Division with different allegations

> and conflicting allegations in regards to sexual abuse.

Kurilla testified that she had reviewed a videotape, taken by Sally, in which Sally questioned Amy, "[asking] several times who did this to you, who did it, who did it, and [Amy] began to cry and said daddy." Kurilla found the repetitive questions "concerning," noting that even if a child has no response to a question, if asked the same question repeatedly she eventually will answer.

Kurilla also testified to concerns raised by her own interview of Amy. Even when she asked Amy about other topics, Amy kept bringing the conversation back to Charles. She reported that Amy told her "mommy said I have to tell my story," referring to the alleged incident with Charles. Kurilla asked Amy how Sally acted when Amy told her about the incident, and Amy said Sally was "happy" and "smiling." Kurilla testified that it seemed that because Sally was convinced abuse had taken place, she "continued to give [Amy] the sense that she was [abused]" and consequently, Amy "was having a memory of being sexually abused by her father created for her."

The written report of an interview conducted by New York investigators Marie Fabiano of Child Protective Services and Jeffrey Devolve of the sheriff's department documents that when Amy was asked "if anyone . . . told her to say she doesn't like

her daddy," she said, "mommy, mommy, mommy, Nanna and Pah," the latter two being her maternal grandparents. When the investigators told her "she was doing well" and "it had been a long day with different people asking her [a] lot of questions," Amy replied: "I know the answers to the questions because mommy tells me."

Under Title Nine, the adjudication of abuse or neglect also involves consideration of the likelihood of "further injury" to the child. The purpose of the act is

> to provide for the protection of children under 18 years of age who have had serious injury inflicted upon them by other than accidental means. The safety of the children served shall be of paramount concern. It is the intent of this legislation to assure that the lives of innocent children are immediately safeguarded from further injury and possible death and that the legal rights of such children are fully protected.
>
> [N.J.S.A. 9:6-8.8(a).]

Sally asserts that her behaviors in the period between April 6 and the change in residential custody were context-driven and reflected temporary stressors. The judge disagreed, relying in part on Kurilla, an expert in conducting child abuse and neglect risk assessments, who opined that Sally's "narcissism" made her "unable to put the child's needs above her own" and rendered her unaware of the ways her "histrionic" and "delusional" reactions to Charles were traumatizing Amy. The

judge also relied upon the prior history of litigation between Sally and Charles, in which there were concerns about Sally's motivation.

As was the case with the finding that Sally was prompting Amy, the fact that there is conflicting opinion in the record does not undercut the judge's findings, which were based upon her overall assessment of the testimony and exhibits, as informed by her credibility findings. The judge did not credit Sally's "statement that sometime in fall 2010 she accepted that no sexual or physical abuse [occurred] and that [she] was never angry with [Charles]." She observed that

> [e]very one of [Sally's] words and her body language during her testimony demonstrated just the opposite. Clear from her testimony is that she is of the opinion that [Charles] was and is the cause of everything that has happened. Her demeanor tells a story far from the enlightenment or therapy progress described by [the witnesses who disagreed with Kurilla].

Consequently, we are convinced that Judge Mizdol's conclusion that Sally's conduct amounted to "abuse or neglect" in the sense of conduct that was "reckless" is fully supported by the record.

C.

We have reviewed Sally's remaining arguments and find them to be without sufficient merit to warrant extended discussion in

a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

The judge did not abuse her discretion in making a finding of "abuse or neglect" rather than just continuing the Division's services to Amy and her parents. As we have already concluded, the record fully supports a finding of "abuse or neglect." There was no reason for the judge to defer making such a finding.

Pursuant to Rule 5:3-6, the trial should have taken place on consecutive trial days. However, the trial record reflects that delays were caused by scheduling, including consideration of Sally's work schedule, the availability of counsel, the availability of experts and their reports, and the judge's trial calendar. We also note that the issue of continuous trial days was not raised before the trial judge. In any event, we find no prejudice to Sally and certainly no deprivation of her constitutional rights.

The judge was able to consider and rule upon parenting time issues during the trial. By the time of the final trial day in July 2011, Sally had been granted unsupervised parenting time with Amy every other weekend from Friday to Sunday and once each week for several hours.

III.

For all of the reasons set forth above, we affirm the order on appeal.

Affirmed.