

# Parental Alienation: An Overview of the Available Case Law

by Michelle Altieri

Parental alienation has generated a wealth of books, scholarly articles, and other literature discussing its origins, clinical characterizations, controversies surrounding the syndrome, and even its notoriety in the mainstream media and television.<sup>1</sup> While there continues to be much attention given to parental alienation in social media, there is a dearth of case law in New Jersey on the subject.<sup>2</sup> In fact, most of the cases discussing parental alienation are unpublished opinions that do not squarely address the issues and controversies surrounding the phenomenon itself. These cases, therefore, provide little guidance to practitioners who are either pursuing or defending against claims of parental alienation. This article will discuss a few cases that shed some light on the issues that arise from claims of parental alienation, including potential tort claims a parent engaging in alienation could face. While most of the cases cited in this article are unpublished opinions and are not binding upon any court, these opinions may be cited as secondary authority in accordance with the Rules of Court.<sup>3</sup> Hopefully, they also will assist the reader in recognizing the issues that arise with claims of parental alienation, crafting arguments to be advanced on a client's behalf, and formulating approaches to resolve cases with these toxic issues.

## ***M.A. v. A.I.***

In *M.A. v. A.I.*,<sup>4</sup> the parties had two children who aligned with their father at the time of the parties' divorce, and displayed "signs of overt hostility and anger towards their mother."<sup>5</sup> The situation did not improve as the divorce litigation proceeded, and the children refused to spend time with their mother, drive with her or eat meals she prepared.<sup>6</sup> Even after both parties agreed to hire a therapist to assist the children, the children's relationship with their mother only deteriorated.<sup>7</sup> The court found that the children's relationship with their mother remained strained after spending time with their father.<sup>8</sup> Both parties retained custodial evaluators and the trial court appointed a guardian *ad litem* for the children.<sup>9</sup>

While the divorce was pending, the mother ultimately moved for sole legal and physical custody of the children for a period of six months and requested permission to enroll the children in a reunification program located in California.<sup>10</sup> The trial court conducted a hearing over 23 days, during which both parties, their experts, the court-appointed custody expert, and the guardian *ad litem* testified.<sup>11</sup> The court-appointed expert testified that "[w]hen one considers the different symptoms of parental alienation, one is struck by the fact that the children did demonstrate many of the characteristics cited in the literature."<sup>12</sup> The court-appointed expert opined that the alienation was "moderate to severe."<sup>13</sup> The trial court granted the mother's application for sole legal and physical custody, permitted her to enroll the children in the reintegration program, suspended the father's parenting time, and barred his contact with the children for a period of 90 days.<sup>14</sup> In rendering its decision, the trial court found the father had been pivotal in ensuring the children rejected their mother; "empowered" the children to act in a manner that was inappropriate toward her; and involved the children in the litigation, including discussing the proceedings with the children and efforts to have the children obtain information on his behalf.<sup>15</sup>

The trial court based its decision on the eight criteria of parental alienation syndrome (PAS), and held:

In New Jersey, while there are several cases attempting to deal with the problem, there is no definitive analysis as to what actually constitutes parental alienation. This court now holds that in order for a parent to sustain a claim that the other parent has alienated their child, the proponent must prove the presence of the eight criteria.<sup>16</sup>

Without referencing a source for the criteria, the trial court identified the eight criteria of parental alienation syndrome as:

- 1) a campaign of denigration of the parent;
- 2) weak rationalizations for the deprecation;
- 3) lack of ambivalence;
- 4) insistence that the rejection is the child's own idea;
- 5) reflexive support for the alienating parent in the parental conflict;
- 6) the absence of guilt or remorse over cruelty to the alienated parent;
- 7) the presence of borrow scenarios; and
- 8) the spread of rejection to extended family and friends of the alienated parent.<sup>17</sup>

The trial court also referenced the best interests factors set forth in N.J.S.A. § 9:2-4(c), but held that when dealing with parental alienation the statutory factors are important but not “dispositive.”<sup>18</sup> The trial court stated that the eight criteria of PAS were “more probative, relevant, and significant in determining whether there is alienation and what to do about it.”<sup>19</sup> Notably, the trial court did not perform any further review of the factors noted in N.J.S.A. § 9:2-4(c), other than to find that the father “was on the edge of being unfit,” and concluding that a parent who is alienating his or her children may be unable to care for his or her children.<sup>20</sup>

The father appealed, arguing that it was error for the trial court to rely upon PAS as a basis for its decision as it is a “novel theory and there was no evidence that it is generally accepted in the relevant scientific community.”<sup>21</sup> The Appellate Division agreed, and reversed the trial court's decision, stating:

Neither the scientific reliability nor general acceptance of PAS was established in this case by either the testimony of any expert or the literature. Indeed, the theory is still the subject of considerable controversy within the medical and legal communities and should not have played a part in the court's ruling.<sup>22</sup>

The Appellate Division also found that PAS had not been recognized as a mental health illness in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and, further, that the New Jersey Supreme Court had not yet decided that PAS is “a scientifically reliable or generally accepted theory.”<sup>23</sup> In order to be admissible, a novel scientific syndrome such as PAS must be generally accepted in the specific scientific community.<sup>24</sup>

Important, however, is that the Appellate Division did not completely rule out the admissibility of PAS in future cases. “We express no opinion on whether PAS may ever be properly admitted. We note only that, in this case, a proper foundation for its admission was not established.”<sup>25</sup> The appellate court did not elaborate any further on the foundation necessary to render evidence of PAS admissible. Although this question remains unanswered, some commentators have recommended that an expert, who is an authority on PAS, be offered as an “educational resource” on the subject to provide a court with guidance on the subject matter.<sup>26</sup> This educational resource expert would be offered for the limited purpose of educating the court on PAS. The PAS expert would, in essence, be neutral on the ultimate issues of who should retain custody, parenting time schedules, and remedies for the family, such as therapy. In other words, the expert would be offered separate and apart from a custodial expert, who would opine on the custody issue. While an expert offered solely to provide information on PAS may be helpful, the issue that still needs to be faced is a general recognition in the scientific community, and it appears that issue still remains unresolved.<sup>27</sup>

### ***V.U. v. L.U***

The Appellate Division decision in *V.U. v. L.U.*<sup>28</sup> is a reminder that even where there may be acts of parental alienation, a court may leave the children with the alienating parent. In *V.U.*, the trial court ordered that the defendant/mother undergo counseling for parental alienation issues.<sup>29</sup> Despite this finding, the court ordered the parties' two daughters to remain in the custody of their mother.<sup>30</sup>

On appeal, the plaintiff argued that the trial court erred by failing to implement the directives of the court-appointed psychologist, who recommended the children be removed from the defendant's custody.<sup>31</sup> The Appellate Division affirmed the trial court's holding that the primary concern was the children's best interests and, despite the defendant's actions, the children were “healthy and doing well in school.”<sup>32</sup> While the trial court was cognizant of the court-appointed expert's conclusion that the mother engaged in alienating the children from their father, the trial court had interviewed each child twice and found they were both involved in extra-curricular activities, active in their church, articulate in voicing their opinions, socially engaged with friends, and doing well academically.<sup>33</sup> Based upon these findings, the trial court did not accept the recommendation of a

transfer of custody, and was satisfied the children's best interests were served remaining in the defendant's care.<sup>34</sup> The Appellate Division agreed, and stated that the trial court had "meticulously" reviewed all of the facts and noted, while "another judge may have a different conclusion," the Appellate Division could not find the trial judge abused his discretion.<sup>35</sup>

### **Quinn v. Quinn**

In *Quinn v. Quinn*,<sup>36</sup> the Appellate Division affirmed the trial court's denial of a request for a parental alienation evaluation and an order directing the parties and the children to engage in therapy.

The parties were divorced, with two children.<sup>37</sup> Their property settlement agreement (PSA) provided for parenting time for the defendant with the parties' children and designated a parent coordinator for the parties to engage with respect to any parenting issues.<sup>38</sup> A little over a year following the entry of the final judgment of divorce, the plaintiff obtained a final restraining order (FRO) against the defendant-father.<sup>39</sup> The FRO provided that parenting time would continue as set forth in the parties' PSA.<sup>40</sup> Three years after the FRO was entered, the defendant filed a motion requesting a parental alienation evaluation, claiming that his relationship with the children had been strained since the issuance of the FRO.<sup>41</sup> The defendant alleged the plaintiff "fueled and cultivated" the children's refusal to visit and communicate with him.<sup>42</sup>

The Appellate Division agreed with the trial court's denial of the defendant's request on the basis that the PSA provided the parties with a mechanism to address custody and parenting issues, but the defendant never took advantage of those remedies.<sup>43</sup> Further, the court faulted the defendant for allowing several years to lapse without making any efforts to address the issues.

Given the assertions of the defendant that plaintiff has engaged in a course of conduct designated to alienate the children, he offers no explanation as to why he waited so long to seek general remedies. As such, given the passage of time, the age of the children and their acknowledged unwillingness to have a relationship with defendant, the relief he sought is not only impractical, but unlikely to garner any positive results.<sup>44</sup>

Perhaps, the lesson learned here is to be vigilant when faced with a parent who may be alienating children,

and follow any directives of a custody order or agreement so relief is not denied for failure to adhere. Conversely, the plaintiff was well served by focusing on the agreed upon provisions of the PSA (apparently ignored or forgotten by the defendant) outlining the protocols for addressing custody and parenting time disputes.

### **Flesche v. Flesche**

The *Flesche v. Flesche*<sup>45</sup> decision is instructive for the relief crafted by the Appellate Division and the instructions to the parties, including an admonishment to the child's father. In *Flesche*, the parties were divorced and had agreed that the father would be the parent of primary residence with the mother having every other weekend with the child and parenting time on Tuesdays and Thursdays of each week.<sup>46</sup> The parties' son refused to exercise parenting time with his mother and treated her with disrespect.<sup>47</sup> He also refused to speak with his mother on the phone, accept gifts from her, and attend activities with her.<sup>48</sup> The son's animosity toward his mother stemmed from her extramarital affair with the child's hockey coach.<sup>49</sup>

The child's father ultimately filed a motion to be designated the child's custodial parent and modify the parenting time provisions of the parties' property settlement agreement to "as agreed upon by the parties."<sup>50</sup> The mother opposed the motion, acknowledging that she did not have parenting time with her son and admitting that the problems with her son, in part, stemmed from her relationship with his hockey coach.<sup>51</sup> However, she also contended that the child's father stoked the child's negative feelings for his mother by condoning the child's disrespectful language and conduct, constantly calling her a "whore" in the child's presence, and excluding her from school events, medical appointments, and the child's activities.<sup>52</sup>

The trial court found that there was really no factual dispute. The court entered an order granting residential custody of the child to his father and modifying the mother's parenting time as agreed upon by the parties.<sup>53</sup> The court also stated that it would be receptive to applications for reunification therapy.<sup>54</sup> In deciding the defendant-mother's appeal of the trial court order, the Appellate Division agreed that the lower court's order did nothing more than reflect the actual circumstances of the parties that had been ongoing since the son stopped visiting with his mother.<sup>55</sup> But, the Appellate Division commented that the trial court did not order the parties

to attend mediation, appoint a therapist to assist the parties and/or their son, or order a plenary hearing, which could have “some utility in fashioning a long-term remedy to this quite difficult situation.”<sup>56</sup> While the Appellate Division hesitantly affirmed the trial court’s decision, it did impose several conditions to the trial court’s order.<sup>57</sup>

The Appellate Division stated that it viewed the order as an ‘interim custody order’ subject to future proceedings.<sup>58</sup> The court further provided the mother 90 days to file an additional motion seeking prospective relief such as therapeutic counseling and modification of the original order, if warranted.<sup>59</sup> The Appellate Division essentially instructed the mother to detail her attempts to pursue counseling with her son and set forth any new facts that occurred since the order was entered.<sup>60</sup> The Appellate Division noted that opposition submitted by the father should also detail any attempts he made to assist in repairing his son’s relationship with his mother.<sup>61</sup> The court further held that if a motion was filed, the trial court should consider whether mediation and a plenary hearing are necessary and, in furtherance of a hearing, an interview with the child.<sup>62</sup> The Appellate Division’s final comments directed to both parents are worth repeating here:

The parties and their son have a very challenging and emotional situation. It is incumbent upon both parents to exert their best efforts cooperatively to repair their son’s fractured relationship with his mother. The mother, for her part, must take the initiative in pursuing suitable counseling, and in exhibiting appropriate sensitivity, judgment and patience in order to help her son learn to accept her again as a parent with open arms. Likewise, we admonish the father, despite his understandable hard feelings about his former spouse’s affair, to honor his express commitment in the PSA, as well as his inherent duties as a co-parent, to show respect for his son’s mother, to refrain from disparaging her, and to support the mutual efforts of mother and son to rebuild a constructive relationship. Without such mutual parental cooperation, the son surely will be deprived of the inestimable benefits of his mother’s love and support, and the mother will be deprived of the reciprocal fulfillment and respect that every parent presumptively deserves

from his or her children.<sup>63</sup>

These words directing the parties to encourage respect for the other parent apply equally in all custody and parenting time disputes, not just to extreme cases involving the alienation of children.

### **Segal v. Lynch**

Separate from the custody issues attendant to parental alienation is the potential tort claims the alienated parent has against the alienator. This issue was addressed in *Segal v. Lynch*.<sup>64</sup> In *Segal*, the unmarried parties had two children. After the parties ended their relationship, they continued to reside close to one another in Toronto, Canada, with the children residing with their mother but enjoying “frequent and liberal contacts” with their father.<sup>65</sup> The genial relationship changed when the children’s father moved to New Jersey. Although the children and their mother moved to New Jersey a few years after the father’s move, the mother changed her phone number and ended all contact between the children and their father.<sup>66</sup> She prohibited the children from emailing their father and blocked the father’s emails to the children.<sup>67</sup> Consequently, the father had no contact with his children for over three months, during which time he alleged the mother had alienated the children with “false and spiteful things about their father.”<sup>68</sup>

The father was ultimately able to locate the children and filed a complaint in the family part requesting an order to resume his parenting time and contact with the children.<sup>69</sup> The trial court granted supervised visitation.<sup>70</sup> While not a part of the appellate record, the father also alleged that a court-appointed psychologist opined that the mother had taken steps to alienate the children from their father.<sup>71</sup>

Subsequent to initiating an action in the family part, the father filed an action in the Law Division against the mother, claiming intentional and negligent infliction of emotional distress.<sup>72</sup> The trial court dismissed the complaint on three grounds: first, the claim was barred by the Heart Balm Act;<sup>73</sup> second, the factual recitation set forth in the complaint failed to state a claim for intentional and/or negligent infliction of emotional distress; and third, the claims were barred by the entire controversy doctrine and Rule 5:1-2(a) due to the fact that the claims could have been brought in the family part action.<sup>74</sup>

The Appellate Division affirmed the dismissal of the father’s claims, holding that a “legally cognizable claim

was not presented;" however, the court held that the Heart Balm Act did not work as a bar to such claims, which are cognizable under the common law. The Appellate Division first addressed the Heart Balm Act, holding that the claims of alienation were not based upon a loss of a conjugal relationship with the children's mother but rather were predicated on the mother's alleged pattern of conduct designed to alienate the father from his children.<sup>75</sup> Thus, the court concluded that the purpose of the Heart Balm Act to eliminate causes of actions to recover damages for the interference with conjugal rights was not implicated and, as a result, the act did not bar causes of action for intentional infliction of emotional distress due to a parent's interference with the other parent's relationship and bond with the children.<sup>76</sup>

The Appellate Division then discussed whether an action for intentional infliction of emotional distress due to acts of parental alienation was barred by the common law. Noting that the Supreme Court had lifted the bar on spousal suits for injuries caused by tortuous conduct, the Appellate Division concluded the law did not impede a spouse from suing another spouse for emotional distress; the court did, however, carefully state that the tortuous conduct must meet the definition of the alleged tort.<sup>77</sup> With respect to the intentional infliction of emotional distress, the plaintiff must prove that the tortfeasor committed outrageous and intentional conduct, proximate causation, and distress that is severe.<sup>78</sup>

Turning to the specific facts of Segal's claim, the Appellate Division affirmed the trial court's dismissal of the action. Relying upon its *parens patriae* duties, the Appellate Division agreed with the trial court that litigation would be contrary to the children's best interests, as it would create a proverbial "tug of war" over children.<sup>79</sup> The "force driving" the matter had nothing to do with the children's best interests, and instead was focused on monetary damages.<sup>80</sup> The court expressed its concern about the children being placed in the middle of the litigation and being forced to choose sides between their mother and father. The court commented on the likelihood that the children would be key witnesses in the litigation and subject to grueling depositions and examinations by experts.<sup>81</sup> Such a scenario, the court concluded, would be antithetical to the children's best interests.<sup>82</sup>

The Appellate Division further found that, even in viewing the facts in a light most favorable to Segal, he failed to state a cause of action for intentional infliction of emotional distress.<sup>83</sup> The court noted that the basis of his claim—a three month period wherein the children's mother prohibited his communication with the children, moved them to the state of New Jersey without notifying him of the children's whereabouts, and enrolled them in school under her surname<sup>84</sup>—did not rise to the level of such outrageous and extreme actions that went beyond the scope of decency and could be regarded as atrocious and intolerable.<sup>85</sup>

While the court dismissed Segal's claims, it did not completely foreclose future claims for intentional infliction of emotional distress emanating from acts of parental alienation.<sup>86</sup> The Appellate Division stated that there could be situations where one parent engaged in conduct so outrageous and extreme as to justify a claim for intentional infliction of emotional distress.<sup>87</sup> The court provided examples of conduct such as parental abduction and false accusations by one parent against the other for sexual abuse that may "cr[y] out for compensation."<sup>88</sup> The court noted claims of this nature must be brought in the family part, as "such claims raise issues that are uniquely suited to the function and expertise of the Family Part."<sup>89</sup>

## Conclusion

The law on parental alienation in New Jersey still needs to be developed. The review of the few unpublished cases discussed in this article demonstrate there are numerous issues to be addressed, including, pertinently, the admissibility of parental alienation syndrome and the viability of tort actions by one parent against the other. It is clear, though, that claims of parental alienation are factually and emotionally complex and potentially destructive to children who are caught in the middle of these quandaries. Given the importance and sensitivity of these types of cases, guidance from the Judiciary on parental alienation issues is critical to families struggling to deal with these issues. ■

*Michelle Altieri is a partner with Charny, Karpousis, Altieri & Donoian, P.A., in Marlton.*

## Endnotes

1. Ira Turkat, Parental Alienation Syndrome: A Review of Critical Issues, 18 *Journal of the American Academy of Matrimonial Lawyers* 131, 132-33 (2002).
2. Elizabeth M. Vinhal, Parental Alienation: The Quandary Lawyers and Judges Face, *New Jersey Family Lawyer*, Vol. 28 No. 95, 2007.
3. R. 1:36-3; *see also* Comment 2 on R. 1:36-3 (providing that a party may bring an unpublished opinion to the “attention” of the court so long as a full copy of the opinion is provided to opposing counsel and the court along with any contrary opinions).
4. 2014 WL 7010813 (App. Div. Dec. 15, 2014).
5. *Id.* at \*1.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* at \*2.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at \*3.
16. *Id.*
17. *Id.* at \*3 n.3.
18. *Id.* at \*3.
19. *Id.*
20. *Id.*
21. *Id.* at \*4.
22. *Id.* at \*5.
23. *Id.*
24. *Id.*
25. *Id.*
26. Turkat, *supra*, at 166-67 n.1.
27. Holly Smith, Parental Alienation Syndrome: Fact or Fiction? The Problem with its Use in Child Custody Cases, 11 *U. Mass. L. Rev.* 64 (2016)(noting that in cases where PAS has been addressed the syndrome has not been “validated” and that the syndrome has not been accepted by the American Psychiatric Association or the American Psychological Association).
28. 2006 WL 2707346 (App. Div. Sept. 22, 2006).
29. *Id.* at \*2.
30. *Id.*
31. *Id.*
32. *Id.* at \*4-\*5.
33. *Id.*
34. *Id.*
35. *Id.*
36. 2014 WL 1257077 (App. Div. March 28, 2014).
37. *Id.* at \*1.
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. *Id.* at \*2.
44. *Id.*
45. 2006 WL 1586025 (App. Div. June 12, 2006).
46. *Id.* at \*1.
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* at \*2.
51. *Id.*
52. *Id.* at \*2.
53. *Id.* at \*3.
54. *Id.*
55. *Id.* at \*4.
56. *Id.* at \*5.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* at \*6.
64. 413 N.J. Super. 171 (App. Div. 2010).
65. *Id.* at 179.
66. *Id.* at 180.
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. N.J.S.A. § 2A:23-1 *et seq.*; The Heart Balm Act abolished the right to sue and recover damages for “the alienation of affections,” adultery and breach of a contract to marry.
74. *Segal, supra*, 413 N.J. Super. at 181.

75. *Id.* at 185.
76. *Id.*
77. *Id.* at 185-86.
78. *Id.* at 186-87.
79. *Id.* at 187-89.
80. *Id.* at 188.
81. *Id.* at 189.
82. *Id.* at 190.
83. *Id.* at 191.
84. Interestingly, a recent unpublished case addressing these issues reached the same conclusion. In *Besen v. Weiss*, 2017 WL 3708139 (App. Div. Aug. 29, 2017), the Appellate Division affirmed the dismissal of a claim for intentional infliction of emotional distress arising from allegations of parental alienation. The Appellate Division again found that the alleged alienation was not sufficiently “outrageous” to sustain a claim for intentional infliction of emotional distress.
85. *Segal, supra*, 413 N.J. Super. at 191-92.
86. *Id.* at 192.
87. *Id.*
88. *Id.* at 189.
89. *Id.* at 192.