

Seeking a Bridge Between Child Sexual Abuse and Parental Alienation Experts

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This article is intended to reduce skepticism among child sexual abuse (CSA) experts and experts in various concepts related to “parental alienation, particularly “parental alienation syndrome” (PAS), “parental alienation disorder” (PAD), or “parental alienation” (PA) conceptualized as a diagnosable entity, regarding their respective claims in divorce cases. Experts on both sides claim to rely on knowledge that is generally accepted in their fields, as legal rules of evidence would require (Melton, Petrila, Poythress, & Slobogin, 2007). However, some PAS/PAD/PA experts (e.g., Baker, 2013; Baker, Burkhard, & Albertson-Kelly, 2012; Clawar & Rivlin, 2013; Lorandos, Bernet, & Sauber, 2013) make inflated claims for the scientific validity of the knowledge supporting theories about alienation (Milchman, 2019; Faller, 2020, this issue; Saini, Johnston, Fidler, & Bala, 2016).

The article begins by acknowledging advances in parental alienation theories since the original misogynistic incarnation of the PAS (Gardner, 1987). It then moves to the limitations in scientific validity studies (Milchman, 2019) that advocates claim support modern alienation theories (Baker, 2013; Baker et al., 2012; Clawar & Rivlin, 2013; Lorandos et al., 2013). This part of the article intends to provide a bridge between CSA and alienation experts by acknowledging advances in theory and research without denying their limitations. The article next briefly discusses New York State (NYS) Appellate Division (AD) divorce cases decided between 2001 and 2017 in which alienation allegations were used to rebut CSA allegations (Milchman, 2017). This part of the article demonstrates the realistic foundation for CSA experts’ skepticism about alienation allegations, while

not denying that false CSA allegations can be used against targets of alienation. The article concludes by discussing the battle of the experts in these cases.

Advances in Theories of Parental Alienation

Today, researchers who focus on alienation vary in the extent to which divorce advocacy influences their scholarship (Emery et al., 2016). A large contingent of alienation scholars conform their work to scientific standards. Their theories recognize multiple possible causes for children’s contact resistance and refusal (CRR) toward one parent other than the deliberate and irrational interference in that relationship by the other parent, which is the hallmark of alienation (Birnbaum & Bala, 2010; Drozd, 2009; Drozd & Olesen, 2004; Drozd, Olesen, & Saini, 2013; Fidler & Bala, 2010; Garber, 2011; Kelly & Johnston, 2001; Johnston, 2003; Johnston, Walters, & Olesen, 2005; Lee & Olesen, 2001; Ludolph & Bow, 2012).

Alienation theories today recognize that both fathers and mothers can alienate their children (Johnston, 2003; Johnston et al., 2005) and that fathers can alienate their children even if they do not live with them (Warshak, 2015). They recognize that alienation can occur in intact families as well as divorced ones, focusing attention on parents’ conflict and its longitudinal history rather than on marital status (Deutsch & Pruett, 2009; Mone & Biringen, 2006). Serious recognition is given to the need to tailor therapeutic interventions to the specific causes of CRR in individual families (Fidler & Ward, 2017; Pruett, Deutsch, & Drozd, 2016).

Guidelines have been developed to apply modern alienation theories to child custody evaluations.

Drozd, Olesen, and Saini's (2013) are the most detailed and systematic. They provide a structured protocol to guide evaluators in collecting and interpreting evidence so that no plausible cause of CRR goes unassessed. Milchman (2019) proposes a protocol to sequence assessment of each cause so that abuse and other legitimate reasons for CRR are ruled out before alienation is assessed. These changes, if applied in practice, should significantly reduce misuse of alienation theories to dismiss CSA allegations against the weight of evidence in custody cases (Meier, 2019; Meier & Dickson, 2017; Milchman, 2017).

This scholarship has developed over approximately the last 17 years. While it is advancing rapidly, much of it is specialized, not scientific, knowledge because it still has limited empirical validation. However, alienation researchers who have a more advocacy-driven agenda overlook or deny the scientific limitations in the research they cite to support the use of parental alienation in court (Baker, 2013; Bernet & Baker, 2013). They fail to recognize that specialized knowledge is also admissible and helpful to the court (Melton et al., 2007). The article now briefly addresses scientific limitations in this advocacy-driven research.

Limitations of Scientific Validity for the Concept of Parental Alienation

Advocacy-driven alienation researchers (Baker, 2013; Bernet & Baker, 2013) mute the significance of the difference between qualitative descriptive research and quantitative empirical research for establishing the validity of parental alienation as a scientific construct. Qualitative descriptive research shows that something exists, and it points to a possible phenomenon, but quantitative empirical research is needed to demonstrate that it can be accurately identified and discriminated from other phenomena (Milchman, 2019). Muting this distinction, they claim scientific validity sufficient to pass a Daubert challenge (Baker, 2013). Their claim is undermined by pervasive deficits in the research designs intended to support it.

These deficits include inadequate assessment instruments, biased selection of subjects, lack of adequate comparison groups, inadequate statistical

analyses, and circular reasoning (Faller, 2020; Saini et al., 2016). Alienation research has not assessed standard scientific validity constructs (Milchman, 2019). It does not assess relationships between alienation and other specific psychological symptoms with which alienation would be expected to be associated (convergent validity). While it shows that children classified as alienated suffer from higher levels of depression, anxiety, acting-out, low self-esteem, substance abuse, decreased self-sufficiency, and attachment problems (Baker & Ben Ami, 2011; Baker & Brassard, 2013; Ben Ami & Baker, 2012; Bernet, Baker, & Verrocchio, 2015), these are symptoms of general distress that could have many explanations other than alienation.

Paradoxically, researchers should not expect alienated children to be generally more distressed than non-alienated children. Since rejecting a parent is supposed to be an internal and external way of coping with parental conflict, it should *lower* general psychological distress, not raise it. Alienation researchers need to demonstrate that symptoms specific to alienation are not associated with other causes of children's CRR (discriminant validity). For example, discriminant validity would be demonstrated if alienated children were shown to be less distressed compared with children who perceive their parents as rejecting them but who do not reject their parents (Khaleque & Rohner, 2002) or compared with abused children who do not reject their abusive parent. To date, research with this level of specificity in assessing discriminant validity has not been conducted.

While convergent and discriminant validity are needed to differentiate alienated from non-alienated children, even if they were established, advocates still could not claim that alienation is the cause of the child's CRR. Convergent and discriminant validity for the concept of alienation could only show that "these behaviors and not those behaviors" are associated with irrational but not with rational CRR. To show that alienation is the cause of the child's CRR (internal validity), alienation researchers must assess parenting practices and the parent-child relationship quality before the divorce process, during it, and after it. They must assess whether the degree of a parent's alienating behavior in any of these time periods was or was not related to the degree of the child's willingness to

engage with the other parent. Finally, other possible causes of CRR must be eliminated. To date, there are no such longitudinal alienation research studies. The lack of scientifically validated criteria for alienation has a direct impact on confusing the kind of evidence needed to corroborate alienation in forensic custody decisions.

Evidentiary Confusion in NYS Appellate Division Divorce Cases: 2001–2017

In these NYS cases, the evidence needed to prove alienation and disprove CSA or vice versa was not understood (Milchman, 2017). On logical grounds alone, since the behavioral criteria for alienation (Lorandos et al., 2013) and for CSA (Friedrich, 1997) are different, disproof of one cannot be interpreted as proof of the other. This does not mean that the separate proofs are unrelated. Good forensic practice in CRR cases would require that evidence for and against alienation and CSA both be addressed when explaining the child's CRR (Drozd et al., 2013). Nevertheless, affirmatively assessing alienation and CSA requires different kinds of evidence.

The author (Milchman, 2017) analyzed the custody decisions made by the NYS Appellate Division (AD) from 2001–2017 in which alienation and CSA allegations were pitted against each other. There were 24 cases. In 22 of them, mothers appealed the trial courts' award of custody to the father against whom CSA was alleged. In 21 of these cases, she lost her appeal. Of these 21 cases in which the alleged abuser obtained custody, 15 contained no affirmative evidence against CSA. In one case the court considered the CSA allegation possible. In the other 20 cases, the CSA allegations were considered "unfounded," which means insufficient evidence to decide one way or the other (Tippins, personal communication, 2017), but the case was nevertheless decided in favor of the alienation allegations. However, in 12 of those cases no affirmative evidence for alienation was presented.

These findings, however, do not support the conclusion that alienation allegations are no more than an adversarial tactic. In the 21 cases in which the accused father obtained custody, eight had affirmative

evidence of alienation and six had affirmative evidence against CSA. In these cases, judicial decisions favoring alienation appear well-founded.

The NYS AD decisions reflect a fairly consistent confusion between failure to prove CSA and disproving it, on the one hand, and between disproving CSA and proving alienation, on the other. While alienation advocates are right that false CSA allegations could be made, the decisions in these NYS cases suggest that parents alleging alienation do not face the same risk of custody loss as do parents who bring true, or at least not disproven, CSA allegations to the court's attention.

Conclusion

Skepticism about the validity of alienation and CSA claims seems to disfavor CSA claims. In many of the NYS cases reviewed, covert misogyny, insufficient evidence, and confusion about the kinds of evidence needed to prove or disprove the allegations appeared to have influenced judicial decisions. If experts for either alienation or child abuse, including CSA, allegations are aligned with advocacy positions, the court is left with the battle of the experts. However, if experts assess alienation and child abuse, including CSA, allegations by collecting the specific evidence relevant to each, and acknowledge the scientific limits of alienation research to date, then they should be able to provide admissible evidence, educate the court, and undermine the ill-founded polarization that weakens their ability to protect children from abuse or from parent loss.

About the Author

Madelyn S. Milchman, PhD, has practiced clinical and forensic psychology in New Jersey since 1986. Her expertise is in trauma, including child sexual and emotional abuse, incest survivors, domestic violence, rape, recovered memory, sexual harassment, PTSD, divorce/custody, parental alienation, and other types of trauma. She won the American Professional Society on the Abuse of Children 2019 Outstanding Frontline Professional Award for her work on the relationship between child abuse allegations and parental alienation allegations. She has served as an expert witness in child custody cases, relocation cases, reunification cases, criminal child sexual abuse cases, and psychological injury cases involving trauma-related issues. Dr. Milchman has presented and published articles nationally and internationally in these and related areas including principles and methods for forensic evaluations and working with psychological experts. She serves as an evaluating expert, a scientific expert, a consulting expert, and a rebuttal expert.

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