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What to do about 'parental alienation': B (change of residence; parental alienation) March 2017

by reporting watch team | May 15, 2017 | Analysis, Cases, FCReportingWatch | 10 comments

Re B (change of residence; parental alienation) [2017] EWFC B24 is the recently published judgment from a family court decision that a child had been alienated from her father by her mother and should move to live with her father.

One of the aims of the President's Transparency Guidance to judges on

making in the family courts. The guidance list of cases to be published (unless compelling factors require otherwise) include disputes between parents about arrangements for their children to the extent these involve fact-finding determinations about serious allegations of harm (including emotional harm). Her Honour Judge Gordon-Saker doesn't specify whether her decision to publish was under that provision or simply because she considered publication to be in the public interest.

Certainly, parental alienation is a topic of significant public interest and importance for families and family justice professionals. It provokes strong opinions, including on whether and how the family court system (including Cafcass) ought to do better in identifying and managing parental alienation. International Parental Alienation Day on 25 April 2017 inspired a fair amount of commentary. See this Hansard debate secured by ex-Labour Party MP Simon Danczuk on 17 March for a flavour.

Summary of the case

IB's parents were married and lived together until she was five. Her mother had agreed to the father sharing parental responsibility for two older maternal half siblings during the marriage. IB lived with her mother and half siblings when they separated. At that point she was 'happy to see her dad' and settled at school, but this changed.

The separation involved an argument in front of IB that the mother felt triggered her leaving. She characterised a scratching of IB's leg by her father when he picked her up and put her back in her bed early one morning as an assault, warranting supervised contact, and said he held her (the mother) forcefully when the argument continued downstairs. She admitted hitting him on a previous occasion (which she said was in self-defence) and alleged he had been controlling and abusive in the form of talking down to her and making her feel worthless. After separation, they reached agreement with the help of a friend that he would move out, so she could move back into the former family home with the girls and that she would allow contact. When the father changed his mind and didn't move out for a couple of weeks she withdrew from the

Three years of litigation followed about IB who was 9 by the date of the decision to change her residence at a hearing in March 2017. Her mother resisted initial recommendations by Cafcass for overnight staying contact with the father. A new Cafcass officer then recommended two hours, every other week, in a contact centre – and some contact started. When contact faltered in that setting, it was reduced, and then moved to the home of maternal family members. A court order eventually made for staying contact was caveated with 'if the child wanted to go' (which she didn't). When the case was finally heard (after transfer, adjournment, expert evidence from a psychologist and appointment of the second Cafcass officer as IB's guardian), a family assistance order was made – leaving matters in the hands of the guardian, on the basis both parents had agreed to be led by her. The result was that contact stopped altogether for 14 months to the point the case was heard by HHJ Gordon-Saker in March. By this time, the father sought residence while the mother sought orders for no contact and limiting the father's right to make further applications.

The decision

HHJ Gordon-Saker heard evidence from the parents, the guardian and the psychologist before deciding that IB's long-term best interests required an order that she move to live with her father (even with a school move and separation from half-sisters) on the basis that he would promote contact with her mother and maternal relatives.

The family also agreed to look into attending the Family Separation Clinic in London (at their own expense).

A postscript records that the transfer went ahead and that subsequently IB's mother had also starting spending time with her.

The reasons

There's no substitute for reading the nuanced judgment but the reasoning included:

- A rejection of the picture the mother painted of a controlling or abusive man during the marriage (paras 37-38);
- Findings that, at the time of separation, IB had had a strong and healthy attachment to her father, that he posed no risk to her whatsoever and had been patient and followed advice, not incessantly litigated as suggested;
- That her mother had harmed and was harming her by preventing her from maintaining her relationship with her father;
- Acceptance of psychological evidence that IB showed characteristics of a child who was alienated from her father and was at risk of long term emotional and psychological harm;
- That her mother (even after listening to the evidence on the day), remained unable to actually promote and repair IB's relationship with her father;
- That IB remained anxious and unhappy, even at school, and even after 14 months of her father stepping back from contact to follow advice;
- Of the need (since positive experiences of her father were being eroded by her mother) to look beyond IB's current expressed wish not to see her father, to the background and bigger picture for her true wishes and feelings.

The law

Applying the welfare checklist to determine IB's best interests, HHJ Gordon-Saker reached the conclusion that the most relevant factors were her emotional needs; the harm she was already suffering and was at risk of suffering long term and the capacity of her parents to meet her emotional needs.

Both parents could meet her physical and educational needs (even with the school move required) but only her father could meet her long term psychological needs for a relationship with both parents and both sides of her family; and provide the higher chance of litigation and hostility ending for her as a matter of urgency.

She applied Mrs. Justice Bracewell's approach to the wishes and feelings of the children in Re V (A Child) [2013] EWCA Civ 1649 as follows:

> *IB's expressed wishes and feelings have been ascertained and her behaviour in attempts at contact suggest she does not want contact with*

> *separated have affected her understanding. At her young age her positive experiences of her father are being eroded by her mother, so I have to look at the background and wider picture to ascertain her true wishes and feelings. In my judgment, if she had the true picture of her father and was allowed by her mother to enjoy contact, she would wish to spend time with him. She has become entrenched in her mother's views, but her anxiety continues. She knows from her own memory that her father is not the bad man he is portrayed as.*

She also made some suggestions for how (in retrospect) the case might have been handled differently by professionals including the guardian and the court:

The guardian

Whilst the mother was responsible for what had happened, not the guardian, the recommendation of no contact ahead of the hearing had nevertheless been based on a flawed assumption that the mother was not preventing contact. Analysis of the history and detail firmly supported the view that '*at the heart of this case*' was a mother '*preventing contact*':

> The guardian had been *hampered* by this mother who was *intelligent and plausible and giving the impression of wanting to make contact work when she is doing the opposite*
>
> *With hindsight…. I am not sure there was enough analysis of the pressure Mrs. B was likely to be placing on IB.*

There had never been any rationale or justification for limiting contact to a contact centre:

> The *quality of the relationship between IB and her father when her parents separated and not long after… was good. There should have been staying contact not two hours a fortnight in a contact centre. The reports of contact were positive; but Mrs. B wanted to stop contact, although Mrs. Miller as the welfare officer at that time recommended contact continue as being in*

When IB started to express a wish not to go to even that contact, the response of reducing contact further while maintaining the contact centre setting (in the hope of stopping it breaking down altogether) was unhelpful in hindsight:

> *IB had some reservations about seeing him. Mrs. Miller said rightly that, if contact was stopped, it would be difficult to get it going again. But she also thought, probably wrongly with the benefit of hindsight, that increasing contact might increase IB's resistance to future contact.*
>
> *Looking back now, staying contact with her father would have reminded IB of all the positives in her relationship with him whereas the two hours a fortnight was too little and it was surrounded by her mother's negativity.*
>
> *While [the psychological] assessment was taking place, contact was reduced to four weekly at the contact centre, albeit not supervised. IB was taken there by a member of her maternal family and I have seen their attitude to the father. All of this was reinforcing the idea that a contact centre was necessary and acceptance of IB's apparent reluctance to go to contact.*

The attempt to move contact out of the centre by getting the maternal family to supervise was also doomed to failure as the psychologist explained:

> *IB could not be seen to have a nice time. She was there with family members who were supporters of her mother.*

And the advice to the father that he should now step back under the family assistance order was in the guardian's own view with hindsight:

> *not helpful*

The Court

There was inadequate case management at the crucial early stages of the case [Para 8], followed by delay. We are told that the case was transferred to the Norfolk Family Court in October 2015, but it's not clear where accountability lay for the earlier case management decisions.

> *I know it is easy with the benefit of hindsight to say this, but there was a lack of active case management and analysis of the issues in some of the early hearings. There was not sufficient control on the filing of witness statements or letters to the court or supporting letters from friends and family, and most of those have not assisted the court.*

And it had been inappropriate to make an order for contact dependent on whether the child wanted to go:

> *An order was made for gradual increases in contact building up to overnight in September "if IB wishes to do so". That burden of decision making should not have been placed on IB. Needless to say, overnight contact did not take place.*

Others?

HHJ Gordon-Saker also suggests delay in returning the matter to court when contact broke down altogether was a contributory factor though it's not clear why or for how long:

> *Sadly, the end result was that there has been no contact for fourteen months. For some time no one brought the matter back to court.*

Lastly

The view of Suella Fernandes (Conservative MP for Fareham) Hansard (column 497) citing the President (presumably from *F v M* [2004] EWHC 7272 (Fam), although she doesn't specify), seems largely borne out by this judgment:

> *I thank the hon. Gentleman for his explanation of the issue. Does he agree with Mr Justice Munby, as he then was—he is now president of the family division of the High Court and has judged many family cases involving contact disputes—that the cause of these problems is delay in the court system, the failure of the courts to challenge groundless allegations against non-resident fathers and the failure of the courts to get to grips with defiance of contact orders and child arrangement orders and to properly enforce against breach? Does he agree that that is the sum of some of the*

10 Comments

Dr Sue Whitcombe on 15 May 2017 at 3:34 pm

Most of these flaws could at least begin to be addressed if there was universal training around parental alienation for all practitioners working with families in proceedings, as well as others involved in mental health, social care and education.

There are clear early indicators that alienation may be a factor. Doing what needs to be done, which at the earliest stages is ensure that contact happens before all else, can be counter-intuitive. The costs of getting it wrong are far too great. In this case the early errors likely contributed to the emotional harm of the child. It is to be hoped that in residing her with the more able parent, and ensuring appropriate therapeutic support for the whole family, damage can be repaired so that it will not have the lifelong impact so often found in these cases.

Reply

Peter A Davies on 18 May 2017 at 10:21 pm

Time and again in cases featuring alienation we see the same mistakes being repeated. Re B is the most recent example.
In 2010 in, Re S (Contact: Intractable Dispute) [2010] 2 FLR 1517 CA, commenting on the order made by the judge at first instance in, '… a case that is at the extreme end of difficulty in the difficult field of intractable contact disputes'

2. The complaint that the judge essentially ducks the issue in failing to find the mother's obstruction of contact deliberate and wilful is difficult indeed to make good given that the judge specifically emphasised that she had gained some understanding of the parties as a result of three days of evidence and submissions in her court…
"it is a condition of the contact that the children have to decide for each contact whether to take it up or not."
That is a highly unusual provision and, whilst it seems on the face of it to conform with the children´s wishes and feelings, in reality it burdens them with a responsibility that they should not be asked to bear at their respective ages of 12 and 13."

In that case Thorpe was critical of children of 12 and 13 being burdened with responsibility for deciding whether to have contact or not. Instead of learning from this mistake, years later a judge has written an order in similar terms but in the case of re B the decision is placed with an even younger child of less than 8 years old!

Dr Sue Whitcombe's point about training is a valid one but time after time in reported alienation cases we see evidence of the lower courts failing to do either their jobs or their homework and simply accepting what is said at face value when, as HHJ Gordon-Saker clearly demonstrates, even gentle probing reveals serious inconsistencies that are indicative of something being very wrong. I suggest that HHJ Gordon-Saker has presented such a detailed analysis to demonstrate that, far from requiring any extensive training or expertise, most judges should have many of the skills needed to set alarm bells ringing and have a positive impact upon the futures of the child subjects of their decisions.

Reply

Wayne Newton on 4 December 2017 at 3:09 pm

You make several excellent points Peter and I have to

attributable to high conflict" or "definitely exists but is too difficult to address as it would involve disturbing the stability of residential status". The fact that "disturbance within the primary residence" may be the most worrying issue, hardly ever seems to be a perspective given serious voice or hearing.

This issue, according to a conservative estimate during the recent Westminster Dialogues, is actively harming at least 1million children currently. The real number and legacy cases would blow this figure through the roof. Yet too much emphasis is placed on fillibustering over definitions. There is not enough consultation involving parents (resident and non), alienated children, psychologists and then police, social workers and lawyers, in that order.

Too many people within the legal profession are making too much money from this and CAFCASS and social services are way behind the curve in recognising that this is not the result of so-called "intractable hostility" but is more often than not a targeting parent (usual the RP), undertaking a very deliberate campaign of bullying over time owing to some perceived sleight, a persistent issue or a personality disorder that prevents them from empathising or recognising that parenting is not the right or remit of one person alone.

Reply

Susan Daveson on 22 May 2017 at 1:44 pm

In many cases, there IS abuse, yet courts are assuming most mothers lie about abuse, so ignoring the childs safety and putting the fathers rights first. Children are rarely heard ie given value, contact is at any cost..still. Training in domestic abuse, domestic violence, perpetrator personality Cluster B types and actually giving the children a voice, would at least go halfway towards

bearable, child silenced, isolated, alienated from maternal family and never listened to again. No proper follow up after decisions..except perhaps a CAFCASS worker seeing the children..'that scary lady who made us live with dad and stopped us seeing mummy'. These children are growing up and leaving the father behind after years of abuse, hating and fearing him more than ever. In the end..a pointless, dangerous exercise producing adults who will need many hours of therapy in the hope of some recovery from experiences that are irrevocably damaging. There is still a belief in and hidden use of 'parental alienation syndrome', a theory rejected as admissible in a court of appeal and expert review panel, higher court ordered lower courts not to use this model, yet they are still using it as a base to discrediting innocent parents and children

Reply

reporting watch team on 22 May 2017 at 1:56 pm

Hello Susan,
Thanks for your comment. On what basis do you say that courts assuming most mothers lie about abuse? What would be the point of fact finding hearings if this was so? Many fathers would say they assume most mothers are telling the truth (the exact opposite of what you are saying). How should we / the family justice system deal with this difference in perspective? Should we assume most mothers tell the truth?

Reply

Wayne Newton on 4 December 2017 at 3:16 pm

Yes, there is abuse in "most" PAS cases, Susan. But it isn't an extension of "domestic abuse" allegations made in order to secure legal aid, one of the root causes of the

Where the parents have been separated for a long time and have no wish to infringe upon the private life of their former partner, simply wishing to fulfill their ongoing parenting responsibilities, it is actually abuse undertaken by the person with an imbalance of power who uses time with the children to attack and bully the targeted parent systematically, using a range of tools and techniques to cause them prolonged harm.

But the abuse of the adult aside, it is the act of using the children that is most wicked, as this gives rise to problems they will face for the rest of their lives.

Reply

Min on 23 May 2017 at 6:25 am

I have been made aware of certain cases where Parental Alienation has been cited and I have concerns that some are jumping to that conclusion too readily without considering the reason for the alienation.

My understanding is that apart from interviews with CAFCASS, a statement/position statement and supporting documentation, there is nothing to look at why the supposed alienating parent is reluctant for contact and a court environment is, in my view, not the best place to ascertain it.

I believe that rather than assuming PA and looking at whether it is or isn't, it would be more beneficial in the long run and possibly more cost effective and put less strain on the court's time if the court thought it fit to have the supposed alienating parent to a few sessions of, for example, psychotherapy, counselling, to get a feel of what is behind the perceived PA. I also feel that this needs to be done by a professional who is working outside the field of alienation – as they will be be looking at ways of identifying it instead of trying to establish what has made the supposed alienating parent stop/deny contact

No, I'm not talking just about abuse, but a variety of other reasons which may be missed. There seems to be a fairly commonly held view that parental alienation is coercive control, and whilst it certainly can be I think it is incorrect to assume that is always is and professionals need to cast their net wider and look at all possibilities.

The supposed alienating parent has, for whatever reason, come to a point where contact has or is being disrupted and it would be in the BEST interest of the child to determine what it is rather than to thrash it out in court, under intense scrutiny, with the threat of some form of 'punishment' looming not far away.

I give an example of a situation I was contacted about. This is just one of many who have been in touch and PA has been cited by one or the other party.

1. F leaves M to set up home with D. M is distraught and F is flaunting his new relationship around M, bringing D to school events, to pick up and drop off, which does nothing for M's wellbeing. F wants to establish his new family unit as soon as possible so makes an application to the court for 50:50 contact. He wants to be seen as an involved Dad and thinks 50:50 is the way to do it. Predictably M reacts to this and starts to make contact difficult. She becomes more hostile at pick up and drop off and throughout D is still accompanying F to handovers, sitting in the car but in full view and trying to connect with the other school mums at child's school.

In court, F claims the M is hostile and actively alienating his child from him. M comes across as tearful and not forthcoming with information except to say the child doesn't want to see F.

Mother's reason for her actions: She was still in love with F and was devastated when she found out he was having an affair with a mutual friend she had liked. Insecurity crept in and she was worried D would replace her in the child's affection and that fear resulted in a spiralling chain of events that would only create

F wasn't an abuser and DA did not come up in the hearings but he had behaved callously in letting his new partner become too involved in his child's schooling etc. M was worried because she really liked D and felt betrayed by both and exacerbated the feelings of being replaced.

This case was resolved amicably and without being unnecessarily drawn out. M came to me for advice and after having talked and exchanged messages, this is the advice I gave:

1. Write to your ex and say, although you are devastated by the ending of the marriage who wish them both all the best for their future.
2. Ask your ex if it is possible to not involve D for school events and in handovers as you are having some difficulty with adjusting to the new reality and this would give some much needed distance.
3. For a few weeks at least, have another person greet F and child or say goodbye at the door or change pick up and drop off to happen at the school but although you feel it will all work out in the end, you would prefer it if D was not involved for the time being at least.
4. See the GP and explain that you are grieving for someone still living and could you be referred for counselling as you need some support through this.
5. In the meantime you have my details, ring me, email me whenever you need to let it out, I won't always be able to talk/reply straight but you'll get it out of your system, even if it's only a text that says ****, **** 500 times.

Basically a month or so after the application, a routine of staying contact every other weekend and half the holidays was established with each side respecting and having empathy for the other and the child and now, a year one, Fs relationship with D ended and F and M are tentatively talking.

To say I'm happy is an understatement as this could so easily have gone the other way.

Matt on 10 June 2017 at 6:27 am

Min, you say you "have concerns that some are jumping to that conclusion too readily without considering the reason for the alienation". PA is abuse and whilst there are many reasons for it occurring I don't believe we should ever look to justify abusing a child.

That said, you are quite right that providing the right support for parents is key to resolving this and keeping cases away from the courts and Cafcass has to be the preferred approach. Promoting Family Mediation and Divorce Counselling early on, and throughout the process, can support shared parenting, target the causes of PA and reduce the likelihood of PA.

However, when the formidable emotions of parenting can't be kept in check, the court and Cafcass need to consider which parent is most likely to provide the best support for the child within the whole family and maintain good relationships with both parents. Perhaps I'm wrong but I haven't seen much evidence of both parents alienating so perhaps that suggests the alienated parent should 'always' be given the benefit of the doubt?

Reply

Parent allianation on 1 December 2017 at 11:57 pm

My ex has accused me of many abuses which are not true. She fabricated everything. With the help of the women refuge and the social service she moved away with our two children. I haven't seen them for almost 8 months.
At the moment i am trying to clean my name and find a way out. The social service does not give me any information about the children. I used to be the prime career.
Any suggestion or help are very welcome. Thank you.

reporting watch team on 2 December 2017 at 11:13 pm

Parent allianation,
I’m afraid that The Transparency Project cannot give legal advice, but it sounds as if you need to go and seek legal advice. You could try and find a local solicitor or your might try the Family Rights Group or Coram Childrens’ Legal Centre helplines.
TP Team

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