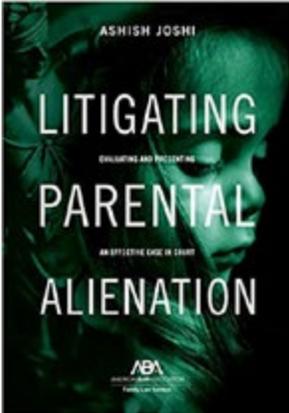




BOOK REVIEW

LITIGATING PARENTAL ALIENATION

BY STACI GISKE



Litigating Parental Alienation

Ashish Joshi
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Parental Alienation is one of those often used phrases that I have often heard in court proceedings and documents. I have heard clients use the phrase to critique their co-parent’s behavior toward their parenting time. I have heard judges and FOC professionals even refer to the term “parental alienation” to describe a situation in which one parent uses their child to advance an agenda. While using this term to accurately describe alienating behaviors of a parent, the failure to understand the meaning of parental alienation—as a mental condition in the child—warps our understanding of what is happening, dilutes

the severity of the situation and fails to address the impactful and often destructive situation for the children.

It wasn’t until I had a severe parental alienation case that I truly understood that *parental alienation* has a *clinical meaning* and a meaning in common parlance of the court system. Continuing to use the terms interchangeably mitigates the meaning of the syndrome and leaves lawyers, judges and the Friend of the Court unjustifiably confident in thinking we understand what exactly is parental alienation is and how best to address it in our courts. Ashish Joshi’s book, *Litigating Parental Alienation*, is the exact remedy for this common problem.

When Ronald’s week on/week off parenting time ended with a hug and a kiss in June 2019, little did we understand that Daniel, his son, was becoming radically alienated from his father. When his next week on of parenting time was to commence, Daniel – then 13 years old – decided not to go, as he was told by his mother that a motion for school designation was pending and he would not have to go to his father’s. Why a motion for school designation would abruptly suspend the week on/week off parenting time schedule that had been exercised without any court involvement for at least 9 years was not clear but also not considered by the trial court. The Court failed to enforce the current parenting time argument buying Daniel’s mother’s, Bella’s, argument that *she can’t physically*

force her 13 year old child to go for parenting time; it became an acceptable situation, even warning to involve the police or other 3rd parties (GAL) in enforcing the court’s order led to a situation whereby the Court failed to enforce its own parenting time order for more than 15 months. This despite more than 10 motions filed to address the declining mental condition of Daniel along the way.

As alienation was playing out in “real time” during the litigation of a “motion for school designation” it was difficult to connect the dots of what was really occurring. Hindsight vision is “20/20” as the saying goes, but had I had Joshi’s book in tow during the litigation of this case, I believe I would have approached the case so differently. When the issue of parental alienation was sent to the best known local psychologist to consider, he fell short of calling it parental alienation simply suggesting that mother was exhibit “alienating behaviors.” Frustrating as it is that courts and psychologists fixate on the behaviors of the parents –after ruling out that there was no justifiable reason for the estrangement between child and parent -- Joshi examines early intervention and prevention that can redirect the issue to understanding the radical change *in the behavior of the child* that would have been helpful in my case. Joshi writes “stringent case management on the part of the court and greater advocacy on behalf of the target or rejected parent” as well as strict adherence to parenting time orders is a fundamental start to addressing this issue. (Pg. 56-57).

In June of 2019, when Daniel just stopped going to Ronald for his parenting time *without justification* and without any court enforcement of its orders despite Ronald’s motions, this manifested a campaign of alienation of Ronald that had subtly been in the works for months prior. Despite sharing joint legal custody, Bella had been influencing Daniel to want to attend high school where she lives—more than 25 miles apart from where Ronald lives and where Daniel attended private parochial school for the past 8 years. Taking Daniel to tour the school in her area while telling Daniel to keep the prospect for attending the school in her neighborhood under wraps as she puts the legal measures in place for a court to enter this order was an example of alienating behavior that eventually empowered the child and fueled her drive. Never once did Bella or Daniel mention high school designation to Ronald- whom she shared joint legal custody with. By the time there was a hearing on Bella’s motion, Daniel had been radically alienated to

disregard Ronald's opinion, care and parenting time that had been "justified" by made-up actions of Ronald. The failure of the Court to inquire if the rejection of Ronald by Daniel was justified and what the effect on the child was amounted to a co-conspiracy of allowing Daniel's mental health to wane.

Shortly after the hearing on the motion for school designation, an avalanche of behaviors followed that in hindsight explained exactly what was happening with Daniel as a quintessential case of parental alienation. I can't help but wonder if the attorneys on the case, myself included, and the Court had read and understood Joshi's book, *Litigating Parental Alienation*, if the painful and ruinous fate of Daniel could have been thwarted. If we all understood that failing to enforce the Court's parenting time order without asking "why" to discontinue the week on/week of parenting time could have addressed Daniel's crisis before the full manifestation of his depression and self-destructive behaviors.

As explained for the legal professional, once the psychiatric and behavioral response of Daniel to Ronald was understood and decoded, it is very clear what happened. The shocking part is how quickly Daniel was able to reject Ronald's parenting and how entrenched Daniel was able to become in his rejection. Over the course of 15 months, Daniel's justification of his rejection of Ronald surrounded how Ronald failed to provide Daniel his own room years prior, how Ronald would "force" Daniel to donate some of his birthday gifts to the needy, and how Daniel was "forced" to attend church with Ronald when he was younger. All the complaints of Daniel fail to raise to the level of a complete denial of their current relationship and the rejection of Ronald as a parent. Whether Daniel's rejection of Ronald was at the behest of Bella or simply her implicit acquiesce is probably very difficult to decipher for a court, however, had Bella – at any point- supported Ronald and Daniel having a healthy relationship the alienation could not have festered. Bella also had an unspoken partner that fostered and encouraged the alienation in this case – the Court -- failing to schedule a hearing on any one of the near-dozen motions Ronald filed for enforcement on his parenting time. During this time, Daniel became despondent, extraordinarily rude, unmotivated to attend or do well in school, friendless and isolated, depressed and slothful. Had the court or any of the professionals studied Daniel's baseline attitude, aptitude and relationship with Ronald it would be very clear that nothing Ronald did or didn't do *years prior* could justify Daniel's rejection of Ronald.

In the case of Daniel and Ronald, the behaviors read like a prototype in the playbook of parental alienation. Joshi's book explains that when there is actual parental alienation, the non-justifiable rejection of a parent, all the fact-patterns read like text-book definitions only varying in degree from mild to severe. Despite an investigation by Child Protective Service, a Guardian Ad Litem and several "highly qualified" psychiatrists that tested the parties and investigated this case, the failure

on all parties to fully understand parental alienation allowed Daniel to spiral. Many professionals crept up to the line calling Bella's actions along the way as *alienating in nature* but failed to identify that her failure resulted in her son's declining mental health. Had the professionals considered that before June 2019, Daniel was a bright A and B student in his parochial school (where church attendance was expected and encouraged), had many friends and an innate respect for adults, his new-found attitude toward his father was highly out-of-character. While listening to the "complaints" of the child are extremely important, they must be considered against appropriate developmental stages and simply "make sense." To go from weekly parenting time, a typical teen with a close and loving relationship with a parent to a complete rejection on the premise that "sometime in the history of the relationship between father and son, there were *normal parenting grievances* (i.e., father requiring the child do chores around the house, attend church, donating gifts to the needy against the "desire" of the child, etc.) somehow justify the rejection follows the pattern often seen and litigated in our courts. Children's valid complaints are important to address. While the standard is not perfect parenting, certain deference should be given to parents and children. The alternative to parental deference is that any parenting act that a child objects to (in real time or years later) can be legitimized by the court to justify following the Court's orders. The context of the child's complaints must resonate with the behaviors of the child. It is when the child over-exaggerates his disdain to rise to the level of a complete rejection that must be evaluated in each case. In my case, Daniel continues to be alienated from Ronald under the guise of the Court "not forcing" a now 15 year old to go for parenting time without looking at the actions that justify this rejection or not. Had one professional fully understood parental alienation and fully looked at the *baseline relationship between Daniel and Ronald*, it would have been very clear that the rejection of Ronald by Daniel was unjustified and in fact encouraged by Bella implicitly or outright.

In the case of Ronald and Daniel, it has taken many professionals months and months to identify that the discord between the father and son does not "make sense" without the support of the other parent – that is parental alienation. Bella, more concerned about "winning" her motion for school designation where she failed to step in and adequately report to the professionals on the case that Daniel's mental health was deteriorating. And her counsel, to his credit, strongly advocating only for the position espoused by his client: searching for the "win" and failing to ask "why" when analyzing the behaviors of the child perpetuating the challenge we have when courts are asked to consider mental health causes. Joshi's book considers that this current approach preserves the status quo and fails to identify how to remedy this serious mental health condition created in children.

To address parental alienation appropriately it takes the trifecta of the awareness of the mental health professionals, lawyers that see this pattern in cases and most importantly the courts asking “what happened to cause the rejection and does it make sense?” Joshi’s book is a benchbook for every family law practitioner and professional that sees a non-justified rejection of a parent. Identifying the problem and answering how to address it in our non-mental health framework is the true importance of Joshi’s book that will hopefully direct future generations from continuing the negative effect on children. Simply becoming more aware of the severe detrimental effects parental alienation has on children should help all family law practitioners to take heed of the symptoms and remedy the situation. Educating ourselves on the difference between alienating behaviors and the mental health condition that comes from the sustained campaign of alienation is necessary for the legal system to identify and address this mental health condition in children. Only after properly understanding the cause and effect of parental alienation can we properly address this in our court systems. Joshi’s book, *Litigating Parental Alienation*, written by a lawyer for lawyers, provides a map for how to address this challenge in the courts and among other lawyers who fail to consider or fully understand the implications on children’s mental health.

Joshi’s book provides attorneys with not only an explanation of what parental alienation is but how easy it is to overlook under our reactive system of assessing best interest in children that is often parent-focused and not on the behaviors of the child. Once understanding the science behind parental alienation, how to manage the case is of paramount importance. Courts need to assume that their orders for parenting time will be enforced as well as attorneys needing to argue for such strict enforcement. Once there is evidence of parental alienation, Joshi’s book provides a road map for how to litigate such a case – arguing for *reunification therapy* (pg. 61) or the most severe cases an intensive treatment program for the target parent and the child – most importantly removing the child from the alienating parent that requires fortified arguments for most courts to consider such an argument. (Pg. 68). Arguments backed by science, case law and common sense are discussed and explained to the attorney practitioner or the jurist involved in such a case. What is required, however, is courage and bold action to save these kids from destruction.

Joshi’s well-researched book provides multiple examples of how parents have alienated their child against their former co-parent – sometimes intentionally or systematically and often times not but a more subtle campaign- and how various courts around the country have addressed this issue with multiple jurisdictions providing a template and examples for a practitioner to draw from. Examples of what behaviors an alienating parent does to sever the relationship between the child and the targeted parent will resonate as any family law practitioner has seen some of these behaviors. However, understanding what is

happening with your client’s child is one thing – being able to show the child’s problem to the court backed by evidence that will survive the highest critique and standards is another thing. Chapter 4 of Joshi’s book marries the theory of understanding parental alienation to *what to do about it* in court. Understanding the role of the GAL in an alienation case is paramount to a successful approach. Often GALs do not scratch the surface of understanding what is going on with the child in their case to see if his/her behaviors are justified. In Chapter 5 Joshi explains the difference between the need for a GAL and an LGAL and their different roles and duties. Both professionals, however, need to push beyond the “client centered” models (the “client” being the child) and consider the vulnerabilities of children whom by definition are not vested with the ability to make their own decisions. This is even more imperative in cases of alienation. (Pg 123).

Joshi’s book takes a huge step toward providing clarity on the misinformation surrounding parental alienation and refocusing this problem on science and the legitimacy that parental alienation does show up in DSM-5 as a mental disorder if not by its own classification but understanding that there are three diagnoses that can be used in classifying cases of parental alienation: child affected by parental relationship distress; parent-child relational problems; and child psychological abuse (Chapter 6).

In family law cases we see domestic violence. Those practitioners and jurists that truly understand the cause, effect and syndrome of Domestic Violence will find parallels in studying the syndrome of parental alienation (Chapter 7). So too with understanding, parental alienation will be classified and considered as abuse.

Joshi ends his book with practical tips for handling a parental alienation case. Chapter 9 is the jewel of this “benchbook” in understanding *what to do*. Joshi cites the resources, the law and maps out a plan on how to best advocate for a target parent or understanding the dynamics of a case involving the mental disorder of parental alienation. His practical advice raises the bar on how to practice better and more purposefully, hopefully yielding happier clients but more importantly healthier children. As Michigan Supreme Court Chief Justice Bridget Mary McCormack writes in the forward, the work of understanding the harm parental alienation has on parents and children alike takes the village of family law practitioners – attorneys and judges—to take the time to understand and to have the heart to make a difference.

About the Author

Staci Giske graduated from University of Detroit Mercy School of Law in 1999 following her attendance and graduation from James Madison at Michigan State University. After opening her own practice in 2002, she has concentrated her practice to the area of Family Law in the Metro-Detroit area.