

Case law review- Alienating behaviours

[S \(Parental Alienation: Cult\), Re - Find case law \(nationalarchives.gov.uk\)](#)

29 April 2020

Court of Appeal provides a summary of law in respect of parental alienation

In this case, the Court of Appeal considered an appeal against a first instance decision that a child should remain living with her mother despite findings that the mother was involved in a cult (Universal Medicine) and that the child was becoming alienated from the father. Much of the appeal judgment addresses what the Court of Appeal found to be a flawed balance of risks by the first instance judge, including risks directly arising from the mother's involvement with Universal Medicine, but paragraphs 7-13 set out the law in respect of parental alienation the key points of which are as follows:

- *"For working purposes, the Cafcass definition of alienation is sufficient: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent." To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive."* [paragraph 8 of the judgment]
- Paragraph 9 of the judgment gives examples of alienating conduct.
- Where alienation is found to exist, there is a 'spectrum of severity' and the court's remedy will depend on an assessment of all aspects of the child's welfare. A change in the child's main home is a "highly significant" step to take, but is not to be regarded as a "last resort" – *"the judge must consider all the circumstances and choose the best welfare solution"*.
- Cases involving severe alienation are highly demanding of the court, which must take a *"medium to long term view and not accord excessive weight to short-term problems"* that may be inherent in any intervention or order it identifies as potentially indicated.
- *"In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it."* [paragraph 13 of judgment]

The Court allowed the father's appeal, noting that absent a *"wholesale transformation in the mother's position"* the Judges foresee a court at a further hearing finding it necessary to transfer the child's care to the father.

Case law review- Alienating behaviours

MFS (Appeal: Transfer of Primary Care) [2019] EWHC 768 (Fam)

29 March 2019

and

Re: L (A Child) [2019] EWHC 867 (Fam)

08 April 2019

Two appeals where a decision to transfer residence of child is upheld, and guidance given in respect of approach in cases where there is parental alienation

In both of these cases, the appellate Judges uphold the lower court's decision for a child to move from one parent's primary care to the other parent's primary care due to concerns about parental alienation.

Drawing from both Judgments, the consensus is that the approach in these cases should include the following:

- A factual basis should be established particularly in relation to the behaviour of the primary carer and what, if any, harm (generally emotional) this behaviour has on the child;
- The primary carer must be given a chance to acknowledge and/or understand what went wrong and make changes to their attitude;
- There is a step away from previous terms describing the use of a change of primary carer as a 'last resort'. The President in Re: L emphasises that *"The test is, and must always be, based on a comprehensive analysis of the child's welfare and a determination of where the welfare balance points in terms of outcome."*;
- The President also drew a comparison between public law and private law cases stating that in cases where the choice is between care by one parent and care by another parent it might be anticipated that the *"threshold triggering a change of residence would, if anything, be lower than that justifying the permanent removal of a child from a family into foster care"*.

Case law review- Alienating behaviours

Re C ('Parental Alienation'; Instruction of Expert)

21 February 2023

Guidance on use of experts in proceedings and confirmation that the decision of whether a parent has alienated a child is a matter of fact for the court, not a diagnosis for a clinical expert

In this case the President rejected an appeal against the decision of a court not to re-open Findings of Fact; an application originally launched on the grounds that the jointly instructed expert in the proceedings was not qualified to give advice to the court. The Association of Clinical Psychologists (ACP) intervened and made detailed submissions to the court about their view that any psychologist should be registered or chartered. The case involved findings that the mother had alienated the children from their father.

Following a breakdown in contact arrangements between the children and their father the court authorised the instruction of an expert to consider the reason for the breakdown. Following findings of alienation, the court made an order that the children live with father. The mother applied to the same court to re-open the findings in light of her concerns about the expert and their qualifications. The application was refused by the judge and the mother sought to appeal that decision. Permission to appeal was given, *"not because the appeal had a real prospect of success but because it was in the public interest for the court to consider the instruction of unregulated psychologists as experts in the Family Court, in general"*.

The judgment does not address the issue of alienation itself in any detail, but the President encourages acceptance of the submission of the ACP that:

"Much like an allegation of domestic abuse; the decision about whether a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact."

The focus of the judgment is on the issue of instruction of unregulated experts and the President took the opportunity *"to draw the recent guidance together and to flag up the key points in clear terms"*. without suggesting that anything in the judgment was intended to amend existing guidance.

Paragraphs 87 – 102 of the judgment set out his views in full but the summary is as follows:

- There is no definition of expert in Family Proceedings (with certain statutory exceptions including officers of Cafcass).
- Expert evidence is only permitted where it is necessary for a decision to be made;
- The opinion of an expert witness is only admissible on matters in which they are qualified – there is no definition of qualified, but the question of whether an expert is qualified is a matter for the court to decide.
- Part 25 of the Family Procedure Rules sets out relevant duties as well as identifying the relevant statutory regulators.
- Certain categories of psychologist are protected titles, the generic label is not protected and a report from an unregistered person can be called a psychological report.
- The court should have its eyes wide open to the need for clarity over those who present as a psychologist, but may be unregistered.
- A psychologist's CV should highlight whether they are Health and Care Professions Council (HCPC) registered. It is incumbent on an unregistered psychologist to assist the court by providing a short and clear statement of their expertise.

Case law review- Alienating behaviours

- It is not for the court to prohibit the instruction of any unregulated psychologist, recognising the flexibility that the current guidance allows. However, where the expert is unregistered, it is for the court to indicate in a short judgment why it is, nevertheless, appropriate to instruct them.
- It is important for the court to identify and determine which discipline is required and not conflate psychiatrist with psychologist.
- A template CV could be established to clarify whether the proposed expert is registered or chartered and allow the court to identify whether the proposed individual has the necessary expertise.

[RH \(Parental Alienation\) - Find case law \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk)

3 October 2019

A case providing an example of a successful change of residence in context of parental alienation

In this case Mr Justice Keehan came to consider a father's application for change of residence. Family court proceedings had been ongoing almost continuously for ten years. Previously successful contact between the child and father ceased suddenly in 2018, just after the father sent the mother an ill-tempered email, the content of which the court found had been shared by the mother with the child.

The court received expert evidence in the form of a report and oral evidence from chartered clinical psychologist Janine Braier, and a report from a National Youth Advocacy Service (NYAS) caseworker and s37 report from a local authority social worker.

Keehan J granted the father's application for a change of residence, finding that the mother had alienated the child from the father, that the continuing absence of the father in the child's life would cause the child ongoing harm, and that the prospect of the child having a meaningful relationship with the father if he remained in the mother's care were poor at best. The Judge acknowledged that the child may face potential traumas and harm in the short-term arising from the transfer of residence, but considered that the comprehensive support plan proposed for the transitional arrangements would ensure that the transition was successful. Long term welfare implications therefore justified the existence of short-term risks.

The Judge noted that the transition had been a success, at the time of the written judgment being handed down two weeks after the decision had been made.

The judgment notes the following:

- The Judge noted the remarks of the President in [Re L \(a Child\)](#) that there is a danger in viewing a proposed change of residence as an order of 'last resort' and that the court should make whatever order was required to secure the child's welfare considering all relevant circumstances.
- The Judge found the local authority's s37 report "woefully inadequate", the social worker not having any previous experience in parental alienation cases and having given no regard to the report of Dr Braier. No weight could be placed on the social worker's conclusions.

Case law review- Alienating behaviours

Warwickshire County Council v The Mother & Ors [2022] EWHC 2146

8 August 2022

A case providing an example of an unsuccessful change of residence in context of parental alienation

In this case Mrs Justice Leiven considered an application for a care order in respect of two sisters aged 10 and 12. The children were initially subject of private law proceedings – following separation of the parents in 2016 contact between the children and father gradually deteriorated and then ceased. The father alleged, and a court found, that this was because the mother was alienating the children from him. In 2022 following a Fact-Finding hearing a judge directed that the children should move to live with their father under a 90 day ‘Reunification plan’. This went extremely poorly, to the extent that the children had to be removed with police involvement into foster care. The LA subsequently issued public law proceedings focusing on concerns about the mother’s alienating conduct.

By the point of Leiven J’s judgment, the parties agreed that neither child should live with the father and the Judge took the view that some of the mother’s actions had been judged against “*unfair and unrealistic standards*” and that the father had “*lost proper insight of the impact of his decisions and actions upon the children*”.

The Judge quoted the Court of Appeal’s summary of applicable law/principles in respect of parental alienation in *Re S*, but also noted at paragraphs 23-25:

“There are a number of cases concerning alleged “parental alienation”. This is a highly fact specific scenario in which labels and generalisations are not in my view helpful. In a very large number of cases that appear before the Family Courts, particularly concerning private law, the parents have some degree of animosity towards each other and whether consciously or unconsciously may influence the views of the children about the other parent. It must however be remembered that children are autonomous human beings who have their own feelings and their own perceptions. That becomes particularly true as they become older and begin to wish to assert their own personalities separately from parental control.

It needs to be accepted, and carefully considered, that the “muscularity” of Court intervention suggested at [13] of Re S may be in considerable tension with the wishes and feelings of the children. As the children get older, and more weight would be accorded to their wishes and feelings, the Court has to consider very carefully the degree to which a very significant interference in their Article 8 European Convention on Human Rights (“EHCR”) rights against their wishes, is justified and proportionate.

In my view the Court should also bear closely in mind in these difficult cases, that there may be no “good” solution. The Court cannot rewrite the past and only has a limited influence on the future. It is often not possible to cure the wrongs that have happened, and it is particularly hard to change a mindset or narrative that has been firmly adopted. It may be, although I am only considering the facts of this particular case, that these comments are particularly apt in respect of slightly older children.”

Case law review- Alienating behaviours

CDM v CM [2003] 2 FLR 636

14 September 2019

A case in which the children were failed by the Family Justice System and ten factors identified that had contributed to the difficulties

This case had gone on for eight years and involved 36 court hearings and ten experts. The court had transferred the live with arrangements for the children to their father, but the children ran away and returned to their mother's care. The case concluded with the father withdrawing his private law application and permission being given for the public proceedings to be withdrawn. The judge considered that it was in the public interest to see an example of how severely wrong things can go and how complex cases are, where one parent alienates children from the other parent. It is also an example of how sensitive the issues are when an attempt is made to transfer the living arrangements of children from one residential parent to the other.

In his judgement the judge identified ten factors that had contributed to the difficulties in the case:

1. A failure to identify, at an early stage, the key issue in the case: the alienation of the children from their father by the mother.
2. Significant delay within the proceedings.
3. At the early stage of the private law proceedings the case was adjourned repeatedly for further short reviews. There were eight orders for review hearings in the first two years of the private law proceedings alone.
4. At no point in the first six years of proceedings had the court undertaken a full hearing on evidence to determine factual disputes between the parents. There had needed to be a definitive judgment about the difficulties in the family so that future work with the family could be based on the facts in the judgment.
5. Indirect contact in cases involving parental alienation has "*obvious limitations*" and here letters were being sent into a home environment where the father was demonised – it was meaningless to attempt it.
6. The proceedings saw a vast number of professionals and the children eventually reached a stage where they said "no more".
7. A particular difficulty in this case was the absence, at times, of collaborative working by professionals. A particular example of that occurred when an attempt was made to move the children to the father's care. The professionals involved with the court process and the schools had not had sufficient dialogue before that move was attempted. If professional people show their disagreements, as happened in this case on the day of transfer, it undermines the process and allows cherry-picking by family members of what they want to hear.
8. Early intervention is essential in a case such as this. It took years (probably five) to identify the extent of the emotional and psychological issues of the mother. By that stage it was too late for there to be any effective psychotherapeutic, or other, intervention in relation to her, the children's views having already become so entrenched.

Case law review- Alienating behaviours

9. There is an obvious difficulty about how to approach the expressed wishes and feelings of children who are living in an alienating environment. If children who have been alienated are asked whether they wish to have a relationship with the non-resident parent there is a likelihood that the alienation they have experienced will lead them to say 'no'. Therefore, in this type of case, the approach to the wishes and feelings of children has to be approached with considerable care and professionalism. To respond simply on the basis of what children say in this type of situation is manifestly superficial and naïve. The children's expressed wishes that they should not see their father had gone on for many years. The lack of an effective and early enquiry into what was happening within the family meant that there was no effective intervention. In turn, this led to the children's expressed wishes being reinforced in their minds. It has also resulted in the mother being able to say "we should listen to the children", rather than addressing the underlying difficulties.
10. It was unfortunate that the joinder of the children to the second set of proceedings was so delayed. Any attempt to conduct these proceedings without the joinder of the children would have been even more complex and unsatisfactory.

CDM v CM [2003] 2 FLR 636

15 May 2003

Non-exhaustive checklist of possible considerations as to when a s37 report might be directed/an ICO made in parental alienation cases

In this case Mr Justice Wall made an order under s37 of the Children Act inviting it to consider initiating care proceedings to enable an assessment of the children's relationship with their parents, with the assessment taking place with the children in local authority foster care under an ICO. Away from their primary carer, the children rapidly resumed their relationship with their non-resident parent. Wall J's judgment provides guidance at paragraph 11 in the form of a non-exhaustive checklist of considerations when a court is thinking of making a s37 direction in proceedings relating to parental alienation including the following:

- The court must be satisfied that the legal criteria for directing a s37 report are met.
- The action contemplated (e.g. removal of children for purposes of assessment or change of residence) must be in the children's best interests, and the consequences of removal must have been thought through. If an ICO is to be made as part of the s37 direction, there should be a coherent care plan of which temporary or permanent removal from the resident parent is an integral part.
- There must have been a Finding of Fact hearing determining contested facts where indicated.
- The reason for making the s37 direction should be recorded and communicated to the local authority.
- The children should be separately represented.
- Preferably the s37 report should be supported by professional or expert advice.
- Judicial continuity is essential.
- Undue delay must be avoided, and the case may need to be kept under review.

Case law review- Alienating behaviours

Re S [2020] EWHC 217 (Fam) – Family Law Week

6 February 2020

Observations from a Judge on local authority involvement in complex private law proceedings

In this judgment, Mrs Justice Knowles considered threshold findings in support of a local authority's application for care orders in respect of siblings aged 11 and 4 (the siblings had the same mother and different fathers). The care proceedings arose following private law proceedings in which the mother made unsubstantiated and untrue allegations of sexual abuse of the children by their fathers.

At paragraphs 61-71 of her Judgment, Knowles J provided some observations about social work practice in the case including the following:

- *“... local authorities may be ill equipped to grapple with complex private law proceedings where there are allegations of abuse made by one parent against the other. Though it is trite to observe that social workers are well aware that children can be harmed in such situations, translating that knowledge into effective social work practice is rather more difficult. Furthermore, an organisational resistance to sustained involvement in what is seen as essentially a dispute between separated parents may also be in play in circumstances where local authorities are hard pressed to manage their child protection workload.”*
- *Complex private law disputes “require a high degree of professional skill from social workers and their managers and, in my view, should not be allocated to trainee or inexperienced social workers. These can be some of the most frustrating and difficult cases to work because of the high levels of entrenched parental conflict into which children are inevitably drawn. Better training about the complex issues these cases demonstrate, such as repeated but unsubstantiated allegations of abuse, seems to me to be urgently needed both for local authority social workers and their managers”.*

Case law review- Alienating behaviours

Re GB (Parental Alienation: Factual Findings) [2024]

28 March 2024

A case in which the court declined to make finding in respect of alleged alienating behaviour, and that the children's reluctance to having a relationship with the father was a result of their own experience of his abusive behaviour

This judgment arises from a Fact-Finding hearing held by His Honour Judge Middleton-Roy in proceedings relating to two children aged 12 and 9. The children lived with their mother and at the point of the judgment were not spending time with their father, which was “consistent with their expressed wish”. The father asserted that the mother had “negatively influenced” the children against him and that she had made false allegations and lied to the court. The mother asserted that the father had subjected her and the children to domestic abuse – that he was the perpetrator of a “pattern of extensive, insidious coercive controlling behaviour towards her and the children”. Alongside other specific allegations she asserted that the father used “[court] proceedings to emotionally torment the children and me”.

The judgment records a litigation history within which opportunities had previously been missed to address at an early stage the full extent of the disputed allegations between the parties, and which was marked by a lack of judicial continuity. An order had also been made for instruction of a psychologist to undertake a ‘global psychological assessment’ of the parents and children, inappropriately inviting the expert to determine the factual matrix of the parents’ disputed allegations. That order was successfully appealed and discharged ahead of the Fact-Finding hearing.

The Judge found almost all the mother’s specific allegations against the father proved.

The Judge considered that there was significant weight in submissions made on behalf of the mother that the father had sought through his evidence to “*deflect or deny, to attack the mother and to seek to reverse the role of victim and offender*” as a way to avoid taking responsibility for his own actions and to shift blame onto the mother. He identifies as one example of this an occasion [judgment at paragraphs 85-91] where the father sought to manipulate the police into believing that the older child’s distress in connection to one incident at home was a result of the child “*acting*” and being encouraged by the mother to act in a certain way in the context of family court proceedings, when in fact the child’s distress was a result of the father’s own “*patently emotionally abusive*” behaviour. The father’s attempts to impose a self-serving narrative on the child that she was “acting” was in itself “*further evidence of his harmful behaviour towards her*”.

In finding that the father had not proved any of his allegations against the mother, including his overarching allegation that she had influenced the children against him, the Judge noted that “*Both children are now refusing a relationship with him for reasons that are justifiable. The children have both aligned themselves fully with their mother, with whom they are living, by way of a normal and justifiable response to the father’s negative attitudes, communications and beliefs that have sought to denigrate, demean, vilify, malign, ridicule and dismiss the mother, persistently seeking to convey false beliefs about her.... The Court must conclude that the non-resident parent (the father) has engaged in behaviours that have directly or indirectly impacted the children, leading to the children’s refusal, resistance or reluctance to engage in a relationship with him*”.