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Courts can rescue kids from an alienating parent

By Sarah Hampson
From Thursday's Globe and Mail

The tide of opinion is turning against those who alienate their children from the other parent. Courts are willing to show tough love, even though they have no proof their intervention will work in the long run

Judges in Canada are now omniscient parents, willing to practice tough love, even though the plan they rely on to help the children has no longitudinal studies to prove that it works.

In cases of parental alienation, judges are prepared to step in and decide what is right for the children, against their wishes and those of the custodial parent, with whom they may have lived for many years.

That was the upshot of the case reported last week in which an Ontario judge stripped a mother, a 42-year-old chiropodist known in court documents as K.D., of the custody of her three girls, aged 9, 11 and 14.

The news gave hope to many divorced parents, who often give up in the face of their ex-spouses' campaigns to excommunicate them from the lives of their children.

It will still be a long and expensive fight. The father, a vascular surgeon identified as A.L., waged his legal battle for 10 years, and the trial alone would have cost about \$250,000 plus \$100,000 in expenses, legal experts say.

But the decision points to the severe consequences for the alienating parent.

"There is a greater understanding that the courts really hold the power to rescue the children from the situation of being caught in the middle," says Richard Warshak, a clinical psychologist in Dallas, Tex., and author of *Divorce Poison: Protecting the Parent-Child Bond from a Vindictive Ex*. A leading authority on parental alienation, Dr. Warshak runs a family workshop to help alienated parents reunite with their children. It was cited in the case last week as the resource to be used for helping the children and their warring parents.

"The Canadian courts are in the forefront," Dr. Warshak says.

Toxic exchanges between divorced parents are not uncommon. But the term parental alienation is used when the custodial parent systematically poisons the minds of the children against the other parent.

The language used in the courts highlights how damaging the problem is now considered to be. In the recent judgment, Madam Justice Faye McWatt wrote that the mother's "unrelenting behaviour toward the children is tantamount to emotional abuse."

A clinical child psychologist, Barbara Fidler, who had been involved with the family for several years, testified at the trial.

The judge also severely limited the mother's access to the children. Ordered not to harass them or go within 300 metres of them, she can see them only in the context of counselling. The father was granted the power to confiscate the girls' cellphones and any other communication devices to prevent their mother's interference. He also has the right to whisk them out of the province and the country to get counselling.

The victory comes after much frustration. The courts want to give parents several chances to do the right thing. In the case between A.L. and K.D., who was described in court documents as lacking in credibility, parenting plans and visitation rights had been mandated over the years - with poor results.

Aside from waiting for the slow wheels of justice to turn, parents must also allow child psychologists time to properly assess the situation.

"There are some cases of what we call realistic estrangement," Dr. Fidler explains. "The alienated parent may be abusive, and the child has good reason for not wanting to visit. And then there is true pathological alienation, in which children are refusing contact without good reason. ... It takes time to figure out what kind [of estrangement] it is and how severe it is."

Removal of the children from the custodial home is "the last resort," explains Harold Niman, lead lawyer for the 56-year-old father. Though this is not the first case - judges removed children from the custodial home, citing parental alienation, in a case in Ontario in 1989 and in another in Quebec in 1991 - imposing custody reversal as a way to address parental alienation signals a shift in thinking.

"There was a period of time when people thought that if you did anything to sever that attachment between the child and the favoured parent - that is, the allegedly toxic parent - that could cause more harm than any good," notes Jeffery Wilson, a family lawyer specializing in child advocacy, and founding partner of Wilson Christen. In fact, in this latest case, the lawyer who represented the children, Elizabeth McCarthy, contravened the wishes expressed by her clients, all of whom did not want to live with their father. Instead, Ms. McCarthy, who declined an interview request, acted on the basis of the children's best interests. It was argued that the children, even the teen, were unable to think clearly about what they wanted because they had been brainwashed by their mother.

"I give little to no weight" to their views and preferences, the judge wrote.

"The pendulum has shifted slightly where the more courageous judges are making these decisions [because] the courts have seen that children can adjust to these changes," Dr. Warshak says.

"In one of the most severe cases I handled ... the child, now 18, was violent and threatened violence against his mother if the judge made him live with her. He now continues to express gratitude that the legal system set firm limits. He says that what he was saying during the trial were not his true feelings and that he had no choice but to say them."

Even so, there are no longitudinal studies about whether radical intervention works, several experts acknowledged. Dr. Warshak, who stands to profit from this court decision (and one in Ontario in 2007 in which his program was also cited), explains that the workshop helps children to "think critically. It is wrong to call it deprogramming."

The severely restricted access of the alienating parent is usually temporary, as the children only benefit from the program when they are free of that parent's influence. The goal is for the children to have a relationship with both parents eventually, say child psychologists familiar with Dr. Warshak's work.

Partly, the justification for custody reversal comes from studies that look at what happens if nothing is done.

"What's new is looking specifically at children who have rejected a parent and seeing what happens when they grow up," Dr. Warshak explains. "They are angry at the parent that they had aligned with for putting them in that position and they feel terribly guilty at mistreating the other parent."

Dr. Warshak's miracle cure seems to have found considerable favour in Canada. The courts are willing to take a risk that in the long run their intervention will work. Like concerned parents everywhere, who want to do the right thing, they can only hope for the best.

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