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# The Challenge of Parental Alienation

By James M. Lynch | March 07, 2017

Family Law Divorce Child Custody

*Attorney James M. Lynch considers the problem of parental alienation in child custody cases inside and outside of Massachusetts.*



Few areas of family law present more troubling concerns than parental alienation. Even the term itself is an area of controversy. In its most basic form, parental alienation occurs when a parent bad-mouths or undermines another parent by making inappropriate statements directly to a child. However, with the advent of the father's rights movement, and the more controversial claims connected to Parental Alienation Syndrome – which places the focus on the child's behavior, as much or more than the offending parent – a reliable definition of what constitutes parental alienation has become difficult to grasp in

recent years.

A recent unpublished opinion of the Appeals Court, [Fiore v. Deruosi](#) (2015), illustrates the troublesome nature of parental alienation case. Fiore arose from the aftermath of a same-sex relationship in which each party served as mother to a single child, a son. The recitation of facts provided by the Appeals Court is frustratingly thin. The Court's indirect reference to the statute affecting [unmarried parents – Chapter 209C](#) – suggests the parties were never married. The case was before the probate and family court on a [Complaint for Modification](#), suggesting that the parties were returning to court after previously entering a parenting plan for the child.

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## Fiore: a Case of Parental Alienation?

In Fiore, the Appeals Court does not identify the son’s age, but references a series of incidents occurring between the boy and the non-custodial mother, Derousi, that occurred between 2010 and 2013, which resulted in the boy adamantly refusing to spend time with Derousi. The timeline suggests the boy was at least eight years old by the time the decision was rendered, and perhaps quite older, given the boy’s apparent objection to Derousi’s presence in the bathroom while he was bathing.

The Court described the alienating behavior of the custodial mother, Fiore, [as follows](#):

The judge found that there had been a substantial change in circumstances due to the fact that, between July, 2013, and February, 2014, DeRuosi was deprived of parenting time with the child, aside from “a handful of reunification therapy sessions.” The judge concluded that this estrangement occurred because Fiore had engaged in a pattern of alienation. Fiore “consistently and repeatedly excluded DeRuosi from [the child’s] life,” including failing to discuss medical and educational issues with DeRuosi, and refusing to list DeRuosi as the child’s second parent when dealing with medical, educational, and child care providers. Such behavior amounts to Fiore having used “her final decision making authority as a tool to marginalize DeRuosi as a parent.” The judge paid particular attention to the fact that Fiore and her partner had exposed the child to inappropriate conversations critical of DeRuosi. The judge found that these conversations had the effect of causing the child stress due to the conflict between the negative portrayal of DeRuosi by Fiore, and “the positive relationship [the child] enjoys with DeRuosi.”

Fiore contends that incidents that occurred in 2010 and 2013 between the child and DeRuosi were what caused the relationship to become strained. The judge found that, in 2010, DeRuosi became angry with the child and

grabbed his shirt. The judge also found that a 51A report filed in June, 2013, was unsupported for allegations of sexual abuse, but was supported for emotional maltreatment, due to DeRuosi remaining in the bathroom while the child took a bath. However, the period in which the judge found that the relationship between the child and DeRuosi deteriorated was after the second incident occurred. Both parties agree that the relationship was positive from 2010 to July, 2013. Ultimately, the judge acted well within her discretion when she decided that parental alienation by Fiore, not the incidents with DeRuosi, were the primary cause of the strain in the relationship, and her decision rested on ample factual support. Absent demonstrated abuse of discretion, we will not disturb the judge's decision.

Further, the Court found that Fiore [violated a court order](#) by "failing to ensure that the child answer his phone to speak with DeRuosi on numerous occasions, and for refusing to allow DeRuosi to exercise her parenting time on three dates." The Appeals Court held that the probate court judge "permissibly found Fiore in contempt when, in defiance of the court's orders, she failed to insist that the child answer DeRuosi's telephone calls and failed to facilitate the required visitation."

Based on the facts described above, it seems clear that Fiore engaged in troubling behavior, particularly inasmuch as she "and her partner had exposed the child to inappropriate conversations critical of DeRuosi." However, like many cases involving allegations of alienation, there are ambiguities. For instance, in a footnote the Appeals Court added:

We note that, despite the judge's findings of a concerted effort by Fiore to alienate the child from DeRuosi, the child by all accounts appears to be developing well. In that context, the judge's order appears designed to further the child's best interests by removing that negative strain from the child's environment and allowing him to enjoy a healthy relationship with both parents.

The opinion spends little time characterizing the "incidents" that occurred between DeRuosi and the son that led to the child refusing to see DeRuosi. However, the fact that the [Department of Children and Families](#) entered a [supporting finding of neglect](#) against DeRousi for the 2013 incident suggests that perhaps Fiore's conduct alone was not responsible for the fracturing of DeRuosi's relationship with the son. The Appeals Court seems to acknowledge this ambiguity when noting, "the judge acted well within her discretion when she decided that parental alienation by Fiore, not the incidents with DeRuosi, were the primary cause of the strain in the relationship ..."

Adding to the thinness of the record is that the Appeals Court did not indicate how and to what extent the probate and family court judge, [Hon. Theresa A. Bisenius](#) of the Essex County Probate and Family Court, modified the prior custody order in light of Fiore's alienating behavior. However, Appeals Court's footnote indicates that the judge's order sought to "remov[e the] negative strain from the child's environment [by] allowing him to enjoy a healthy relationship with both parents." This suggests that Judge Bisenius may have modified the parenting plan to provide additional parenting time for DeRousi.

## Parental Rights vs. Best Interest of the Child

Parental alienation cases, like this one, in which a "child by all accounts appears to be developing well", despite the alleged alienation, are particularly thorny. The legal standard for custody cases in Massachusetts is based on the "best interest of the child". Separately, there are the rights of each parent. As articulated in [Youman v. Ramos \(1999\)](#), there is often a tension between the rights of individual parents and the best interest of a child:

[A] parent's interest in his relationship with his child is not absolute, because the "overriding principle" in determining the right of a parent to custody "must be the best interest of the child." ... "Although parents have a fundamental, constitutionally protected interest in their relationships with their children, attainment of the children's best interest may involve some limitation on the liberties of one or the other of the parents." ... A parent's "desire for and right to `the companionship, care, custody, and management of his or her children' is an important interest that `undeniably warrants deference and, absent a powerful countervailing interest, protection.'" [Internal citations omitted.]

In cases involving two legal parents, the rights of the child are supposed to trump those of either parent. However, we know in the context of guardianship cases – in which non-parents are seeking legal rights to children – that a parent's fundamental rights are given great weight. For example, in [Blixt v. Blixt \(2002\)](#), a leading case on [grandparent visitation](#), the Supreme Judicial Court interpreted the best interest of the child standard as follows:

To accord with due process, an evaluation of the best interests of the child under the statute requires that a parental decision concerning grandparent visitation be given presumptive validity. .... To obtain visitation, the grandparents must rebut the presumption. The burden of proof will lie with them to establish, by a preponderance of the credible evidence, that a decision by the judge to deny visitation is not in the best interests of the child. More specifically, to succeed, the grandparents must allege and prove

that the failure to grant visitation will cause the child significant harm by adversely affecting the child's health, safety, or welfare.

Massachusetts courts have struggled to balance the rights of children versus parents over the years, and a case like [Fiore](#) illustrates the dilemma. In [Fiore](#), we see a child who is “developing well” under the care of a custodial parent who is alleged to bad mouth the non-custodial parent. Moreover, [Fiore](#) included evidence that the child did not desire to see or speak to the non-custodial parent, against whom DCF supported a finding of emotional maltreatment following an incident involving the child and the non-custodial parent. One might easily imagine that a major disruption in the child's parenting time – due to the Court's order – could interrupt the child's positive development. Most parents might also recognize that a probate and family court judge's orders alone may not remove the “negative strain” that a child feels in his mind towards an estranged parent.

In [Fiore](#), we don't know what orders the judge entered to address [Fiore's](#) alienating behavior. We can speculate, however, that a hypothetical order that forces the son away from the perceived safety and stability he felt with [Fiore](#), and into the perceived insecurity he might feel with [DeRuosi](#), could negatively affect the child. On the contrary, such an order could also improve the child's mental state and self-esteem, over the long run, if [DeRuosi](#) plays a positive role in the son's life. There is often a degree of tension between [punishing a disobedient parent](#) for inappropriate conduct and determining what the trust best interest of a child is in a given case.

Clearly, a parent whose relationship with his or her child has been negatively impacted by alienation has a right to feel aggrieved. However, it does not always follow that forcing an increase in parenting time on behalf of the aggrieved parent will benefit the child. Nor is it always fair to assume alienation is behind a child's negative feelings towards a specific parent. In many cases, a parent-child relationship breaks down due to the unique interpersonal dynamics of that relationship, and not due to the influence of the other parent. All of these issues make cases involving allegations of parental alienation particularly difficult to navigate.



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# The Science of Alienation: the Positive Value of “Two Parents” vs. the Negative Impact of Parental Conflict

The Courts (along with common sense) have long recognized a list of negative behaviors that can be described as alienating, [such as](#):

- Allowing the child to talk negatively or disrespectfully about the other parent.
- Setting up tempting alternatives that would interfere with the other parent’s time with the child.
- Giving the child decision-making power about spending time with the other parent when no choice exists.
- Acting hurt and betrayed if the child shows any positive feelings towards the other parent.
- Using the child as a courier, messenger or spy.
- Asking the child to lie to the other parent or betray the parent’s trust in the child.
- Sharing the details of the divorce settlement with the child.
- Going without dinner and then tell the child the other parent didn’t give you enough money for everyone to eat dinner.
- Letting the other parent worry needlessly about the child.
- Infringing on the other parent’s time with excessive phone calls or scheduled activities.

There is little question that such behaviors undermine the strength of a child’s relationship with the other parent, and have a general negative impact on the child as a result. Moreover, in cases in which one parent is engaging in severe alienation, while the other parent strives to play a positive role, often result in [swift condemnation by a judge](#). On the other side of the spectrum, parents who engage in very subtle or effective forms of alienation – for example, cases in which children actively conceal alienation on behalf of a parent – are exceedingly difficult for courts to resolve. The vast majority of cases involving alleged alienation, however, involve high-conflict parents, who are unable to effectively communicate and co-parent for reasons that are entirely separate from the alienation.

High conflict cases that involve allegations of parental alienation are especially difficult for courts to resolve because they pit two competing bodies of science – each persuasive in their own right – against each other. On the one hand, there is [persuasive science](#) demonstrating that children who have positive and active relationships – including substantial parenting time – with both of their parents develop into healthier adolescents, teenagers and adults. This science is often referenced by victims of parental alienation, particularly in cases in which a child

refuses to spend time with the parent and reacts badly to the parent's presence. The argument, in such cases, is that the long-term impact of a child having a positive relationship with both parents outweighs the short-term trauma the child may experience from being forced to see the unwanted parent.

On the other hand, there is an equally deep and persuasive [body of science](#) demonstrating that children who are exposed to parental conflict – in the form of bickering, disputes over parenting time, and verbal and physical confrontations between parents – suffer greatly from the feelings of instability, guilt and fear they experience. It is this body of law, for example, that caused Massachusetts to require divorcing parents to take the state's [Parent Education Class](#). Similarly, it is this science that underpins the many rulings in which Massachusetts courts have held that shared custody is inappropriate for parents who lack the ability to cooperate or co-parent. These rulings are embodied in [Ch. 209C, s. 10](#), which provides the following for unmarried parents:

In awarding the parents joint custody, the court shall do so only if the parents have entered into an agreement pursuant to section eleven or the court finds that the parents have successfully exercised joint responsibility for the child prior to the commencement of proceedings pursuant to this chapter and have the ability to communicate and plan with each other concerning the child's best interests.

The same body of science that argues against exposing children to parental conflict also argues against creating unwarranted disruption and instability in a child's living arrangements when parents separate. This is likewise addressed in [Ch. 209C, s. 10](#), where it provides:

In awarding custody to one of the parents, the court shall, to the extent possible, preserve the relationship between the child and the primary caretaker parent. The court shall also consider where and with whom the child has resided within the six months immediately preceding proceedings pursuant to this chapter and whether one or both of the parents has established a personal and parental relationship with the child or has exercised parental responsibility in the best interests of the child.

The two bodies of law – i.e. the value of positive relationships with two parents vs. the negative impact of parental conflict – are often at odds in parental alienation cases. On the one hand, one or both parents may be engaging in conduct that could rightly be labeled as alienation, therefore undermining the child's ability to enjoy positive relationships with both parents. At the same time, the history of parental conflict is often so pervasive that a shared custody

arrangement – ordinarily the remedy for parental alienation – would simply result in more opportunities for the parents to engage in conflict that harms the child.

Indeed, looking at the known facts in [Fiore](#), we see all the hallmarks of a high-conflict relationship between parents. And while an order for shared physical custody may improve the child's relationship with the alienated parent, the child's exposure to greater interactions between the parents – and greater conflict – could fundamentally undermine the child's sense of wellness and stability.

## Parental Alienation Syndrome: a Controversial Theory

As noted above, the concept of [Parental Alienation Syndrome](#) is steeped in controversy. To its critics, Parental Alienation Syndrome (PAS) shifts the focus away from the parent's alienating behaviors, however, and places the focus on the child's reactions to the alienation. To its proponents, PAS illustrates the harm suffered by child victims of alienation, by formalizing the reactions of such children as symptoms of a kind of mental disorder.

The controversy surrounding PAS in custody cases is less about the psychiatric validity of PAS than it is about *evidence*. In short, proving that a parent has engaged in alienation generally requires some proof of specific conduct (or in this case, misconduct) by the accused parent. With PAS, however, critics complain that a psychiatrist determines that alienation is present based on symptoms such as depression, anxiety, fear of a parent, or allegations of sexual or physical abuse by the child against the parent. All of these symptoms, critics say, can also be attributed to non-alienating factors, such as a child's depression or anxiety over a divorce, actual sexual or physical abuse by a parent, or simple parenting deficiencies. (Indeed, where [4% of the American population](#) are apparently sociopaths, roughly [15% of children](#) are victims of sexual abuse, and [10% of the adult population](#) suffer from substance abuse, statistics suggest that millions of American children have good cause to fear or dislike one or both of their parents.)

In short, attorneys complain that symptoms of PAS can be attributed to many causes – including poor parenting by non-custodial parent. Perhaps more importantly, attorneys complain that PAS – which focuses on a child is acting, rather than the specific conduct of a parent – circumvents evidentiary rules by attributing a child's depression, anger, anxiety or other behavior to a parent, without independent evidence of the parent's actions. That said, in cases where the parent's alienating conduct can be clearly and independently proven, PAS can be a useful tool for demonstrating the negative impact of the behavior on the child's psyche.



## Parental Alienation Cases: a Thorny Challenge for Probate and Family Court Judges

Unlike criminal child abuse cases, in which children are frequently called upon to testify, Massachusetts probate and family court judges resolutely [refuse to allow direct testimony from children](#) in the *vast majority* of custody cases. The taboo against child testimony is understandable in many cases, but is often puzzling in cases in which the child is documented making out-of-court statements in which express fear or refuse to see another parents. Such children are already living in a kind of private hell – how else can one describe a small child who seriously fears or dislikes one or both parents? Instead of bringing such children to Court, taking their testimony, and getting down to the bottom of whether the child’s fear is genuine or the product of alienation, judges rely on surrogate investigators, such as Guardian ad Litem (GAL), to interview children at home. Most judges are quite good at assessing the credibility of witnesses. The abilities of GAL vary widely, however.

Whatever the method, there is little question that cases involving parental alienation pose extraordinary challenges for judges and attorneys. Proving alienation is often quite challenging. Disproving allegations of alienation – like disproving any negative fact – is often equally challenging. And even when alienation is detected, the most obvious remedy – a dramatic change in physical custody – would often pose serious risks to the mental health and well-being of the very child the court purports to protect. All of these factors make high-conflict custody cases among the most difficult legal proceedings that family law attorneys face.

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