
**IN THE FIFTH DISTRICT COURT OF APPEAL OF FLORIDA
CASE NO. 5D19-0473
L.T. CASE NO. 2013-DR-000505-O**

CHELSEA NELSON,
Appellant/Respondent,

v.

IAN G. CLARK,
Appellee/Petitioner.

**BRIEF OF AMICI CURIAE
THE LEADERSHIP COUNCIL FOR CHILD ABUSE AND
INTERPERSONAL VIOLENCE, AND CHILD USA
IN SUPPORT OF APPELLANT-RESPONDENT**

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INTEREST OF AMICI

Amicus Curiae The Leadership Council is a nonprofit organization whose membership includes many of the nation's most prominent legal and mental health leaders. Members of the Council are dedicated to the health, safety, and well-being of children and other vulnerable populations.

Amicus Curiae CHILD USA is a non-profit think tank that draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread problems involving child protection. Movants are particularly concerned with the trial court's reliance on (i) the scientifically flawed theory of parental alienation ("PA") and (ii) psychological speculation to reduce Appellant Nelson's (the "Mother") parenting rights.

Based on that strong interest, the *Amici* respectfully support the Mother's position in this appeal and join in requesting that the Court vacate the Amended Supplemental Final Judgment on Supplemental Petition to Modify Parental Responsibility, Timesharing, Child Support and Other Relief ("Modification Order") in its entirety.

Amici's Brief describes alienation theory's roots in Richard Gardner's discredited theory of Parental Alienation Syndrome ("PAS"), the absence of any scientific basis for its basic premises, and its gendered and harmful applications in

court, particularly where mothers or children raise abuse claims against a father in custody litigation.

SUMMARY OF THE ARGUMENT

The trial court relied on the scientifically flawed theory of parental alienation and psychological speculation in entering the Modification Order, which switched primary residential custody of the child from the Mother, who had primary residential custody from birth until this litigation, to the Father. The Modification Order also drastically reduced the Mother's time-sharing with her child from approximately 60% of the overnights to 34% of the overnights. R. 766, 776.

Amici support the Mother's appeal of the Modification Order both out of concern for the parties' young daughter, and because this case is emblematic of how the theory of parental alienation ("PA"), which developed from the now discredited "Parental Alienation Syndrome" ("PAS"), is used in family courts to the detriment of children and of parents (usually mothers) who seek to protect their children from emotional or physical harm. As here, alienation theory is typically introduced in custody litigation through the testimony or report of a mental health professional or alleged expert, which is often accepted uncritically and without application of existing standards for admissibility of scientific evidence. Even

though the newer theory of PA is purportedly less extreme than PAS, it also lacks scientific basis, and its application in family courts is virtually identical.

In this case, the trial court's reliance on PA is even more problematic and tenuous given that it is based on something in the future - "if the Mother's conduct continued, it would cause significant parental alienation between the child and the Father." R.¹ 753. There was no finding that the child *is* alienated from the father. The court made its decision based on its prediction of a possible detrimental change in the relationship between the Father and child in the future and its prediction that this change would be caused by improper actions of the mother.

ARGUMENT

I. Parental Alienation Lacks Scientific Definition or Basis, Making It Unreliable.

In this case, the trial court painted the Mother as a paranoid, irrational, hostile and suspicious mother, whose conduct, if continued, "would cause significant parental alienation between the child and the Father." R. 753 ¶ I(D)(2)(a.). Although the trial court referenced hostility of the Mother starting in 2014, the majority of the Mother's conduct that concerned the court occurred after February 2017, which is when the Mother discovered injuries on her child after the child returned from a visit with the Father. The child's injuries were

¹ Cites to the Record are reflected as "R. ____". Amici has limited access to the Record in this case because much of it is sealed (including the reports of the GAL, DCF, Dr. Grbac and Dr. Reilly).

documented by her pediatrician and included bruising on the child's face, butt, and abdomen and redness on her genitals. TR.² at 78-79, 240-243. The Mother asked the Father about the cause of the injuries and he never responded or explained the cause of the child's injuries. TR. at 412.

Rather than acknowledge that the Mother had a good faith basis for concern about the child's safety, the trial court relied upon Dr. Grbac's opinion that the Mother engaged in "gatekeeping and *potentially* alienating behaviors" and punished the Mother by reducing her timesharing. TR. at p. 177 (emphasis added). The GAL essentially rubber stamped Dr. Grbac's views. TR. 135, 137. The willingness of the court to pathologize the Mother for her concerns about the child is consistent with how alienation theory is used to deny abuse claims and instead turn them against the alleging parent.³ This case is a classic example of how the theory of parental alienation is used to the detriment of children and of parents who seek to protect their children.

Alienation theory is generally understood to posit that when a child dislikes one parent (typically the non-custodial parent), it is likely because of the influence

² Cites to the trial court transcripts of the trial held August 21 – 22, 2018, filed with this Court on May 9, 2019, shall be reflected as "TR.____".

³ Joan S. Meier, *Parental Alienation Syndrome and Parental Alienation: A Research Review*, National Research Center on Domestic Violence, at 9-10 (Sept. 2013), available at <http://www.vawnet.org/material/parental-alienation-syndrome-and-parental-alienation-research-review>.

of the other (typically custodial) parent. This hypothesis rests on two fundamental assumptions: (i) that children do not ordinarily dislike a non-custodial parent without negative manipulation by the other parent (or individual); and (ii) that a child's hostility toward the other parent can in fact be caused solely by the favored parent's negative influence, regardless of the child's own experience, which could include abuse, neglect, or other unfavorable behavior by the disliked parent. There is no scientific support for either of these fundamental premises, both of which derive from PAS, which itself has been repeatedly criticized and discredited by scientific and professional authorities.

A brief review of the history of PAS and PA demonstrates that alienation is often misinterpreted and misapplied in a manner contrary to the best interests of the child. While a child may be "alienated" from a parent—at least in the sense that she feels antipathy toward or wishes not to see that parent—that estrangement is rarely a result of what the more favored parent has said or done but rather the result of the behavior of the less-favored parent.⁴

A. Parental Alienation Syndrome Has Been Thoroughly Discredited.

⁴ See Jenna Rowen and Robert Emery, *Examining Parental Denigration Behaviors of Co-Parents as Reported by Young Adults and Their Association with Parent-Child Closeness*, 3 *Couple and Family Psychology: Research and Practice* 165, 176 (2014).

Dr. Richard Gardner created the term “Parental Alienation Syndrome” in the 1980s based solely on his own interpretation of observed clinical data. No empirical studies or peer reviewed examinations tested his conclusions.⁵ Gardner described PAS as a “syndrome” in which vengeful mothers asserted child sexual abuse allegations as a powerful weapon to punish ex-husbands and ensure custody to themselves.⁶ He claimed that such mothers enlisted the children in a “campaign of denigration” and “vilification” of the father, that they often “brainwashed” or “programmed” the children into believing untrue claims of paternal abuse, and that the children also fabricated their own stories in response to the “programming” of the mothers.⁷ To explain why mothers would do so, Gardner posited that “hell hath no fury like a woman scorned.”⁸ He also suggested that some mothers’ purported vendettas were the product of pathology.⁹

There is no empirical evidence supporting the PAS theory, but there is substantial empirical evidence contradicting it. In fact, rather than mothers

⁵ Meier *supra* n. 3 at 2.

⁶ Richard A. Gardner, *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Cresskill, NJ: Creative Therapeutics: 1992a) (self-published).

⁷ Richard A. Gardner, *True and False Accusations of Child Sex Abuse* 162, 193 (Cresskill, NJ: Creative Therapeutics: 1992b) (self-published); Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child Custody Disputes?* *The American Journal of Family Therapy*, 30(2) 93, 94-95 (2002).

⁸ Gardner 1992b, *supra* n. 7, at 218-219.

⁹ *Id.* at 162, 193.

regularly fabricating false child abuse claims to win custody, the largest study of its kind found that only 12% of child abuse/neglect claims in child access litigation were knowingly false; and the primary fabricators were *noncustodial* parents (typically fathers).¹⁰

Scientific and professional authorities such as the American Psychiatric Association and The American Prosecutors' Research Institute and National District Attorneys' Association, have rejected PAS.¹¹ Leading researchers concur that "the scientific status of PAS, is, to be blunt, nil," and the former president of the American Psychiatric Association has characterized PAS as "junk science."¹² It has thus been repeatedly rejected for inclusion in the Diagnostic and Statistical Manual of Mental Disorders ("DSM"). Published by the American Psychiatric Association, the DSM is the mental health profession's most well-respected and widely used diagnostic manual.¹³

Further, courts throughout the country that have addressed the issue have found PAS inadmissible as invalid science. *See, e.g., People v. Loomis*, 658

¹⁰ Niko Trocme & Nicolas Bala, *False Allegations of Abuse and Neglect When Parents Separate*, *Child Abuse & Neglect* 29, 1333-45 (2005).

¹¹ Meier, *supra* n. 3 at 5.

¹² *Id.*

¹³ *See, e.g., Wright v. State*, 256 So. 3d 766, 783 n. 13 (Fla. 2018), Pariente, J. concurring in result (describing the DSM as one of two "current medical diagnostic standards"); *see Supplement to Diagnostic and Statistical Manual of Mental Fitness*, Fifth Edition, American Psychiatric Association, October 2018 (renamed "Parental Alienation Disorder" not included in the Supplement to DSM).

N.Y.S.2d 787 (N.Y. Ct. 1997); *People v. Fortin*, 706 N.Y.S.2d 611, 613-14 (Crim. Ct. Nassau Cnty. 2000), *aff'd*, 289 A.D.2d 590, 591 (2d Dep't 2001); *M.A. v. A.I.*, No. FM-20-973-09, 2014 WL 7010813, at *5 (N.J. Super. Ct. App. Div., Dec. 15, 2014), *cert. denied*, 112 A.3d 592 (2015); *D.M.S. v. I.D.S.*, No. 2014-CA-0364, 2015 WL 926777, at *9 (La. Ct. App. Mar. 4, 2015); *People v. Sullivan*, Nos. H023715, H025386, 2003 WL 1785921, at *13-*14 (Cal. Ct. App. Apr. 3, 2003).¹⁴

In the most substantive discussion of PAS in a Florida appellate court, *In Interest of T.M.W.*, the court cited the lack of reference to any authority with respect to PAS in the record and briefs on appeal, and indicated skepticism “as to general professional acceptance of [PAS] as a diagnostic tool.” 553 So. 2d 260, 262 (Fla. 1st DCA 1989) (quashing trial court’s order requiring child to submit to mental examination).

B. "Parental Alienation" Has No Better Basis Than PAS.

While some researchers distinguish parental alienation ("PA" or "alienation") from PAS, conceding the latter is unscientific,¹⁵ other proponents assert that PAS and PA are essentially the same thing.¹⁶ A leading association of

¹⁴ See also *Mastrangelo v. Mastrangelo*, 55 Conn. L. Rptr. 245 (Conn. Super. Ct. 2012) (unpublished); *Snyder v. Cedar*, 2006 WL 539130 (Conn. Super. Ct. Feb. 16, 2006) (unpublished).

¹⁵ Joan B. Kelly and Janet R. Johnston, *Rejoinder to Gardner's "Commentary on Kelly and Johnston's The Alienated Child: A Reformulation of Parental Alienation Syndrome,"* 42(4) Fam. Ct. Rev. 622-28 (2004).

¹⁶ William Bernet, *Parental Alienation: Misinformation Versus Fact*, Judge's Journal (Jan. 2015) at 25 (describing the two concepts as "almost

juvenile & family court judges published the following guideline for custody courts:

The discredited "diagnosis" of "PAS" (*or allegation of "parental alienation"*), quite apart from its scientific invalidity, inappropriately asks the court to assume that the children's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the behaviors of the [disliked] parent, who may have directly influenced the children's responses by acting in violent, disrespectful, intimidating, humiliating and/or discrediting ways toward the children themselves, or the children's other parent.¹⁷

Proponents of PA claim it is valid on the unproven assumptions: (i) that alienation can be identified (or "diagnosed") reliably, and can be distinguished - or disproved - based on other understandable causes of a child's estrangement; (ii) that a child's estrangement from one parent can actually be caused by a favored parent, even unconsciously or unintentionally; and (iii) that the harm of alienation is long-term and extreme (thus warranting extreme measures to prevent it). Each of these premises lacks any scientific foundation, as acknowledged by alienation scholars.

synonymous"). Sheila Pursglove, *Asked and Answered: Demosthenes Lorandos on Parental Alienation Syndrome*, *Oakland County Legal News* available at <http://www.legalnews.com/oakland/1399575/> (discussing PAS and parental alienation interchangeably); Meier, *supra* n. 3 at 8 (describing a case in which the evaluator seamlessly changed the label from PAS to PA without changing the analysis).

¹⁷ Clare Dalton, Leslie Drozd, & Hon. Frances Q.F. Wong, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Rev. ed.) 24 (Reno, NV: National Council of Juvenile & Family Court Judges: 2006)(emphasis added).

i. Neither Alienation Theory Nor Practice Distinguishes Different Causes of Children’s Estrangement.

Despite assertions by some proponents that there is ample science supporting PA theory,¹⁸ objective researchers’ analyses have emphatically pointed out that neither the literature nor the practice distinguishes between different causes of a child’s estrangement:

Until there are scientifically valid studies using independent measures of parenting quality that can distinguish between children who rationally and irrationally reject a parent, PA advocates cannot claim scientific support for identifying alienated children.¹⁹

More importantly, if alienation cannot be *disproved* in a given case, because it has no particular definition, and other causes of a child’s estrangement are not considered, it fails the most fundamental prerequisite of science: falsifiability.²⁰

¹⁸ Pepiton et al., *Is Parental Alienation Disorder a Valid Concept? Not According to Scientific Evidence. A Review of Parental Alienation, DSM-5 and ICD-11* by W. Bernet, *Journal of Child Sexual Abuse* (2012) (dissecting and critiquing claims of scientific support for “Parental Alienation Disorder” (PAD) by leading advocate William Bernet, pointing out his book is largely subjective stories, movies, television shows and non-peer-reviewed books and articles, and citation to only two studies, both dissertations, neither of which proves PAD, and the complete failure to acknowledge that abuse must be ruled out).

¹⁹ Madelyn Simring Milchman, *Commentary on “Parental Alienation Syndrome/Parental Alienation Disorder” (PAS/PAD): A Critique of a “Disorder” Frequently Used to Discount Allegations of Interpersonal Violence and Abuse in Child Custody Cases*, *APSAC Advisor* (forthcoming 2019) (“alienation advocacy” does not distinguish between the reasons a child may be estranged).

²⁰ Madelyn Simring Milchman, *Misogynistic Cultural Argument in Parental Alienation Versus Child Sexual Abuse Cases*, 14 *J. Child Custody* 221, 211 (falsifiability is the *sine qua non* of science).

See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593 (1993) (falsifiability is the first legal test of the admissibility of a theory as evidence).

In fact, several studies have concluded that a child’s estrangement is virtually always the product of multiple factors, *almost always including the estranged parent’s own behaviors*.²¹ But despite this growing recognition, most studies—and evaluators—tend to *presume* that estranged children are “alienated” children. “There is a virtual absence of empirical studies on the differential diagnosis of alienation in children from other conditions that share similar features with parental alienation, especially realistic estrangement or justified rejection in response to parental abuse/neglect, significantly compromised parenting or the child being a witness to intimate partner violence.”²² Several leading alienation specialists who undertook a comprehensive review of existing scientific research, found that:

Although the majority of the researchers purport to exclude from their studies cases where abuse of the child had occurred, few have reported working definitions of child abuse and systematic methods for identifying and excluding these from their samples. Despite considerable controversy over the extent to which child abuse and intimate partner violence cases are wrongfully judged in family courts

²¹ Janet R. Johnston et al., *Is it Alienating Parenting, Role Reversal, or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes*, 5 J. Emotional Abuse 191, 206 (2005) (recognizing other factors affecting children’s estrangement).

²² Saini, Johnston, Fidler and Bala, “Empirical Studies of Alienation,” in Drozd, Saini & Olesen, Eds., *Parenting Plan Evaluations: Applied Research for Family Court*, 423 Oxford University Press (2016).

to be alienation cases or vice versa . . . few empirical studies have tried to sort these issues out, and to date no clear concurrence of findings has emerged. (citations omitted).²³

Ultimately, the survey found that alienation studies tend to be small, “methodologically weak,” non-random, and with “limited ability to generalize the results of only on study.”²⁴

The same thorough survey of existing research also confirmed that there is no scientific “consensus on the definitions of alienation.”²⁵ Others have found that even courts fail to define it.²⁶ Other research indicates that evaluators and others who use the alienation label are often driven by their own biases and predispositions more than objective knowledge or facts.²⁷ Without a valid

²³ Saini, Johnston, Fidler and Bala, *supra* n. 22 at 417-418; Milchman, *supra* n. 19.

²⁴ Saini, Johnston, Fidler and Bala, *supra* n. 22 at 374, 423.

²⁵ Saini, Johnston, Fidler and Bala, *supra* n. 22 at 374; Holly Smith, *Parental Alienation Syndrome: Fact or Fiction? The Problem with its Use in Child Custody cases*, 11 U. Mass. L. Rev. 64, 86 (2016).

²⁶ Suzanne Zaccour, *Parental Alienation in Quebec Custody Litigation*, 59 Les Cahiers de Droit 1073, 1087 (2018) (judges rarely choose a “model” or define alienation, and often find alienation even when children are not opposed to contact).

²⁷ Dan Saunders et al, *Child Custody Evaluators’ Beliefs About Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody/Visitation Recommendations*, Award Number: 2007-WG-BX-0013 (2012) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf>; Jaya L. Connors, *Advocating for Child Clients in Custody Cases Involving Parental Alienation Issues*, 28 Widener Commonwealth L. Rev. 5, 19-20 (2019) (citation omitted) (both attorneys for children and “expert” evaluators’ opinions are often driven by their own biases); *Montoya v. Davis*, 66 N.Y.S.3d 350 (3d Dep’t 2017) (describing evaluator’s “pervasive and manifest bias” against the mother).

definition or an objective means of distinguishing children who are “legitimately” estranged from those who are not, alienation is a meaningless label—a chosen hypothesis, with no scientific or objective validity. This is not surprising. The very theory was invented—not because there was concern about children’s estrangement from parents in treatment settings - but because it was a useful solution to a problem in *custody litigation*.

- ii. **There is no scientific support for the idea that one parent’s sole influence can turn a child against the other, consciously or unconsciously, without legitimate reasons.**

Amici are not suggesting that there is no such thing as a parent’s behavior that denigrates the other parent; nor that such behavior is not harmful. Such behavior certainly exists, and it is unhealthy for children. However, there is no scientific evidence that such parental denigration is capable of turning a child against the other parent when the child has no legitimate reason for disliking or fearing the parent.

While alienation theorists and evaluators regularly suggest that one parent’s denigration of the other inevitably poisons the child’s feelings toward the other parent, the only credible research on this presumed mechanism has demonstrated the opposite. A leading family court researcher, Robert Emery, completed two studies of young adults who had grown up with parents who denigrated the other to the children. Neither study provided “support for the alienation hypothesis,” and in

fact, “supported the opposite.” The research found that parental “denigration” of the other parent usually “backfires” by undermining the child’s relationship with the *denigrating* parent.²⁸

Similarly, a study by a leading alienation researcher found that, while the vast majority of divorcing parents in the study made denigrating comments about the other to the children, 80% of children’s relationships with the other parent were unharmed. Only 20% of the children were at all “alienated,” and only 6% “severely alienated.” Most significantly, *all* of the alienated children had had concrete experiences with the *alienated parent* that fed their negative feelings.²⁹ In short, multiple credible studies have disproved the “alienation hypothesis” and shown that parental denigration usually does not “work.” At minimum, it does not turn a child against a parent without legitimate reason.

iii. There Is No Scientific Support for the Idea that Alienation Causes Long-term, Severe Harm.

Finally, there is also no scientific support for the presumption of many courts and evaluators that, if a child is “alienated,” there will be drastic long-term negative effects on that child. The comprehensive review of the research by Saini

²⁸ J. Rowen & R. Emery, *Parental Denigration: A Form of Conflict that Typically Backfires*, 56 Family Court Review 258 (2018) (finding that denigration “boomerangs,” i.e., children come to dislike the denigrating parent more than the denigrated parent).

²⁹ Janet R. Johnston, *Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child*, 38 Family Law Quarterly 757 (2005).

et al. explained that findings on long-term effects were “inconclusive;” and most studies involved self-identified victims of alienation without control groups or objective measures. Indeed, one small (therefore “deemed unreliable”) longitudinal study actually contradicted the claimed harm, finding that young adults deemed alienated scored no higher on a scale of emotional distress and attachment insecurity than their “nonalienated counterparts” from custody disputes.³⁰

II. APPLICATION OF PA THEORY CAUSES SIGNIFICANT HARM TO CHILDREN IN CUSTODY LITIGATION.

Alienation labelling causes at least two distinct types of harm to children in custody litigation: (i) it dismisses abuse claims, resulting in children’s exposure to ongoing abuse; and (ii) it often inflicts trauma on children by stripping them from the parent to whom they are bonded.

A. Alienation labelling in custody cases subjects children to ongoing abuse.

Alienation has gained its primary power and traction from its invention (as PAS) and use (as PA or just “alienation”) to deny abuse claims by mothers (and children) against fathers.³¹ In practice, alienation is used in a conclusory manner, like PAS, and is routinely invoked to automatically discredit abuse claims.³²

³⁰ Saini, Johnston, Fidler and Bala, *supra* n. 22 at 420 (citing Janet Johnston & J.R. Goldman, *Outcomes of family counseling interventions with children who resist visitation: An addendum to Friedlander and Walters*, 48 Family Court Review 112 (2009), available at doi: 10.1111/j.1744-1617.2009.01292.x).

³¹ See Madelyn Simring Milchman, *Misogyny in New York custody decisions with parental alienation and child sexual abuse allegations*, Journal of Child Custody,

A growing body of empirical research is documenting the harmful impact of alienation claims in custody cases involving abuse, and the role of gender bias in these decisions. For example, the authors of a study funded by N.I.H. collected and analyzed "turned-around cases," where the family court initially rejected child abuse claims, but a subsequent court credited the abuse, leading to reversal of the initial custody arrangement. The most frequent error underlying the initial harmful orders was application of the "alienation" label to mothers' attempts to protect their children.³³

14:4, 234-259, 234, 237, 254 (2017), DOI: 10.1080/15379418.2017.1416723 (analyzing 24 appellate decisions involving child sexual abuse claims by mothers and parental alienation cross-claims by fathers, finding that mothers appealed custody to fathers in 22 cases, and in 20 of the 21 cases in which the mother lost custody and the father retained custody on appeal, a finding that the child sex abuse claim was unfounded was interpreted as evidence of PA and provided basis for awarding custody to the fathers); Holly Smith, *Parental Alienation Syndrome: Fact or Fiction? The Problem with its use in Child Custody Cases*, 11 U. Mass. L. Rev. 64, 80 (2016) (fathers' rights groups have embraced PAS . . . fathers assert PAS "much like an affirmative defense to disclaim a mother's allegation [of abuse]"); Simon LaPierre & Isabel Cote, *Abused women and the threat of parental alienation: Shelter workers' perspectives*, 65 Children and Youth Services Review 120, 125 (2016)(alienation "has served a men's rights agenda" and is a "strategy to overshadow males' violence against women and children in society")(citation omitted); M. Clemente & D. Padilla-Racero, *When courts accept what science rejects: Custody issues concerning the alleged 'parental alienation syndrome,'* J. Child Cust., 13:2-3, 126-133, 129, 132 (2016) (theory is gender-biased and the pathologizing of "alienator" is also "undeniable" gender bias).

³² See, e.g., *Milchman, supra* n. 31 (NY custody decisions) (courts favored alienation claim over child sexual abuse claim in almost every case).

³³ Joyanna Silberg *et al.*, *Crisis in Family Court: Lessons From Turned Around Cases*, Final Report to the Office of Violence Against Women,

Another pilot study of 240 published opinions empirically analyzed outcomes in cases involving alienation and abuse claims. It found that where fathers alleged alienation against mothers alleging paternal abuse, courts removed custody from the mothers 50-69% of the time.³⁴ Even where a father was found to have committed child or adult abuse, if the mother was also considered to be an alienator, the father won each case, and “this win rate [was] driven by findings of alienation.”³⁵

The impact of these types of decisions on children has been severe. In 59% of the “turned-around” cases, the child was removed from the mother and ordered into the sole custody of the alleged perpetrator. Children spent an average of three years in the abusive parent’s custody before another court believed them and the decision was reversed. Court records showed the children’s deteriorating mental and physical conditions, including anxiety, depression, dissociation, post-traumatic stress disorder, self-harming, and suicidality. Thirty-three percent of the children became suicidal, some repeatedly ran away, and some were placed in psychiatric hospitals.³⁶

Dep't of Justice (Sept. 30, 2013), <http://www.protectiveparents.com/crisis-fam-court-lessons-turned-around-cases.pdf>.

³⁴ Joan Meier & Sean Dickson, *Mapping Gender: Shedding Empirical Light on Family Court Cases Involving Abuse and Alienation*, 35 J. of Law & Inequality 18 (2017).

³⁵ *Id.*

³⁶ Silberg et al, *supra* n. 35 at 39-49.

Even more dire outcomes are also being documented when family courts refuse to credit reports of one parent's dangerousness. A growing database identifies hundreds of cases where, after a court refused to restrict one parent's access at the urgent request of the other protective parent, children were killed by the parent who was permitted unrestricted access.³⁷

B. Alienation Analysis Subjects Children to Trauma

Alienation labels also harm children when they motivate a court to remove children from the parents they trust and feel loved by. There is little dispute that abrupt removal of a child from a parent to whom the child is strongly attached inflicts significant long-lasting psychological trauma.³⁸ Yet, Richard Gardner's prescribed "treatment" for PAS was to remove the child from the favored parent, to

³⁷ Dastardly Dads Blogspot, cited in R. Dianne Bartlow, *Judicial Response to Court-Assisted Child Murders*, Chapter 12, in M.T. Hannah and B. Goldstein, *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues*, Vol. II (2016), 12-3, n. 7 (describing survey of judicial officers in 21 states from courts where custody litigant murdered a child); see also <http://www.centerforjudicialexcellence.org/cje-projects-initiatives/child-murder-data/> (documenting over 650 children killed by a parent in a separation, divorce, or family court litigation context, but not documenting what the family court knew).

³⁸ "It is difficult to understand a court participating in a psychological "diagnosis" that requires trauma to the family as the "cure." Thomas & Richardson, *Parental Alienation Syndrome: 30 Years On and Still Junk Science*, American Bar Association available at https://www.americanbar.org/groups/judicial/publications/judges-journal/2015/summer/parental_alienation_syndrome_30_years_on_and_still_junk_science/ (2017). Eleanor Willemsen and Kristen Marcel, *Attachment 101 for Attorneys: Implications for Infant Placement Decisions*, Markkula Center for Applied Ethics, Santa Clara University at 18, 19 (2010).

place the child with the disfavored parent, and to prohibit any contact—or at least any unsupervised contact—between the child and the favored parent for a substantial period of time.³⁹ That is exactly what the trial court did in this case. Like Gardner, the court did not consider the fact that there is no empirical evidence that the custody switch and lengthy separation between the child and the favored parent will have any beneficial effect on the child—especially an effect so beneficial as to outweigh the trauma suffered by the child as a result of the separation.

CONCLUSION

There has been virtually no oversight of the uses and misuses of alienation theory in custody cases. Constraints on the misuse of unscientific concepts is needed to reduce injustices and lifelong harm to children. *Amici* believe that a deliberative and broad review of the theory and its problems, which this Court can provide, on the developed record in this case, is a precious and critical opportunity to make a profound difference to the child in this case and to the children of Florida.

³⁹ Gardner (1992a), *supra* n. 6; Meier, *supra* n. 3 at 2 (discussing Gardner’s remedy).

Respectfully submitted this 11th day of June 2019.

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I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, in compliance with Fla. R. App. Pro. 9.210(a)(2).

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