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New elephant in courtroom during custody cases

Not long ago, divorce attorneys rarely used the term “parental alienation.” Now, it seems to be thrown out at every turn in a contested custody case.

Why has this term become so popular and what should parents look out for to make sure parental alienation does not become an issue in a child-custody case?

“Parental alienation syndrome” is a term Richard A. Gardner, a psychiatrist, coined in the early 1980s to describe a disorder in which a child regularly belittles one parent without justification, often due to indoctrination by the other parent and almost exclusively as part of a child custody dispute.

Although Gardner dubbed this a syndrome and the term is often used in divorce court, PAS is not a recognized as a disorder, medical diagnosis or part of the Diagnostic and Statistical Manual of Mental Disorders. The DSM is the standard classification of mental health disorders. Mental health professionals use this road map to classify and diagnose various disorders.

The DSM was most recently revised in December 2012, and Gardner unsuccessfully lobbied for a PAS entry. Upon the release of the fifth DSM edition, the term Parental Alienation Syndrome is nowhere to be found. Of concern

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is that although PAS is not recognized as a mental illness or condition in the DSM — one of the guides custody evaluators typically use) — custody experts, typically psychologists or psychiatrists, continue to use the term “parental alienation” to help prove or disprove their conclusions in some custody evaluations.

In Illinois, there is no parental-alienation statute, per se; however, courts rely on the best interests of the child standard in the Illinois Marriage and Dissolution of Marriage Act when determining custody. Within this standard, the court lists factors that help determine what is in the best interests of the child.

When it relates to parental alienation, there is no black-and-white guideline listed in the statute, nor is the term “parental alienation” mentioned. However, Section 602(8) requires the court to consider, among other factors, whether the parents are able to continue to facilitate a close and continuing relationship between the other parent and the child.

This is the factor in which the court is determining whether

parental alienation is taking place, by asking whether one parent can facilitate a relationship with the other parent and the child.

Although Section 602(8) is only one factor, out of 10 listed factors that the court may consider when it relates to custody, the likelihood that we will see more parental alienation accusations in domestic relations is very high.

The reality is that parental alienation is an easy allegation to make and a difficult one to refute. In the past, when attorneys were informed of a child acting out during the divorce process, it was not seen as unusual. Today, that same behavior by the child may be termed parental alienation and taken more seriously.

Without any guidelines from the DSM or Illinois Marriage and Dissolution of Marriage Act on how to determine parental alienation, the unfortunate reality is that the term is certain to cause more contentious litigation in an already high-conflict arena.

Therefore, from the beginning of the case, each and every client should be guided by counsel to avoid the obvious pitfalls when it

relates to the new elephant in the courtroom during custody cases, parental alienation.

Here are some simple guidelines to avoid a claim of parental alienation in court:

- Allow for open communication with the other parent and the child. This communication should be reasonable in duration and frequency and should not include the other parent being placed on speaker phone, without a court order.

- Do not speak poorly about the other parent in front of the children, no matter the circumstances. No judge will think it is appropriate if the child is indoctrinated by one parent against the other. Remember, children observe and hear everything. Let the facts play out in court, not through the child.

- Encourage parenting time with the other parent. Have the children packed and ready to go and keep the communication at the exchanges to minimal niceties in front of the children.

- Never coordinate visitation or other plans through a child or in front of the child.

- Do not treat the child as a teammate, equal or an adult. The custody case is not broken into one group (one parent and child versus the other parent).

- Do not question the child regarding the details of the visitation with the other parent.