

**PARENTING**

**Shining a torch on the bleakness of parental  
alienation**

**- Solicitors in the coalmine**

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This paper is not an analysis of the psychological literature, but is written from the perspective of a solicitor who acts for parents who display alienating behaviour to their former partners and parents whose relationship with their children appear to have been damaged or may be in the process of being damaged by the behaviour of their former partner.

Rather than deal with the theory, this paper looks at a selection of cases which demonstrate possible warning signs of parental alienation and strategies. It ends with some practical tips as to the role of the solicitor and strategies to give the preferred and rejected parent.

Alarm bells should ring when your client gives an extremely negative report of the other parent and reports that the interactions of that parent with the children are always poor and that the other parent has nothing to offer as a parent to the children.

***Pierce & Pierce [2010] FMCAfam 1137***

Over the course of the years of litigation, the relationship between the parents and between the father and the children deteriorated. Initially, a shared parenting arrangement was proposed by both parents with the father spending substantial and significant time with the children.

Ultimately, orders were made that the children live with the mother, that the mother have sole parental responsibility and that the father see one child on alternate weekends and his time with the other two children be swiftly reintroduced.

Several of the father's witnesses were not challenged regarding the father's relationship with the children, which was described as strong and loving though not always perfect (e.g. he was sometimes sarcastic with them). Federal Magistrate Coker found the lack of challenge notable. Several witnesses said they had seen the father raise his voice to the kids or smack them in an appropriate show of discipline, but none had heard him call the children names or hit them inappropriately. It was suggested that the father had called certain behaviours "stupid", but he had not called the children "stupid".

A third report was prepared after the report writer had a chance to see other subpoenaed materials and updated affidavit evidence. In light of the additional information, she suggested the father had, in 2009, been grieving his mother's death and although he made changes to his parenting and stopped hitting the children after the first report writer had said he should not, he continued to yell at them. This ongoing angry criticism up until the children ceased contact with him was his greatest regret. The children perceived him as abusive and didn't notice the changes in his parenting behaviour. The whole family was stuck around the point of separation emotionally - the parents had been unable to be conciliatory to one another and relations between them had deteriorated over time. The report writer believed it was no wonder that the children struggled to manage living with both parents.

The Federal Magistrate was enormously troubled by the evidence given by both parents. His perceptions of the father were that:

- He loved his children and wanted a relationship with them.
- He put his own wishes and expectations to the forefront.
- He had not attended therapy, despite clear benefits and repeat recommendations, the father said he could not afford it. He had not investigated methods to pay e.g. health insurance.
- He lacked insight into his role in the deterioration, tended to blame the mother and talked about her brainwashing the children.
- He acknowledged partial responsibility for the relationships breaking down and for the difficulties between him and the mother and children following separation but wasn't willing to specifically particularise what he had done or suggest what he could do to improve matters. He lacked appreciation that attending counselling could help him.
- He ran a stricter household whereas the mother's was more permissive. He recognised this but didn't seem to recognise that both ways were valid.
- He didn't realise that better relations with the mother and trying to re-establish trust would improve his relations with the children. He felt that his role as father in the children's life wasn't being supported, and the mother was all to blame for the deteriorated relationship.
- He sometimes refused to take steps that would have improved matters e.g. attending children's birthday activities at the mother's home when the mother's new partner was present or when domestic violence orders were in place, even though these steps might have improved relations significantly.

- He preferred to follow what the court suggested in regard to his future relations with the children. The Federal Magistrate understood why he might say this but expected the father to have at least some stated preferences or some fall back positions.
- There were small things he could have done to improve relations with the children, but refused to do for emotive reasons.
- He was unable to say what he could do to improve relations with the children, even though he very much wanted that improvement.

The Federal Magistrate found that some of the allegations about how the father disciplined the children were exaggerations if not outright misstatements even though it was true that the father was angry and sometimes sarcastic with the children. The father had become downtrodden by the situation. The Federal Magistrate seemed hopeful and made comments about how there was much that the father could have done better but that no parent was a perfect parent. The father now seemed to recognise the need to make changes, but didn't yet fully understand what those changes ought to be. One child had recently expressed a desire to see the father again and that augured well.

The Federal Magistrate's perceptions of the mother were that:

- He had real concerns around whether mother wanted to foster the relationship with the father.
- She was less than fully frank. She hadn't told the father about X wanting to see him, and this was a poor oversight. She talked the talk, but did not walk the walk.
- She changed her story and wasn't frank about the circumstances under which the children wrote certain notes. The Federal Magistrate found that even if the children had not been influenced directly by the mother in writing the letters, which was possible, that they may have written with an idea in mind of what the mother would want them to say regarding future contact with the father.
- She was trying to win the case rather than ensuring the children's best interests were addressed.
- Although the mother claimed to be intimidated and downtrodden by the father, this was not the impression she gave in the witness box. She came across as in control of herself.
- The mother loved the children and the children loved her, but the Federal Magistrate also found the mother was intent on having her way.

Federal Magistrate Coker found that the situation was not one of parental alienation, and that the relationship between the father and X and Y was best described as estranged rather than alienated. At least one child, Z, still had a close positive relationship with the father, and at least one other, X, was seeking positive reintroduction with the father, whereas Y was more thoroughly estranged. In the past the children had a positive relationship with the father which had deteriorated, and the Federal Magistrate was uncertain whether this happened through the mother's influence or through the children's aligning themselves with the mother and against the father without being directly influenced.

Federal Magistrate Coker found the mother now understood more clearly the harm that could result to the children in the short and long term if the issues between them and their father were not addressed. With counselling, the assistance of experts, and the real good will of the parties, he considered that the relationship breakdown between the father and the two eldest children could be addressed.

Considering the s 60CC factors, the Federal Magistrate noted that there was estrangement between X and Y and the father, and that this needed to be addressed to facilitate a meaningful relationship with both parents. However, the children were at risk, not in terms of their physical welfare (he ultimately rejected the suggestion that the father had been violent with the children or subjected them to physical abuse), but in terms of their mental/emotional health. For this reason the Federal Magistrate adopted the ICL's recommendation that specific orders for time spent not be made, but rather that arrangements be made for reunification counselling, with the objective that time with the two children who were not seeing the father be swiftly re-introduced.

**McGregor & McGregor [2012] FamCAFC 69**

The Full Court allowed an appeal by a father who challenged orders that changed the children's living arrangements from living with him to living with the mother. The appeal focussed on the Federal Magistrate's significant reliance on social science scholarship and journal articles in his judgment. The findings of fact were not challenged. It was the conclusions based on those findings, which appeared to have been drawn by viewing the facts largely through the prism of journal articles about parental alienation, that were at issue.

The father argued that Federal Magistrate O'Dwyer had relied on academic writing on parental alienation by the academics Fidler and Bala, Federal Magistrate Altobelli's paper on parental alienation and other unidentified "literature" in coming to conclusions about the evidence, and that the parents had not had an opportunity to cross examine, respond to, or introduce contradictory evidence in relation to these sources. Neither of the parents seemingly introduced the majority of this material - the Federal Magistrate informed himself, and therefore was in error.

**Ward & Ward (No 2) [2016] FamCA 890**

Justice Tree, in the first paragraph of his judgment said:

"Francis Bacon famously warned that care must be taken to avoid an outcome where "the remedy is worse than the disease". This case exquisitely exemplifies that conundrum."

The mother sought that the children not spend time with or communicate with the father for at least 6 months. The older child, Y, was 14 and the younger child X was 12.

The father unsuccessfully sought to have the trial adjourned on the first day of the trial and then took no further part in the trial. He made it clear that his proposal was that the parties have equal shared parental responsibility and that the children be free to live with either parent. The mother and Independent Children's Lawyer opposed these orders.

There was an inappropriate conversation between the father, his wife and the older child. Whilst Tree J was critical of the father's behaviour, he was also critical of the mother's response to it. She recorded it and didn't intervene to stop it. She was prepared to allow her child to be emotionally hurt so she could gain evidence.

Justice Tree reached positive conclusions about the benefits for the children of having a relationship with the father (at [173]):

"No one really contended that both children would not, in the long-term, benefit from having a meaningful relationship with their father. He presents as their gateway to adventurous outdoor activities, and particularly fishing. The father has a long history of involving both boys in those sorts of activities, and I have little doubt that they are highlights of their lives. Moreover, it is plain that the father does deeply love both children, and does have their best interests at heart. The criticism that is really made of him however is that he allows himself to be dominated by his wife L, and does not protect the children from her emotional manipulation of them. However if the adverse aspects of that influence could be mitigated, there is no doubt that the children would both benefit from a meaningful relationship with their father, and that the best means of facilitating it is likely to be spending regular face-to-face time with him."

Justice Tree concluded about the mother (at [174]) that so long as she remained abstinent from alcohol, there was no reason to doubt that the behaviours which she had demonstrated in the past, much to the annoyance and embarrassment of the children, were unlikely to recur. He was therefore satisfied that each of the children would benefit from a meaningful relationship with the mother, and as with the father, that was likely to be best facilitated by each of them spending regular face-to-face time with her, and her being involved in all aspects of their lives. Justice Tree recognised though that neither household was the perfect environment for the children.

The older child was living with the mother, and he appeared to be coping well with that. To the extent that he was experiencing distress, it was his rejection by the father, and estrangement from his brother, that appeared to be the active ingredients. The younger child had for nearly two years consistently refused to spend time with or communicate amicably with his mother. His dreadful behaviour at the shopping centre contact visits left Tree J in no doubt that he was adamant that he

did not wish to live with her, except if he chose to do so, and under a regime, including a progression of time, of his choosing. Justice Tree was satisfied that if he were forced to live with the mother, he would experience extreme distress.

In evidence the mother expressed a view that she sometimes had a fantasy that, after the younger child came to live with her, he would cry whilst cuddling her and say "mum, why didn't you rescue me sooner." In Tree J's view that epitomised the mother's completely unrealistic assessment of the likely effect on the child of him coming to live with her.

A major difficulty in managing the younger child's emotional reaction to being forced to live with his mother, was that he presently had no therapist who might help him through such a momentous change, and was unlikely to accept any such support. There was a further practical difficulty, that even if the child availed himself of counselling, the consensus view was that he needed a male counsellor. There was only one suitable male counsellor in the town, and he was very busy, with long waiting times for an appointment.

There was some prospect that the younger child would self-harm if forced to live with the mother. However, Tree J found the risk of him in fact committing suicide, or self-harming, was relatively low.

Justice Tree concluded (at [225], [230]):

"On balance, I am therefore confident that the effect on the younger child of being physically forced to live with the mother against his express and strongly articulated wishes, (assuming he can be forced to remain with her) is likely to be emotionally cataclysmic and of considerable duration, and will affect his schooling. It is only when his will has been wholly crushed that he will move to a condition of, most likely, sullen and resentful acceptance of his fate. ...

I have already observed that the younger child's present primary source of support, nurture and comfort is the father. He is completely estranged from the mother, and presently derives no support from her whatsoever. The effect of the child not spending time or communicating with the father, therefore, would be to deprive him of the primary source of nurture that he presently has the benefit of. I assess that the impact on him of that loss is likely to be profound, in that he will likely go through something akin to a kind of grieving for the forced termination of the relationship which he presently has. The likely effect of him not spending time or communicating with the father is therefore considerable."

The points which favoured the *status quo* or were against the mother's proposal that the children live with her for 6 months before any reunification with the father were (at [276]):

- The younger child is strongly antipathetic to the mother and has some basis to be so;
- Previous attempts at reunification of the younger child with the mother have all been dismal failures (noting that the mother says this is the fault of the father);
- The mother agreed to the *status quo* in the parenting plan as recently as August 2016, and her justification for doing so is weak, but somewhat plausible [accepting that I have now determined she entered it knowingly and voluntarily];
- The current situation reflects the children's wishes (leaving aside that the older child has a wish to see his father, and that the mother contends the younger child's wish is not genuine [which I have discussed earlier in these reasons]);

- The younger child has a strong bond with his father (which therefore also predicts that it will likely survive any moratorium);
- The mother's proposal is wholly contrary to the younger child's strongly expressed wishes, and he is a child who always seems to have gotten his way with both parents;
- The mother's proposal would cause great upset for the younger child, with no real likelihood that he will avail himself of therapy to assist him cope, noting importantly that he has no established bond with a therapist which he could immediately avail himself of to deal with any grief upon dislocation of his relationship with his father;
- The younger child (and indeed the older child) will in any event shortly be grieving the loss of their paternal grandfather (with, on the mother's proposal, absolutely no access to – even to talk with – the father to help in this grieving process) and further, he is at the end of his first year in high school where he appears to have been doing well;
- The mother's proposal would see great turmoil in the children's lives for at least a further 12 months, and probably longer (accepting that even the alternative proposal of Ms B discussed below would see some turmoil);
- The success of the mother's proposal is wholly dependent on her ability to control/discipline the younger child, which in the past she has been unable to do, except with the assistance of the mother's partner, who no longer lives with her and plans to have no part in the reunification strategy;
- The mother has no concrete plans about how to manage the younger child on his return, and seems naïve about his likely reaction;
- It would wholly sever both children's relationship with the father for at least six months, and perhaps longer, and if permanently, thereby effecting the very harm the solution is designed to avoid;
- Whilst the mother is likely to better facilitate a relationship between the children and the father than he would with her, there is no guarantee that she will do so, especially given Mr F's strong antipathy to the father and the father's wife having anything further to do with the children;
- There is no strong probability that the mother's orders would in fact effect reunification [in fact as has been seen, I assess their likely success as low].

The points in favour of mother's proposal, or against the *status quo*, were listed (at [277]):

- The mother has the greater capacity to protect the children from emotional harm;
- The mother's proposal might reunify the younger child with her;
- The mother's proposal might promote a healthier relationship between the children and the father;
- The mother's proposal might reunify the children;
- The *status quo*, and the children's presently expressed wishes, are likely in some respect the product of manipulation or alienation by the father and his wife, and perhaps to a lesser extent the mother and her partner;

- The mother's proposal would best protect the children from the coercion and control of the father's wife;
- The younger child is unlikely to otherwise voluntarily re-establish a relationship with his mother;
- The siblings are presently separated, save for going to the same school and playing handball and online games together, noting that they did spend time successfully together both at a movie on 21 May 2016 and on 4 September 2016 with the father for Father's Day;
- There is a risk of further emotional harm to the younger child if he remains in the father's care;
- There is a risk of deterioration of the younger child's mental health if he remains in the father's care;
- There are some asserted risks of harm in relation to alcohol abuse in the father's care [accepting I have not found them to be of any great moment].

Justice Tree observed (at [281]) "that sometimes parties can create insoluble problems." He concluded (at [285]):

"Ultimately it comes down to a consideration of whether the potential benefits of the mother's proposal outweigh the likely risks. I am not satisfied that they do. The only certainty of the mother's proposal is that it will greatly and adversely affect the younger child, and the older child also, in that they will be deprived of any communication, much less face-to-face time, with the father for at least six months, and perhaps longer. As I have observed, if their relationship with the father is permanently lost, that will effect the very harm that the proposal is designed to remedy."

The orders made were very unusual as they left the children ultimately to decide what they did. The orders included:

3. The children live and spend time with the parents as may be agreed between the parties from time to time, but in default of agreement, then:
  - (a) Each of the children may choose to live with and spend time with either or both parents, including on a week about basis, and in the event that one or both children so express a choice:
    - (i) The mother and father shall support the child's choice;
    - (ii) The parents shall facilitate and promote the children living with or spending time with the other parent;
  - (b) If Y does not express a choice, then he will live with the mother and spend such time with the father as he may choose;
  - (c) If X does not express a choice, then he will live with the father and spend such time with the mother as he may choose.
4. Whilst in the care of either parent, the children are to communicate with the other parent as may be agreed between the parties from time to time, but in default of any such agreements, at times and by means of the children's choosing.
5. For so long and for all periods as the children are not residing in the same household for at least two nights per week, then the parents must do all acts and things necessary to facilitate the children spending time with each other after school on Monday and Wednesday each week from 3:30pm to 5:30pm.

6. The children's time with each other under order 5 shall occur at such locations as may be agreed between the parties from time to time, but in default of agreement, then:
- (a) The mother is to forthwith, and every six months thereafter, nominate and advise the father of 3 locations, which may include either parent's house, but must include at least one other place;
  - (b) The father is to choose one of the mother's nominated locations which choice shall thereafter bind the mother for the next six months;
  - (c) If the father does not so choose within 7 days of the mother communicating her nominations to him, then the mother may choose, which choice shall thereafter bind the father for the next six months.

***Ralton & Ralton***

The decision of the trial judge, Riethmuller J is at [2016] FCCA 1832 and the appeal decision is [2017] FamCAFC 182. The appeal was dismissed.

The children were given into the sole care of the father by Riethmuller J. The father only reluctantly sought a change in residence. Under the final orders, for six months the only time the children had with the mother was 2 hours of supervised time on one of the children's birthdays and 4 hours, on Christmas Day. For the next 12 months, the mother had supervised time at a contact centre fortnightly for 2 hours before 6 visits of unsupervised time each alternate Sunday for 4 hours and then alternate weekends and half of the school holidays. The independent children's lawyer had liberty to apply.

The ages of the 2 children were not precisely reported but they were approximately 7 and 9 years old. The focus at trial and on appeal was on X, the older child who was described as B in the Full Court judgment.

Judge Riethmuller noted that there were a relatively small number of significant factual disputes and they related to the allegations about the behaviour of the father - whether he had been violent in a physical sense, or violent or angry in his behaviour towards the mother or children, and in particular whether or not he had been violent towards X. It was not in dispute that as time had passed X had become strongly resistant to spending time with his father, that he had run away from school on a number of occasions when the father was meant to be picking him up from school, and that he had refused to attend school on occasions when he expected that his father would be picking him up.

The problems had become so severe that at the end of the trial the judge suspended all contact pending delivery of his judgment to prevent X running away at handover attempts. On the day that judgment was delivered, Riethmuller J ordered that the children be placed in the childcare room at the court for the purpose of ensuring they were in a safe location to be advised of the outcome of the proceedings by the Family Consultant and independent children's lawyer. The mother said she was unable to get X to come in to the court building. A recovery order was issued so that the Police could assist, and with their assistance X was in a room on the same level as the childcare room, so in a safe and contained environment.

The child Y continued to attend spending time with his father until the most recent visit when she refused in a manner not dissimilar to X.

Judge Riethmuller noted that despite significant efforts to have professionals work with the parties about their own attitudes to parenting and their relationships with the children, the situation had not improved but had steadily worsened throughout the last 18 months.

The mother's evidence demonstrated to Riethmuller J that she was absolutely fixed in her views, even down to the simplest things. For example when the children did not want to go to see their father because she erroneously thought that they would not come back to her on Mother's Day that weekend (the orders made provision for them to return for Mother's Day), she suggested that in some way this was the father's fault. The father had presumably expected to comply with the existing orders and the suggestion that he should bear some blame for not having notified the mother of his intention to comply with the orders, even though he was completely unaware of her mistake in that regard, highlighted the mother's attitude. Judge Riethmuller considered that it was



representative of the nature of her evidence that all difficulties seemed to have been caused by the fault, directly or indirectly, of the father.

Judge Riethmuller was particularly troubled by parts of the mother's evidence. For example it seemed clear that she could not even conceive of the possibility that the version of events she received from X about the father might not be correct particularly in the light of evidence given by the 3 professionals. The mother's primary case was that X's story to her and in his diary should be accepted as being absolutely correct. However it seemed to Riethmuller J that on any rational view of the evidence one must at least consider the possibility of those things not being correct given the evidence of the professionals who had interviewed X.

Judge Riethmuller was also troubled by the extent to which the mother attached significance to some events. For example X complained that he was forced to play in the cold sprinkler water. The trial judge noted that this was the type of thing that children in X's age bracket did regularly, and although in retrospect he found it not so positive an experience, it was difficult to see why significant weight should be attached to what was a very minor incident. Other relatively minor incidents occurred with X's half-siblings or step-siblings. These had the air of the type of horseplay that boys of that age from time to time engage in.

Judge Riethmuller noted (at [32]):

"Whilst in a perfect world many of these things would not happen, one also has to bear in mind that in the real world much goes on and the weight to be attached needs to be kept in perspective".

The mother demonstrated a lack of insight into the family needs in the father's household, particularly given that the father's mother was very ill and that he had other children in his life. The number of extracurricular activities arranged by the mother for the children remained high and together with the engagement of the children in school parties meant that a considerable number of pre-arranged events occurred during the father's time. The trial judge felt this showed a lack of appreciation by the mother that there needed to be some time and space in the father's household for the father to be able to develop a relationship and have activities with the children, and also for the children to spend time with family. In light of the way in which the activities were presented to him and the way in which they impacted upon the potential for him to arrange family activities and time with the children, Riethmuller J could understand the father's reluctance in taking the children to every party to which they were invited. The children were invited to a very large number of parties and children normally miss some of these because of family activities.

The mother was strongly fixated on questions of family violence. At best, her case was that the only recent incident involving her was a relatively minor one when the father videoed her taking the children to parties on his contact weekend. Whilst not condoning the videoing, Riethmuller J the trial judge considered it quite different from the classical stalking complaint. The other incidents involving the mother directly occurred many years ago, but they remained a very significant part of the case from the mother's perspective.

Judge Riethmuller concluded in relation to the mother at ([39]):

"I accept that the mother is a loving mother of the children and that she meets their day-to-day needs in terms of ensuring that they are properly cared for and attend school and the like. I have real reservations about her capacity to separate out her own needs from the children and her capacity to maintain perspective and objectivity when dealing with issues that cause the children concern or quiet, which is a significant parenting skill when bringing up children."

The father had been surprisingly compliant and surprisingly prepared to engage with professionals in the past and undertake courses, particularly if it was accepted that the mother's view of him was correct. There was an incident at a dance concert when the father allowed the child X to remain with his mother when he expressed in strong terms that this was his preference. This showed that he had a capacity to separate his obvious needs and desires to have time with the children from his extreme frustrations, and put the interests of the children first. When giving evidence he was obviously genuinely distressed about the events that had taken place. He showed a very genuine interest in the children and trying to find a way to have a relationship with them. He had persisted with what must have been very expensive proceedings since 2010, the various interlocutory processes and the costs of counselling and the like since that time.

It was also relevant that the father was prepared to take advice not to pursue the contravention applications but move straight to trial of the significant issues, when Riethmuller J offered a priority final hearing. This showed a lack of vindictiveness and demonstrated a clear desire to have the underlying issues resolved. He was not simply pursuing legal proceedings to punish the mother. The videoing of the mother was inappropriate but was a lapse of judgement fuelled by extreme frustration.

Judge Riethmuller accepted that, as Ms P indicated in the Family Report, the father could have done more in terms of preparing for the possibility that the children would live with him. However he had engaged and had indicated a clear preparedness to continue to engage with professionals into the future. The trial judge was persuaded that the father did not perhaps fully understand the difficulties that might arise if the children were to go to live with him from that day but he was convinced that the father had a reasonable idea of the likely difficulties.

Evidence was given by the school principal which showed that there had been difficulties with the changeovers which took place at the school. The idea of using the school as a changeover point was that it would save the parties from interacting with each other but this was ineffective and left the school with considerable difficulties dealing with the children in their attempts to facilitate the changeover and reduce the conflict.

Judge Riethmuller was critical of the mother's choice of expert. In particular:

- His evidence was relatively limited.
- He focussed heavily on primary attachment in the first 2-3 years of life.
- He did not present as a contemporary expert. For example he used the phrase "sole custody".
- He did not deal with any of the history but was critical of the father for bringing a particular application.
- He ignored the intensive work that had already been done with the family whilst recommending more intensive work.
- He didn't see the parties or the children.
- He was focussed on the academic discussion of alienation rather than the actual circumstances of the family, particularly the children.

One of the major aspects of the mother's case was relying upon X's journal which could easily lead one to conclude that X had an appalling time when he went to his father's household and was treated appallingly. Judge Riethmuller said (at [77]):

"It is, in many respects, almost reminiscent to a modern day rendition of something like Cinderella's story. If it is accurate, it would be a very strong factor against him having to see his father."

The mother considered that one of the most significant matters that X raised was an allegation that the father threatened to chop his fingers off. The father's evidence was that this was an offhand comment intended to be humorous when the father was gently rebuking the children for taking biscuits from the biscuit tin. He called out to them "If you keep getting into that tin, I'll chop your fingers off." Judge Riethmuller considered that taken out of context it sounded appalling and within context it could easily have been a joke. In the context of this case, though, it was unfortunate that the comment was made.

Judge Riethmuller pointed that the father's household may well include language such as "shit" and "shut up" and given the father's background, appearance and trade, other more colourful words were undoubtedly used by him from time-to-time, but that had to be contextualised. Judge Riethmuller said (at [88]):

"I am persuaded that, when I look at the evidence as a whole, whilst it may not be Shakespearean sonnets that are whispered every day in the father's household, but a

more rough and tumble form of language, it's certainly within the reasonable range of Australian society."

Most of the incidents between the mother and the father which were raised by the mother were situational arguments, not unusual for couples that were separating. Even accepting the mother's evidence at its highest with respect to these incidents, they showed considerable anger and difficulty between the parents about separating and about the children's arrangements, but the incidents seemed to have ceased relatively soon after separation.

The pattern of the mother's behaviour was set out in the report (at [109]):

"The family report assessment found there were numerous indications that Ms Ralton has behaved in a manner that is recorded in the professional literature as associated with parental alienation. These indications include:

- a. That the children express strong feelings of fear and unwillingness to spend time with Mr Ralton that is incommensurate with the explanations they provide for their feelings of fear,
- b. That there is a consistent pattern of Ms Ralton seeking to limit the time and telephone contact the children have with Mr Ralton, or the information Mr Ralton has about the children's medical needs or extracurricular activities, and that Ms Ralton has sought other legal measures such as obtaining intervention orders, or seeking letters from her general medical professional, to support her decisions to limit the time the children spend with their father
- c. That the children's rejection of Mr Ralton extends to other members of the paternal family, such as their half-brother A and their step-brother B,
- d. That Ms Ralton has demonstrated a pattern of arranging activities for the children to attend during the time they spend with Mr Ralton, and then proposing that the children should 'choose' whether they spend time with their father. This option of choice has been largely demonstrated through the repeated presentation of X's school work or pages from his diary where he reports not wanting to spend time with his father
- e. That Ms Ralton demonstrates patterns of 'service shopping' where professional advice is only accepted when it is in line with her views such as the advice of her local medical practitioner or the counsellors at (omitted) while other professional advice is rejected such as the advice of Ms L or Ms S,
- f. That there are indications of tacit rewards for the children's rejecting behaviour towards Mr Ralton, for example permissive parenting practices regarding food, co-sleeping arrangements, and possibly attendance at extracurricular activities,
- g. That there has been a pattern of increasing rejection of Mr Ralton,
- h. That Ms Ralton describes her behaviour in terms of following the children's wishes or being protective of the children

In addition, the professional literature proposes;

- i. That children who are most vulnerable to alienation practices are generally between the ages of 8 and 15 years,

- j. Developmental disorders or emotional difficulties increase a child's vulnerability, as these children lack the resilience to withstand the pressures associated with high post-separation conflict between parents,
- k. The personality features of 'favoured' parents include a tendency to be rigidly defended and moralistic, they perceive themselves to be flawless and virtuous and often externalise responsibility onto others, and they often have limited insight into themselves and their effect on others.
- l. Favoured parents often have an enmeshed relationship with the aligned child
- m. Aligned children are angrier than non-aligned children, and alienated children are more likely to demonstrate defiant or rigid behaviour, often refuse to attend school and are more likely to develop eating disorders
- n. Favoured parents often falsely or without reasonable basis make allegations of abuse against the other parent, which feature delusional statements or gross distortions of events.

Judge Riethmuller concluded (at [113]-[114], [119]-[120], [123]-[125]):

"In summary, the case, is one where the mother is completely opposed to the children spending time with the father, although she would verbalise that as allowing the child to choose. In the context of the facts and circumstances of this case it is apparent that such a choice means there would not be time. It is clear that the mother's reactions to the father and time are likely to cause the children to pick up on the mother's distress. The mother is not only without the capacity to even contemplate that these may be the underlying features of the case, but quite intransigent in her resistance to this as even a hypothesis that one might need to consider, even if she does not accept it is the true hypothesis.

It seems to me that this presents a number of difficulties for the children. It is certainly a very unhealthy environment for children to be developing in, where the mother has an intransigent and insightful view of an aspect of their lives so significant as the relationship with their other parent. There is the real likelihood that these behaviours would also occur with respect to other events in the children's lives. I am persuaded on the evidence that if they stay with the mother, they will not have any real relationship with the father. Indeed, even if I were to order them to have supervised time only a few times a year, it seems to me to be most likely that they would refuse to go into the session with the father, as is demonstrated with the family consultant interviews and even today where, without knowing the result, the child X refused to even come into the court building until such time as the police were called. ...

If the children were to go to the father's household, there would be considerable grieving in the short term for the loss of the mother and, certainly, today will be a particularly difficult day for the children when they are told what is to occur.

I am persuaded that the father will facilitate the children to have a relationship with the mother, to the extent that this can be made possible, without destroying the children's relationship with him. His relationship with his other child appears positive and he continues to interact with the other child's mother in a way that clearly facilitates both their relationship with the child. ...

However, there is a very real prospect that the movement of the children to the father's household enables them to have a relationship build up that is sufficiently strong to

withstand the mother's anxiety. It places them in the position where they will be able to have a positive and loving relationship with both parents, not just one parent, which would be a significant improvement to their circumstances.

If I make no order to change the care arrangements, it would do nothing to relieve their immediate distress about contact. To do that, I would have to effectively remove the father from their lives until they were far older. This is likely to have a significant damaging impact upon them in the long term.

If I change their care arrangements, they will suffer significant distress today. I must also take into account that there are no guarantees that a change in care arrangement would result in the positive outcome of them ending up with a good relationship with both parents. A change in care arrangement could fail. There is a risk of that, and that must be carefully balanced in determining what an appropriate order should be today. There is, of course, also the potential benefits of a change in care arrangements if, in a year's time, we see these two children having positive relationships with both of their parents and a feeling that they have the love and support of both parents to guide them and care for them through their lives."

The Full Court dismissed the mother's appeal. It approved of the approach taken by Riethmuller J to list the final hearing with priority rather than deal with the interim and contravention applications. It said (at [71]):

"Faced with the serious issues raised by the evidence that they had just heard and the very concerning behaviour of B, His Honour took the very appropriate and responsible course of giving this matter priority over other matters in his docket by bringing forward the final hearing. The matter was plainly urgent."

The Full Court said (at [4]) that the significant factor that led to Riethmuller J making the orders moving the children to live with the father were his findings that the children were "at risk of longer term psychological harm in the mother's household" and that if they remained in the mother's care they would not have any real relationship with the father. The Full Court noted that Riethmuller J was at pains to avoid the use of labels such as "parental alienation" or "enmeshment" although these words were used in the family consultant's report in a passage quoted by the trial judge. The Full Court found that Riethmuller J did not make the findings of enmeshment and parental alienation about which the mother complained. Rather, Riethmuller J had regard to and made findings in accordance with the behaviour described in the family consultant's report. Each of these paragraphs identified particular conduct of the mother and none attempted to provide a psychological label for it. The Full Court (at [191]) noted that Riethmuller J clearly indicated that he would consider:

"The circumstances confronting these two children in each of the households and the behaviours exhibited" rather than engage in a discussion of psychological concepts."

The Full Court did not consider there was any substance in the mother's criticism that Riethmuller J had no regard to the scientific papers to which he was referred to by the mother. For the reasons already given there was no need for him to do so and in the absence of expert evidence on the issue, having regard to academic literature can be a dangerous course e.g. *McGregor & McGregor* [2012] FamCAFC 69.

## **Conclusion**

The cases discussed above were selected to show the different approaches taken by the courts. *McGregor* and *Ralton* are consistent in demonstrating that reliance on social science cannot occur in the absence of the evidence being given by an appropriately qualified expert. In *Pierce* the

children were left living with the preferred parent with orders made for the swift reintroduction of the two estranged children. Whether or not this worked is unknown.

The approach in *Ward* was not very interventionist. The children were largely left to decide their own arrangements. The more "textbook" approach was taken in *Ralton*. Orders were made for the children to live with the father (the rejected parent), see the mother on two special occasions in the next 6 months and then be gradually reintroduced to spending time with the mother (the preferred parent).

### ***August 2018***

Caution: This advice is of a general nature only and does not take into account the particular circumstances or needs of your personal situation and is no substitute for legal advice taking into account the particular circumstances of the case.