South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

19-02

Friday, January 25, 2019

presented by
The South Carolina Bar
Continuing Legal Education Division

http://www.scbar.org/CLE

SC Supreme Court Commission on CLE Course No. 190693

In the Best Interest of the Child: 2019 Guardian *ad Litem* Training and Update

SPEAKER BIOGRAPHIES

(by order of presentation)

Julianne M. Stokes

Stoker & Haselden, LLC
(course planner)

Julianne Meggs Stokes graduated with honors from Presbyterian College in 2003, earning a B.S. in Political Science. She received her J.D. from Mercer University's Walter F. George School of Law in 2006. Mrs. Stokes was admitted to the South Carolina Bar in 2006 and has practiced almost exclusively in the Family Courts of South Carolina since that time. She deals on a daily basis with issues such as divorce, equitable distribution of assets and liabilities, alimony, and time-sharing and support of children. She also represents clients in high-asset, complex marital and family law cases, drafting and enforcing prenuptial agreements, modification of alimony or child support payments, modification of custody, and parental relocation cases. In addition to her very active litigation practice, Mrs. Stokes is also a certified Family Court Mediator and acts as a Guardian ad Litem in private custody matters.

Mrs. Stokes is a member of the South Carolina Bar (Family Law Section), Charleston County Bar, and the South Carolina Women Lawyers Association. She is also a member of the South Carolina Bar Resolution of Fee Disputes Board.

Mrs. Stokes is married to her college sweetheart, Joshua P. Stokes, who is also a local attorney. They have two rambunctious sons and welcomed a daughter in 2015.

Leslie Fisk

South Carolina Legal Services

Leslie Ragsdale Fisk completed her undergraduate degree at Baylor University and her law degree at West Virginia University School of Law. She has worked for South Carolina Legal Services for eleven years; including four years in the Spartanburg Office and seven years in the Greenwood Office. She previously held the position of Lead Domestic Violence Attorney, then was the Family Law Unit Head from 2015-2018. In 2018, she became the Managing Attorney of the Greenwood Office.

Leslie chaired the Young Lawyer Division Cinderella Project for Greenwood County in 2014 and 2015 and serves on the South Carolina Bar's Wellness Committee and the Self Represented

Litigants committee. Leslie was a member of Governor Haley's Domestic Violence Task Force. She graduated from the Bar's Leadership Academy in 2014 and tied for SCLS Attorney of the Year for 2014. Leslie was the 8th Judicial Circuit nominee for the S.C. Bar's Young Lawyer of the Year for 2015. She is a volunteer mediator at the Upstate Mediation Center and enjoys providing presentations for Continuing Legal Education and for community groups on issues related to family law and domestic violence.

Michele Dahl Sturkie

Sturkie Law, LLC

Michele is originally from Reading, Pennsylvania, and graduated from Cabrini College in Radnor, Pennsylvania in 1988 with a B.A. in History, and minors in Mathematics and Political Science. She received her certificate in Paralegal Studies with a concentration in litigation from the Philadelphia Institute in 1989. Michele worked for almost ten years as a litigation paralegal for the U.S. Army, the State of Utah, and at private law firms in Utah and South Carolina before attending law school at the University of South Carolina. She received her J.D. from the University of South Carolina in 2002, where she received the Harvey L. Golden Domestic Relations Student of the Year Award in 2001from the South Carolina Chapter of the American Academy of Matrimonial Lawyers. In 2003, Michele received a Pro Bono Service Award in 2003 from the South Carolina Bar. She practiced with McDougall & Self, LLP mainly in the Florence office from October 2002 until March 2010, then was a partner with McGowan Rogers Stewart Hiller & Krize from March 2010 until March 2016. On March 1, 2016, Michele opened Sturkie Law, LLC in Florence, South Carolina. Michele is a member of the South Carolina Bar, the South Carolina Women's Bar Association, and the Florence County Bar. Since she became a lawyer, her practice has been in Family Court with domestic relations cases, including serving as some Guardian ad litem in private custody matters. Michele became a Certified Family Court Mediator in July 2016. Michele practiced under the name "Michele R. Krize" until December 2016, when she married Wayne Sturkie.

Almand J. Barron

Th Law Offices of Shea & Barron

Almand Barron graduated from the University of South Carolina in 1993 with a Bachelor of Arts degree. Almand received her Juris Doctor from the University of South Carolina and was admitted to the South Carolina Bar in 1998. She has practiced solely in the area of Family Law since her admission to the Bar and also serves as a Guardian *ad Litem* for children in Family Court matters. Almand is a member of the South Carolina Women Lawyer's Association, and the Richland and Lexington County Bar Associations. She is also a Fellow in the South Carolina Chapter of the American Academy of Matrimonial Lawyers. She is Board Certified in Family Law by the National Board of Trial Advocacy.

John Means A'Hern (Jay)

The A'Hern Law Firm, LLC

Jay attended Dreher High School in Columbia and the Emory University in Atlanta before graduating from the University of South Carolina School of Law in 2005. He has done Guardian *ad litem* work since 2006, and for approximately the last ten years his main focus has been serving as a GAL in contested family court cases.

Leslie Armstrong

Sahn Law Firm, LLC

Leslie A. Armstrong, Esq. is licensed South Carolina and North Carolina attorney, a Licensed Professional Counselor Intern, (LPC/I), a National Certified Counselor (NCC), and a South Carolina Certified Family Court Mediator. She is a 2007 graduate of Furman University where she earned her undergraduate degree in psychology and a 2011 graduate of the University of South Carolina School of Law where she obtained her Juris Doctor and served on the editorial board of the South Carolina Law Review. After law school, Mrs. Armstrong then went on to pursue a Master of Arts in Counseling with a mental health concentration which she received from Wake Forest University in 2016. She is currently a partner at Sahn Law Firm, LLC and is now in the process of launching her solo practice where she practices exclusively in family law, also including mediation, guardian ad litem work, working with families affected by parental alienation, and developing professional education programs designed for mental health and legal professionals which focus on topics relevant to the interfacing of these professional communities in serving families undergoing high-conflict divorce/separation cases. Ms. Armstrong also works for Changing Families, Inc., a 501 (c) 3 organization dedicated to educating members of the community who are confronting the challenges of building step, and blended families, and mediates family law cases as a member of the Mediation and Meeting Center of Charleston (MMCC). Ms. Armstrong is an active member of the Association of Family and Conciliation Courts (AFCC), and has attended specialized training through this organization in the field of parental alienation. She has also been trained by Dr. Amy Baker as a provider of Restoring Family Connections, a program for reunifying adult children of alienation with their parents. She is a member of the Parental Alienation Study Group (PASG), and recently attended the PASG Nordic conference in Stockholm where she also received training in the Family Bridges (FBAC) reunification program.

(Note: I currently practice as the family law partner at Sahn Law Firm, LLC, but I have also launched a solo practice, Armstrong Family Law, LLC in conjunction with finishing out my cases with Sahn Law Firm. Armstrong Family Law will be my new practice going forward – you can include one or both of these in my bio as you feel is appropriate.

Helen Elliot Wheeler

The Center for Families, LLC

Helen Wheeler is a graduate (With Distinction) from The Citadel with a Master's Degree in Clinical Counseling. She has been a Licensed Professional Counselor (LPC) since 2001 and is a Licensed Professional Counselor Supervisor preparing and supervising future counselors. In addition, she is an Adjunct Professor in the Graduate Counseling Program at Webster University. Ms. Wheeler's private counseling practice specializes in family counseling with emphasis on high conflict co-

parenting, marriage counseling, children counseling and reunification/clarification issues. The Center for Families is a teaching facility cooperating with many graduate schools. She is also a 20-year veteran Certified Public School Teacher. Ms Wheeler is a Certified Family Court Mediator and was a Guardian ad Litem for DSS. She has received specialized training in working with high conflict divorcing couples and is a Nationally Certified Parent Coordinator. She has been qualified as an expert in the Ninth and First Judicial Districts in working with high conflict divorcing couples, the impact of high conflict divorce on children, as well as child development, family counseling, and parent coordination, among others. She is a member of the Association of Mental Health Counselors of America (AMCHA) who has named her a Diplomate in Marriage and Family Counseling and the local South Carolina Association of Licensed Professional Counselors (SCALPC) She is also a member of Association of Family Conciliation Courts (AFCC), America Association of Christian Counselors, (AACC) and the Parental Alienation Study Group (PASG). She has presented CLE activities for the SC Bar ("Dealing with High Conflict Clients") and the statewide GAL CLE ("Alternative Dispute Resolution: Parent Coordination" and "Visitation Refusal: Is It Parental Alienation?") She has presented on several occasions for the Family Court Bar of Charleston and Dorchester Counties ("Dealing with Difficult Clients", "What do Parents Need to Know About Mediation?" "Understanding Visitation Refusal in Terms of Parental Alienation" [for Charleston area GALs]). Other community involvement includes presentations for Palmetto Behavioral Health and Summerville Behavioral Health. Ms. Wheeler has taught on multiple Continuing Education topics for counselors. She has also presented for the South Carolina Counselor's Association (SCCA) annual meetings and was a former Executive Board Member. She also taught on several different workshop topics for the South Carolina School Counselor's Association (SCSCA). As a founding board member of the Mediation and Meeting Center of Charleston Ms. Wheeler has done several presentations for the group about mediation. She presented an ethics/drug & alcohol workshop for Mediation Week in 2017.

Heather M. Smith

Metropolitan Children's Advocacy Center

Heather M. Smith is a licensed professional counselor. Ms. Smith has worked extensively with children and adolescents in outpatient, inpatient and group home settings. Since 2003, she has conducted front-line forensic interviews and evaluations of suspected child abuse victims, as well as witness preparation and trauma-focused therapies at the Met CAC (formerly known as the Assessment & Resource Center), the Children's Advocacy Center based in Columbia, SC. Ms. Smith also maintains an active private practice addressing service needs beyond the scope of the Met CAC. She is especially relied upon in the Midlands of South Carolina for her skills with divorced parents in high conflict. Ms. Smith provides co-parenting assistance, parent coordination and development of parenting plans tailored to meet the needs of individual families. Ms. Smith trains across disciplines on evidence-based interventions with maltreated children, complex trauma in children and adolescents and best practice forensic interviewing techniques. She has presented on interviewing child victims of sexual exploitation at international conferences in Africa, Central America and Thailand with the FBI and the US Department of Justice. Ms. Smith contributed to a national project in developing a forensic interview protocol for sexually exploited American youth with the Department of Justice in collaboration with National Center for Missing and Exploited Children. In 2017, she was honored with the Distinguished Humanitarian Award at the South Carolina Victims' Rights Week conference. Ms. Smith works with Family Bridges for Alienated

Children (FBAC), conducting workshops for severely alienated children and their left-behind parents when reunification is ordered by the court.

Brooke Evans

Evans & Turnblad, LLC

Brooke Chapman Evans graduated in 2000 from the College of Charleston with a Bachelor of Arts degree in Political Science, with a minor in Philosophy. She then obtained her JD from the University of South Carolina School of Law in 2003. Brooke is a founding member of Evans & Turnblad, LLC in Florence, where she focuses primarily on domestic litigation and serves as a Guardian ad Litem.

After law school, Brooke served as Circuit Court law clerk to the Honorable John C. Few, now Justice of the South Carolina Supreme Court. Upon completing her clerkship, Brooke entered private practice in Greenville and remained there until returning home to Florence in 2011. Brooke serves on the Executive Committee of the Florence County Bar Association, is a member of the South Carolina Association of Justice, and is a Barrister in the Pee Dee Inn of Court Chapter of the American Inns of Court. Additionally, Brooke serves on the Board of Directors for The School Foundation.

Honorable Angela W. Abstance

SC Family Court

Judge Angela Abstance is the child of Bobby Wood and Susan Myrick, both formerly of Barnwell. She attended Barnwell public schools and received a Bachelor of Arts in English from Furman University in 1998. Judge Abstance attended the University of South Carolina School of Law, where she served on the Environmental Law Journal. She graduated in 2001 and began her general practice of law at the Moore Law Firm in Barnwell, South Carolina, handling civil litigation, real estate, and probate matters. During that time, she also practiced extensively in Family Court, representing parties in private actions, serving as counsel for parents in abuse and neglect cases, and later serving as the attorney for the Guardian ad Litem program. In 2008 she went to work for the South Carolina Department of Social Services handling abuse and neglect cases in the Fourteenth Judicial Circuit. Judge Abstance opened her own practice in Barnwell in 2014, where she focused on Family Law. Judge Abstance is a certified family court mediator. She served as a contract attorney for the Commission on Indigent Defense and represented parents in abuse and neglect actions. She was elected to fill the unexpired term of the Honorable Dale Moore Gable on February 7, 2018.

Judge Abstance is married to Robert M. Abstance, III, formerly of Denmark, South Carolina, and they have three children. She is a member of the First Baptist Church of Denmark, South Carolina. Judge Abstance enjoys watching football, hiking, traveling, and reading.

Honorable Tarita A. Dunbar

SC Family Court

Judge Tarita A. (Ridgill) Dunbar was born in Manning, South Carolina and raised in Summerton, South Carolina. She is the daughter of Roland Hayes and Clotel Ragin Richburg and the late William Nelson Ridgill. She is a graduate of Manning High School, Georgetown University and the University Of South Carolina School Of Law.

After law school, Tarita started her legal career in private practice in Columbia, South Carolina practicing in the area of domestic relations. Shortly thereafter, Tarita served as the Director of Research and Legal Counsel for the South Carolina Senate Committee on Corrections and Penology. Her legal career also includes serving as an Attorney for the South Carolina Department of Labor, Licensing and Regulation; Attorney for Spartanburg and Cherokee County Department of Social Services; and Attorney for South Carolina Department of Social Services Child Support Division.

Tarita was appointed to serve as a Commissioner to the South Carolina Human Affairs Board of Commissioner. She also served on the Board of Eau Claire Cooperative Health Centers, Inc., Columbia, South Carolina.
Tarita is a member of Augusta Road Church of Christ, Greenville, South Carolina, where she has served as Sunday School Teacher. She is married to Vernon F. Dunbar and they have three children, William Radford Dunbar, Kathleen Eleanor Dunbar, and Richard Hayes Dunbar.

She enjoys exercising at the Caine Halter YMCA, reading, and hiking. Tarita is passionate about other's health in terms of eating properly and using nature's remedies for healing.

Honorable Robert Newton

SC Family Court

Judge Robert E. Newton was born in 1964, in Wurzburg, Germany. His father is Major Vernon P. Newton, USA, Retired, who is retired from a career in the military and then a second career with the American Red Cross, and his mother is Ruth I. Newton, who had a career as a military wife and full-time homemaker.

Upon Judge Newton's father's retirement from the military, his family ultimately settled in Lexington, South Carolina. Judge Newton graduated from Lexington High School in 1982, and then attended the University of South Carolina where he received a Bachelor of Science Degree, cum laude, in Finance in 1986. He is a member of Phi Beta Kappa and Beta Gamma Sigma. Judge Newton received his Juris Doctorate from the University of South Carolina School of Law in December 1988.

After graduating from law school, Judge Newton entered private practice in his hometown of Lexington, South Carolina, where he had a litigation intensive practice with a primary focus in the family courts of South Carolina. He was a member of the South Carolina Association for Justice and served a term on its Board of Governors. He served on the executive committee of the Lexington County Bar Association and was President of the Lexington County Bar in 2006. He served as a

member of the Dispute Resolution Section Council of the S.C. Bar and the S.C. Bar Resolution of Fee Dispute Board. He was active in various School Improvement Councils and public service committees, as well.

In the later years of his private practice, Judge Newton narrowed his practice to the mediation and arbitration of family court cases throughout the state. On May 23, 2012, he was elected by the General Assembly to the Family Court Bench for the Eleventh Judicial Circuit, Seat 3.

Judge Newton has been married to his high school sweetheart, Caroline Steppe Newton, for over 25 years and they have one daughter. In his free time, he enjoys playing guitar, seeing live music, riding motorcycles, and spending time with his wife and daughter hiking in the mountains of North Carolina. Of late, he has also taken up the building and playing of cigar box guitars.

Honorable Jerry D. Vinson

SC Family Court

Judge Jerry D. (Jay) Vinson, Jr. was born in Camden, South Carolina in 1960, the son of Jerry D. Vinson and Patricia Ann Mahan Vinson. Judge Vinson was raised in Florence, South Carolina where he attended public schools. He graduated from Francis Marion College, cum laude, with a Bachelor of Science Degree in Biology. He received his Juris Doctorate Degree in 1985 from the University of South Carolina School of Law and was admitted to practice law the same year.

Following law school, he served as a law clerk to the Honorable John H. Waller, Jr., Circuit Court Judge of the Twelfth Judicial Circuit. After completing his clerkship, he joined the firm of Turner, Padget, Graham and Laney, P.A. and later practiced law with his wife, Flo Lester Vinson, in The Vinson Law Firm, P.A. Judge Vinson merged his practice with the law firm of McDougall & Self, L.L.P, where he practiced until his election to the bench in 2004. He is admitted to practice before the United States District Court, the Fourth Circuit Court of Appeals and the United States Supreme Court.

Judge Vinson has been active with Francis Marion University, where he has been named both Outstanding Alumnus and Outstanding Biology Alumnus. He has served as FMU Alumni President and as a member of the Board of Directors of the Francis Marion University Foundation. He has also served on the Board of Directors for the Florence Symphony Orchestra, the Master Works Choir and the Florence Kiwanis Club. Judge Vinson was also active in the South Carolina Bar serving as a member of the House of Delegates and as a member, and former chair, of the Family Law Section Council. He is a member, and past chair, of the South Carolina Bar Law Related Education Committee. He has been a frequent speaker at Family Law CLE programs.

Judge Vinson is former Chair of the Family Court Bench Bar Committee and serves as chair of the Best Legal Practices sub-committee. Judge Vinson served on the Governor's Task Force for Children in Foster Care and Adoption Services. Judge Vinson is also a member of the National Council of Juvenile and Family Court Judges and served on the Council's Board of Trustees. He is past president of the South Carolina Conference of Family Court Judges and a former member of the Family Court Judges Advisory Committee.

Judge Vinson is a confirmed communicant at St. John's Episcopal Church where he has served has on the Vestry.

Davis Henderson

Lowcountry Psychiatric Group, LLC

Davis Henderson, PhD earned his undergraduate degree at The University of Georgia, his Master's degree from The University of South Carolina, and his Doctoral degree from The University of Memphis. He completed his predoctoral training at Children's Hospital Los Angeles. He entered private practice in 2004. He has extensive training and experience in psychotherapy, psychological evaluations, parent training, clarifications, and child custody evaluations. He works with many attorneys and GALs on high conflict family cases. He is a faculty member in the Master's and Doctoral Clinical Psychology Program at Capella University. He is a member of the American Psychological Association and the Association of Family and Conciliation Courts.

In the Best Interests of the Child:

2019 Annual Guardian ad Litem Training and Update
Friday, January 25, 2019

This program qualifies for 6.0 MCLE
SC Supreme Commission on CLE Course # 190693

8:30 a.m. **Registration**

8:50 a.m. **Welcome and Opening Remarks**
Julianne M. Stokes, Esq.
Stokes & Haselden, LLC

9:00 a.m. **Domestic Violence and its Impact on Children**
Leslie Fisk, Esq.
South Carolina Legal Services

10:00 a.m. **Guardian Actions and Reactions**
Michele Dahl Sturkie
Sturkie Law, LLC

10:30 a.m. **Morning Break**

10:45 a.m. **Dollars and Sense: A Practical Look at Financial Aspects of Guardian *ad Litem* Work from Two Practicing Guardians *ad Litem***
Almand J. Barron, Esq.
Law Offices of Shea & Barron

John Means A'Hern, Esq.
The A'hern Law Firm, LLC

11:15 a.m. **Parental Alienation: Don't Be Fooled**
Leslie Armstrong, Esq., LPC/I
Sahn Law Firm, LLC

Helen Elliott Wheeler, LPC
The Center for Families, LLC

12:15 p.m. **Lunch (on your own)**

1:30 p.m. **Handling Abuse Allegations**
Heather M. Smith, LPC
Metropolitan Children's Advocacy Center

2:30 p.m. **Caselaw Update**
Brooke Evans
Evans & Turnblad, LLC

3:00 p.m. **Judges Panel: "Answers from the Bench"**
Hon. Angela W. Abstance
Hon. Tarita A. Dunbar
Hon. Robert Newton
Hon. Jerry D. Vinson

3:45 p.m. **Afternoon Break**

4:00 p.m. **Decoding Psychological Evaluations in Custody Cases**
Davis Henderson, Ph.D.

4:45 p.m. **Adjourn**

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South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Domestic Violence and its Impact on Children

Leslie Fisk

What GALs need to know about Domestic Violence

Leslie Fisk, South Carolina Legal Services

What is Domestic Violence?

- Violence to settle disputes vs.
- Abuse and Control
- Not all abusers are men, not all survivors are women!

- Physical
- Sexual
- Financial
- Religious
- Emotional

How Common is it?

- 1 in 4 women and 1 in 7 men report having experienced severe physical violence by an intimate partner during their lifetime. (National Intimate Partner and Sexual Violence Survey, 2010, Centers for Disease Control and Prevention)
- There were 18,740 emergency hotline calls made to SCCADVASA member domestic violence organizations in FY 2015. (SCCADVASA)
- South Carolina's ranking: 6th in the nation for women killed by men per capita. (Violence Policy Center)

Why the Survivor did not leave

- Children
- Financial
- Lack of family support
- Religious beliefs
- Promises by the abuser to get help or do better
- Think it's normal
- NOT the Survivor's fault!

How Domestic Violence might affect your impression

- No job
- No family support
- May appear too emotional
- May lack connections in the community
- May lack evidence of the abuse
- May be suspicious of the process
- Poor communication skills
- Delayed anger

David Mandel's work

- Domestic Violence as a Parenting Choice
- Can't expect Survivor to control the Abuser
- Affects the culture of the family even when the Abuser is not around

https://www.youtube.com/watch?v=hNS9RYAB5TY

How Domestic Violence can affect a Judge's decision

- Custody §**63-15-40.**
- Visitation §**63-15-50**
  - Time
  - Conditions
- Alimony §**20-3-130**
  - "marital misconduct or fault of either or both parties…if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage…"
- Order of Protection
- Equitable Division §**20-3-620**

Custody and Domestic Violence

- "The court must give weight to evidence of domestic violence…"
- Does not mean that the abuser will not get custody
- It is one of many factors.

Domestic Violence and Visitation

- A Judge may…
  - Order exchanges in a protected setting
  - Order the visitation to be supervised
  - Order the abuser to attend a program of intervention for offenders or other designated counseling
  - Abstain from possession/consumption of alcohol
  - Prohibit overnight visits
  - Require a bond
  - Impose any other condition necessary for the safety of the child
  - Order the address of the child and victim to be confidential
  - For the Perpetrator to pay cost of treatment for a child

How Witnessing Domestic Violence affects children

- Generational Cycles of Abuse
- Undermines the relationship between the Survivor and children
- Affects children's perception of themselves as a boy or girl
  - "you hit like a girl"
- Trying to stop the abuse or guilt for not trying to stop it.
  - "Should I have stopped my Dad…"
  - "What do I do when they get back together and…"
  - Making the child hold the phone and record it.
  - Abuse during pregnancy

Domestic Violence may affect post-litigation

- Exchanges
- "As parties can agree" probably won't work.
- Decision-making
- Parents bad-mouthing the other parent to the child or on Facebook

Suggestions for Agreements

- Electronic Communication
  - Texting, Facebook, Our Family Wizard, TalkingParents.com
  - Either party can decide when communication needs to be electronic-only.
- Exchange children at a 3rd party's house and stagger times
- Mediation if the parties can't agree
- Therapy
- Restraining Order against harassment or abuse
  - This is different than an Order of Protection.
- Meet at public place
  - Walmart, McDonalds, a park, police station

SOUTH CAROLINA

48 females were murdered by males in South Carolina in 2016

The homicide rate among females murdered by males in South Carolina was 1.88 per 100,000 in 2016

Ranked 6th in the United States

AGE

For homicides in which the age of the victim was reported (48 homicides), 3 victims (6 percent) were less than 18 years old, and 3 victims (6 percent) were 65 years of age or older. The average age was 40 years old.

RACE

Out of 48 female homicide victims, 24 were white, 23 were black, and 1 was of unknown race.

MOST COMMON WEAPONS

For homicides in which the weapon used could be identified, 59 percent of female victims (26 out of 44) were shot and killed with guns. Of these, 54 percent (14 victims) were killed with handguns. There were 5 females killed with knives or other cutting instruments, 4 females killed by a blunt object, and 8 females killed by bodily force.

VICTIM/OFFENDER RELATIONSHIP

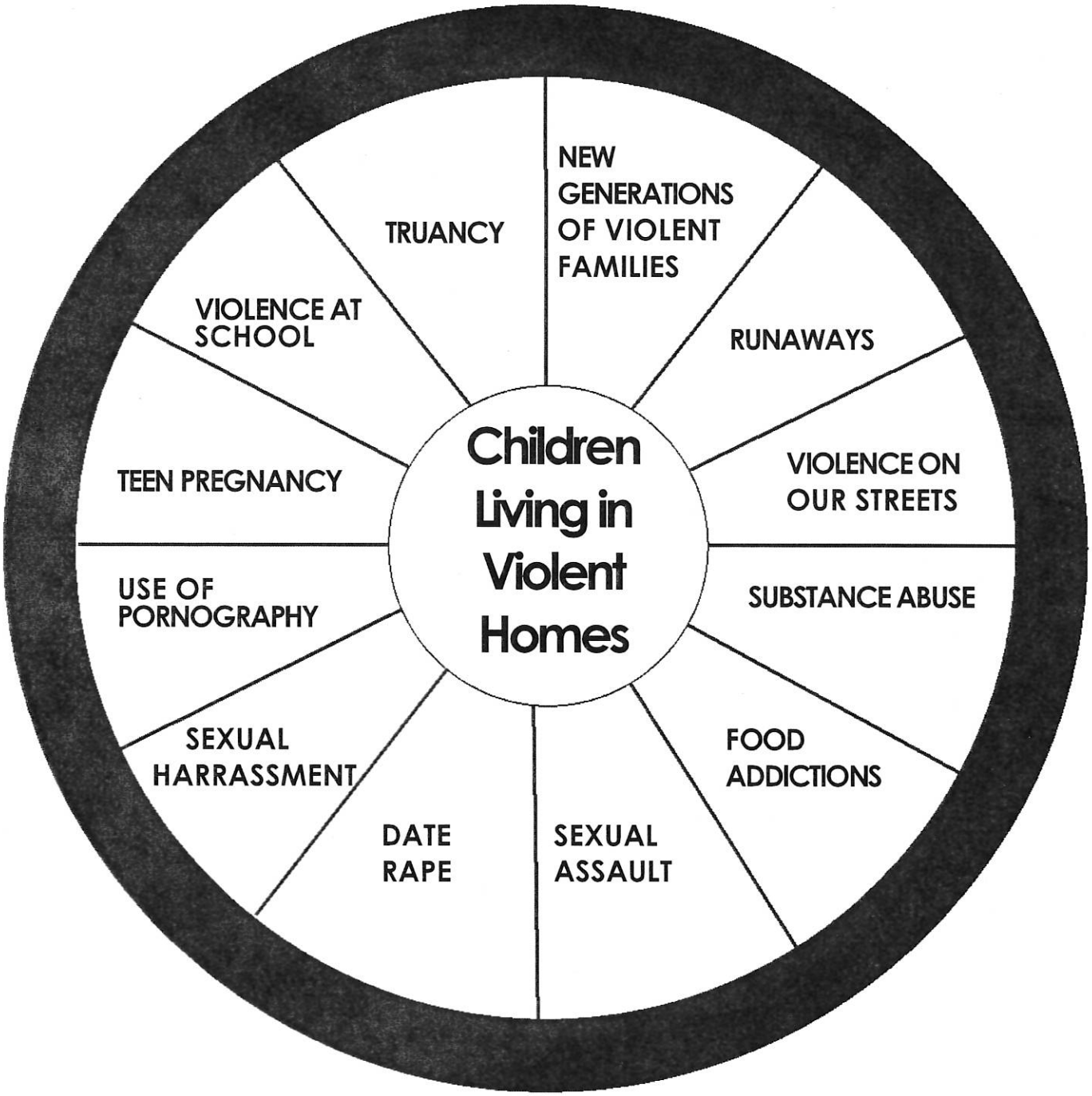
For homicides in which the victim to offender relationship could be identified, 95 percent of female victims (42 out of 44) were murdered by someone they knew. Two female victims were killed by strangers. Of the victims who knew their offenders, 69 percent (29 victims) were wives, common-law wives, ex-wives, or girlfriends of the offenders. Among the female intimates who were murdered, 66 percent (19 victims) were killed with guns; 53 percent of these (10 victims) were shot and killed with handguns.

CIRCUMSTANCE

For homicides in which the circumstances could be identified, 88 percent (28 out of 32) were not related to the commission of any other felony. Of these, 71 percent (20 homicides) involved arguments between the victim and the offender.

INSTITUTE FOR SAFE FAMILIES

Long-Term Results Of Children Living In Violent Homes



NATIONAL CENTER
on Domestic and Sexual Violence
training · consulting · advocacy

Developed from:
Domestic Abuse Intervention
Project 202 East Superior Street
Duluth, MN 55802

From Parenting Magazine, www.Parents.com

How Does Domestic Violence Affect Kids?

An estimated 3.3 to 10 million American children witness domestic violence in their homes each year. Find out how the exposure can have devastating effects.

By Tamekia Reece

iStockphoto

Every minute, approximately 24 people in the United States are physically attacked, sexually assaulted, or stalked by a current or former partner, according to the Center for Disease control. Many victims believe they can keep the abuse hidden from their children, but experts say they're rarely successful. "Domestic violence is a family affair and is impossible to hide when it occurs, even if children are sleeping or otherwise not present," says Alicia H. Clark, Psy.D., a clinical psychologist in Washington, D.C. Even if kids don't witness the incident itself, they can still feel the tension, they might hear the violence, and they're likely to notice the aftermath including injuries or the distance between mom and dad, she says.

Regardless of how kids learn of the abuse, the exposure to domestic violence can cause negative consequences in many areas of their lives.

Physical health. "[People have] a very strong mind-body connection, so for many children, the stress of living with domestic violence is expressed in physical ways," says Cindy W. Christian, M.D., chair of child abuse and neglect prevention at The Children's Hospital of Philadelphia. Headaches, stomachaches, change in appetite, insomnia, nightmares, bedwetting, and other sleep issues are all common in children living in abusive homes. Long-term, children who go through adverse childhood experiences, such as exposure to domestic violence, are at increased risk for health issues such as substance abuse, autoimmune diseases, heart disease, and cancer.

Mental and emotional issues. Children may experience fear, anxiety, depression, post-traumatic stress disorder, an inability to control their emotions, and suicidal feelings as a result of witnessing violence between adult caregivers, according to the Centers for Disease Control. Worrying that she is at fault can take a toll on a child's mental and emotional well-being. Kids often feel guilty for not being able to help the situation or for sparking an abusive outburst, says Dr. Clark.

Behavior. Kids may have more tantrums, become clingy, withdraw, overreact to situations, and regress to earlier behavior such as thumb-sucking, wanting to be held like a baby, wetting themselves, or using baby talk. Parents should also be on the lookout for signs of anger and changes in appetite and sleeping habits. Teens exposed to parental violence may skip school or use drugs and alcohol.

Relationships with peers. Children first learn how to interact with others by watching their parents. When parents physically harm each other or have a volatile relationship, kids become distrustful and reluctant to form bonds. In addition to withdrawal and social isolation from peers, children living in homes with abuse may have poor communication skills and lack of conflict resolution skills and are at increased risk for bullying or being bullied. Children who witness violence between parents are also more likely to be involved in abusive relationships, as either the abuser or victim, when they're older, according to the U.S. Department of Human Health and Services.

Relationships with parents. Naturally, domestic abuse affects the relationship between children and their parents. Research shows that infants exposed to family violence may have difficulty developing attachments with their caregivers, and an older child's interactions with parents could change as well. Dr. Clark says some kids may feel rage at the abusive parent, anger at the victim for not being able to avoid the abuse or protect herself, or pity for the abused parent. These feelings could cause the child to withdraw or lash out at one or both parents, be disobedient, become excessively clingy, or take on a parental role towards the abused parent.

Learning issues. Worries about home life, or being awakened at night by shouting and fighting, can cause children to have difficulty focusing or concentrating at school. Often, kids blame themselves for what happens in their parents' lives. As a result, they may put extreme pressure on themselves to do well in school because they're afraid of angering their parent if they get a bad grade.

Abuse. Children exposed to domestic violence are at increased risk of being abused themselves, either by the abuser, by the victim lashing out at the kids, or by both parents being so entangled

in the abuse that they don't care for the children properly. Research shows that 30 to 60 percent of domestic violence cases also include child abuse or neglect.

Although it may seem some children aren't affected by domestic violence, experts say any exposure can be detrimental to a child's well-being. If you're involved in an abusive relationship, or know someone who is, contact a local domestic violence program or the National Domestic Violence Hotline (1-800-799-7233).

FUTURES WITHOUT VIOLENCE®

NCTSN The National Child Traumatic Stress Network

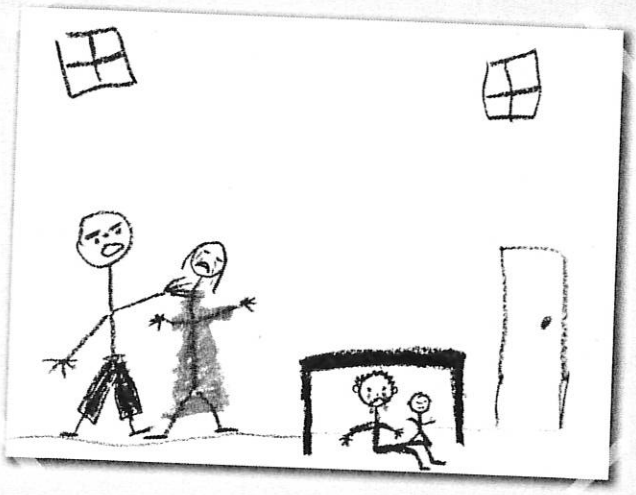
Children and Domestic Violence

How Does Domestic Violence Affect Children?

Domestic violence is a pattern of behavior that one person in a relationship uses to control the other. The behavior may be verbally, emotionally, physically, financially, or sexually abusive. You as a parent may have left an abusive relationship or you may still be in one. This fact sheet is #1 in a series of 10 sheets written to help you understand how children may react to domestic violence, and how you can best help them to feel safe and valued and develop personal strength. For other fact sheets in the series, visit www.nctsn.org/content/resources

Children experience domestic violence in many ways. They may hear one parent threaten or demean the other, or see a parent who is angry or afraid. They may see or hear one parent physically hurt the other and cause injuries or destroy property. Children may live with the fear that something will happen again. They may even be the targets of abuse.

Most children who live with domestic violence can recover and heal from their experiences. One of the most important factors that helps children do well after experiencing domestic violence is a strong relationship with a caring, nonviolent parent. As a caring parent, you can promote your children's recovery by taking steps to increase safety in the family, helping your kids develop relationships with other supportive adults, and encouraging them in school or other activities that make them feel happy and proud.



HOW CHILDREN RESPOND TO DOMESTIC VIOLENCE

Children and parents living with domestic violence seek support in different ways. They may turn to their extended families or friends, their faith communities, or their cultural traditions to find connection, stability and hope. Children may find their own coping strategies and some do not show obvious signs of stress. Others struggle with problems at home, at school, and in the community. You may notice changes in your child's emotions (such as increased fear or anger) and behavior (such as clinging, difficulty going to sleep, or tantrums) after an incident of domestic violence. Children may also experience longer-term problems with health, behavior, school, and emotions, especially when domestic violence goes on for a long time. For example, children may become depressed or anxious, skip school, or get involved in drugs.

The Co-chairs of the NCTSN Domestic Violence Work Group Betsy Groves, Miriam Berkman, Rebecca Brown, and Edwina Reyes along with members of the committee and Futures Without Violence developed this fact sheet, drawing on the experiences of domestic violence survivors, research findings, and reports from battered women's advocates and mental health professionals. For more information on children and domestic violence, and to access all fact sheets in this series, visit www.nctsn.org/content/resources

The following factors affect how an individual child will respond to living with domestic violence:

- How serious and how frequent is the violence or threat?
- Was the child physically hurt or put in danger?
- What is the child's relationship with the victim and abuser?
- How old is the child?
- What other stress is going on in the child's life?
- What positive activities and relationships are in the child's life?
- How does the child usually cope with problems?

DOMESTIC VIOLENCE CHANGES FAMILY RELATIONSHIPS

Children may try to protect an abused parent by refusing to leave the parent alone, getting in the middle of an abusive event, calling for help, or drawing attention to themselves by bad behavior. They may want to be responsible for "fixing" their family by trying to be perfect or always tending to younger siblings. Some children take sides with the abusive adult and become disrespectful, aggressive, or threatening to their nonviolent parent.

Children who live with domestic violence may learn the wrong lessons about relationships. While some children may respond by avoiding abuse in their own relationships as they grow older, others may repeat what they have seen in abusive relationships with their own peers or partners. They may learn that it is OK to try to control another person's behavior or feelings, or to use violence to get what they want. They may learn that hurtful behavior is somehow part of being close or being loved.

REMEMBER...

A strong relationship with a caring, nonviolent parent is one of the most important factors in helping children grow in a positive way despite their experiences. Your support can make the difference between fear and security, and can provide a foundation for a healthy future.

IMPORTANT!

If you feel unsafe now and need help for yourself, your family, or someone else in a domestic crisis, contact

- 911 for emergency police assistance
- The National Domestic Violence Hotline. Advocates are available to intervene in a crisis, help with safety planning, and provide referrals to agencies in all 50 states. Call the confidential hotline at 1-800-799-7233 or go to www.thehotline.org
- Your local child protective services have resources for you if your children are in danger.

This project was funded by the Substance Abuse and Mental Health Services Administration (SAMHSA), US Department of Health and Human Services (HHS). The views, policies, and opinions expressed are those of the authors and do not necessarily reflect those of SAMHSA or HHS.

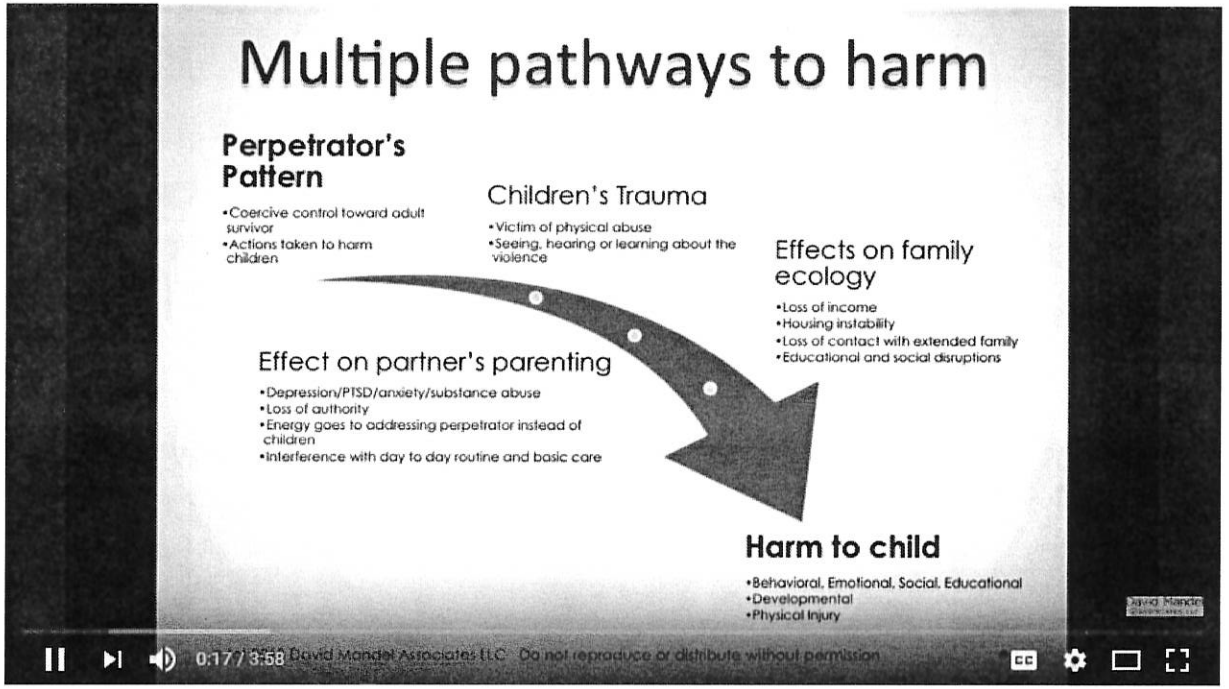
#1 - How Does Domestic Violence Affect Children?
#2 - Celebrating Your Child's Strengths
#3 - Before You Talk to Your Children: How Your Feelings Matter
#4 - Listening and Talking to Your Child About Domestic Violence
#5 - The Importance of Playing with Your Children
#6 - Keeping Your Children Safe and Responding to Their Fears
#7 - Managing Challenging Behavior of Children Living with Domestic Violence
#8 - Where to Turn if You Are Worried About Your Child
#9 - Helping Your Child Navigate a Relationship with the Abusive Parent
#10 - A Parent's Self-Care and Self-Reflection

(48) Multiple Pathway

Secure | https://www.youtube.com/watch?v=MQ_CI4w6FPU

Apps | Lexis Advance - Onlin | Lexis Advance® - Sig | 2 Notifications | MOHELA | Login - Spending Acc | ADP Login

YouTube Search



Multiple Pathways from Domestic Violence Perpetrator's Behavior to Harm to Children

2,482 views

7 0 SHARE

Safe & Together Institute
Published on May 14, 2014

SUBSCRIBE 119

In this video David Mandel talks about the need to widen out the assessment and documentation framework for looking at the intersection of domestic violence perpetrator's behavior and harm to children.

SHOW MORE

0 Comments SORT BY

Up next







CHAPTER 15
Child Custody and Visitation

ARTICLE 1
General Provisions

DERIVATION TABLE
Showing the sections in former Chapter 7, Title 20 from which the sections in this article were derived.

New Section	Former Section
63-15-10	20-7-1525
63-15-20	20-7-1520
63-15-30	20-7-1515
63-15-40	20-7-1530
63-15-50	20-7-1535
63-15-60	20-7-1540

SECTION 63-15-10. "Tender Years Doctrine" abolished.

The "Tender Years Doctrine" in which there is a preference for awarding a mother custody of a child of tender years is abolished.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-15-20. Religious faith.

In placing the child in the custody of an individual or a private agency or institution, the court shall, whenever practicable, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of such child, or, in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-15-30. Child's preference.

In determining the best interests of the child, the court must consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-15-40. Consideration of domestic violence.

(A) In making a decision regarding custody of a minor child, in addition to other existing factors specified by law, the court must give weight to evidence of domestic violence as defined in Section 16-25-20 or Section 16-25-65 including, but not limited to:

(1) physical or sexual abuse; and

(2) if appropriate, evidence of which party was the primary aggressor, as defined in Section 16-25-70.

(B) The absence or relocation from the home by a person, against whom an act of domestic violence has been perpetrated, if that person is not the primary aggressor, must not be considered by the court to be sufficient cause, absent other factors, to deny custody of the minor child to that person.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-15-50. Domestic violence and visitation; payment for treatment.

(A) A court may award visitation to a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, as defined in Section 16-25-20 or Section 16-25-65, or in cases in which complaints were made against both parties, to the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor under Section 16-25-70, only if the court finds that adequate provision for the safety of the child and the victim of domestic violence can be made.

(B) In a visitation order, a court may:

(1) order an exchange of a child to occur in a protected setting;

(2) order visitation supervised by another person or agency;

(3) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to attend and complete, to the satisfaction of the court, a program of intervention for offenders or other designated counseling as a condition of the visitation;

(4) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by the court to have been the primary aggressor, to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;

(5) order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay a fee to defray the costs of supervised visitation;

(6) prohibit overnight visitation;

(7) require a bond from a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, from the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, for the return and safety of the child if that person has made a threat to retain the child unlawfully;

(8) impose any other condition that is considered necessary to provide for the safety of the child, the victim of domestic violence, and any other household member.

(C) If a court allows a household member to supervise visitation, the court must establish conditions to be followed during the visitation.

(D) A judge may, upon his own motion or upon the motion of any party, prohibit or limit the visitation when necessary to ensure the safety of the child or the parent who is a victim of domestic violence.

(E) If visitation is not allowed or is allowed in a restricted manner to provide for the safety of a child or parent who is a victim of domestic violence, the court may order the address of the child and the victim to be kept confidential.

(F) The court must order a person who has been found by a general sessions, magistrates, municipal, or family court to have committed domestic violence, or in cases in which complaints were made against both parties, the person found by a general sessions, magistrates, municipal, or family court to be the primary aggressor, to pay the actual cost of any medical or psychological treatment for a child who is physically or psychologically injured as a result of one or more acts of domestic violence.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-15-60. De facto custodian.

and religious training; however, a judge may designate one parent to have sole authority to make specific, identified decisions while both parents retain equal rights and responsibilities for all other decisions.

(2) "Sole custody" means a person, including, but not limited to, a parent who has temporary or permanent custody of a child and, unless otherwise provided for by court order, the rights and responsibilities for major decisions concerning the child, including the child's education, medical and dental care, extracurricular activities, and religious training.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

SECTION 63-15-220. Parenting plans.

(A) At all temporary hearings where custody is contested, each parent must prepare, file, and submit to the court a parenting plan, which reflects parental preferences, the allocation of parenting time to be spent with each parent, and major decisions, including, but not limited to, the child's education, medical and dental care, extracurricular activities and religious training. However, the parties may elect to prepare, file, and submit a joint parenting plan. The court shall issue temporary and final custody orders only after considering these parenting plans; however, the failure by a party to submit a parenting plan to the court does not preclude the court from issuing a temporary or final custody order.

(B) At the final hearing, either party may file and submit an updated parenting plan for the court's consideration.

(C) The South Carolina Supreme Court shall develop rules and forms for the implementation of the parenting plan.

HISTORY: 2012 Act No. 259, Section 1, eff August 17, 2012.

SECTION 63-15-230. Final custody determination; considerations.

(A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.

(B) The court may award joint custody to both parents or sole custody to either parent.

(C) If custody is contested or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody, and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.

(D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

SECTION 63-15-240. Contents of order for custody affecting rights and responsibilities of parents; best interests of the child.

(A) In issuing or modifying an order for custody affecting the rights and responsibilities of the parents, the order may include, but is not limited to:

(1) the approval of a parenting plan;

(2) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent;

(3) the award of joint custody, in which case the order must include:

(a) residential arrangements with each parent in accordance with the needs of each child; and

(b) how consultations and communications between the parents will take place, generally and specifically, with regard to major decisions concerning the child's health, medical and dental care, education, extracurricular activities, and religious training;

(4) other custody arrangements as the court may determine to be in the best interest of the child.

(B) In issuing or modifying a custody order, the court must consider the best interest of the child, which may include, but is not limited to:

(1) the temperament and developmental needs of the child;

(2) the capacity and the disposition of the parents to understand and meet the needs of the child;

(3) the preferences of each child;

(4) the wishes of the parents as to custody;

(5) the past and current interaction and relationship of the child with each parent, the child's siblings, and any other person, including a grandparent, who may significantly affect the best interest of the child;

(6) the actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, as is appropriate, including compliance with court orders;

(7) the manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute;

(8) any effort by one parent to disparage the other parent in front of the child;

(9) the ability of each parent to be actively involved in the life of the child;

(10) the child's adjustment to his or her home, school, and community environments;

(11) the stability of the child's existing and proposed residences;

(12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child;

(13) the child's cultural and spiritual background;

(14) whether the child or a sibling of the child has been abused or neglected;

(15) whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child;

(16) whether one parent has relocated more than one hundred miles from the child's primary residence in the past year, unless the parent relocated for safety reasons; and

(17) other factors as the court considers necessary.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

SECTION 63-15-250. Telephonic and electronic communication between minor child and parents.

In addition to all rights and duties given to parents pursuant to Section 63-5-30:

(A) when a court orders sole custody to one parent, the custodial parent, except in cases of abuse, neglect, or abandonment, should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the noncustodial parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child; and

(B) when a court orders joint custody to both parents, each parent should facilitate opportunities for reasonable telephonic and electronic communication between the minor child and the other parent, as appropriate, as provided for by court order if the court determines that this type of communication is in the best interest of the child.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

SECTION 63-15-260. Equal access to educational and medical records of child by parents.

Notwithstanding the custody arrangement and in addition to all rights and duties given to parents pursuant to Section 63-5-30, each parent has equal access and the same right to obtain all educational records and medical records of his or her minor children and the right to participate in the children's school activities and extracurricular activities that are held in public locations unless prohibited by an order of the court or State law.

HISTORY: 2012 Act No. 259, Section 1, eff June 18, 2012.

ARTICLE 3

Uniform Child Custody Jurisdiction and Enforcement Act

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Guardian Actions and Reactions

Michele Sturkie

GUARDIAN ACTIONS AND REACTIONS

Michele Dahl Sturkie
Sturkie Law, LLC
msturkie@sturkielaw.com
(843) 799-1000

ACTIONS

I. GETTING A NEW CASE
- A. File affidavit
- B. Notify attorneys and parties with initial letter
- C. Do a file review, and make notes
- D. Prepare a tracking form for important dates

II. BILLING
- A. Use a good billing program - Clio
- B. Send out regular bills, and keep track

III. YOUR REPORT
- A. File it timely
- B. Break it down - do a history, and a summary of investigation
- C. Note everyone you have talked to and every document you reviewed

REACTIONS

IV. GETTING A REPORT OF POSSIBLE ABUSE

V. GETTING INFORMATION THAT CAUSES CONCERN
- A. Balance your investigation
- B. Make notes on sources
- C. Follow up with other providers

VI. MOTIONS
- A. Filing your motion
- B. Responding to an attorneys motion

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2018-DR-21-0001
Lindsay M. Smith,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF
v.	)	GUARDIAN AD LITEM
	)	
Jonathan E. Smith,	)	
	)	
Defendant.	)	
	)	
	)	

The undersigned Guardian *Ad Litem*, Pursuant to S.C. Code Ann. §§63-3-820 and 63-3-860, states:

1. I am 52 years of age. I have a Bachelor's Degree from the Cabrini College and a Juris Doctor Degree from the University of South Carolina.

2. I have completed the training requirements pursuant to S.C. Code Ann. §63-3-820.

3. I have not been convicted of a crime delineated in S.C. Code Ann. §63-3-820.

4. I have never been placed on the Department of Social Services Central Registry of Abuse and Neglect.

5. I have no relationship with any party in this case, nor does any member of my immediate family residing with me.

6. I am unaware of any interest adverse to any party or attorney which might cause the impartiality of the undersigned to be challenged.

7. I am not a current member of any organization related to child abuse, domestic violence, or drug and alcohol abuse.

_____
Michele Dahl Sturkie

SWORN to before me this
14th day of January, 2019.

_____
Notary Public for South Carolina
My Commission Expires:_____

STURKIE LAW, LLC

MICHELE DAHL STURKIE
ATTORNEY-AT-LAW | CERTIFIED FAMILY COURT MEDIATOR
P.O. BOX 2260 FLORENCE, SC 29503 | 1506 W. PALMETTO ST. FLORENCE, SC 29501
843-799-1000(P) | 843-799-4199(F) | WWW.STURKIELAW.COM

January 15, 2019

Nicholas W. Lewis, Esq.
Barth, Ballenger and Lewis
Post Office Box 107
Florence, SC 29503

Brooke Chapman Evans, Esq.
Evans & Turnblad
607 S. Coit Street
Florence, SC 29501

Re: Lindsay M Smith vs. Jonathan E. Smith
Docket No. 18-DR-21-0001

Dear Nick and Brooke:

I am in receipt of the Temporary Order wherein I have been appointed the guardian ad litem in the above matter. Pursuant to S.C. Code Ann. §§63-3-820 and 63-3-860, enclosed please find a copy of my Affidavit setting forth the disclosures required by the statutes.

Please forward me all documents (pleadings, affidavits, etc.) you feel are relevant to the issues of custody, visitation and support in this matter for my review. Please remember that the South Carolina Private Guardian *ad litem* Reform Act prohibits me from billing for the review of any documents not related to these issues. Please be advised that should you or your client supply me with any documents, I will assume they are relevant to these issues and will review them accordingly.

Your client has scheduled her initial appointment with me. Please provide me with Jonathan Sturkie's contact information.

I look forward to working with all of you in this matter. Please call me if you have any questions or concerns as this matter proceeds.

With kind regards, I am

Very truly yours,

Michele Dahl Sturkie

MDS/mc
Enclosure

Gal St. Germain 9-7-18

17-DR-40-1544

File Review DOF 4/19/17

adoptive parents

Will & Jessica [redacted], Lancaster, SC

DOM 5/15/07

child: 2/22/17 placed 3/29/17, mixed race Charlie

he is 33, she is 35

he's a game Warden, she's a production manager

no resp. father registry.

Jimmy Ray [redacted] [redacted] Lake View, SC

1/20/90 5'9" 135lbs A-A

Works at Lewis Tree Care making $16.50/hr.

lives w/ his parents.

son Jimmy 9/20/13 w/ girlfriend Jessica [redacted]

Rigby GAL 8-7-18

17-DR-21-1574

James "Mason" [redacted] - Π - Kim Barr DOF: Oct 12, 2017

Ashley [redacted] - Δ - pro se

Child: Haley, 8 yrs old

never married

Temp Order 12/4/17

- he got primary custody

Order appting GAL $1000 each. / Cap $7500

Mason -

* married to Shannon (DOM: 3/15/17)

Maci - 4 yrs old

Kyson - 9 yrs old (from another relationship) his mother Ashley Porter. - drugs

Shannon - has 3 sib (names, ages: Jayveon 10, Keith 11, Yasmine 12)

negatives - Ashley - at least 3 diffs. men - extensive tardies & absences. never a dull moment.

[redacted]

GUARDIAN AD LITEM INFORMATION/TRACKING FORM

DATE OF FILING OF ACTION:	
DATE RECEIVED CASE:	
DATE INITIAL LETTER SENT:	
DATE AFFIDAVIT OF GAL FILED:	
INITIAL APPT WITH MOTHER:	
INITIAL APPT WITH FATHER:	
FIRST HOME VISIT WITH MOTHER:	
FIRST HOME VISIT WITH FATHER:	
DATE FINAL REPORT DUE:	
DATE OF TRIAL:	

STURKIE LAW, LLC

INVOICE

Invoice # 2885
Date: 09/02/2018
Due On: 10/02/2018

Sturkie Law, LLC

P.O. Box 2260
Florence, SC 29503

GAL St. Germain

00942-St. Germain

guardian

Type	Date	Description	Quantity	Rate	Total
Service	07/16/2018	open file	0.75	$175.00	$131.25
Expense	07/31/2018	Reimbursable expense: Copies	1.00	$0.20	$0.20
Expense	07/31/2018	Reimbursable expense: Postage	1.00	$0.47	$0.47
Service	08/03/2018	Calls to parties to schedule appointment	0.30	$150.00	$45.00
Service	08/09/2018	e-mails with Family Court to schedule final hearing	0.20	$150.00	$30.00
Expense	08/31/2018	Reimbursable expense: Postage	1.00	$1.41	$1.41

Total	**$208.33**
Payment (09/02/2018)	**-$208.33**
Balance Owing	**$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
2885	10/02/2018	$208.33	$208.33	$0.00

Sturkie Law - ESCROW

Date	Type	Description	Matter	Receipts	Payments	Balance
08/23/2018	check	retainer	00942-St. Germain		$1,500.00	$1,500.00
09/02/2018		Payment for invoice #2885	00942-St. Germain	$208.33		$1,291.67
10/02/2018	cash	retainer	00942-St. Germain		$1,500.00	$2,791.67
10/02/2018		Payment for invoice	00942-St. Germain	$612.50		$2,179.17
10/31/2018		Payment for invoice	00942-St. Germain	$521.00		$1,658.17
11/08/2018	check	retainer	00942-St. Germain		$1,500.00	$3,158.17
12/02/2018		Payment for invoice	00942-St. Germain	$15.00		$3,143.17
			Sturkie Law - ESCROW Balance		**$3,143.17**	

Please pay within 30 days.

We take Discover, MasterCard and Visa. Please call Myrtle Coker at 843-799-1000 to make a payment via credit card.

STURKIE LAW, LLC

INVOICE

Invoice # 2925
Date: 10/02/2018
Due On: 11/01/2018

Sturkie Law, LLC

P.O. Box 2260
Florence, SC 29503

GAL St. Germain

00942-St. Germain

guardian

Type	Date	Description	Quantity	Rate	Total
Service	09/07/2018	File and document review	1.00	$175.00	$175.00
Service	09/07/2018	Initial office conference with [redacted]	1.00	$175.00	$175.00
Service	09/07/2018	Emails with Attorneys Barron and Kennedy re: meeting with their clients; phone call from Attorney Kennedy re: case	0.50	$175.00	$87.50
Service	10/26/2018	Initial office conference with Jimmy [redacted]	1.00	$175.00	$175.00

Total	**$612.50**
Payment (10/02/2018)	**-$612.50**
Balance Owing	**$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
2925	11/01/2018	$612.50	$612.50	$0.00

Sturkie Law - ESCROW

Date	#	Type	Description	Matter	Receipts	Payments	Balance
08/23/2018		check	retainer	00942-St. Germain		$1,500.00	$1,500.00
09/02/2018			Payment for invoice #2885	00942-St. Germain	$208.33		$1,291.67
10/02/2018		cash	retainer	00942-St. Germain		$1,500.00	$2,791.67
10/02/2018			Payment for invoice	00942-St. Germain	$612.50		$2,179.17
10/31/2018			Payment for invoice	00942-St. Germain	$521.00		$1,658.17
11/08/2018		check	retainer	00942-St. Germain		$1,500.00	$3,158.17
12/02/2018			Payment for invoice	00942-St. Germain	$15.00		$3,143.17
				Sturkie Law - ESCROW Balance		**$3,143.17**	

Please pay within 30 days.

We take Discover, MasterCard and Visa. Please call Myrtle Coker at 843-799-1000 to make a payment via credit card.

STURKIE LAW, LLC

INVOICE

Invoice # 2969
Date: 10/31/2018
Due On: 11/30/2018

Sturkie Law, LLC

P.O. Box 2260
Florence, SC 29503

GAL St. Germain

00942-St. Germain

guardian

Type	Date	Description	Quantity	Rate	Total
Expense	10/17/2018	Reimbursable expense: SLED check - Jimmy [redacted]	1.00	$25.00	$25.00
Service	10/30/2018	Travel to/from Lake View, home visit with biological father and his family	2.50	$175.00	$437.50
Expense	10/30/2018	Reimbursable expense: Mileage to/from Lake View	1.00	$58.50	$58.50

Total	**$521.00**
Payment (10/31/2018)	**-$521.00**
Balance Owing	**$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
2969	11/30/2018	$521.00	$521.00	$0.00

Sturkie Law - ESCROW

Date	Type	Description	Matter	Receipts	Payments	Balance

08/23/2018	check	retainer	00942-St. Germain		$1,500.00	$1,500.00
09/02/2018		Payment for invoice #2885	00942-St. Germain	$208.33		$1,291.67
10/02/2018	cash	retainer	00942-St. Germain		$1,500.00	$2,791.67
10/02/2018		Payment for invoice	00942-St. Germain	$612.50		$2,179.17
10/31/2018		Payment for invoice	00942-St. Germain	$521.00		$1,658.17
11/08/2018	check	retainer	00942-St. Germain		$1,500.00	$3,158.17
12/02/2018		Payment for invoice	00942-St. Germain	$15.00		$3,143.17
			Sturkie Law - ESCROW Balance		**$3,143.17**	

Please pay within 30 days.

We take Discover, MasterCard and Visa. Please call Myrtle Coker at 843-799-1000 to make a payment via credit card.

STURKIE LAW, LLC

INVOICE

Invoice # 3016
Date: 12/02/2018
Due On: 01/01/2019

Sturkie Law, LLC

P.O. Box 2260
Florence, SC 29503

GAL St. Germain

00942-St. Germain

guardian

Type	Date	Description	Quantity	Rate	Total
Service	11/02/2018	e-mails with attorneys and Family Court to schedule final hearing	0.20	$75.00	$15.00

Total	**$15.00**
Payment (12/02/2018)	**-$15.00**
Balance Owing	**$0.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
3016	01/01/2019	$15.00	$15.00	$0.00

Sturkie Law - ESCROW

Date	Type	Description	Matter	Receipts	Payments	Balance
08/23/2018	check	retainer	00942-St. Germain	$1,500.00		$1,500.00

09/02/2018		Payment for invoice #2885	00942-St. Germain	$208.33		$1,291.67
10/02/2018	cash	retainer	00942-St. Germain		$1,500.00	$2,791.67
10/02/2018		Payment for invoice	00942-St. Germain	$612.50		$2,179.17
10/31/2018		Payment for invoice	00942-St. Germain	$521.00		$1,658.17
11/08/2018	check	retainer	00942-St. Germain		$1,500.00	$3,158.17
12/02/2018		Payment for invoice	00942-St. Germain	$15.00		$3,143.17
			Sturkie Law - ESCROW Balance		**$3,143.17**	

Please pay within 30 days.

We take Discover, MasterCard and Visa. Please call Myrtle Coker at 843-799-1000 to make a payment via credit card.

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Dollars and Sense: A Practical Look at Financial Aspects of Guardian *ad Litem* Work from Two Practicing Guardians *ad Litem*

Almand Barron
Jay A'Hern

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)) FATHER,)) Plaintiff,)) vs.)) MOTHER,)) Defendant.)	IN THE FAMILY COURT FIFTH JUDICIAL CIRCUIT Docket No. 2016-DR-40- **MOTION AND CONSENT ORDER TO RAISE GUARDIAN *AD LITEM* FEE CAP**

WHEREAS, the Plaintiff is represented by Lawyer 1, Esquire;

WHEREAS, the Defendant is represented by Lawyer 2, Esquire

WHEREAS, Almand J. Barron, Esquire was appointed to serve as Guardian *ad Litem* for the minor child in this matter in an Order Appointing Guardian *ad Litem* of the Honorable Dorothy M. Jones, filed December 13, 2017, and contained in the above captioned matter;

WHEREAS, the Guardian *ad Litem*'s interim fee cap was set at $5,000 in the Order Appointing Guardian *ad Litem*;

WHEREAS, the Guardian *ad Litem* has notified counsel that she anticipates that she will exceed her fee cap either prior to or during the course of the trial on this matter;

WHEREAS, counsel has agreed that the Guardian *ad Litem*'s fee cap shall be increased to $8,000.00.

THEREFORE, for good cause shown and by agreement of the parties

IT IS HEREBY ORDERED THAT the Guardian *ad Litem*'s fee cap shall be increased to $8,000.00.

AND IT IS SO ORDERED on this _____ day of September, 2017, in Columbia, South Carolina.

_____
PRESIDING JUDGE, FAMILY COURT
FIFTH JUDICIAL CIRCUIT

WE SO MOVE AND CONSENT.

_____
LAWYER 1, ESQUIRE
Attorney for Plaintiff

_____
LAWYER 2, ESQUIRE
Attorney for Defendant

_____
ALMAND J. BARRON, ESQUIRE
Guardian *ad Litem* for Minor Child

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	Docket No. 2017-DR-40-1502
MOTHER,	)	
	)	
Plaintiffs,	)	
	)	**NOTICE OF MOTION AND**
vs.	)	**MOTION TO INCREASE THE FEE**
	)	**CAP OF THE GUARDIAN *AD LITEM***
FATHER,	)	
	)	
Defendant.	)	

TO: THE PLAINTIFF AND DEFENDANT, ABOVED NAMED, AND THEIR COUNSEL:

YOU WILL PLEASE TAKE NOTICE THAT the Guardian *ad Litem* will move before the presiding judge for Family Court for the Fifth Judicial Circuit, Richland County Family Court, 1701 Main Street, Columbia, South Carolina, 29201 on the _____ day of _____, 201___ or as soon thereafter as counsel may be heard for an Order granting the relief requested herein.

Such Motion shall be based upon the statutory and decisional law of the State of South Carolina including, applicable rules of the South Carolina Rules of Civil Procedure and South Carolina Law, including, but not limited to, South Carolina Code § 63-3-850, and shall be made upon the followings grounds:

1. The Guardian *ad Litem* was appointed to serve in this matter by an Order Appointing Guardian *ad Litem* of the Honorable Dana A. Morris on December 18, 2017. That Order sets the interim fee cap of the Guardian *ad Litem* at $7500.00.

2. The Guardian *ad Litem* has completed her investigation for trial and is finalizing her report. This matter is set for four days of trial, beginning November 26, 2018. At the time of

the preparation and filing of this Motion, the Guardian *ad Litem* is informed and believes that there is no agreement of the parties as to the issues for trial.

3. The Guardian *ad Litem* anticipates exceeding or has exceeded this fee cap prior to the commencement of the trial on this matter.

4. Accordingly, the Guardian *ad Litem* would show that she is requesting that her fee cap be raised to at least $15,000.00 to cover her appearance at and preparation for trial.

This motion is based on the foregoing, the record in this case, and such further argument and evidence as may be submitted at a hearing on this Motion.

Respectfully submitted,

SHEA & BARRON

_____

Almand J. Barron
1916 Henderson Street
Columbia, South Carolina 29201
(803) 779-3700 [Telephone]
(803) 779-3044 [Fax]
GUARDIAN *AD LITEM*

November____, 2018

Shea and Barron
1916 Henderson Street
Columbia, SC 29201 USA

Ph:(803) 779-3099 Fax:(803) 779-3044

January 10, 2019

Jane Doe
1 Main Street
Columbia, SC
29201 USA

File #: 999999.1
Inv #: Settle

Attention:

RE: Mother's Billing in Mr. Doe vs. Mrs. Doe AJB Guardian ad Litem for Children

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-01-18	Review of file and Guardian ad Litem Order, instructions to paralegal	0.20	40.00	ajb
	Preparation of GAL Affidavit, prepare email to lawyers	0.20	17.00	AB
Nov-02-18	Telephone call with mother, set appointment with AJB, email forms to Mother	0.20	17.00	AB
	Telephone call with father, set appointment with AJB, email forms to Father	0.20	17.00	AB
Nov-10-18	Review of file, meeting with mother	1.25	250.00	ajb
	Review of file, review of father's affidavits and pleadings, meeting with father	1.25	250.00	ajb
Nov-11-18	Review of correspondence from counsel	0.10	20.00	ajb
Nov-15-18	Preparation of letter to counsel, telephone call with with mother concerning setting home visit for children at her residence	0.30	60.00	ajb
Nov-20-18	travel to and conduct home visit at mother's residence, meeting with children	2.00	400.00	ajb
Nov-23-18	Telephone call with father regarding home visit at Father's residence	0.10	20.00	ajb

Nov-25-18	travel to and conduct home visit at Father's residence, meeting with children,	1.25	250.00	ajb
Dec-01-18	Telephone call with with Grandmother Doe (paternal grandmother)	0.30	60.00	ajb
Dec-02-18	Telephone call with Grandfather Doe, maternal grandmother, children's teachers, school guidance counselor, children's therapist	1.25	250.00	ajb
Dec-10-18	Telephone call with mother's friend	0.30	60.00	ajb
Dec-15-18	Review of psychological report	0.40	80.00	ajb
Dec-20-18	Preparation of preliminary report	0.75	150.00	ajb
Dec-29-18	Telephone call with counsel regarding upcoming hearing, preliminary report	0.40	80.00	ajb
	Totals	5.23	$1,010.50	

Total Fee & Disbursements for all charges on this matter **$1,010.50**

Shea and Barron
1916 Henderson Street
Columbia, SC 29201 USA

Ph:(803) 779-3099 Fax:(803) 779-3044

John Doe
2 Main Street
Columbia, SC
29201 USA

January 10, 2019

File #: 999999.2
Inv #: Settle

Attention:

RE: Father's Billing in Mr. Doe v. Ms. Doe AJB Guardian ad Litem for children

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-01-18	Review of file and Guardian ad Litem Order, instructions to paralegal	0.20	40.00	ajb
	Preparation of GAL Affidavit, prepare email to lawyers	0.20	17.00	AB
Nov-02-18	Telephone call with mother, set appointment with AJB, email forms to Mother	0.20	17.00	AB
	Telephone call with father, set appointment with AJB, email forms to Father	0.20	17.00	AB
Nov-10-18	Review of file, meeting with mother	1.25	250.00	ajb
	Review of file, review of father's affidavits and pleadings, meeting with father	1.25	250.00	ajb
Nov-11-18	Review of correspondence from counsel	0.10	20.00	ajb
Nov-15-18	Preparation of letter to counsel, telephone call with with mother concerning setting home visit for children at her residence	0.30	60.00	ajb
Nov-20-18	travel to and conduct home visit at mother's residence, meeting with children	2.00	400.00	ajb
Nov-23-18	Telephone call with father regarding home visit at Father's residence	0.10	20.00	ajb

Nov-25-18	travel to and conduct home visit at Father's residence, meeting with children,	1.25	250.00	ajb
Dec-01-18	Telephone call with with Grandmother Doe (paternal grandmother)	0.30	60.00	ajb
Dec-02-18	Telephone call with Grandfather Doe, maternal grandmother, children's teachers, school guidance counselor, children's therapist	1.25	250.00	ajb
Dec-10-18	Telephone call with mother's friend	0.30	60.00	ajb
Dec-15-18	Review of psychological report	0.40	80.00	ajb
Dec-20-18	Preparation of preliminary report	0.75	150.00	ajb
Dec-29-18	Telephone call with counsel regarding upcoming hearing, preliminary report	0.40	80.00	ajb
	Totals	5.23	$1,010.50	

Total Fee & Disbursements for all charges on this matter **$1,010.50**

THE A'HERN LAW FIRM, LLC
JOHN MEANS A'HERN
ATTORNEY AT LAW
POST OFFICE BOX 50225
COLUMBIA, SOUTH CAROLINA 29250
TEL: (803) 530-9419
FAX: (866) 204-8216
EMAIL: JMAHERN@GMAIL.COM

November 28, 2017

The Honorable Lisa M. Comer
Clerk of Court for Lexington County
Lexington County Courthouse
205 East Main Street
Lexington, South Carolina 29072

Re: [redacted]
2017-DR-32-[redacted]

Dear Ms. Comer,

Enclosed please find the original and one copy of the Guardian *ad Litem's* proposed **Rule to Show Cause** in this matter as well as the motion fee. Please forward to the appropriate judge for consideration. I have enclosed a self-addressed, stamped envelope so that the copy can be returned to my office. Please do not hesitate to contact me if you have any questions or concerns.

Thank you for your assistance with this matter.

Sincerely,

John Means A'Hern

JMA
Enclosure
cc: [redacted] (Encl.)
[redacted] (Encl.)

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON)

[redacted]
☐ Plaintiff

v.

[redacted]
☐ Defendant.

CASE NO.
2017-DR-32[redacted]

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: GAL John Means A'Hern, Bar No. 73808 Address: Post Office Box 50225, Columbia, SC 29250 phone: 803-530-9419 fax: 866-204-8216 e-mail: jmahern@gmail.com other:	Defendant's Attorney: [redacted] Bar No. Address: phone: 803[redacted] fax: e-mail: other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Rule to Show Cause
Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

J. Means A'H
Signature of Attorney for ☐Plaintiff / ☐Defendant

November 28, 2017
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
[redacted]	)	Civil Action No. 2017-DR-32-[redacted]
Plaintiffs,	)	
vs.	)	**RULE TO SHOW CAUSE**
[redacted]	)	
Defendant.	)	

TO: THE DEFENDANT [redacted]

Based upon the attached Affidavit, it appears that you have not obeyed one or more Court Orders, as described in the Affidavit. It appears from this Affidavit that a Contempt Hearing is necessary.

THEREFORE, IT IS ORDERED THAT you appear before the Presiding Judge in the Family Court of Lexington County, located on the Second Floor of the Lexington County Courthouse at 205 East Main Street, Lexington, South Carolina, on the _____ day of _____, 2017 / 2018 at _____ a.m./ p.m. to show cause, if any there may be, why the relief requested in the Affidavit should not be granted and why you should not be held in Contempt of Court for such disobedience.

AND IT IS FURTHER ORDERED THAT service of this Rule to Show Cause shall be made by means allowable under Rule 14 of the South Carolina Rules of Family Court.

_____
Presiding Family Court Judge
Eleventh Judicial Circuit

_____, 2017

_____, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
[redacted]	)	Civil Action No. 2017-DR-32[redacted]
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF GUARDIAN *AD LITEM* IN SUPPORT OF RULE TO SHOW CAUSE**
[redacted]	)	
Defendant.	)	

PERSONALLY APPEARED BEFORE ME, John Means A'Hern, Attorney at Law, who being first duly sworn does state the following:

1. My name is John Means A'Hern and I was appointed to serve as the Guardian *ad Litem* in this action by a Consent Order Appointing Guardian *ad Litem* (attached as Exhibit A) issued by The Honorable W. Greg Seigler and filed on [redacted] 2017. Under the terms of this Order my hourly rate was set at $175.00 per hour, with the parties to equally divide these fees on a temporary basis. My initial fee cap was set at $5,000.00. The parties were also required to "stay current with the periodic bills submitted by the Guardian *ad Litem* and pay them with thirty (30) days of billing." (page 6)

2. I have been sending the parties billing statements each month, but the Defendant Father has not stayed current with my bills. As of today's date he has a past due balance of $1,908.25, all of which is authorized under the current fee cap. I have not received any payment from him since he paid my initial fee on June 26, 2017. My most recent billing statement, which includes a complete billing history in this case, is attached as Exhibit B.

3. I have tried to avoid the necessity of filing this Rule to Show Cause.

a. Each month I have kept the parties informed of their respective balances, and I have reminded them of their obligations to stay current with my periodic bills.

b. On August 11, 2017, after receiving no payment towards my previous bill, I sent the Defendant a letter (attached as Exhibit C) in which I noted the requirement that he must pay his GAL fees timely. I asked that he pay his past due balance immediately.

c. On September 11, 2017, after still not having received any payment towards my previous bills, I reminded him of the Order and told him that if I did not receive payment in full of his past due balance by September 29 then I would have no choice but to file a Rule to Show Cause. I told him that he could be responsible for the past due fees, as well as my costs and fees in pursuing this sum. I made clear that I had no desire to ask the Court to hold him in contempt but that I must require both sides to pay my fees timely.

d. I still did not receive any payment from the Defendant Father, but on October 16, 2017 I received an email from his wife telling me that they had received my bill and would have a payment to me within the next week. Because of this email I did give them additional time but no payment was forthcoming.

4. While I have absolutely no desire to "punish" the Defendant Father, I respectfully ask that he be held in Contempt of Court for his willful violations of the Order in this matter so that I may be compensated for my work in this case. I request that he be required to pay my past due fees.

5. Finally, because I have attempted to resolve this matter without the necessity of filing a contempt action, I request that I be awarded my fees and costs incurred in bringing this Rule to Show Cause.

FURTHER THE DEPONENT SAYETH NOT.

Respectfully submitted,

J. Means A'H

John Means A'Hern
Guardian *ad Litem*

Signed and sworn to before me this

27 day of November, 2017

Emma Hall

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires: 01-05-26

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT OF THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
)
[redacted]) CASE NO.: 2017-DR-32[redacted]
Plaintiff.)
) MOTION AND ORDER INFORMATION
vs.) FORM AND COVERSHEET
)
[redacted])
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
[redacted] Bar No. [redacted] Address: [redacted] Phone: [redacted] Fax [redacted] E-mail: [redacted] Other: _____	Address

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: **15 minutes** Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant June 26 2017 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ _____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

PAID

SCCA 233 (11/2003)

- Exhibit A -

STATE OF SOUTH CAROLINA FILED

COUNTY OF LEXINGTON 2017 [redacted] AM [redacted]

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

IN THE FAMILY COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

DOCKET NO.: 2017-CP-32-[redacted]

[redacted]

Plaintiff,

v.

[redacted]

Defendant.

CONSENT ORDER APPOINTING GUARDIAN AD LITEM

Plaintiff [redacted] commenced this custody litigation by filing pleadings on [redacted] 2017. The Defendant [redacted] was personally served with the pleadings on May 19, 2017. All parties are agreed that the services of a Guardian *ad Litem* is necessary, and all parties are agreed that John Means A'Hern, Esquire should be appointed as Guardian, if he so consents. It appears to the Court that he has so consented.

NOW, THEREFORE, IT IS ORDERED that John Means A'Hern, Esquire is appointed to serve as the Guardian *ad Litem* to protect the interests of the minor child: [redacted] 9 years of age.

IT IS FURTHER ORDERED that the Guardian *ad Litem* shall:

1. Be allowed private access to the child by the caretakers of the child, whether caretakers are individual, authorized agencies or health care providers;

2. Upon proof of appointment as Guardian *ad Litem* and upon request, the Guardian *ad Litem* shall be permitted to have access to all records and information in the possession of medical and dental authorities, psychologists, social workers, counselors, schools, law enforcement personnel, any agency, hospital, organization, school, person or office and any

-SWGSHT

private or public service providers about the minor children or child and the parents of said minor children or child. The Guardian *ad Litem* shall maintain records relating to the minor children or child and the parents of said minor children or child as confidential and shall not be disclosed except in reports to the Court, to the parties to this action, their counsel or as directed by the Court;

3. Be given notice of all hearings and proceedings involving this case, multidisciplinary teams, interagency staffing, and any other hearings or meetings when the children's interests might be affected, or any meetings or hearings the Guardian *ad Litem* may request, and

4. Perform the functions listed S.C. Code Ann. §20-7-1549, et.seq., including but not limited to the following:

(a) Representing the best interests of the children;

(b) Conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the children and the family. The investigation must include, but is not limited to:

(1) Obtaining and reviewing relevant documents, except that the Guardian *ad Litem* must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support.

(2) Meeting with and observing the child on at

SWGS #2

least one occasion.

(3) Visiting the home settings if deemed appropriate.

(4) Interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case.

(5) Obtaining the criminal history of each party when determined necessary.

(6) Consider the wishes of the children, if appropriate.

(c) Advocating for the child's best interest by making specific and clear suggestions when necessary, for evaluation, services and treatment for the child and the child's family.

(d) Attending all court hearings related to custody and visitation issues, except when attendance is excused by the Court or the absence is stipulated by both parties. The Guardian *ad Litem* is not required to attend a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parties as to custody, visitation, or child support. The Guardian *ad Litem* must provide accurate, current information directly to the Court, and that information must be relevant to matters pending before the court.

(e) Maintaining a complete file, including notes.

(f) Presenting to the Court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the children's best interests. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the Court and all parties no later than

SWGS #5

twenty days prior to the merits hearing, unless that time period is modified by the Court, but in no event later than ten days prior to the merits hearing. The ten day requirement for submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the Guardian *ad Litem* make a recommendation as to the issue of custody at the merits hearing unless requested by the Court for reasons specifically set forth on the record. The Guardian *ad Litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses and telephone numbers of those interviewed during the investigation, provided the Guardian *ad Litem* is in possession of such information.

(g) The Guardian is empowered to require the parties to undergo psychological evaluations or attend anger management classes, with each party paying his or her costs. The Guardian is also authorized to file a further motion for pendente lite relief if any adjustments in pendente lite custody need to be made; and

(h) Perform such other duties as directed by the Court.

IT IS FURTHER ORDERED that this appointment shall continue to be in effect until formal discharge by the Court.

IT IS FURTHER ORDERED that upon receipt of this Order, the Guardian *ad Litem* shall make all filings and disclosures to the Court and the parties pursuant to S.C. Code Ann. §20-7-1547(D) and 20-7-1555 (Supp.2002).

IT IS FURTHER ORDERED that the parties shall execute all releases necessary for the Guardian *ad Litem* to obtain records to investigate this case, or obtain and provide such

records at the request of the Guardian *ad Litem*.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is to be given access to all of the child's and parties' financial, medical, psychological, and intellectual testing records. The Guardian *ad Litem* is entitled to obtain copies of all relevant documents.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is authorized to have access to records prepared or related to any medical and psychiatric treatment of the child and parties and to discuss the child's and parties' medical and psychological treatment with any appropriate medical or health care professionals. This access is authorized by this Order, as provided by 45 CFR 164.5 12(e)(l)(i), the Health Insurance Portability and Accountability Act (HIPAA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court.

IT IS FURTHER ORDERED that the Guardian *ad Litem* is specifically authorized by this Order to utilize the information obtained pursuant to this Order to prepare and/or include in any report or testimony concerning the Guardian *ad Litem*'s investigation required by this Order.

IT IS FURTHER ORDERED that the Guardian *ad Litem* shall not retain an attorney without prior approval of the Court, after notice to all parties and hearing.

IT IS FURTHER ORDERED that the Guardian shall be paid a retainer of $1,000.00, $500.00 by Plaintiff [redacted] and $500.00 by Defendant [redacted] within fifteen (15) days of the date of this Order. The Guardian *ad Litem* may charge a reasonable fee and not to exceed $5,000.00 for performing the tasks assigned herein. The Guardian *ad Litem* shall equally bill [redacted] and [redacted] for work done representing [redacted]

S/W RS HS

The Guardian *ad Litem* shall submit itemized periodic bills to the parties and their attorneys on a regular basis, including hours, expenses, costs and fees. The parties shall stay current with the periodic bills submitted by the Guardian *ad* Litem and pay them within thirty (30) days of billing. The Guardian *ad Litem*'s hourly rate is $175.00. If the Guardian *ad Litem* determines that it is necessary to exceed the fee authorized above, the Guardian *ad Litem* must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than $5,000.00.

AND IT IS SO ORDERED.

S/ W. GREG SEIGLER

JUDGE. Family Court
Eleventh Judicial Circuit

June 5th, 2017

Lexington, South Carolina

I CONSENT:

FOR: [redacted]
Attorney for Plaintiff

I CONSENT:

[redacted] Esq.
Attorney for Defendant

I CONSENT TO SERVE:

J. Means A'H

John Means A'Hern, Esq.
Guardian *ad Litem*

S/W GS #4

THE A'HERN LAW FIRM, LLC
JOHN MEANS A'HERN
ATTORNEY AT LAW
POST OFFICE BOX 50225
COLUMBIA, SOUTH CAROLINA 29250
TEL: (803) 530-9419
FAX: (866) 204-8216
EMAIL: JMAHERN@GMAIL.COM

November 6, 2017

[redacted] South Carolina 290[redacted]

[redacted] South Carolina 290[redacted]

Re: [redacted] v. [redacted]
2017-DR-32-[redacted]

Dear [redacted] and [redacted]

Enclosed please find my most recent itemized billing statement in this matter, which indicates that [redacted] has a balance of $141.75 and [redacted] has a balance of $2,050.00. Contact me if you have any questions or concerns, about my billing or any other subject.

Thank you for your attention to this matter.

Sincerely,

John Means A'Hern

JMA
Enclosure
cc: [redacted] Esq. (Encl.)
[redacted] Esq. (Encl.)

- Exhibit B -

THE A'HERN LAW FIRM, LLC

JOHN MEANS A'HERN
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POST OFFICE BOX 50225
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TEL: (803) 530-9419
FAX: (866) 204-8216
EMAIL: JMAHERN@GMAIL.COM

Re: [redacted] *vs.* [redacted]
2017-DR-32-[redacted]

October 1-31, 2017 Billing

Date	Action	Hours
Oct. 17	Emails with Stepmother	.02
	Emails with Atty. [redacted]	.2
Oct. 18	Reviewing text messages	.2
	T/Cs and emails with [redacted] Mother	.6
Oct. 19	Emails with Stepmother	.4
	T/Cs with Mother	.2
Time spent this month		1.62 hrs.
Hourly rate		$175.00
Expenses and costs		$0.00
Total current fees		$283.50
Father's fee allocation		1/2
Previous balance		$1,908.25
Payment received since last billing		$0.00
Carryover balance from prior billing period		$1,908.25
Current charge to Father		$141.75
Total now due from Father		**$2,050.00**
Mother's fee allocation		1/2
Previous balance		$404.25
Payment received since last billing		$404.25
Carryover balance from prior billing period		$0.00
Current charge to Mother		$141.75
Total now due from Mother		**$141.75**

Father's Payment History		
Date	Action	Balance
6/8/17	Initial Fee Ordered	[$500.00]
6/26/17	Paid $500.00	-$500.00
7/11/17	Billed $1,659.00	$1,159.00
8/11/17	Billed $131.25	$1,290.25
9/11/17	Billed $213.50	$1,504.00
10/4/17	Billed $404.25	$1,908.25
11/6/17	Billed $141.75	$2,050.00

Mother's Payment History		
Date	Action	Balance
6/8/17	Initial Fee Ordered	[$500.00]
6/14/17	Paid $500.00	-$500.00
7/11/17	Billed $1,659.00	$1,159.00
7/26/17	Paid $1,159.00	$0.00
8/11/17	Billed $131.25	$131.25
8/23/17	Paid $131.25	$0.00
9/11/17	Billed $213.50	$213.50
9/15/17	Paid $213.50	$0.00
10/4/17	Billed $404.25	$404.25
10/16/17	Paid $404.25	$0.00
11/6/17	Billed $141.75	$141.75

THE A'HERN LAW FIRM, LLC
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ATTORNEY AT LAW
POST OFFICE BOX 50225
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EMAIL: JMAHERN@GMAIL.COM

August 11, 2017

[redacted] South Carolina 290[redacted]

Re: [redacted]
2017-DR-32-[redacted]

Dear [redacted]

On July 11 I sent you a bill for $1,159.00, and as of today's date I have received no payment towards that amount. Please recall the requirement of the Consent Order Appointing Guardian *ad Litem* that "parties shall stay current with the periodic bills submitted by the Guardian *ad Litem* and pay them within thirty (30) days of billing." Judges, and particularly judges in Lexington County, do not give me the discretion to allow parties not to pay their GAL fees timely – or to put them on payment plans. I must insist that you pay my fees according to the Order and pay your past due balance immediately.

Thank you for your attention to this matter.

Sincerely,

John Means A'Hern

JMA
cc: [redacted] Esq.

- Exhibit C -

THE A'HERN LAW FIRM, LLC
JOHN MEANS A'HERN
ATTORNEY AT LAW
POST OFFICE BOX 50225
COLUMBIA, SOUTH CAROLINA 29250
TEL: (803) 530-9419
FAX: (866) 204-8216
EMAIL: JMAHERN@GMAIL.COM

September 11, 2017

Mr. [redacted]
[redacted] South Carolina 290[redacted]

Re: [redacted]
2017-DR-32-[redacted]

Dear [redacted]

On July 11 I sent you a bill for $1,159.00, and on August 11 I sent you a bill for an additional $131.25 (for a total of $1,290.25). As of today's date I have still received no payment towards these bills and this entire amount is now past due.

The Consent Order Appointing Guardian *ad Litem* stated that "parties shall stay current with the periodic bills submitted by the Guardian *ad Litem* and pay them within thirty (30) days of billing." Judges, and particularly judges in Lexington County, do not give me the discretion to allow parties not to pay their GAL fees timely – or to put them on payment plans. I must insist that you pay my fees according to the Order and pay your past due balance immediately.

If I do not receive payment in full of your past due balance by September 29 then I will have no choice but to file a Rule to Show Cause. You could be responsible for the past due fees, as well as my costs and fees in pursuing this sum. I have no desire to ask the Court to hold you in contempt but I must require both sides to pay my fees timely.

Thank you for your attention to this matter.

Sincerely,

John Means A'Hern

JMA
cc: [redacted] Esq.

- Exhibit D -

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Parental Alienation: Don't Be Fooled

Leslie Armstrong
Helen Wheeler

American Psychological Association

Psychological Bulletin

0033-2909/18/$12.00

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http://dx.doi.org/10.1037/bul0000175

Parental Alienating Behaviors: An Unacknowledged Form of Family Violence

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University of British Columbia

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Clark University

Despite affecting millions of families around the world, parental alienation has been largely unacknowledged or denied by legal and health professionals as a form of family violence. This complex form of aggression entails a parental figure engaging in the long-term use of a variety of aggressive behaviors to harm the relationship between their child and another parental figure, and/or to hurt the other parental figure directly because of their relationship with their child. Like other forms of family violence, parental alienation has serious and negative consequences for family members, yet victims are often blamed for their experience. In order to be recognized as a form of family violence and to secure protection for victims under law and social policies, a formal review and comparison of parental alienating behaviors and outcomes to child abuse and intimate partner violence has been sorely needed. The result of this review highlights how the societal denial of parental alienation has been like the historical social and political denial or other forms of abuse in many parts of the world (e.g., child abuse a century ago). Reframing parental alienating behaviors as a form of family violence also serves as a desperate call to action for social scientists to focus more theoretical and empirical attention to this topic.

Public Significance Statement
This article presents parental alienating behaviors as a form of family violence with serious consequences for children and families. Professional recognition of parental alienation and the alienating behaviors that cause it is a necessary first step toward stimulating much needed research in this area and in the development and testing of effective clinical, educational, and legal interventions to prevent and mitigate the damaging effects of this form of family violence.

Keywords: parental alienation, child abuse, intimate partner violence, family violence, domestic violence

Human aggression involves behaviors directed toward another individual with the proximate (immediate) intent to cause harm. Some psychologists have argued that in order to be considered aggression, there must also be a belief that the behavior will cause harm and that the target of the aggression is motivated to avoid it (Anderson & Bushman, 2002). Human aggression has traditionally been characterized as hostile or instrumental in form, with hostile aggression being thoughtless, unplanned behaviors committed while angry in reaction to a perceived provocation, and instrumental aggression describing aggressive behaviors that are premeditated and expressed as a means to obtain some goal other than hurting the target. With instrumental aggression, the target is essentially hurt in the process of the aggressor trying to obtain their goal (Berkowitz, 1993). Several theories have guided most research on human aggression including cognitive neoassociation theory (Berkowitz, 2012) and social learning theory (e.g., Bandura, Ross, & Ross, 1961), and human aggression can take many forms, such as gossiping, bullying, physical assault, genocide, and war. The goal of the current article is to describe and characterize a specific and complicated form of hostile and instrumental human aggression that has been controversial and largely overlooked by many social science researchers: parental alienation.

Parental alienation refers to a child's reluctance or refusal to have a relationship with a parent (referred to here as the targeted parent or TP) for illogical, untrue, or exaggerated reasons (Bernet, Wamboldt, & Narrow, 2016). Clinicians and researchers have outlined numerous symptoms that are indications that a child has been or is being alienated from a parent (Spruijt, Eikelenboom, Harmeling, Stokkers, & Kormos, 2005), including using a campaign of denigration against the TP, making frivolous rationalizations for their complaints about the TP, using borrowed scenarios

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created by the alienating parent (AP) such that the child's stories about past events are nearly exactly the same as the AP's version (even using identical words), and spreading animosity about the TP to other people. When the child rejects a parental figure, their behavior is often accompanied by a lack of overt ambivalence, guilt, or remorse for their rejection (Baker & Eichler, 2016; Jaffe, Thakkar, & Piron, 2017), and the child will automatically side with the AP in any argument or conflict.

Parental alienation is the outcome associated with alienating behaviors (Baker & Eichler, 2016). While alienating behaviors will not always lead to severe parental alienation, which is the complete rejection and refusal of contact with the TP (Warshak, 2013), they still impact the child and the other parental figure in many negative ways, even in the mildest of circumstances (e.g., Johnston, 2003). These outcomes include, but are not limited to, the child feeling abandoned and experiencing anger and/or rejection of the TP for unjustifiable reasons. There are also potential negative effects in psychological (e.g., depression), educational (e.g., academic decline), legal (time, expense), and physical (e.g., high blood pressure) domains (Harman & Biringen, 2016).

The behaviors that cause parental alienation to occur fall along a broad continuum ranging from mild and subtle to severe and explicit. Parental alienating behaviors are not discrete one-time events; in order to be considered a parental alienating behavior, it is typically enacted over time (Verrocchio, Baker & Marchetti, 2017) and alongside other clusters of behaviors with the intent of hurting, damaging or destroying the child's relationship with that parental figure, and/or to hurt the parental figure themselves (Baker & Darnall, 2006; Gottlieb, 2012; Harman, Biringen, Ratajack, Outland, & Kraus, 2016a; Kelly & Johnston, 2001; Lorandos, Bernet, & Sauber, 2013; Warshak, 2015a). These behaviors are *intended* to harm the other parental figure and their relationship with a child, and the TP is motivated to avoid them. For example, the AP may badmouth the TP to a child and also interfere with the TP's contact with the child (e.g., blocking phone calls when in their care; Reay, 2011). Children are often used as instruments of the AP in these campaigns (particularly among severely alienated children; Warshak, 2013), and they are subsequently directly and indirectly hurt in this process. Parental alienating behaviors are therefore both hostile and instrumental forms of aggression.

Although parental alienating behaviors can occur in intact families (Baker & Verrocchio, 2013; Moné & Biringen, 2006), they are reportedly used more frequently in nonintact families, particularly those that are litigating child custody disputes (Baker & Verrocchio, 2015; Hands & Warshak, 2011). To date, the majority of research on parental alienation has studied it as occurring between two biological parents; however, the AP and TP could be any parental figure in a child's life (step-parent, coparent, grandparent, etc.), and it does not discriminate: Few gender differences have been found in terms of who is the target of alienating behaviors (Harman, Leder-Elder, & Biringen, 2016b). Experts have found that custodial status, rather than gender, is a more important predictor of who is likely to alienate (for a review, see Harman & Biringen, 2016). The prevalence of children who have been alienated from a parent has been challenging to calculate due to the need to accurately diagnose this outcome, but some estimates point to around 29% of children from divorced homes as being alienated from a parent to some extent (Hands & Warshak, 2011). Parental alienating behaviors are quite common depending on the type of behavior that is being reported (Johnston, Walters, & Olesen, 2005). For example, between 5% and 42% of parents recruited from an online sample report doing at least one alienating behavior themselves; the behaviors that parents report at higher rates (e.g., yelling at the other parental figure in front of a child) occur more frequently than other behaviors consistent with the concept of parental alienation (e.g., moving the child out of state) because there are more opportunities to engage in the former behaviors (Harman et al., 2016b). Although some of these behaviors occur because of routine conflict (e.g., yelling at the other parental figure in front of the child) or because of necessity (e.g., moving out of state), it is the persistent and strategic use of these behaviors that results in parental alienation.

Extant published literature on parental alienation indicates there is consensus among affected family members and mental health professionals about the types of behaviors that APs use to alienate children (Saini, Johnston, Fidler, & Bala, 2016; Templar, Matthewson, Haines, & Cox, 2017). However, there has yet to be an explicit professional recognition in the social sciences of these behaviors as a form of family violence. Indeed, Ron Berglas, a citizen of the State of California, addressed the California Board of Behavioral Sciences on March 3, 2017, with a request that parental alienation be required training for all mental health professionals across the state. At the conclusion of his presentation, a board member stated that parental alienation first needs to be established in the peer-review literature as a form of emotional abuse and domestic violence. After that criterion has been established, then training and education could be required of their practitioners (Berglas, 2017).

Therefore, the purpose of this article is to provide a review of selected literature and research on parental alienating behaviors and their associated outcomes using professionally recognized legal and public health definitions of family violence. This review is the necessary first step before harms to victims can be indexed and assessed. We will discuss intent in a later section of the article because individuals who have denied the existence of parental alienation or minimized its scope have used intent to fuel debates about and to justify the use of this form of family violence. This review is necessary so that greater research attention can be focused on understanding and finding solutions to prevent and treat parental alienation (e.g., allocated funding for basic research, theoretical advancement, and intervention).

Family Violence

Inaccuracies in how family violence has been conceptualized have led to great variability in legal and clinical definitions around the world. It is outside the scope of this article to review the multitude of ways legal and clinical definitions have varied (see legal reviews such as Cutland, 2012 and Meyersfeld, 2004 for some examples), so we will describe here how family violence has generally been defined. The World Health Organization has defined violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation" (p. 4, Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002). The Organisation for Economic Cooperation and Develop-

ment (OECD) defines family violence, also known as domestic violence, as any violent act inflicted by one family member onto another, a term encompassing both child abuse and intimate partner violence (IPV). Violence here includes physical, sexual, emotional, and economic violence, as well as neglect (Organisation for Economic Cooperation and Development, 2013).

Legal definitions of family violence have specified several types; for example, the U.S. Department of Justice identifies physical, sexual, emotional, economic, or psychological actions or threats of actions as forms of violence that can intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone (Office of Violence Against Women, U.S. Department of Justice, 2017). State statues in the United States individually define what violence is, and the majority (42/50) of U.S. states have family violence defined within their criminal or penal codes (Child Welfare Information Gateway, 2017).

In addition to there being great variability in how family violence has been defined, who is considered a victim of family violence also varies greatly across legal jurisdictions and countries (United Nations Office on Drugs & Crimes, 2010). For example, in the U.S., "victims" are often only those individuals who are harmed by specific offenses such as a felony or misdemeanor (National Crime Victim Law Institute, 2011). International law has traditionally not paid significant attention to victims and there is not an international concept of what characterizes one (Romani, 2010). The General Assembly Resolution 40/34 of the United Nations defines "victim" as a person who has suffered harm "including physical or mental injury [and] emotional suffering . . . through acts or omissions that are in violation of criminal laws . . . including those laws proscribing criminal abuse of power" (United Nations General Assembly, 1985). Importantly, this definition has included family and dependents of the direct victim who have suffered harm in assisting the person in distress or in trying to prevent victimization (Romani, 2010).

Legal jurisdictions also vary as to whether children who witness family violence are considered victims. Children can be exposed to violence either directly or indirectly by witnessing violence in their family, community, and/or school (Hillis, Mercy, & Saul, 2017). Child victims exposed to family violence (intimate partner violence or IPV) experience many harmful effects and significant emotional impairments (Ayoub, Deutsch, & Maraganore, 1999; McTavish, MacGregor, Wathen, & MacMillan, 2016). These effects can occur either by witnessing the violent behaviors, being in the home where such events are happening (Hines & Douglas, 2016b) or even just being *aware* of them (MacMillan & Wathen, 2014). The term *child affected by parental relationship distress* (CAPRD) appears in the most recent edition of the *DSM–5*, and it encompasses a wide range of parenting relationship issues that have negative consequences for children, including intimate partner distress and violence and parental alienating behaviors (Bernet et al., 2016). Children who have been exposed to intimate partner conflict and aggression have poorer psychological and social adjustment, poorer academic performance, and higher incidences of behavioral disorders (Amato, 2001; Douglas & Hines, 2016a, 2016b). Parental alienation specialists have argued that severe parental alienating behaviors are a form of child abuse (Templar et al., 2017), and severe parental alienation is an extreme manifestation of both CARPD and "parent-child relational problem" in the *DSM–5* (Warshak, 2015a).

Despite the negative consequences that witnessing family violence has on children, only 24 states in the U.S. have recognized that children who witness family violence are collateral victims and have child protection laws written to address this in their criminal or civil codes. In contrast, the Australian Family Law Act, 1975 Sect 4AB specifies that children are exposed to family violence when they see, hear, or experience the effects of family violence (Commonwealth Consolidated Acts, n.d.). Australian courts have applied this definition of family violence to family law cases with alienated children because parental alienating behaviors are recognized as a form of family violence that causes harm to children (e.g., Federal Circuit Court of Australia, 2015).

In 2010, Brazil passed a law criminalizing parental alienation because it was labeled as a *moral abuse* against a child or adolescent, is a violation of the child's fundamental human right to have healthy family interactions and family life, and is considered a breach of parental duties stemming from parental custody (Brazilian Law No. 12 318, 2010). The examples of parental alienating behaviors described in this law include organizing campaigns to discredit the TP, the undermining of the TP's parental authority, prevention of contact and visitation between the child and the TP and/or extended family, hiding personal information about the child (e.g., school records) from the TP, making false claims of abuse, and changing the residence or contact information for the child without notifying the TP. The law allows judges to prosecute APs for their abusive behaviors toward the child and the TP, even reversing custody if it is in the best interests of the child.

Despite the implicit and explicit recognition of parental alienating behaviors as being a form of family violence in countries like Australia and Brazil, it has not received legal recognition in other jurisdictions, such as the U.S. There has also been widespread and persistent denial by some researchers, practitioners, and policymakers in the fields of domestic violence and child abuse (e.g., Bruch, 2001; Dallam & Silberg, 2016) about the reality (Clemente & Padilla-Racero, 2015) and prevalence of parental alienation (Rowen & Emery, 2014), particularly concerning whether the problem can be considered a psychological "syndrome" (Parental Alienation Syndrome or PAS; Gardner, 1999; Warshak, 2015a). This denial is reminiscent of the societal-level denial of the existence and prevalence of domestic violence and the abuse of children in the United States and Canada at the start of and throughout the 20th century (e.g., Pleck, 2004; Roy, 1977).

Due to the resistance to accept the reality that parents engage in behaviors to hurt another parental figure and that parental figure's relationship with their child(ren), parental alienation and the behaviors that cause it have been unacknowledged, treated as an "anomalous" form of aggression. In addition, parental alienation is sometimes described as a story that only abusive fathers use to obtain custody of their children and to abuse the other parent (e.g., Ellis & Boyan, 2010). This denial detracts attention away from a serious public health crisis (Fidler, Bala, & Saini, 2013; Vezzetti, 2016) that is affecting an estimated 22 million or more fathers *and* mothers and their children in the U.S. (Harman et al., 2016b), and likely millions more across the world.

State of the Research on Parental Alienation

Before we outline how specific parental alienating behaviors map onto professionally recognized (legal and clinical) forms of child abuse, IPV and their associated outcomes, it is important to address the current state of research on parental alienation. To date, more than 1,000 books, book chapters, and articles have been published in mental health or legal professional journals on the subject of parental alienation (Vanderbilt University Medical Center, 2017). However, the majority of documentation regarding the presence and sources of parental alienation are drawn from legal case reviews, expert opinions, clinical case studies, and qualitative research-based accounts (Saini et al., 2016). Conducting research on the prevalence, etiology, diagnosis and assessment, and treatment outcomes of parental alienation is resource intensive. The funding necessary to conduct such research has not been earmarked because parental alienating behaviors have not yet been recognized as a form of family violence. For example, even though there is cross-sectional evidence from surveys and legal cases that greater amounts of parental alienating behaviors are associated with greater hostility and rejection of a parent (Baker & Eichler, 2016; Burrill, 2001), a longitudinal study of a diverse sample of families is necessary to inform causality. Such a study is not possible without substantial funding. Consequently, the majority of empirical studies to date published on parental alienation have been drawn from convenience samples, rely on retrospective reports of TPs and adult children, and utilize cross-sectional designs, often without comparison groups. Professional and public denial of this phenomenon has hindered research progress on this topic because it has blocked researchers' access to funding.

In a recent review of the published research on parental alienation, Saini, Johnston, Fidler, and Bala (2016) used a stringent set of criteria to identify studies (published prior to 2015) that reported sample sizes and methods of selection, the methods of data collection, information about data analysis procedures, and a report of the findings. Their search resulted in 45 published articles and 13 doctoral dissertations published in English. Unfortunately, many of the studies identified had design limitations (e.g., small sample sizes, lack of comparison groups) which limits their generalizability, leading the authors to conclude that the state of the research on parental alienation is in its early stages (Saini et al., 2016). Despite these limitations, it is important for our purposes that the authors found a very high consensus in the finding that "mothers, fathers, children, young adults, and counselors have been able to describe the explicit behaviors that may be perpetrated by one parent and have the capacity to distance, damage, or destroy a child's relationship with the other parent" (p. 418), as well consensus as to what outcomes are associated with different levels of severity of parental alienation in children (Saini et al., 2016). This consensus is found across many different studies using different methods and samples. Therefore, there has been noteworthy professional agreement about the types of alienating behaviors that APs use, and research has demonstrated reliable identification of clusters of symptoms in children who have been alienated (Saini et al., 2016).

In our review, we will draw as much as possible from empirical research studies published on parental alienation to date. However, in areas where less research has been conducted, we will refer to clinical, legal, and expert opinion publications. We will also draw from summarized details of legal cases where parental alienation was identified (Lorandos, 2013), published testimonies of thousands of adults who attest to having suffered through it as children, and extensive personal interviews conducted by the first two authors of this article with alienated parents (some of which have been referenced in Harman & Biringen, 2016). These sources offer valuable insight into causes and consequences of parental alienation and provide examples of parental alienating behaviors and their outcomes which are important building blocks for an emerging field of inquiry. Whenever possible, we will cite multiple sources for our examples from different perspectives (parent, child, mental health or legal professionals) as independent observations derived from different forms of methodological inquiry demonstrate consensus and can provide greater confidence in the findings.

Parental Alienating Behaviors as Child Abuse

Due to the many ways that child abuse can be perpetrated, defining it has proved to be challenging. Indeed, there are many different and sometimes incompatible definitions of child abuse, and there are often disagreements about the meaning of the term itself (Cameron, Hazineh, & Frensch, 2010). There is also debate about whether child abuse can ever be precisely defined (and therefore measured; Trocmé, Akesson, & Jud, 2016). Child abuse is generally defined as a specific form of harm to children that is *significant* and may be attributed to *human agency* (Cooper, 1993) that is proscribed, proximate, and preventable (Finkelhor & Korbin, 1988). The American Professional Society on the Abuse of Children (1995) defines child maltreatment, which is an even broader term incorporating child abuse and neglect, as behaviors that a caregiver does that result in a child feeling worthless, unloved, and only valued for meeting the caregiver's needs (Binggeli, Hart, & Brassard, 2001).

Many writers have indicated that using parental alienating behaviors to cause parental alienation is a form of child psychological abuse (for a brief review, see Verrocchio, Baker, & Bernet, 2016) and some specific behaviors have been mapped to child outcomes in a qualitative analysis by Baker (2007). Indeed, the tactics used by APs in their alienation are often tantamount to extreme psychological maltreatment of children (Baker, 2010). It is important to note that while some behaviors may be, at face-value, inherently associated with parental alienation (e.g., psychological aggression), other behaviors (e.g., physical aggression) may be only associated with the concept. While empirical evidence and greater theorizing is needed to determine whether this distinction can be made, we believe that regardless of the centrality of specific aggressive behaviors to the concept (e.g., frequency, impact), the behaviors we will review are described and documented as being done to hurt the relationship between the child and the TP, or to hurt the TP directly. Therefore, the reported behaviors are all important for our understanding of this complex form of aggression. Our review here is the first step toward classifying behaviors that have been documented by researchers and experts in the field using a child abuse framework.

Thorough reviews of child abuse behaviors have identified several different forms (e.g., Fakunmoju et al., 2013). We will first review the psychologically aggressive child abuse behaviors that APs use with their children, and then review other forms of child abuse behaviors.

Emotional/psychological aggression. Psychological aggression involves the use of verbal and nonverbal communication with the intent to harm the other person mentally or emotionally. This is the most common form of child maltreatment; it involves attacking a child's emotional and social well-being, and can include spurning, terrorizing, isolating, corrupting or exploiting, and denying emotional responsiveness (Binggeli et al., 2001). Compared with psychological aggression between intimate partners, child abusive forms have not been as clearly differentiated. Alienating parents are extensively documented as using this form of aggression, yet it is one of the more challenging ones to observe directly because they often occur in privacy.

Alienating parents terrorize their children by derogating the TP and creating fear in children that the TP might be dangerous or too unstable to be around (e.g., Baker & Verrocchio, 2013; López, Iglesias, & García, 2014; Verrocchio et al., 2017). Alienating parents will often reject, shame, or make their child feel guilty for showing any loyalty or warmth toward the TP or the TP's extended family (e.g., step-siblings, grandparents; Baker & Darnall, 2006; Harman & Biringen, 2018), or ridicule them for showing the TP affection (López et al., 2014). They may also withdraw love and affection when the child talks positively about the TP (Baker & Verrocchio, 2013, 2015), leading the child to fully and openly reject the TP, or to compartmentalize their feelings and show one "face" to the AP and another to the TP (Dunne & Hedrick, 1994; Garber, 2014). Some APs force and reward their children for rejecting the TP (e.g., not say hello at a sporting event; López et al., 2014; Verrocchio et al., 2017), or for using the same derogatory labels that the AP uses to describe them (Warshak, 2015b). The AP will interrogate children for information after visits with the TP (Baker & Darnall, 2006; López et al., 2014), and even make them throw away all clothing, gifts, or reminders of the TP after they return from visits with them (Harman & Biringen, 2018).

Alienating parents also attempt to corrupt their children and reject part of their own identity by calling another adult mother or father (to replace the TP; Verrocchio et al., 2017), and even change their last name to fully reject the TP (Baker & Verrocchio, 2013; Warshak, 2015c). In one extreme example, Dunne and Hedrick (1994) reported an AP as having conducted a "burial ceremony" with the children to "bury" symbolically their living father in order to start their "new" family. The AP may also allow the child to refer to them by first name in order to make it seem they are their equals in order to create an alliance. Alienated children may even use their AP's surname (e.g., maiden name) socially if it is different from the surname of the TP in order to publicly reject the TP (Harman & Biringen, 2018). Children are asked or even paid to keep secrets from the TP (Reay, 2011; Verrocchio et al., 2017), and are pulled into a state of dependency on the AP that makes them even more susceptible to their manipulations (Gottlieb, 2012).

Alienated parents will also corrupt their children by using gaslighting techniques to accomplish parental alienation. Gaslighting refers to the presentation of false information to the victim with the intent of making them doubt their own memory or perception. Alienating parents will rewrite past history, or use events that the child recalls and then exaggerate or fill in with details that never happened in an attempt to distort the child's memory about the TP and the TP's relationship with them and/or the AP (e.g., brainwashing; Baker & Darnall, 2006; Harman & Biringen, 2016; Reay, 2011; Warshak, 2015a). The AP creates conflict between the child and the TP by telling them false, incomplete, or misleading information about the other parent. For example, the AP may tell the child that the TP was supposed to be picking them up at a certain time (when no such schedule was arranged) to make the child believe the TP rejected them ("your mom/dad forgot about your visit today;" Harman & Biringen, 2018; Lorandos, 2013). The AP will often make the child choose between parents ("you can either live with them or me, not both;" Harman & Biringen, 2018; Verrocchio et al., 2017).

Alienating parents will manipulate their children to help in their campaign against the TP (Smith, 2016). For example, they will put the child in the position to spy on the TP, such as searching a TP's computer for bank account information (Baker & Verrocchio, 2013; Harman & Biringen, 2018; Stahl, 2004; Verrocchio et al., 2017). Alienating parents adultify or parentify one or more of the children such that as child caregivers, they serve and provide for the needs of the AP (Moné & Biringen, 2012; Garber, 2011). In this role, APs often share inappropriate information about financial and legal matters with their children (Balmer, Matthewson, & Haines, 2017; Gottleib, 2004; López et al., 2014; Moné, MacPhee, Anderson, & Banning, 2011).

Parenting time is often based on a stipulated agreement or is court ordered, and yet APs will give or force their children to make a "choice" as to whether they want to visit the TP (Baker & Darnall, 2006; Baker & Verrocchio, 2013). By doing so, the AP deflects responsibility for violating court ordered visitation ("my child just doesn't want to see them. I cannot force them to go"). This deflection of responsibility for noncompliance of court orders is placed inappropriately onto a child, who is thereby encouraged to act in an antisocial manner (Joshi, 2016). Adolescents have a greater vulnerability to external influences such as parents and peers, and are highly suggestible, making them willing to fill such adult roles (Warshak, 2015c) and be manipulated to act on behalf of the AP.

Child neglect. The World Health Organization (1999) has defined neglect as failure to provide for the development of the child in all spheres of life. Therefore, neglect can include behaviors such as not caring for a child's basic needs (food, health care, clothing, education) or leaving a child with an abusive caretaker. According to Erickson and Egeland (2011), psychological or emotional neglect occurs when parents fail to meet their child's basic emotional needs, such as not comforting children when they are injured. This form of abuse cannot be identified from one specific incident, as it is *chronic* neglect that has significant impact on a child's development (Hornor, 2014). Neglect can result in physical and psychological harm, and it is the most common and deadliest form of child abuse (Child Welfare Information Gateway, 2012). Unfortunately, this form of child abuse has not been well studied (Stoltenborgh, Bakermans-Kranenburg, & van Ijzendoorn, 2013).

Neglect is a fundamental element of parental alienation because the AP's needs are placed ahead of those of the child, and the AP fails to recognize the need for the child to be loved and cared for by the TP (Baker & Verrocchio, 2013; Garber, 2011). Children are simultaneously infantilized (lives are dependent on the AP) and parentified. Parents who alienate their children do so regardless of the impact it has on the child, which demonstrates serious neglect of their basic emotional needs (Johnston, Walters, & Olesen, 2005). Indeed, many APs fight hard to have full custody and

control of their children, with little desire to be with the children themselves (Baker, 2006b). The AP will opt to have third party caregivers for the children rather than allow any parenting time for the TP, and they are emotionally unavailable to the child due to their own psychological pathologies (Garber, 2011; Harman & Biringen, 2016).

One common form of child neglect is *factitious disorder imposed by another* (American Psychiatric Association, 2013), which occurs when a parent fails to seek medical care, seeks out excessive and/or inappropriate care, or is noncompliant with care (alternatively known as Munchausen Syndrome by Proxy, Grace, & Jagannathan, 2015; or medical child abuse, Yates & Bass, 2017). Factitious disorder imposed by another is more common among mothers who have had a history of abuse and who have personality disorders (e.g., borderline personality disorder), and the abusive behaviors increase during times of separation with the child (Yates & Bass, 2017). Some parents will make false allegations of abuse and fabricate illnesses in an attempt to get custody of (Dauver, Dayan, & Houzel, 2003; Lorandos, 2013) and to alienate their children from the TP (De Becker & Ali-Hamed, 2006). In order to make the TP appear incompetent, the AP may also give the TP inaccurate medication treatment information for the children while in the TP's care. The AP then harasses the TP if they do not comply with what are known to be false instructions, and tells the children that only they (the AP) know how to care for their needs (Harman & Biringen, 2018).

Alienating parents are also described by TPs as neglecting the academic needs of the children, such as allowing excessive absences from school to attend appointments that could easily be scheduled outside of school hours (Harman & Biringen, 2018). By appearing busy in attending to the "complex" needs of the children (López et al., 2014), the AP gives the appearance to others as being the "better" and more "concerned" parent, while the child's actual needs are not being met. Alienating parents frequently utilize mental health professionals to "help" their children cope with the alleged behaviors of the TP. If the professional becomes suspicious of parental alienation, or seeks details from the TP to make better sense of the child's real issues, the AP typically fires them and finds another therapist who is more sympathetic and not a threat to the fiction they are trying to maintain about the TP. "Therapist shopping" results in the children's psychological needs not only being neglected, but being exploited and used against them (Campbell, 2013; Harman & Biringen, 2018).

Targeted parents have reported that APs will restrict and control the types of friends or later dating partners that their children have, or in more extreme situations, isolate their children from peers and social networks. For example, the AP may not support a relationship between their teenager and a healthy romantic partner because the romantic partner may question the child's rejection of the TP or because the romantic partner was seen speaking to the TP (Baker & Darnall, 2006; Harman & Biringen, 2018). Limiting the children's social networks in these ways neglects the child's need to develop their own individuality that is separate from the identity of the AP.

Legal and administrative aggression. This form of aggression refers to a partner manipulating legal and administrative systems to hurt the other partner, such as making false claims of abuse to child protective services about the parent (Hines, Douglas, & Berger, 2015; Kruk 1993, 2011). While this form of aggression is primarily used against the TP, APs have had their children testify against the TP in court or to mental health professionals and teachers about false events (e.g., abuse) and perceived or unsubstantiated fears (Harman & Biringen, 2018). Some children are convinced by the APs to tell social workers, teachers, medical providers, and other mandatory reporters about events that never happened, or are exaggerated by the APs to create perceptions of danger to the children, which prompts unnecessary third-party intervention (Dunne & Hedrick, 1994).

Physical and sexual aggression. Physical aggression inflicts pain on a child and has the potential of causing injury or impairment to development. This form of aggression can include slapping or hitting a child, throwing objects at the child, banging a child's head on an object (e.g., wall), or dragging a child on a floor as punishment (e.g., Straus & Hamby, 1997). Sexually aggressive behaviors include exposing a child to sexual behaviors of adults (e.g., having sex or masturbating in their presence), videotaping or viewing a child naked for sexual pleasure, allowing a child to watch pornography, asking the child to perform sexual acts with an adult, and engaging in sexual conversations with a child for sexual pleasure. There is some clinical and survey evidence that children are physically abused (e.g., hit) when they tell the AP they want a relationship with the TP (e.g., Rand, 1997) and that adults who were alienated as children have experienced physical and sexual abuse at the hands of the AP (Baker, 2005). It remains unclear whether this behavior is an inherent component of PA, or whether it is correlated with its occurrence. The AP may also select new partners who put the child at risk for physical or sexual abuse. The TP is often physically and legally prevented from being able to help the victimized child in these situations, and the AP does not intervene. For example, the first author has interviewed several TPs who learned the new romantic partners or spouses of the AP had histories of sex offenses and did not have any legal means to protect their children from harm (Harman & Biringen, 2018).

Parental Alienating Behaviors as Intimate Partner Violence (IPV)

Parental alienating behaviors do not just contribute to child abuse; they are direct and indirect attacks that an AP makes on the TP. Intimate partner violence (IPV) describes aggressive and abusive behaviors perpetrated by a current or former intimate partner (i.e., spouse, boyfriend/girlfriend, coparent, dating partner, or ongoing sexual partner; Breiding, Basile, Smith, Black, & Mahendra, 2015) and, like child abuse, has been a difficult form of violence to define due to the many forms it can take. In 1999, the National Center for Injury Prevention (NCIP) at the Centers for Disease Control published a report intended to outline a clear definition of IPV (Saltzman, Fanslow, McMahon, & Shelley, 1999). Since that time, the NCIP has published updated definitions in order to account for behaviors that have long been documented but were not easily categorized before (e.g., stalking; Breiding et al., 2015). The most commonly used form of IPV by APs is psychological aggression, so we will focus primarily on this form here. We will then briefly review other IPV behaviors that APs use in their aggression toward the TP.

Psychological aggression. This form of IPV includes attempts to control the partner or the relationship, demonstrate power, and/or damage the victim's sense of self (Williams, Richardson, Hammock, & Janit, 2012). Perpetrators intimidate, emotionally wound, express anger, restrict, and coerce a partner (Follingstad, 2007). Psychological aggression can also include threats to damage property and falsely accusing a partner of having an affair (Doherty & Berglund, 2008). Most parental alienating behaviors directed at the TP are examples of psychological aggression (Mason, Lewis, Milletich, Kelley, Minifie, & Derlega, 2014). The most recent NCIP report (Breiding et al., 2015) presented numerous types of psychological aggression, and we will provide examples of how APs use this type of IPV in their relationships.

1. *Expressive aggression* entails the use of name-calling, degrading the target of the behavior, humiliation, and behaving in a physically dangerous manner.

Nearly all TPs report that the AP has used some form of badmouthing and derogation, either directly or indirectly, and often in front of a child (Baker & Darnall, 2006; Godbout & Parent, 2012; Harman et al., 2016b; Kruk, 2011; López et al., 2014; McMurray & Blackmore, 1993). This form of psychological aggression is common because it is a "potent technique to undermine the child's love and respect for parents and other relatives" (Warshak, 2015b, p. 13). Alienating parents will go to great lengths to destroy the TP's credibility (Gith, 2013; Lowenstein, 2015). For example, APs have told their children, friends, neighbors, teachers, and other involved adults that their child's father is a "deadbeat," "dangerous," or "inappropriate," or that their mother is "crazy," or only cares about her career (Harman & Biringen, 2016; Rand, 1997; Warshak, 2015b). Belitting of the TP often occurs at parenting exchanges or at children's activities (e.g., sporting events) in front of others. When talking to their children, some APs refer to the TP using their first name in order to undermine the TP's role as parent to the child (Warshak, 2015b), or even use third person pronouns (e.g., "s/he is here to pick you up now") to create a sense that the TP is not worth recognizing as a parent (Baker & Darnall, 2006; Harman & Biringen, 2016; Kruk, 2011). Alienating parents may even forbid or limit all mention of the TP in the AP's presence. This "erasing" of the TP is an extreme form of degradation.

The AP will also use humiliation to hurt the TP, such as mocking their hobbies, personality, job, friends, or family (Baker & Darnall, 2006; Harman & Biringen, 2018), and focusing the child and others on the TP's flaws and mistakes they have made (Warshak, 2015c). For example, a TP reported to one of the authors that the AP in his life put him on speakerphone when he called to speak with his children, and the AP mocked him during calls to make the children see him as a joke.

Much of the yelling and name-calling behaviors that APs use are designed to make the TP seem angry and dangerous. Alienating parents frequently will yell angrily at the TP in front of the child and others, slam doors, and throw things at them (e.g., shoes, rocks; Harman et al., 2016a). These behaviors are intended to scare the TP, particularly because the TP does not want their children to see them in the way the AP portrays them at such times. Unfortunately, this behavior can result in the child subsequently not wanting to see the TP because they become afraid of them, or they want to avoid exposure to the aggression that occurs during such interactions.

2. *Coercive control* refers to a wide range of behaviors designed to minimize the power of the target by controlling their behaviors. Controlling behaviors include limiting access to transportation, money (financial abuse), friends, and family; manipulation of others to accomplish their goal to control; excessive monitoring of a person's whereabouts and communications; monitoring or interfering with communication (e.g., social media, texting) without permission; making threats to harm the self; and making threats to harm a loved one or a possession. (Breiding et al., 2015)

Having the loyalty of children (and typically legal control over them) affords the AP a considerable amount of power to wield over the TP (Baker, 2006b; Harman & Biringen, 2016; Reay, 2011), and APs use their children as weapons to a great extent when they exercise coercive control. The limitation of access to children, or postrelationship gatekeeping (Saini, Drozd, & Olesen, 2017), is a commonly reported behavior, with as many as two out of three of APs doing it (Baker & Darnall, 2006; Harman & Biringen, 2016; Kruk, 2011). The AP will often prevent visits (e.g., arguing the child is too "sick;" López et al., 2014; McMurray & Blackmore, 1993), change pick-up and drop-off times and locations to make parenting exchanges difficult to coordinate, and put their children in daycare or with another service provider rather than cooperate with the TP to coparent the child (Kruk, 2011). Studies report that APs schedule children's activities (e.g., sleepovers, excessive after school activities) during the TP's parenting time in order to minimize the TP's time with the children (Harman & Biringen, 2018; Reay, 2011).

Similarly, APs will withhold information about the children from the TP and will make the child's medical or academic records nearly impossible for the TP to access or obtain (Baker & Darnall, 2006; López et al., 2014). For example, the AP may change emergency contact information for the children at school so that the TP and/or the TP's family are not informed when their child is ill. Alienating parents often fail to send parent–teacher communication to the TP or tell them about school events, resulting in the child believing the TP does not care about their academic success or involvement in afterschool activities (Harman & Biringen, 2018; Reay, 2011). Alienating parents sometimes do not communicate to the TP that their child is receiving an award at school or provide them wrong information (date, location) about an event, leaving the child disappointed and angry that the TP was not present. The AP will follow up this contrived situation by reinforcing the negative feelings the child has toward the TP ("your mom/dad cares more about work than being here for you," "tell me everything that happened . . ."). Even though most TPs have a legal right to medical information about their children, APs often instruct medical providers to only communicate with them about their children's care, sometimes using their court-appointed sole medical decision-making authority as their rationale (Harman & Biringen, 2018).

Financial abuse is another example of coercive control reported by TPs. Excessive attorney and court fees expended to litigate

custody disputes, defend against false accusations of abuse, and modify child support and/or alimony (see legal and administrative aggression below) leave many TPs financially destitute (Giancarlo & Rottman, 2015; Kruk, 2010, 2015). Alienating parents also hide or delay notifying the TP about changes to their employment or educational enrollment status as a way to continue obtaining money from them (e.g., alimony, child support), or are dishonest about extraordinary expenses spent on their children as a way to extort money from the TP (Harman & Biringen, 2018).

Alienating parents will also limit the TP's access to family and friends. Through the use of derogation and lies about past events, APs typically turn friends, neighbors, teachers, coaches, and other important adults in the child's and TP's lives against the TP (Gith, 2013; Harman & Biringen, 2016; López et al., 2014; Rand, 1997). Nonresident TP fathers have reported that the extended family of the mother of their children often contributed to or drove the conflict that they experienced in trying to parent their children (Lehr & MacMillan, 2001). Many of these adults believe the stories told by the AP about the TP, and fail to consider that there may be another side to the story (Harman et al., 2016a). When TPs try to reach out for support, or act on behalf of the child (e.g., contacting teachers about homework), they are met with a "cold shoulder" and treated with hostility (Harman & Biringen, 2016; Kruk, 2015). In other words, the AP manipulates these adults into acting aggressively toward the TP on the AP's behalf.

The monitoring of the TP's whereabouts and communication is a strategy that TP's report APs have used, and it is quite similar to stalking. For example, APs are reported to have discovered the TP's Internet passwords and subsequently hacked into their accounts to learn details that can be used against them, such as who they are dating, what they are communicating about to their attorneys, and bank account information. Some TPs have reported that their AP has hired spies or enlisted family members to monitor the TP's behaviors. For example, neighbors are asked to inform the AP if the TP is entertaining a new romantic partner and whether the TP is home (Harman & Biringen, 2018). As described earlier, the AP can have the child monitor the TP on their behalf as well.

Alienating parents interfere with contact and communication between the children and the TP (Baker & Verrocchio, 2013). The AP reads the text message and e-mail exchanges between the child and the TP, listens to their voice messages, makes the child communicate by phone while they are in the room to overhear their conversations, and even force the child to communicate with the TP on speaker phone to listen to both parties on the call (e.g., Harman & Biringen, 2016). Targeted parents have reported that their messages (e-mails, voice mails) are not relayed by the AP to the child, and that the AP impersonates the child via text or e-mail to the TP so they do not always know if the communicator is their child or the AP (Harman & Biringen, 2016). The AP will also interfere with symbolic communication between the TP and child, such as throwing away or hiding gifts sent to the child by the TP, or not allowing pictures or mention of the TP in their home (Baker & Darnall, 2006; Reay, 2011; Verrocchio et al., 2017). The AP may also restrict or prohibit contact with the TP's extended family, thereby alienating the child from the TP's social network (Baker & Verrocchio, 2013; Worenklein, 2013). Many TPs have not seen or spoken to their children in many years (even decades), due to the interference of the AP.

Interference of communication also occurs when the child is in the care of the TP. During the TP's parenting time, the AP often texts or calls the child incessantly (López et al., 2014), sometimes sending pictures of their animals or other loved ones who "miss them" to pull their attention away from their time with the TP, or even asking the children whether they are feeling "safe" to imply that they should be concerned for their safety when with the TP (Harman & Biringen, 2018). The interference of parenting time with the TP detracts from the quality of their parenting time, and does not allow the child to be fully present and emotionally available to the TP.

Some APs will threaten to hurt themselves as a strategy to make the TP comply with their wishes. For example, an AP may threaten suicide or say they will become depressed if the TP seeks court intervention to enforce court orders. The TP rarely wants the children to lose a relationship with the AP, even with the amount of abuse that the AP has subjected them to, so the TPs are often coerced into compliance with such threats (Harman & Biringen, 2018). Alienating parents also threaten to harm loved ones or possessions of the TP, such as telling the TP that the children will be financially destitute or psychologically traumatized by a TP's actions in order to control the TP's behavior (e.g., *if you file that motion, your children will be traumatized to be away from their mother/father*). Alienating parents threaten to hurt new romantic partners or family members of the TP (e.g., spread rumors about them), or threaten to call the TP's employer to get the TP fired should the TP not comply with the AP's wishes (e.g., stay away from the child, give them money; Harman & Biringen, 2018).

3. *Threat of physical or sexual violence* is a form of psychological abuse that entails the use of words, gestures, or weapons to communicate the intent to cause death, disability, injury, or physical harm.

Alienating parents use these types of threats to coerce the TP to stay away from the children or create the illusion of danger. For example, APs are reported to have had an intimidating adult present (step-parent, friend, even hired help) at parenting time exchanges to be their "bodyguard" (Harman & Biringen, 2018). The presence of a bodyguard conveys the message that the AP needs protection from the TP, and communicates that the TP is in physical danger for being there to see their children. Another example is documented in a legal case from the U.S., in which an alienating father blocked the targeted mother's car in his driveway so she was unable to leave his property while he read the mother's court motion to the children out loud (Lorandos, 2013). Intimidation and threats made by the AP to hurt the TP are often so scary that the TP will have other adults pick up their children when they exercise their parenting time in order to avoid an altercation with the AP or their proxy (Lehr & MacMillan, 2001).

4. *Control of reproductive or sexual health* is a form of psychological abuse that includes behaviors such as refusing to use birth control or coercing a pregnancy termination.

While this type of abuse is not as commonly used by APs due to the fact that many TPs are no longer in an intimate or sexual relationship with them, these behaviors can happen before the

relationship dissolves. For example, a TP interviewed by the first author reported to having been coerced undergo a vasectomy because their AP did not want more children. Immediately after this procedure, the AP filed for divorce and restricted all contact between the TP and his children. While there could be many reasons for the AP's behavior, the TP was devastated because he later wanted children (Harman & Biringen, 2018). More research is needed to determine how common this form of psychological aggression is among TPs.

5. *Exploitations of victim's vulnerability* is a form of psychological abuse that entails exploiting the target's liabilities or vulnerabilities, such as their immigration status, a disability, or an undisclosed sexual orientation that the target is motivated to remain hidden.

The AP often exploits any misstep or mistake that the TP makes (Smith, 2016). Targeted parents have reported being blackmailed by APs to sign court documents or "agreements" out of fear that the AP will share negative information about them (e.g., a prior criminal record) that would hurt their reputation or perceptions of their children. In order to limit the TP's access to the child, APs sometimes exaggerate or inappropriately share medical or mental health information (that has very little to do with their ability to parent) about the TP with others. If an AP moves with the child to another country, the TP may relocate in the hopes of continuing to have a relationship with their child. When this has occurred, APs have made false reports of visa violations as an attempt to have the TP deported. Alienating parents in these situations also exploit the TP's alien status in court, which often has very different rules and procedures than the court from their native land (Harman & Biringen, 2016; Lorandos, 2013).

The amount of parenting time that has been allocated or court ordered to the TP can also be used as a liability by the AP. For example, if a court's temporary order assigns only alternating weekends of parenting time to a TP, APs often use the time period between the temporary and final orders (which can be months or years) as "proof" that they should be the primary custodial parent (Harman & Biringen, 2016; Kruk 1993). This strategy is even encouraged by lawyers to obtain full custody for their clients, because many American and Canadian judges base final parenting orders on what the "normal" distribution of parenting time was prior to the final hearing. Creating an extended temporary order period with imbalanced parenting responsibility provides the AP with power to exploit the TP's limited parenting time in their favor (Kruk, 2011).

Similarly, the AP will also exploit unequal parenting plans in order to obtain and retain sole decision-making regarding the children. For example, the AP will claim that the TP does not "know" the children as well as they do because the TP only visits them twice a month. Therefore, the AP argues to the court that they should be making all decisions because they know their children best. The AP's strategy is initially a power play to obtain full control over the children and strip all parental decision-making from the TP. Once this control is obtained, it is further exploited by the AP to minimize the TP's access to and information about the children (e.g., not providing full medical information to them, telling school personnel to not allow the TP to visit the children at school) and to harass the TP (Harman & Biringen, 2018). For example, APs often misinterpret the legal meaning of medical decision-making to mean that they have the authority to micromanage *all* day-to-day medical care of the children while in the TP's care. If the TP does not respond to the AP's overstepping of authority on such matters, APs often exploit such actions to use as "proof" that the TP is not being a good parent, or is being "uncooperative" with them (Harman & Biringen, 2018).

6. *Exploitation of perpetrator's vulnerability* is another form of psychological aggression that includes the exploitation of one's own liabilities to control or limit the target's options.

In this case, the "liabilities" of one's gender can be used to exploit the TP. For example, an alienating mother may use gender stereotypes to her advantage such that she portrays herself as a "victim" of abuse perpetrated by the targeted father (with no supporting evidence). Such claims are often believed because of deeply held beliefs about men being aggressive; these beliefs are then used as justification for how the custody of children is assigned (Harman et al., 2016a). An alienating father may use gender stereotypes to show he is a better "provider" for the children than the mother if she was a stay-at-home parent, particularly if he can also incorporate stereotypes about women being mentally unstable. Being a breadwinner can sometimes be a liability (e.g., he or she may be portrayed as working *too* much), and it can also be exploited to the AP's advantage (Kruk, 2010). Alienating parents may also use a physical ailment or disability to make others have sympathy for them beyond the actual limits these vulnerabilities pose. For example, the AP may have an illness that has the *potential* to limit their working ability, but they portray this illness as "proof" they are completely incapable of working and therefore require lifetime alimony or spousal maintenance while they stay home to care for the children (Dunne & Hedrick, 1994; Harman & Biringen, 2018).

7. *Gaslighting*, a strategy used most often by the AP with the children, is also a form of psychological abuse APs use with the TP.

For example, among married heterosexual couples, men are more likely than women to admit to trying to make their partner feel like they are crazy (Kar & O'Leary, 2013). Alienating parents will send e-mails or other written correspondence that rewrite past events in order to create a new version of reality that better suits their goals. For example, the AP may e-mail the TP and claim that they had agreed in the past to let the children move out of state with them, when such an agreement never happened (Harman & Biringen, 2018). The communication is intended to make the TP question their own memory of past events, and to create a paper trail of "proof" for future use against the parent (e.g., modification of parenting plans). Alienating parents will also use this strategy with medical records by inserting inaccurate information about the TP in the child's medical forms (e.g., claims of alcoholism, mental illness), and with legal affidavits and other legal documents to make such retelling of and lies about past events public record (Harman & Biringen, 2018). Alienating parents frequently accuse the TP of engaging in behaviors that they themselves are doing in order to create confusion on behalf of the TP, and to create the

illusion to others (who only see the outcome of the behaviors) that the TP is doing things that the AP is actually responsible for. This strategy deflects attention and blame away from the real aggressor (Kruk, 2011).

Aside from psychological aggression, APs will also use other forms of aggression to hurt the TP because of their relationship with the child. *Physical violence* is defined as intentional use of physical force with the potential to cause death, injury, harm, or disability (e.g., choking, slapping, use of a weapon). This dimension also includes coercion of others to commit the violent act on behalf of the perpetrator. Targeted parents have reported experiencing physical violence at the hands of the AP prior to leaving their relationship (Godbout & Parent, 2012) and report being physically attacked by APs and/or their AP's new romantic partners/spouses or other family members at parenting time exchanges, sometimes in front of their children (Baker & Darnall, 2006; Harman & Biringen, 2016). *Sexual violence* involves sexual acts that are committed (or attempted) by a person without the consent of another, such as rape and sexual harassment. As with physical violence, TPs have reported being the victims of sexual violence, such as rape, prior to leaving their relationship (Godbout & Parent, 2012).

Stalking behaviors are patterns of repeated and unwanted attention and contact that cause concern for one's safety and the safety of others (e.g., a close friend). These behaviors can include repeated and unwanted phone calls, watching or following the victim at a distance, and leaving gifts when the victim does not want them. These behaviors need to occur multiple times to the same person in multiple forms, and the victim needs to feel afraid or unsafe for their physical safety (Breiding et al., 2015). Stalking behaviors committed by the AP are frequently reported by TPs and documented in legal cases (Lorandos, 2013). In a qualitative interview study, 51% of TPs that were interviewed reported being stalked by the AP after their relationship ended, in some cases (~20%) for nearly a decade (Ratajack & Harman, 2018). Typically, this stalking entails using social media to obtain information about the TP to use against them (e.g., in court, with the police). Alienating parents will also convince domestic workers (e.g., nannies) of the TP to spy on their behalf; have friends, family, and other community members follow TPs in their cars; sit outside their homes to spy on them; and hire people to hack into their home computer network (Ratajack & Harman, 2018). Most research on stalking has been conducted with relationships that have recently ended or never began in the first place (e.g., stalking someone to try to establish a relationship; Cupach & Spitzberg, 2014). Much more research needs to be conducted to understand the types of and motives for stalking TPs in parental alienation cases.

Targeted parents also report experiencing *legal and administrative aggression* at the hands of the AP. While other forms of IPV target the individual and their peer groups to destroy the individual's reputation, this form of aggression uses people in power to exact more devastating consequences on the target (e.g., impose restrictions on visitation, jail time; Hines et al., 2015; Kruk, 2011). With respect to parental alienating behaviors, outside forces such as family court can be used to block or interfere with the TP's relationship with the child (e.g., Balmer et al., 2017). Negative court experiences are cited as one of the most serious concerns for nonresident parents, particularly due to gender biases of court professionals that favor mothers over fathers in some parts of the world (Ayoub et al., 1999; Kruk, 2011; Lehr & MacMillan, 2001). One of the primary reasons male victims of severe IPV cite for not leaving their abusive spouses is fear that they will not see their children again (Hines & Douglas, 2010). Similarly, many women report staying in abusive relationships out of fear of losing their children (Hardesty & Ganong, 2006). Although both alienating fathers and mothers use legal and administrative aggression, this form of aggression is more commonly and easily used by women against men because people are more likely to believe claims of abuse made by women (Hines et al., 2015; Tilbrook, Allan, & Dear, 2010). In addition, there are gender biases in the granting of court ordered temporary restraining orders favoring women over men who report being victims of IPV (Muller, Desmarais, & Hamel, 2009).

Targeted parents have reported that AP's would often (several to dozens of times) call the police to their home when their children were there in order to associate the TP with "danger" (López et al., 2014; Harman & Biringen, 2018). Allegations of abuse (particularly sexual abuse) are documented (e.g., Vassiliou, 2005) and have been described as the weapon (Lowenstein, 2012) or "silver bullet" in child custody disputes because once a claim is made, the chance of the TP getting custody or being taken seriously by the courts for the parental alienating behaviors they are experiencing is almost eliminated. Indeed, male victims of IPV have reported that their partners manipulated the "system" by filing false restraining orders and manipulating the court system to obtain sole custody of their children (Hines, Brown, & Dunning, 2007).

When parents are court ordered to attend legal mediation to resolve disputes rather than utilize court resources, TPs have reported that APs do not engage in such negotiations in good faith; they would rather engage in adversarial combat using the legal system because it is more expensive (and therefore punitive for the TP), and they want to "win." When legal mediation is "successful" under these circumstances, TPs report that the AP only used the process in a manipulative fashion to "force" an agreement with them, with threats that their outcomes in court would be worse. Alienating parents will break court orders regarding parenting time or decision-making, and will even blame the TP for engaging in this form of aggression when they seek court assistance in enforcing their existing court orders (e.g., compliance with parenting time orders; Harman & Biringen, 2018; Kruk, 2011).

Representatives from social systems, such as social workers, mental health professionals, guardian ad litems, teachers, medical providers, and police officers, can be "blinded" by the AP's stories and engage in legal and administrative aggression against the TP on behalf of them (Rand, 1997). Social system representatives often have negative biases about the TP (e.g., gender or racial biases), poor training in the identification of parental alienation and/or human development (e.g., a belief that children never lie), and will often stop at nothing to limit or interfere with contact or a relationship between the TP and the child (Harman & Biringen, 2016, 2018). The TP's parental rights may even be taken away due to severe injustices in how their cases were handled (e.g., false IPV claims). The act of removing a child from a parent (or removal of a parent from the child) or making sole-parental custody decisions without sufficient evidence of the other parent's inability to parent is also a form of IPV.

Severity and Reciprocity of Parental Alienating Behaviors

The severity of parental alienating behaviors is challenging to quantify as research has yet to clearly determine what specific behaviors and other determinants result in mild, moderate, and severe forms of parental alienation—there is only preliminary empirical research drawing this direct connection based on theory (Baker & Eichler, 2016). For example, we do not yet know whether certain specific behaviors are more damaging than others, and which behaviors, or clusters of behaviors, cause very severe alienation. Badmouthing the TP is not healthy for a child, but are particular characterizations of the TP more damaging than others? Does badmouthing also need to be paired with other behaviors (e.g., interference of parenting time), and to what extent? Severity could also be determined by length of time and frequency with which behaviors are used, regardless of how "bad" individual behaviors are. For example, if an AP only badmouths the TP in offhanded comments that are not blatantly demeaning, does this behavior eventually result in mild, moderate, or severe alienation if done regularly for five or 10 years? There is some evidence that factors such as age of the child (Fidler & Bala, 2010; Kelly & Johnston, 2001) are associated with outcome severity, with older children (adolescents) being more likely to manifest severe parental alienation symptoms (e.g., complete rejection of the TP). Are the severe outcomes due to exposure to very severe behaviors such as blocking all access to the TP or due to persistent exposure of milder clusters of behavior over long periods of time? Or, does the number of behaviors matter, but only in conjunction with particular vulnerabilities at particular stages of social and cognitive development?

From legal and clinical perspectives, the issue of severity is exceptionally important, as it drives how practitioners are to intervene. When an AP causes severe parental alienation due to their behaviors, they are likely guilty of child abuse, but an AP who causes mild or moderate parental alienation may not yet meet the threshold of child abuse. Such cases would need to be determined on a case-by-case basis by specialists who are well trained in the diagnosis of parental alienation, child abuse, IPV, and its precursors. More systematic and empirically based research on the etiology of parental alienation will aid in this diagnosis.

Reciprocation of IPV varies by the type of aggression. About 4% of cases in a large sample of divorcing couples have reported mutual high levels of coercive controlling violence (domination tactics and physical violence; Beck, Anderson, O'Hara, & Benjamin, 2013), although there is evidence that psychological aggression is often reciprocal (Cuenca Montesino, Graña Gómez, & Martínez Arias, 2014; Straus & Sweet, 1992). Psychological (Kar & O'Leary, 2013) and physical aggression (Langhinrichsen-Rohling, Misra, Selwyn, & Rohling, 2012; Madsen, Stith, Thomsen, & McCollum, 2012) among intact couples is typically reciprocal rather than unilateral, yet we know little about how this reciprocity operates or about the balance of power and aggression within the relationships. Research on IPV has been primarily studied with partners in intact relationships, so we know even less about whether such aggressive behaviors are reciprocal among families that have dissolved.

Many professionals believe parental alienation only occurs in relationships that are high in conflict; in other words, both parents are presumed to be responsible for the conflict that they present to mental health or legal professionals, such as when a parent has to ask for the court to enforce their parenting time. When the parental figures appear in court over this conflict, the judge or magistrate will then assume that both parents must be engaging in parental alienating behaviors (Warshak, 2015c). Using the example above, the court will perceive the parents as having high conflict, despite the conflict being caused by the parental alienating behavior of the AP (e.g., restricting access of the child). While some researchers have found evidence that both parents in divorced families may report alienating behaviors committed by the other (Braver, Coatsworth, & Peralta, n.d.), the reciprocity myth has been debunked by many researchers, legal professionals, and clinicians, because one parent is often responsible for instigating and continuing conflict (Kelly, 2003) and was often an abusive partner before the relationship ended (Godbout & Parent, 2012; Harman & Biringen, 2016). The AP is the more likely parent to engage in controlling and coercive behaviors, display paranoid and hostile behaviors, and promote enmeshment with the child (Warshak, 2015c). Indeed, the AP's behavior is the primary driver of the child's rejection of the TP (Baker & Eichler, 2016; Clawar & Rivlin, 2013).

The TP may respond in maladaptive ways to the alienating behaviors of the AP, but it is important to interpret such behaviors in light of the alienation. For example, if an AP has sustained a long campaign of derogation about the TP to friends, neighbors, community members, and extended family, the TP may retaliate in defense of their reputation (Reay, 2011), such as send an e-mail to such individuals calling the AP a liar. Retaliatory behaviors are certainly aggressive and a form of IPV, but they would not be considered parental alienating behaviors, which are clusters of behaviors enacted over extended periods of time with the intent to harm the TP and damage/destroy their relationship with their child (Darnall, 1998). This distinction between the APs' and TPs' behaviors is an important one to make for legal and clinical purposes when interpreting the cause and maintenance of parental alienating behaviors.

Although some nonresidential parents can alienate a child (Warshak, 2015c), the custodial parent is most often the AP because they have a monopoly on the child's physical, mental, and emotional attention, regardless of gender (Harman & Biringen, 2016). Nonresidential TPs often have limited or no contact with their children (sometimes for years at a time), making it almost impossible to reciprocate many of the behaviors outlined above. The TPs we have studied have observed the negative outcomes of alienation in their children and report not wanting to make the situation worse. Despite being the target of severe IPV, none of the TPs in studies by the first authors reported wanting to take their children away from the AP or reverse roles entirely; indeed nearly all of the TPs that we have interviewed and studied (Harman & Biringen, 2016; Kruk, 2010, 2011) want the children to have a *healthy* relationship with *both* parents. These parents make the conscious decision not to reciprocate the aggressive behaviors of the AP. These parents also know that if the TP reciprocates the behavior of the AP, it only serves to justify the child's negative feelings toward the TP due to their enmeshment or alignment with the AP (Warshak, 2015c).

Some clinicians have argued that TPs are the architects of their own fate, or are partially responsible for the child's alienation due

to problems with parenting that result from their situation (e.g., Johnston, 2003). Most research has indicated otherwise: The rejection of the TP exists independent of the TP's actual "suboptimal" parenting behaviors (Baker & Eichler, 2016), and TPs want to be actively involved in their children's lives, not passive victims of the AP (Balmer et al., 2017). The parent who is the target of this aggression often resists complaining because they do not want to escalate the aggression or expose the child to ongoing high conflict (Cloven & Roloff, 1993; Newell & Stutman, 1991), and they fear that their reports will not be taken seriously or acted on by legal and mental health professionals. Indeed, IPV and child abuse are often underreported because of the reluctance of police and child protective services to address emotional and psychological abuse. Targeted parents have reported they are afraid to challenge the AP on parenting time violations out of fear that the AP will restrict their time further or stop all visitation entirely. It is because of this fear that many TPs feel helpless about enforcing the little parenting time that they are given (Lehr & MacMillan, 2001).

There is a serious power imbalance in families where alienation is occurring, and the AP holds the power granted to them by social institutions (e.g., court-ordered custody allocation) and the sanctioning of their behavior by personal and social bystanders (Harman & Biringen, 2016; Reay, 2011; Warshak, 2015c). Relationship and family systemic outcomes are more affected by the partner who has greater control over relational resources (Dragon & Duck, 2005; Hanks, 1993), which children by definition are. Despite having more societal-level power than women due to patriarchy, men often feel powerless in their family relationships (Blanton & Vandergriff-Avery, 2001; Walsh, 1989).

Being able to inflict punishment also creates feelings of having more power (Lawler & Bacharach, 1987; Stets & Henderson, 1991; Straus, Gelles, & Smith, 1990). The residential parent serves as a gatekeeper between the child and the nonresidential parent, which places this individual in a strong position of power (Madden-Derdich & Leonard, 2000; Sobolewski & King, 2005). Having a greater amount of parenting time with a child provides the parent with more decision-making opportunities and therefore more power in the daily lives of the children (Kelly, 1993). Nonresidential parents (more often fathers) can have little involvement in decision-making related to their child and are rarely consulted by the other parent about decisions (Furstenberg & Nord, 1985; Kalmijn, 2015). Parents who gatekeep their children have admitted to punishing the other parent when they are not getting what they want (Holcomb et al., 2015).

Outcomes of Family Violence

There are many harms associated with child abuse and IPV. We will now review the outcomes that have been associated with these two forms of human aggression, and compare them with the outcomes that have been documented about and reported by alienated children and TPs. Most of the damage caused by parental alienating behaviors falls under the category of psychological injury; in forensic settings such injuries fall under three types: chronic pain, traumatic brain injury, and posttraumatic stress/distress (Young, 2008). While victims of parental alienating behaviors often develop posttraumatic stress and adjustment disorders, they also experience many other negative outcomes that are associated with family violence such as anxiety and depression.

Outcomes of Child Abuse and Parental Alienation

Outcome severity. Parental alienation has been described as ranging from mild to severe, depending on the intensity, type, and frequency of the alienating behaviors the child is exposed to, the child's age and temperament, the quality of relationship with the TP before the alienating behaviors began, and the amount of quality parenting time the child has had with the TP (see chapters in Lorandos et al., 2013 for a review of the levels of severity and outcomes). In mild cases, the alienated child resists and criticizes the TP, yet still enjoys the company of the TP when away from the influence and interference of the AP (Darnall, 2013). Moderately alienated children have consistently negative attitudes toward the TP whether they are with the AP or not, as they have come to internalize the hostility and negative attitudes of the AP as their own (Worenklein, 2013). These children often openly express hostility toward the TP, particularly during transition times between homes, and will not feel guilt or ambivalence about the impact of their behaviors on the TP. At higher levels of severity, alienated children have more extreme polarized attitudes toward their parents (with the TP being all bad and the AP being all good; Bernet, Gregory, Reay, & Rohner, 2018), will refuse to have a relationship with the TP and anyone associated with them (e.g., extended family), will be hostile and violent toward the TP when in their care (e.g., destroying property), and have irrational and unfounded reasons for their rejection (Warshak, 2013). Some severely alienated children are guided toward simply erasing the TP from their hearts and minds. Besides these indications of parental alienation severity, what outcomes do alienated children experience?

The consequences of child maltreatment are severe and lifelong, and have resulted in a United Nations call to action to eliminate violence against children due to many personal, community, and societal-level costs associated with it (Hillis et al., 2017). Adverse childhood experiences such as experiencing or witnessing abuse increases the risk for a host of negative outcomes such as having shorter lifespans (Brown et al., 2009). Children exposed to maltreatment early in life (0–5 years) are at high risk for developing internalizing behavior problems such as depression, anxiety, and social withdrawal (Johnson et al., 2002) and/or externalizing behaviors such as aggression and acting out (Bongers, Koot, van der Ende, & Verhulst, 2004). Repeated maltreatment of children and exposure to conflict and violence has been associated with severe internal and external outcomes (Li & Godinet, 2014) such as poorer academic performance and physical health (particularly among children in separated families, Corrás, Seijo, Fariña, Novo, Arce, & Cabanach, 2017; Martinŏn, Fariña, Corras, Seijo, Souto, & Novo, 2017), neurological damage (e.g., negative impact on brain development; Teicher, Dumont, Ito, Vaituzis, Giedd, & Andersen, 2004), and developmental delays. These children also experience physical health problems as adults, such as migraines (Tietjen et al., 2009), cancer, cardiac disease, and asthma (Hyland, Alkhalaf, & Whalley, 2013), as well PTSD and other mental health problems (Kaplan, Pelcovitz, & Labruna, 1999). These outcomes are evident across different cultures (e.g., East Asia and Pacific regions; Fry, McCoy, & Swales, 2012).

Stress and adjustment disorders. Disorders such as posttraumatic stress disorder (symptoms lasting more than a month after a traumatic event), psychosocial adjustment disorders (after a

stressor rather than that required by PTSD as psychological violence), and acute stress disorder (the symptom pattern in acute stress disorder is restricted to a duration of 3 days to 1 month following exposure to the traumatic event) can occur after witnessing family violence, regardless of the frequency or intensity of the violence, or characteristics of the child such as age or gender (Kilpatrick & Williams, 1998). Parental conflict, regardless of marital status of the parents, has been associated with posttraumatic stress symptomology in children (Basile-Palleschi, 2002). Psychosocial adjustment disorders include internalizing and externalizing problems and declines in academic achievement (Forehand, Biggar, & Kotchick, 1998), and alienated children experience these problems more than children who have not been alienated (Barber, Bean, & Erickson, 2002; Johnston, Lee, Oleson, & Walters, 2005). Many alienated children are separated from the TP for long periods of time, and parental separation accompanied by parental alienating behaviors has been associated with poor psychological adjustment among children (e.g., adjustment disorder; Ellis, 2000; Seijo, Fariña, Corras, Novo, & Arce, 2016).

Psychosocial and behavioral outcomes. Psychological control, otherwise known as "intrusive parenting," undermines children's autonomous development (Joussemet, Landry, & Koestner, 2008). Psychological aggression results in greater amounts of anxiety in children than the use of physical aggression (corporal or severe; Miller-Perrin, Perrin, & Kocur, 2009). For example, in a study of nearly 2,000 father–mother dyads in China, psychological aggression used by mothers and fathers were unique predictors of children's anxiety (Wang, Wang, & Liu, 2016), one of the most common psychological disorders among children (Barlow, 2002). These consequences are long term: Even as adults, having an AP was associated with higher levels of anxiety and depression than among those adults whose parents were not APs, regardless of whether the parents were divorced or not (Baker & Verrocchio, 2016). Witnessing family violence while also being maltreated (e.g., neglect) intensifies negative mental health outcomes for children (Ayoub et al., 1999), so the combination of these factors poses particularly high risk for child abuse when an AP uses parental alienation behaviors and also neglects the emotional needs of the child (Lorandos, 2013). When a child has neurotic traits and has frequent exposure to conflict, they have more severe parental alienation than children without these traits or experiences (Zack, 2016).

Although not all children who are exposed to parental alienating behaviors become severely alienated from the TP (Baker & Darnall, 2006); even mild and moderate harms to children that result from the AP's behaviors are devastating and no different from other forms of child abuse. In retrospective accounts and reports made about children by an AP, children who were exposed to parental alienating behaviors have low levels of self-esteem, insecure attachment, substance abuse disorders, guilt, anxiety, depression, develop fears/phobias, form attachment difficulties, and learn not to trust others or themselves (Ayoub et al., 1999; Baker, 2005; Baker & Ben Ami, 2011; Baker & Chambers, 2011; Baker & Verrocchio, 2015, 2016; Ben Ami & Baker, 2012; Bernet, Baker, & Verrocchio, 2015; Johnston, Walters, et al., 2005; Rand, 1997; Reay, 2007; Verrocchio et al., 2016). For the child, parental alienation is a serious mental health issue based on a false belief that the TP is a dangerous and unworthy parent.

Self-hatred is particularly disturbing among affected children, as children internalize the hatred targeted toward the TP who is part of their own identity. Alienated children are led to believe that the TP does not love or want them and so they are therefore unlovable (Reay, 2011; Verrocchio et al., 2016), and although not openly expressed, will experience severe guilt related to betraying the TP. Their depression is rooted in feelings of abandonment, being unloved by the TP, and being denied the opportunity to mourn their loss. Many children are not even allowed to talk about or recognize the TP while in the AP's presence (Reay, 2011). These children also experience ambiguous and disenfranchised grief (described in greater detail under Outcomes of IPV and for Targeted Parents and are more likely to engage in nonsuicidal self-injury behaviors the more alienated they are from a parent (Yates, Tracy, & Luthar, 2008).

Even if alienated children appear on the surface to be "normal" or as excelling in a particular domain (e.g., school), they often fall short of their optimal development in other areas, such as psychological, physical, academic, social, and emotional domains. The outcomes of this form of child abuse will manifest most overtly in psychosocial problems (Warshak, 2015c). These children also learn that their experiences of love from the AP are conditional upon their rejection of the TP and they must validate the AP's worldview in order to retain their acceptance (Verrocchio et al., 2016). Due to being unable to develop a healthy, independent identity, the alienated child has problems in their peer and romantic relationships because they often interpret behaviors in the same dichotomous ways that the AP does (all good or all bad; Carey, 2003; Harman & Biringen, 2016; Moné et al., 2011), lack trust in their own and others judgment (Baker, 2005), and frequently end friendships over disagreements simply because they have not learned strategies to cope with conflict (Kelly & Johnston, 2001).

Parental alienating behaviors are transmitted intergenerationally (Baker, 2005; Sher, 2017), just like other types of family violence. For example, studies of bullying behaviors among teenagers have found that the parenting practices and attitudes of the mother and father, together or separate, create a climate that promotes this form of aggression in children (e.g., Baldry & Farrington, 2005). A child whose parent has been engaging in alienating behaviors is at high risk of becoming alienated from their own children, just as children who are victims of other forms of child abuse are more likely to become abusers as well (Baker & Eichler, 2016).

Early signs of a child becoming alienated from a parent are when children complain or express dislike of the TP, and not engaging in or enjoying—or even resisting—spending time with the TP (Johnston, 2003). At the same time, the child will exhibit anxiety about being separated from the AP. The AP is very intrusive, making it extremely difficult for the child to individuate from the AP and maintain a strong relationship with the TP (Ellis & Boyan, 2010). Unfortunately, the child becomes enmeshed with the AP and unable to develop a healthy identity that is separate from them (Eysenck, 2004). When a child is enmeshed or has formed a coalition with the AP due to the AP's behaviors, they will sadly act in ways to protect and hold the coalition in higher "esteem" than their relationship with the ousted TP (Lorandos, 2013; Warshak, 2015c). The result of this enmeshment is an anxious or dependent attachment to the AP (Stahl, 2004) and there is preliminary case study data that children who have been alienated have greater difficulties mentalizing, or thinking about the

internal states of others (Faccini & Ramires, 2012), resulting in an inability to feel empathy for others. Over time, the child will strongly reject the TP, or in mild cases act very ambivalent toward them when in their care, and negative toward the TP when in the care of the AP. The reasons the child provides for their rejection are often vague, or the child will use coached language (language that is used by the AP, not the child; Reay, 2011). Due to horizontal power structures (vs. hierarchical; Nixon, Greene, & Hogan, 2012) in the AP's family system, parentified children feel powerful and become manipulative like the AP (Garber, 2011; Stahl, 2004). In other cases, children socially withdraw and lose the few social connections they had due to extreme isolation.

Outcomes of IPV for Targeted Parents

Although it is imperative to consider first and foremost the outcomes of parental alienation behaviors on children, the TP is also seriously affected by these behaviors, which are intended to hurt or destroy them (Darnall, 1998). IPV is a serious public health problem (Center for Disease Control, 2012) because of the substantial physical and psychological costs associated with the outcomes of this they of aggression. The targets of IPV suffer from many mental health problems such as posttraumatic-stress disorder, substance abuse disorders, depression (Zlotnick, Johnson, & Kohn, 2006), and anxiety (Stewart & Vigod, 2017). In addition, many survivors lose economic security and become functionally homeless when they leave their relationship (Johnson & Zlotnick, 2009).

Even after controlling for, or in the absence of other forms of IPV, psychological aggression has been linked to negative physical and mental health outcomes such as posttraumatic stress disorders (e.g., Lawrence, Yoon, Langer, & Ro, 2009), anxiety, depression (Taft et al., 2006), suicidal ideation (and attempts; Marshall, 1999; Sher, 2017), increased substance use (Shorey, Rhatigan, Fite, & Stuart, 2011), limited physical and cognitive functioning (Straight, Harper, & Arias, 2003), increased somatic complaints (Kaura & Lohman, 2007; Próspero, 2007), and an impaired ability to work (Coker, Smith, Bethea, King, & McKeown, 2000). Although the majority of this research has been conducted on female victims of IPV, similar results have also been found with male victims of IPV (Hines & Douglas, 2016a). Victims of psychological aggression report that their experience is as damaging as physical aggression (Williams et al., 2012) and that friends, family, and other individuals (e.g., police) perceive their abuse as harmless or insignificant because it is not visible (Seff, Beaulaurier, & Newman, 2008). Consequently, this form of abuse does not get as much public attention or funding for services, and has resulted in a call to practitioners to take psychological aggression more seriously than they have in the past (Comecanha, Basto-Periera, & Maia, 2017).

The outcomes of parental alienation are no different for TPs than other forms of IPV. Targeted parents have reported being diagnosed with posttraumatic stress disorder due to the behaviors of the AP (Harman & Biringen, 2018; Kruk, 2015), and TPs appraise their situation as highly stressful and severe (Balmer et al., 2017; Harman et al., 2016a). Many TPs report experiencing depression, anxiety, and suicidality (Baker, 2010; Baker & Verrocchio, 2016; Balmer et al., 2017; Sher, 2015). Despite the stress associated with being a TP, most TPs want to remain involved and active in their children's lives, which can fuel the AP's behaviors even more because their desire for involvement is at odds with their intent (Balmer et al., 2017). A large number of TPs report being unable to work effectively and to devoting nearly all their waking time worrying about and trying to find ways to reconnect with their children (Harman & Biringen, 2018; Kruk, 2015). Consequently, TPs report having lost their jobs, having to move in with family or become homeless, and are unable to form new relationships with others (Giancarlo & Rottman, 2015; Harman & Biringen, 2016). As mentioned earlier, many (but not all) of the AP's behaviors take the form of psychological aggression, so it is not as visible as other forms of IPV; TP's reports of parental alienating behaviors often go unheard, unnoticed, misunderstood, denied, or disbelieved (Warshak, 2015c).

Aside from the emotional, physical, and financial toll that parental alienating behaviors put on TPs, the TP also experiences grief and loss due to the impact of the AP's behaviors on their child (Kruk, 2015). *Ambiguous loss* refers to incomplete or uncertain loss, such as when a loved one is physically present but psychologically absent (e.g., a parent with Alzheimer's disease), or when someone is physically absent but psychologically present (e.g., kidnapped children; Boss, 1999). Targeted parents experience ambiguous loss for one or multiple children because their children may be physically present during their parenting time but may be psychologically unavailable (and even hostile) to them, or they are completely denied access to their child (Baker, 2007).

Like psychological aggression, this ambiguous loss goes largely unrecognized by society and is not acknowledged as a significant loss, resulting in what is termed *disenfranchised grief* (Attig, 2004; Doka, 1989, as cited in Corr, 2002). When one adds the professional and social denial that parental alienation is even a real phenomenon, the disenfranchised grief experienced by TPs is more severe. The TP is unable to mourn for their children publicly, they are often told by others that it will get "better" when the children get older, or are encouraged to just "move on." As a consequence, TPs are often unable to formally process their grief and loss, and have problems moving on with their lives (Abrams, 2001; Kruk, 2011). Indeed, mental health professionals who have worked with TPs have reported feelings of rejection, depression, disbelief, anger, guilt, and loss, and often, the TPs are isolated from others due to other people's ignorance and negative judgments about what they are experiencing (Kruk, 2011; Whitcombe, 2014).

Social support is crucial during times of grief, particularly for individuals experiencing both ambiguous loss and disenfranchised grief (Abrams, 2001). Unfortunately, many TPs fail to seek external support for assistance due to learned helplessness (Kruk, 2011) and the belief that courts and other forms of intervention will not work (Balmer et al., 2017). One of the most common alienation tactics employed by the AP is expressive aggression in the form of derogation of the TP to friends, family, teachers, community members, and any other adult who is willing to listen. The result of this strategy is the isolation of the TP from important sources of personal and social support. Although representative surveys have not found statistically significant differences between men and women in reports of having been alienated from a child (Harman et al., 2016b), men typically do not seek formal mental health or support as often as women (Addis & Mahalik, 2003), and this may explain why researchers have noted a "suicide epidemic" among TPs, particularly fathers (Kposowa, 2003).

The task of parenting as a TP can be extremely challenging. It is very difficult for TPs to be emotionally available to a child who is hostile or holds false beliefs about them (Biringen, Harman, Saunders, & Emde, 2017; Johnston, 2003). The result can inadvertently lead to parental behaviors that confirm what the child believes and can be used to justify or exacerbate their rejection of them (Stahl, 2004). When parents have limited contact or decision-making with their child, their role as a parent can become passive; the AP then gains more power and influence.

Intent and Characteristics of the Perpetrator of Aggression

Regardless of *why* acts of aggression are committed, they are very harmful to their victims. For example, regardless of intent, killing another human being causes great harm to many, not only with the loss of a human life, but in terms of the impact the act has on others in the deceased's life (e.g., family members and friends, cost to society). Intent becomes important when decisions are made about how to respond to aggressive acts. For example, there are many reasons why someone might kill another individual, such as by mistake (e.g., out of self-defense), after being provoked (e.g., crimes of passion), or with premeditation (e.g., murder). These reasons are important for how legal cases against the killer are prosecuted because the intent of the killer determines whether the crime is prosecuted as first- or second-degree murder, or as voluntary or involuntary manslaughter.

Some researchers of parental alienation have posited that APs intentionally behave in a way that turns the child against the other parent (Whitcombe, 2014) and their behaviors are driven by "impacable hostility" (Lowenstein, 2015). Hostile aggression is unplanned aggression in response to a perceived threat or provocation (Anderson & Bushman, 2002) and, as we will discuss below, many APs are predisposed to interact almost automatically with hostility toward the TP and even their own children, due to pathological traits and disorders (e.g., borderline personality disorders) and deeper childhood trauma of their own (e.g., childhood sexual abuse, Lorandos, 2013). While some experts have argued that some parental alienating behaviors can be enacted unintentionally (Whitcombe, 2014), we believe that "unintentional" in this case is a misnomer. Rather, such behaviors can be unplanned or automatic responses to the TP and/or child, and they are intentional. Parental alienating behaviors may also be carefully planned, particularly in adversarial arenas such as family court.

When the child hates and rejects the TP for no legitimate or justifiable reason, it is important to recognize that the AP likely implanted their feelings. In this case, the child is essentially an "instrument of war" or "weapon" against the TP (Smith, 2016), and is an unintended casualty in their assault. Therefore, APs intentionally engage in instrumental aggression by "weaponizing" their child against the TP. In cases of parental alienation, most children had a very positive relationship with the TP prior to the AP's behaviors, and so the child later just serves as a proxy for the AP to hurt the TP. It is likely that many APs are not aware of the impact their behaviors have on the children because they are so preoccupied or obsessed with hurting the TP.

One strategy to prevent aggression and intervene in abusive relationships has been to identify the precursors for abusive potential (Rodriguez, Gracia, & Lila, 2016), such as identifying personality characteristics or situational factors that lead to the intent to enact aggressive behaviors. For example, personality disorders such as narcissism, borderline, and sociopathic traits have been identified as prevalent among APs (Cunha Gomide, Camargo, & Ferdandes, 2016; Gordon, Stoffey, & Bottinelli, 2008; Harman & Biringen, 2016), and they are typically angry, jealous, emotionally fragile, and dependent on others (even their children) for their self-esteem. Alienating parents also are reported as having poor impulse control, poor management of personal boundaries, see the world in dichotomous ways (e.g., black/white, all-or-nothing, all good or all bad; Stahl, 2004), refuse to accept accountability or responsibility for their own contribution to problems, insist on being "right," and lack remorse or guilt for their behaviors (from the TP's perspective, Kruk, 2015). Attachment concerns are also factors associated with the escalation of parental alienating behaviors (Harman & Biringen, 2016). Alienating parents feel threatened by their child's love for the other parent (attachment anxiety), and TPs report substantial increases in parental alienating behaviors when this occurs, particularly after extended parenting time with the child. Because the focus of our article is on the alienating behaviors and outcomes themselves, we refer the reader to other sources for more details on characteristics of APs (e.g., Harman & Biringen, 2016; Kruk, 2015).

Is the Intentional Use of Parental Alienating Behaviors "Justified?"

Cross-cultural research indicates that severe physical violence (e.g., choking a romantic partner or a child) is perceived as inexcusable and unjustifiable in most human cultures of the world (e.g., Fakunmoju et al., 2013), so intent to harm is presumed when a person commits such an act. But what about those acts that are perceived as more "socially acceptable?" Harman, Biringen, Ratajack, Outland, and Kraus, (2016a) found that although parental alienating behaviors are perceived negatively by adults, they are more "acceptable" when mothers do them than when fathers do them. Do cultural variations in what is considered "abusive" (Reisig & Miller, 2009) impact how we perceive the culpability of the perpetrator? How do these perceptions influence how harm is perceived?

Legal and mental health professionals, victim's rights advocates, and lay people have argued that parental alienating behaviors are justifiable when the other parent is abusive, mentally ill, or dangerous (e.g., Coffman, 2017; Meyer, 2011). The term "justified estrangement" has been used to imply that the child's rejection of the TP is justified because the TP is abusive or "bad," and that the intentional, alienating behaviors the AP uses are acceptable. Calling parental alienation "justified estrangement" reflects a misunderstanding of the difference between parental alienation and *self-*estrangement.

Self-estranging behaviors are those that a parent does to damage their relationship with their own child, typically due to the parent's own shortcomings (e.g., parenting skills; Ellis & Boyan, 2010). In contrast, parental alienating behaviors are those behaviors committed by the AP *against the TP* to hurt the TP and to damage or destroy the relationship between the child and the TP. This distinction is important because self-estrangement refers to behaviors within the estranged parent–child relationship that are the result of the estranged parent's behaviors (or sometimes the child's behav-

iors); parental alienating behaviors refer to the alienating behaviors the AP does to hurt the TP and the TP–child relationship (Whitcombe, 2017). By stating that the actions of the AP are self-estrangement implies that the actions of the AP are the TP's fault, which blames the victim (Grubb & Turner, 2012).

Dallam and Silberg (2016) have argued that parental alienation researchers encourage clinicians to dismiss claims of abuse when they are evaluating or treating families where there are claims of parental alienation. Their argument implies that researchers who study parental alienation overlook or ignore claims or evidence of abuse, which is an unsubstantiated position. Clearly, claims of abuse should be investigated in order to protect the well-being of the child and family members, as their well-being and safety are of paramount concern. However, claims and evidence of parental alienating behaviors should be considered with the same weight and concern because they are *also* aggressive and abusive—it is as unethical to ignore them because they also cause substantial harm to children and family members.

Like other forms of family violence, we do not believe parental alienating behaviors are *ever* justified—they are abusive to both the child and the TP. When a parent has shortcomings and actually poses risk to the child, it is obviously imperative to protect the child. However, there are strategies that can keep children safe while still promoting a positive relationship with both parents so that one parent does not have to act abusively to "protect" the child. The AP's portrayal that their aggressive behaviors are in their child's best interest are justifications for their abuse. Stopping these behaviors is imperative for the promotion of the child's best interest and to improve the health of the entire family system.

Discussion

In this article, we conclude that causing severe parental alienation is an egregious form of family violence, specifically child abuse and intimate partner violence. The challenges of defining and recognizing the scope of parental alienating behaviors as family violence is rooted in the challenges inherent in defining child abuse on one hand and IPV on the other. There are parallels between the present-day disavowal of parental alienation among some legal and mental health scholars and practitioners, and the historical recognition of both IPV and other forms of child abuse among professional groups and the general public. For parental alienating behaviors to be recognized and accepted as a form of serious child maltreatment and IPV, a clear and precise definition of the phenomenon of parental alienation is needed, and the exact nature of the harms befalling TPs and children as a result of parental alienating behaviors needs to be unambiguous.

We also extensively reviewed the behaviors that APs use to harm the TP and their children's relationship with the TP. When a parental figure repeatedly uses the behaviors over extended periods of time, they are alienating their child from the other parent. This is the first review to directly map parental alienating behaviors onto categories of child abuse and intimate partner violence behaviors. Even if the child is resilient and does not come to fully reject or hate the TP, the AP's behaviors still do affect them negatively (Baker, 2005). Therefore, the AP's aggressive behaviors should no longer be socially or legally sanctioned; there is no legal or psychological justification for parental alienating behaviors. These behaviors should be addressed uniformly as a child protection issue and form of family violence that needs to be dealt with on a broader structural level, requiring fundamental reform within the mental health and family law systems. We will now briefly describe strategies that will assist in this reform.

Assessment

Patterns of aggressive behaviors are more informative for assessment purposes than single events, because only patterns can demonstrate whether abuse has occurred (Tolman, 1992). Unfortunately, custody evaluators often focus on separate incidents of child abuse and IPV rather than patterns of abuse (Pence, Davis, Beardslee, & Gamache, 2012), which can make it unlikely they will identify parental alienating behaviors when they are occurring. For example, if a parent says something negative about the other parent to a child, an evaluator must assess whether this behavior is a retaliatory and discrete reaction (albeit not healthy) to the behaviors of the other parent (therefore *not* a parental alienating behavior), or whether the behavior is and as part of a larger set and pattern of aggressive behaviors enacted over time (making the behavior a parental alienating behavior). It is important to emphasize a focus on actions and not just the words and claims made by the members of the family system, and to consider how these behaviors are expressed in family systems where the power difference between parents is asymmetrical, with the AP typically having more power than the TP (Warshak, 2015c).

To complicate matters, mental health professionals differ significantly from victims in their perceptions of psychological aggression (which is the most common form of parental alienating behaviors) severity because victims often base their opinions on the intent of the perpetrator of the behavior and not just the behavior itself. When a victim seeks intervention, they are privy to more historical background than the professional, who has available a smaller number of behavioral instances with which to draw an opinion, and even less to infer intent (Follingstad & DeHart, 2000). Unfortunately, the victim is often unable to obtain intervention from these gatekeepers of services due to professional's inability to properly diagnose the problem. Although there is preliminary evidence that there are particular patterns of alienating behaviors used by particular types of individuals (e.g., narcissistic parents; Baker, 2006a), more research is needed to determine whether there are particular patterns of aggressive behaviors that different types of APs use, which types or clusters of behaviors create the most damage, how frequently different strategies are used, and what adaptive and protective factors there are for TPs and children to resist the parental alienating behaviors of the AP. In order to effectively assess whether parental alienation is occurring, empirically validated and refined assessment tools that consider these patterns and nuances are needed.

Prevention and Intervention

The understanding of intent is important for the prevention of aggression. For example, sentencing criminals who have committed assault to anger management classes will only be effective if the cause of the original assault was due to an inability to manage anger or conflict. Obviously, protection from harm should be the first priority for not only the child, but also the entire family system. In cases where there is an abusive parent, it is not enough to provide therapy only to the child or the parent who is a victim

of abuse. A family systems approach (e.g., Burnette, 2013) is a preferred treatment method, such that treatment is provided to the perpetrator and the victims to prevent future harms.

Primary prevention. Educational programs for adolescents and mass media campaigns are commonly employed as forms of primary prevention for bullying (Saracho, 2017) and IPV (Whitaker et al., 2006), and could be employed for parental alienation. Although many risk factors for child maltreatment have been identified, little is known about factors that can protect children from being abused. However, there is ample empirical evidence that parents' emotional availability, recognition of problems, parents' willingness to seek support, supportive grandparents and extended family, and accessible mental health care may help prevent children from experiencing abuse. As well, there are parenting interventions that successfully prevent abuse (e.g., Mendelson & Letourneau, 2015). There has been relatively little attention in the literature to community and societal protective factors for abuse. An important point of primary prevention for PA are educational programs in schools and the community on effective coparenting as a couple, or with parents living apart before parental alienating behaviors have begun to affect the child (in mild cases).

Clinical interventions. Every child has a fundamental right and need for an unthreatened and loving relationship with their parents, and to be denied that right by one parent without sufficient justification such as abuse or neglect, is in itself a form of child abuse not only given the harms associated with parental alienating behaviors for children, but also the fact that this abuse is preventable (United Nations Treaty Collection, 1989). No form of child abuse is acceptable, including parental alienation (Lowenstein, 2015). A child's spontaneous reunification with a TP is rarely successful without an intact felt bond and acceptance from both parents (Darnall & Steinberg, 2008). Therefore, clinical interventions are necessary for repairing the damaged relationships that result from parental alienating behaviors.

Implementing large scale, evidence based clinical interventions to address child abuse has been challenging because many countries around the world lack professionals with the knowledge base, skills, and expertise, the infrastructure or funding to support such programs, prevalence data to demonstrate the scope of the problem, and the ability to evaluate the programs (Mikton et al., 2013). A number of models of clinical intervention for children with severe parental alienation have been developed (e.g., Friedlander & Walters, 2010), the best-known being Warshak's (2010) Family Bridges Program. Family Bridges is an educative and experiential program focused on allowing the child to have a healthy relationship with both parents, removing the child from the parental conflict, and encouraging child autonomy, multiple perspective-taking, and critical thinking. These interventions are effective because they apply a child abuse model for treatment. Unfortunately, there are few, if any, structured interventions for the treatment of mild to moderate levels of parental alienation.

Some researchers have argued that some interventions designed to address parental alienation such as reversing legal child custody have not been effective, and can actually cause lasting psychological harm to the child (Dallam & Silberg, 2016). Empirical support has not been provided to support these claims; indeed, if this problem is accurately understood as a child abuse matter, it would not be in the child's best interest to leave them in the sole or primary custody of the abusive parent. The abusive parent needs treatment to prevent further abuse, and the child should be supported in the repair of their relationship with the TP. Measuring the effectiveness of interventions is challenging for all types of child abuse and IPV interventions because what is considered "effective" needs to match the expectations of those who are involved in the intervention itself, as well as measure the expected benefits (Howarth et al., 2015). Therapists who do not recognize parental alienation as child abuse and who use traditional therapeutic approaches to treat it often cause additional harm to children and families (Moore, Ordway, & Francis, 2013), and those who assume that this form of family violence is reciprocal in nature often fail in their treatment of the family (Warshak, 2015a). Modifying the TP's behavior, when they are the victim, is tantamount to only treating the victim of violence or rape. The perpetrator of the abusive action is allowed to continue acting aggressively and to abuse power in the family dynamic. Blaming and treating victims alone is not the solution.

Professionals have argued that parental alienation is a serious form of emotional abuse of children (e.g., Johnston, 2003) and that it needs to be addressed by the child protection system. We extend this position in saying that parental alienation is a child protection matter that warrants attention by child protection authorities in the same manner that other forms of child abuse and neglect are addressed. Child protection is a contested field, focused on best practices using a "best interests of the child" (child removal) versus a "least disruptive" (parental support/family preservation) approach to child abuse and neglect (Kruk, 2011a). In a review of literature pertaining to the best practices for therapists and legal practitioners to address parental alienation, changing the custodial/residential status of the children to be in the primary or equally shared care of the TP, followed by systematic family therapy (Smith, 2016), is an effective strategy to stop this form of abuse (Templar et al., 2017). It is the responsibility of child protection authorities to protect the safety and well-being of children trapped in families where parental alienating behaviors are occurring. It is also the responsibility of these agencies to provide family reunification programs by practitioners with specialized expertise in parental alienation reunification. Evaluation of intervention programs is also needed to assess trauma and abuse effects prior to and after intervention.

Judicial and administrative interventions. Psychological abuse is not often singled out as a specific form of abuse in courtroom settings; however, it is not always ruled out when considering child custody disputes (Verrocchio et al., 2016). Judicial interventions with families where the child fully rejects the TP requires more intensive and collaborative partnerships between legal and mental health professionals, such that confidentiality concerns about treatment should be altered to allow for communication about therapeutic progress to be shared with the court (Sauber, 2013; Walters & Friedlander, 2016). In order to prevent additional conflict, very specific court orders regarding expectations for the family, coparenting time, and clear boundaries for the AP are also needed (Warshak, 2015a). In a review of custody recommendation practices, Saunders (2015) has suggested that joint custody when IPV has been present only allows the abuser to continue to abuse the victim through harassment and manipulation through legal channels. Although written to address a narrower definition of IPV, the same recommendation may apply to other

forms of family violence such as parental alienation. The AP often uses legal channels to abuse the TP, as well as professionals, social networks, and the children to manipulate and harass the TP. If evaluators continue to deny the existence of this form of IPV, millions of adults and children around the world will continue to be victimized by an outdated family law and policy. Family court judges must also be educated about the scientific basis of child custody evaluation and to give guidance to evaluators to look for all forms of family violence, including parental alienating behaviors.

Numerous legal approaches have been recommended to address parental alienation, but unfortunately, many judges are reluctant to take action to address this form of child abuse and IPV because they are unaware or underestimate how the AP's actions will affect the child, and they are concerned about how their decisions will be viewed publicly (Lowenstein, 2015). Expert witnesses have also leaned on the side of "caution" to maintain the status quo, and make recommendations that exacerbate the alienation process, such as recommending therapy only for the child rather than treating the family system (Lowenstein, 2015), or leaving the child in the sole care of the abusive AP. This latter recommendation is based on the erroneous belief that such action will reduce conflict because the AP will have gotten what they want (full control of the child). Unfortunately, parental alienating behaviors do not stop even when a parent has all control, and such recommendations ignore the abuse that the children are suffering at the hands of the AP.

It is vital to protect children and parents who are victims of IPV in legal settings, particularly when child residence is being determined at the dissolution of marriage. Unfortunately, determining whether allegations of IPV are true or not can be difficult, and courts sometimes interpret reports of IPV made by a parent as false when they were true, and this can be used against the parent who is actually being abused (Saunders & Oglesby, 2016). For cases where allegations are made, they are not often substantiated with actual evidence, so there is not an easy way to determine their validity. For example, one large study that examined alleged and substantiated claims of abuse in child-custody disputed cases in California found evidence that claims were made against fathers in 23% of cases (only 6% against mothers), and of these, only 6% of the claims against fathers were actually substantiated with evidence (only 3% for mothers; Johnston, Lee, et al., 2005). The authors also noted that there are much greater numbers of unsubstantiated claims of abuse when custody was at stake than when it was not. When claims of family violence, whether they are about child abuse, IPV, or parental alienation, are used as a strategy to obtain custody and are found to be false and unsubstantiated, the perpetrator should be held accountable for any attempts to damage the relationship between the TP and the child, as it is in the best interest of the child to have a positive and health relationship with *both* parents (Nielson, 2017).

Our exhaustive review of the aggressive behaviors that APs use highlights the need for more theoretical understanding about *why* parents engage in these behaviors. For example, evolutionary theories regarding intrasexual competition have been used to explain why young women use indirect forms of aggression (e.g., gossiping, derogation) against each other (Vaillancourt, 2013). Do evolutionary theories concerning maternal and paternal protection of offspring apply to this form of family violence? Similarly, lifelong monogamy does not characterize the typical mating patterns for humans, and humans abandon costly relationships by "mate switching" (Buss, Goetz, Duntley, Asao, & Conroy-Beam, 2017). Do alienating behaviors serve as a mechanism to cut losses by erasing the TP from the child's life? Some clinicians have proposed that children become alienated due to *pathogenic parenting*, meaning that the AP, who often demonstrates narcissistic or sociopathic tendencies, relives their own childhood trauma (e.g., abuse) and attachment problems through their relationship with their child. Pathogenic parents are proposed to "protect" the child from the other parent due to a delusion that the other parent is dangerous or abusive, when he or she is in fact not (e.g., Childress, 2014). This latter opinion has not been empirically tested or undergone peer review, but theories such as these are important to empirically test and extend so that a greater understanding of the problem can be reached.

Conclusion

In conclusion, there is emerging consensus that parental alienating behaviors are a form of family violence. However, parental alienation does not result from the individual actions of a parent; its source also lies in social and legal policies. For example, parental alienation flourishes in situations where one parent has exclusive care and control of children, and legal systems that remove a parent from a child's life by means of sole custody or primary residence orders are contributing to parental alienation. Laws that make shared parenting the default parenting plan, which are a legal sanctioning that children have two primary parents, can potentially serve as a bulwark against parental alienation because it limits the abuse of power that can occur when a parent has primary custody. By recognizing this form of aggression as child abuse and IPV, protections for parents and families can be provided by law, funded research can be devoted to advancing the understanding the problem and motives for this form of family violence, and the development and testing of interventions to address the problem can occur. It is time to acknowledge and recognize this form of family violence, and to attend to the needs of parents and children who are its victims.

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Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy

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False beliefs about the genesis of parental alienation and about appropriate remedies shape opinions and decisions that fail to meet children's needs. This article examines 10 mistaken assumptions: (a) children never unreasonably reject the parent with whom they spend the most time, (b) children never unreasonably reject mothers, (c) each parent contributes equally to a child's alienation, (d) alienation is a child's transient, short-lived response to the parents' separation, (e) rejecting a parent is a short-term healthy coping mechanism, (f) young children living with an alienating parent need no intervention, (g) alienated adolescents' stated preferences should dominate custody decisions, (h) children who appear to function well outside the family need no intervention, (i) severely alienated children are best treated with traditional therapy techniques while living primarily with their favored parent, and (j) separating children from an alienating parent is traumatic. Reliance on false beliefs compromises investigations and undermines adequate consideration of alternative explanations for the causes of a child's alienation. Most critical, fallacies about parental alienation shortchange children and parents by supporting outcomes that fail to provide effective relief to those who experience this problem.

Keywords: alienation, custody reversal, high-conflict divorce, parental alienation, reunification

Common false beliefs about parental alienation lead therapists and lawyers to give bad advice to their clients, evaluators to give inadequate recommendations to courts, and judges to reach injudicious decisions. The increasing recognition of the phenomenon of children's pathological alienation from parents brings with it a proliferation of mistaken assumptions about the problem's roots and remedies. These assumptions fail to hold up in the light of research, case law, or experience.

In some instances, a professional may not have thought to question the belief, or may lack sufficient experience and familiarity with research literature to test the accuracy of the assumption. The more often the fallacy is mentioned in professional presentations and publications, the more likely it becomes a *woozle*—a commonly accepted idea that lacks grounding in persuasive evidence yet gains traction through repetition to the point where people assume that it is true (Nielsen, 2014). In other cases evaluators, therapists, and lawyers make unreliable predictions based on the relatively small sample of their practices. Some professionals hold rigid ideological positions that inhibit receptivity to disconfirming facts or lead to intentional evasion of data that conflict with desired conclusions (Lundgren & Prislin, 1998; Martindale, 2005). Even those with no strong ideological motivation to advocate a particular position are susceptible to confirmation biases that predispose them to search for and focus on information that supports previously held beliefs and expectations, while overlooking, ignoring, or discounting facts that fail to conform to their preconceived views (Greenberg, Gould-Saltman, & Gottlieb, 2008; Jonas, Schulz-Hardt, Frey, & Thelen, 2001; Rogerson, Gottlieb, Handelsman, Knapp, & Younggren, 2011). An untested assumption about the significance of one factor, such as a generalization based on a child's age, may lead family law professionals to place undue weight on that factor when making recommendations or decisions.

This article identifies 10 prevalent and strongly held assumptions and myths about parental alienation found in reports by therapists, custody evaluators, and child representatives (such as guardians ad litem), in case law, and in professional articles. Ideas were determined to be fallacies if they are contradicted by the weight of empirical research, by specific case outcomes, or by the author's more than three decades of experience evaluating, treating, and consulting on cases with parental alienation claims. The following discussion pertains to the pathological variant of parental alienation and not to situations in which a child's rejection of a parent is proportional to the parent's treatment of the child. The 10 fallacies about parental alienation fall into two categories: those that predominantly relate to the genesis of parental alienation and those concerned with remedies for the problem.

Fallacies About the Genesis of Parental Alienation

1. Children Never Unreasonably Reject the Parent With Whom They Spend the Most Time

It is generally assumed that children will identify most closely with the parent whom they see the most. When children live

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exclusively under one parent's care, naturally this increases that parent's influence on the children, including shaping their view of the absent parent (Clawar & Rivlin, 2013; Warshak, 2010a). The most extreme example of this occurs with abducted children who depend on their abducting parent for any information about their other parent. Spending more time with a parent who is the target of denigration often helps children resist becoming alienated or facilitates their recovery of a positive relationship. It is mistake, though, to assume that children are immune to becoming alienated from the parent with whom they spend the most time. One survey found that in 16% of cases the alienated parent had either primary or joint physical custody (Bala, Hunt, McCarney, 2010). In some families the children's rejection of their custodial parent results in a de facto change of custody without litigation; thus, case law surveys probably underestimate the proportion of children who become alienated from the parent who had primary residential custody.

This author has consulted on more than 50 cases in which a father who had contact with his children primarily when school was out of session effectively influenced his children to reject their mother. In several of these cases the father retained the children at the end of an extended school holiday period at which time the children claimed that they wanted to live with him and never see their mother again. The children's motives varied. Some children wanted to please an intimidating father to avoid his anger (Drozd & Olesen, 2004). Others became convinced that their father's emotional survival depended on having his children live with him and that their mother was responsible for his suffering. In other cases a court allowed a mother to relocate with her children far away from the father, and the father retaliated by exploiting the children's discomfort about the move and manipulating them to reject their mother.

Operating under fallacy #1 some evaluators have stated unequivocally that the children's rejection of their primary residential parent (usually the mother) could not possibly constitute pathological alienation. These evaluators assume that a child who spends a lot of time with a parent is sufficiently familiar with the parent to be invulnerable to cognitive distortions about the parent. Thus if a child rejects a parent who has primary custody, the child must have a valid reason. This mistaken assumption predisposes evaluators to search for flaws in the rejected parent to explain the children's rejection while failing to investigate and sufficiently weigh the other parent's contributions to the children's negative attitudes.

Knowing that children's rejection of the parent with whom they spend the most time can be unreasonable and reflect the noncustodial parent's influence, custody evaluators, therapists, and judges should view the available data and evidence without any preconceived assumptions about the extent to which the child's rejection is justified versus unjustified. When gathering and considering data, child custody evaluators should consider alternative explanations for a child's negative attitudes regardless of which parent spends the most time with the child. Therapists should remain alert to the possibility that a child's complaints about the parent with whom the child predominantly lives may be unduly influenced by the other parent and may not reflect the child's true experiences or be an accurate account of the alienated parent's behavior.

Consulting and testifying experts who review custody evaluations that attribute children's rejection of the parent with whom they spend the most time solely to the rejected parent's behavior should be alert to the possibility that a confirmation bias skewed the data gathering and interpretation (Martindale, 2005) and perhaps gave inadequate attention to the influence of the favored parent. Experts retained to educate the court about general issues in a case that raises parental alienation issues should be prepared to explain how this fallacy may have led to poorly reasoned opinions and recommendations reached by professionals such as evaluators, parenting coordinators, guardians ad litem, and attorneys appointed to represent the children's best interests. Judges who reject this fallacy will be more inclined to give proper weight to evidence of the noncustodial parent's influence on the children's negative attitudes toward the custodial parent when such evidence exists.

2. Children Never Unreasonably Reject Mothers

The fallacy presented above holds that a class of parents—those with primary custody—are immune from pathological alienation. Another fallacy is related to the previous one in that it also holds that a class of parents—in this case, mothers—are immune from their children's irrational rejection. A corollary fallacy is that only mothers are accused of fostering parental alienation and that this means that the concept of irrational parental alienation is bogus and simply a litigation tool for fathers (NOW Foundation, n.d.). Both fallacies are disproved by case law and empirical studies that document the existence of alienated mothers and alienating fathers in one third to one half of cases.

A Canadian survey reported that courts identified the father as the alienating parent in about one third of cases (Bala et al., 2010). Kopetski, Rand, and Rand (2006) reported that the alienating parent was the father in more than one third of cases. An analysis of unreported judgments in Australia over a 5-year period found approximately equal numbers of male and female alienators (Berns, 2001). Similarly, Gardner (2002) reported equal distributions of male and female alienators. In a small but nonrandom sample of parents who participated in an intervention to overcome children's alienation, 58% of the rejected parents were mothers (Warshak, 2010b). Also, several mothers who identify themselves as alienated have written books about their experience for the general public (Black, 1980; Cross, 2000; Egizii, 2010; Meyer & Quinn, 1999; Richardson & Broweleit, 2006; Roche & Allen, 2014).

Those who believe that mothers cannot be the victims of their children's irrational rejection are predisposed to believe that children who reject their mothers have good reasons for doing so. This belief leads evaluators to overweigh a mother's contributions to her children's rejection of her while failing to recognize the influence of the father's manipulations on the children's negativity toward their mother.

Evaluators who hold an ideological position against the concept of pathological parental alienation reflexively dismiss the possibility that a child's negative behavior toward a parent is unwarranted or is influenced by the favored parent. Such evaluators fail to adequately explore plausible rival explanations for case facts and data that relate to children's alienation and instead they prejudge the children's alienation as justified by mistreatment from the rejected parent. In so doing they fall short of practice guidelines such as the American Psychological Association's (2013)

Specialty Guidelines for Forensic Psychology. An example of the lack of critical thinking in a custody evaluation and in testimony is the failure to consider alternative explanations for a child's negative thoughts, feelings, and behavior toward the rejected parent (Warshak, 2003b).

Evaluators operating under an anchoring bias rely on accusations about the rejected parent's behavior as a point of reference for subsequent data gathering and interpretation (Martindale, 2005). This reference point leads to selective attention to evidence that confirms initial impressions, and inattention to disconfirming evidence. Confirmation bias operates when evaluators prejudge concerns about irrational parental alienation as unlikely and then seek, attend, and heavily weigh evidence of the rejected parent's contributions, while they avoid and discount evidence of the favored parent's contributions. Zervopoulos (2013) provides specific questions that attorneys can use to uncover such biases in mental health evaluations and testimony. He shows how to tie an expert witness's lack of critical thinking to the admissibility and weight accorded to mental health evidence.

Mental health and legal professionals who reject the concept of pathological parental alienation should rethink their position in the light of the extensive literature on the topic (for a comprehensive bibliography see Lorandos, Bernet, & Sauber, 2013) and a survey that reported 98% agreement "in support of the basic tenet of parental alienation: children can be manipulated by one parent to reject the other parent who does not deserve to be rejected" (Baker, Jaffe, Bernet, & Johnston, 2011). Also, the *Diagnostic and Statistical Manual Of Mental Disorders*, fifth edition includes "unwarranted feelings of estrangement" as an example of a "Parent–Child Relational Problem" (American Psychiatric Association, 2013, p. 715). Evaluators and therapists should keep an open mind about the possibility that children's rejection of their mother or their father is not warranted by the rejected parent's behavior.

3. Each Parent Contributes Equally to a Child's Alienation

Gardner's (1985) original formulation of pathological alienation, and his subsequent publications (e.g., Gardner, 1998), described multiple contributions to the child's disturbance, including the behavior of each parent, motivations that originate within the child, and situational factors such as a custody dispute or a remarriage. But his formulation, and work that followed (e.g., Clawar & Rivlin, 2013; Kelly & Johnston, 2001; Warshak, 2010a), left no doubt that the attitudes and behaviors of the parent with whom the child appears to be aligned are a key element in understanding the genesis of the problem.

Responding to allegations and concerns that clinicians and courts placed too much emphasis on the contributions of the favored parent and not enough emphasis on other factors, Kelly and Johnston (2001) recast the problem in a family systems framework. Others have elaborated this model by introducing the term *hybrid* for cases that identify a combination of both parents contributing to the children's alienation (Friedlander & Walters, 2010). Some professionals assume that a child's alienation is rarely traced to primary contributions from one parent. The influence of the family systems model is evident in custody evaluation reports that explicitly cite the model, conclude that each parent's behavior is responsible for the child's alienation, and take care to avoid ranking either parent's contributions as more prominent. A related practice is the reflexive use of the term *high conflict couple*, a term that implies joint responsibility for generating conflict.

Kelly (2003) was one of the first to expose this fallacy. Drawing on 40 years of experience as a researcher, custody evaluator, mediator, and Special Master, she found that in as many as one third of entrenched parental disputes, one parent was clearly responsible for initiating and sustaining conflict. Clinical reports and some large-scale empirical studies describe disturbed and disturbing behavior on the part of favored parents, often characteristic of borderline and narcissistic psychopathology (Eddy, 2010; Friedman, 2004; Kopetski, 1998; Rand, 1997a, 1997b, 2011). Favored parents are more likely than rejected parents to display controlling and coercive behavior, poorly modulated rage, paranoid traits, and parenting styles that encourage enmeshed parent–child relationships, such as intrusive and infantilizing behaviors (Garber, 2011; Johnston, Walters, & Olesen, 2005; Kopetski, 1998).

Based on their study of 1000 custody disputes, Clawar and Rivlin (2013) identify the favored parent's programming as the primary dynamic behind a child's alienation, and they regard such programming as psychologically abusive. Kelly and Johnston (2001) agree that the behaviors of the favored parent "constitute emotional abuse of the child" (p. 257). Clearly their model is not intended to hold both parents in all families equally responsible for children's pathological alienation. For example, it would be no more fitting to assume that an alienated mother is equally responsible for her children's rejection of her than it would be to hold a mother equally responsible for her husband's physical abuse of the children.

Studies of formerly alienated children who reconciled with their rejected parents provide additional evidence that the behavior of the rejected parent is not a necessary factor in the genesis of children's alienation. In some cases a family crisis resulted in a spontaneous and in some cases instantaneous reconciliation (Darnall & Steinberg, 2008a, 2008b; Rand & Rand, 2006). Outcome studies for the educational intervention, Family Bridges: A Workshop for Troubled and Alienated Parent-Child Relationships, show that children can overcome their negative attitudes and behavior without any change in the rejected parent's personality or behavior (Warshak, 2010b; Warshak, in press). Although the workshop teaches parents how to more effectively communicate and manage conflict with their children, this is not the central element linked to improvement in the parent–child relationships. Dramatic transformations of children's negative attitudes occur during the 4-day workshop when they learn about and gain insight into the process by which they became alienated and when they have a face-saving way to recover their affection for their parents. If the rejected parent's personality characteristics and behavior were a central cause of the alienation, we would not expect the children's alienation to abate unless and until they had an opportunity to experience changes in the rejected parent's behavior.

Some children have very good reasons for feeling disillusioned with the rejected parent, but the favored parent eagerly fans the flames of negative feelings. In such cases the child's rejection has both strong rational *and* strong irrational components. The rejected parent's behavior may be sufficient to alienate the child in the short-run, but the favored parent's behavior interferes with the healing that would naturally occur

with time and support. And there is no doubt that, in some cases, the rejected parent's behavior can exacerbate or ameliorate the impact of the favored parent's influence (Warshak, 2010a). But this does not mean that the rejected parent is equally responsible for a child's alienation formed in the context of psychological abuse by the aligned parent. Laying such blame on the rejected parent is analogous to ignoring the power imbalance that may exist between spouses and holding the spouse of a physically abusive parent equally responsible for the child's injuries because she failed to protect the child. Just as the phrase "violent couple" can draw attention to transactional variables while obscuring the personality characteristics of an abusive husband (Bograd, 1984), Friedman (2004) points out that "disregarding the power inequality that often prevails in custody arrangements can obscure the fact that one parent is often fighting for more equitable access which the other parent is blocking. Calling them a high-conflict couple can be misleading and a misuse of systems theory" (p. 105).

In an effort to appear evenhanded, evaluators and judges sometimes go to great lengths to balance positive and negative statements about each parent without clarifying the behaviors that most harm the children (Kelly, 2003). It is not surprising that multiple threads form the tapestry of a child's irrational aversion to a parent; this is true for nearly every psychological disturbance in childhood. But evaluators who anchor their data gathering and analyses with the assumption that both parents contribute equally to their children's alienation overlook or undervalue information that supports alternative formulations.

Operating under this fallacy, evaluators fail to take into account the significance of the history of parent–child relationships when they weigh the contributions of rejected parents to their children's alienation. They cite aspects of the parent's personality or behavior that the children complain about, such as using the cell phone too much during the children's soccer games, without considering that this parental behavior had not previously undermined the children's love and respect for the parent. Evaluators who are not restricted by the "equal contribution" fallacy will ask:

1. Did the presumed flaws of the parent emerge just before the child's alienation, such as might be the case with a newly acquired closed-head injury, or have the parent's offensive traits and behavior coexisted in the past with cordial parent–child relations?

2. Would the rejected parent's weaknesses result in the child's alienation under normal circumstances regardless of the favored parent's attitudes and behavior?

3. Has the favored parent played a role in focusing the child's attention on the other parent's flaws and mistakes, exaggerating the significance of the mistakes, or encouraging an unsympathetic attitude toward a parent's problems?

4. Given the favored parent's behavior, were the children likely to become alienated even in the absence of the rejected parent's presumed flaws?

5. Does the rejected parent continue to enjoy a normal relationship with the alienated child's siblings or stepsiblings in spite of the personality and behavior that supposedly is the cause of the child's alienation?

6. Is the rejected parent's offensive behavior, such as a temper outburst, a maladaptive reaction to a child's rejection or is it a likely cause of the child's rejection?

7. Does the child appear motivated to improve the relationship, such as engaging meaningfully in therapy interventions, or does the child seem content with the loss of the parent?

8. Does the child show genuine interest in the parent changing his or her behavior, as in the case of a child who wants his father to watch his soccer games rather than being preoccupied with a cell phone, or does the child convey that no amount of change will be sufficient to heal the relationship?

9. Does the child regain affection when the rejected parent modifies the behavior about which the child complained, or does the alienation continue unabated despite improvements in the parent's behavior?

When evaluators mistakenly hold both parents equally culpable for the children's alienation, they are likely to avoid recommendations that they believe would disappoint and discomfort the children. They will be more inclined to recommend that the children remain with their favored parent and be allowed to avoid the other parent until therapy helps children gradually overcome their negative attitudes. In the case of severely alienated children, such a plan holds little hope for success (Dunne & Hedrick, 1994; Fidler & Bala, 2010; Garber, 2015; Lampel, 1986; Lowenstein, 2006; Rand et al., 2005; Rand & Rand, 2006; Rand, Rand, & Kopetski, 2005; Warshak, 2003a, 2013; Weir & Sturge, 2006).

When the rejected parent's behavior is inaccurately assumed to be a major factor in the children's alienation, therapy proceeds in unproductive directions. Sessions aim to modify the rejected parent's behavior, help that parent express to the children empathy for their complaints, and gradually desensitize the children to their aversion to the parent. Simultaneously, the therapist fails to appreciate the power of the aligned parent to undermine treatment progress. Because the children's alienation is not primarily the result of the rejected parent's behavior, the more that the process validates the children's complaints as legitimate reasons for their animosity and avoidance of normal contact, the deeper becomes the chasm between the parent and the children.

Evaluators and therapists should avoid unwarranted assumptions about the roots of a child's rejection of a parent. Instead they should remain neutral and attentive to all factors that contribute to a child's alienation. In cases where the child's negative attitudes are traced primarily to the behavior and influence of the parent with whom the child is aligned, professionals and the court should be aware of the literature that stresses the importance of an alienated child's contact with the rejected parent (Fidler & Bala, 2010; Garber, 2015; Warshak, 2003a).

4. Alienation Is a Child's Transient, Short-Lived Response to the Parents' Separation

Parents and those who advise them often mistake the incipient signs of a child's pathological alienation as a temporary reaction to the anxiety stirred by the parents' separation. In some cases this reflects the belief, or wishful thinking, that children who resist being with a parent eventually initiate reconciliation. Some do. But many do not.

Based on a sample of 37 young adults who received family focused counseling, Johnston and Goldman (2010) speculated that alienation that emerges for the first time in the early teens will eventually dissipate. But the lead researcher on that longitudinal project referred to the lasting damage caused by parents who manipulate children to turn against their other parent (Wallerstein & Blakeslee, 1989). Warshak (2010b) reported an intervention outcome study in which the average length of time of alienation was 2.5 years; some children had been alienated for as long as five years, and prior to the intervention none of the children gave any indication that the alienation would abate. In a sample of adults who reported being alienated as children, the disrupted parent–child relationship lasted for at least six years in all cases and continued for more than 22 years for half the sample (Baker, 2005). Gardner (2001) reported 33 cases in which alienation persisted for more than two years. In a sample of college students, 29% from divorced homes remained alienated from a parent (Hands & Warshak, 2011).

Therapists who predict that a child's resistance to spending time with a parent will evaporate in the near future are apt to focus therapy on helping the child cope with unpleasant feelings aroused by the parents' breakup. In such cases therapists may encourage parents to passively accept their children's reluctance or refusal to spend time with them, and often advise a "cooling off period" in which the rejected parent temporarily relinquishes active efforts to reestablish regular contact with the children (Darnall & Steinberg, 2008b). Therapists who recognize that they may be seeing the early signs of chronic alienation are apt to encourage more normal parent–child contacts while working on uncovering the roots of the child's discomfort. Such encouragement protects against crucial losses; missing out on even two formative years of parent–child contact means an accumulation of lost experiences that can never be recovered.

The emotional and financial costs exacted by severe alienation, and the obstacles to its alleviation, highlight the importance of directing resources and efforts to early screening, identification, and protection of children at risk and to preventing the entrenchment of severe alienation (Jaffe, Ashbourne, & Mamo, 2010; Warshak, 2010c, 2013, in press). Consulting psychologists should advise lawyers to encourage clients to maintain contact with their children despite the children's scorn, except in situations that raise concern over the safety of the parent or child. Lawyers should move quickly for sanctions when orders for parent–child contacts are violated. Warshak (in press) provides practice tips for lawyers, which consultants can draw on when advising lawyers representing a parent who is alienated or at risk for becoming alienated.

Evaluators should attend to indications that a parent is inappropriately drawing the children into an alliance against the other parent, or engaging in behavior that carries a high likelihood of undermining the children's respect and affection for the other parent. Similarly, evaluators should attend to early signs that a child is succumbing to such pressures by forming an unhealthy alignment with a parent and by unreasonably resisting or refusing to spend time with the other parent.

When a case raises concerns that a child, with a parent's encouragement, support, or acceptance, may refuse contact with the other parent without adequate justification, the court may consider several options implemented in a tiered, stepwise manner and preferably on a fast track (Salem, 2009). A first step is parent and child education programs. Some courts require parents to read books and view material to learn how and why to avoid behaviors that influence children to align with one parent against the other, and then to provide evidence of compliance with the assignment such as a book report (Warshak, in press). Many courts require litigants to attend a parent education program designed for parents who live apart from each other. Such programs operate in at least 46 states (Salem, Sandler, & Wolchik, 2013; Sigal, Sandler, Wolchick, & Braver, 2011). In a recent evaluation of one program, parents reported a reduction in behaviors that placed children in the middle of conflict (LaGraff, Stolz, & Brandon, 2015).

In cases where parent education has proved insufficient to modify alienating behaviors and interrupt the decline of a parent–child relationship courts often appoint a mental health professional to work with the family. Interventions strive to reduce alienating behaviors by helping parents appreciate the importance of shielding their children from such messages. Parents who are the target of bad-mouthing learn to respond in a sensitive and effective manner to their children's behavior and avoid common errors that may exacerbate parent–child conflicts (Ellis, 2005; Warshak, 2010a). Children learn to assert their right to give and receive love from both parents and avoid being pulled into their parents' disputes. The literature presents several models and strategies for working with families in which school-age children are alienated, but lacks rigorous outcome data (Carter, 2011; Eddy, 2009; Freeman, Abel, Cooper-Smith, & Stein, 2004; Friedlander & Walters, 2010; Johnston & Goldman, 2010; Sullivan, Ward, & Deutsch, 2010).

The court may try to motivate alienating parents to modify their behavior by putting them on notice that if the child's relationship with the other parent continues to deteriorate, and the court finds that the aligned parent's behavior is largely responsible for the problem, the court will entertain options that provide more time for the child to be in the care of the alienated parent. In some cases the court hears testimony that raises concerns that a child is being severely mistreated, such as in cases where a parent, intent on erasing the other parent from the child's life, punishes the child for expressing any desire to see the other parent. Such cases may rise to the level where the judge believes that the child is being psychologically abused and the judge feels obliged to protect the child from further abuse by requiring supervision or monitoring of the child's contacts with the alienating parent.

5. Rejecting a Parent Is a Short-Term Healthy Coping Mechanism

A corollary to the view that alienation is transient is that it reflects healthy behavior on the part of a child struggling to come to grips with a family transition and turmoil (Drozd & Olesen, 2004). The assumption is that children want to regulate access to

their parents to accomplish two goals: (a) Exercise control in a situation where they are helpless to stop their world from unraveling, and (b) relieve themselves of torn loyalties by siding with one parent against the other, and reduce discomfort with this position by devaluing and avoiding contact with the rejected parent. No doubt such motives play a part in the genesis of parental alienation for some children. But is this behavior healthy and in the children's best interests?

Studies converge to suggest a conservative estimate that 2% to 4% of children become alienated from a parent after the divorce (Warshak, in press). Although this represents a large number of children, an alienated relationship with a parent is clearly a deviation from the norm even among children whose parents are divorced. Most children want regular contact with both parents after divorce (Fabricius, 2003; Fabricius & Hall, 2000; Hetherington & Kelly, 2002; Parkinson, Cashmore, & Single, 2005; Schwartz & Finley, 2009; Warshak & Santrock, 1983).

Therapists who believe that rejection of a parent is a healthy adaptation encourage parents to accept the children's negativity until the children feel ready to discard it. This is especially true when therapists assume that the alienation is destined to be short-lived. But as discussed above, the alienation may not be transient, and is not healthy if the children's negative attitudes and avoidant behavior harden into a long-term or permanent problem. Growing up with a severely conflicted or absent relationship with a parent is associated with impaired development (McLanahan, Tach, & Schneider, 2013).

A problem that seems at the outset as a temporary difficulty coping with a life transition can, if handled ineffectively, become more long lasting. An analogy is a child who has trouble adapting to the changes entailed by attending Kindergarten instead of remaining home all day. Ordinarily we would work to help the child cope effectively with this expected life transition. If instead we indulged the child's wish to avoid the experience, the child would lose an important opportunity to grow through mastery as well as miss out on the value that school attendance offers.

In their reports and testimony child custody evaluators and educative experts should emphasize that early intervention and rapid enforcement of court ordered parent–child contacts can help prevent a child's avoidance of a parent from hardening into a long-term estranged relationship, especially when the avoidance is encouraged and supported by the other parent (Fidler, Bala, Birnbaum, & Kavassalis, 2008, p. 257; Warshak, in press). Courts should recognize that enforcing the court-ordered parenting plan can alleviate the burden of children who feel that they have to choose between their parents or show loyalty to one parent by rejecting the other.

Fallacies About Remedies for Parental Alienation

6. Young Children Living With an Alienating Parent Need No Intervention

The need for intervention may sometimes be less apparent in families with young children who live with a parent who teaches them to fear or hate the other parent. Toddlers and preschoolers may fulfill a parent's expectations by acting fearful and resistant during scheduled transfers to the other parent's care (Fidler et al., 2008, p. 243; Lund, 1995). If the child's overt, albeit temporary, feelings are indulged, and the child's protests allowed to abort the planned exchange, the protests are likely to emerge and become more intense at each subsequent attempt to implement the parenting time plan. If instead the child is given the opportunity to spend time with the denigrated parent outside the orbit of the alienating parent, the fearful and angry behavior quickly evaporates (Fidler et al., 2008, p. 242; Kelly & Johnston, 2001; Lund, 1995; Warshak, 2010b; Weir, 2011). When meeting with a custody evaluator, young children may try to repeat a script written by the alienating parent. But often they forget what they are supposed to say and cannot answer questions for which they were not rehearsed (Kelly & Johnston, 2001; Ludolph & Bow, 2012).

Because the young child loses the negative reaction and warms up to the denigrated parent during contacts with the parent, and does not show stable and chronic negative attitudes and behavior, a common mistake is to overlook the need for intervention (Weir, 2011). Therapists have noted children's confusion and anger resulting from exposure to alienating processes regardless of the very young child's apparent resilience (Ludolph & Bow, 2012). Depending on their severity and cruelty, alienating behaviors may approach or reach levels of psychological abuse and children may need protection from the abusive parent.

Without help to change, the family environment places these children at risk to develop a fragmented identity with the characteristics and consequences of irrational alienation and of parental absence (Roseby & Johnston, 1998). Children who live in an environment that consistently encourages them to view a parent in a negative light need assistance to maintain a positive relationship with that parent. Such assistance may be to give the child more time with the parent who is at risk for becoming the alienated parent. Or, the court may appoint professionals to help the parents modify behaviors that contribute to a child's problem and to monitor compliance with court orders. An added benefit of involving a professional with the family, either in the role of parenting coordinator, guardian ad litem, or therapist, is that the professional's observations may subsequently assist the court in evaluating the merits of conflicting accounts offered by parents in litigation (Fidler et al., 2008, p. 265).

7. Alienated Adolescents' Stated Preferences Should Dominate Custody Decisions

Many child custody evaluators and courts place more weight on a teenager's preference to sever contact with a parent than on similar preferences of younger children (Gould, 1998). In any given case, one of two rationales underpins the deference given to adolescent's stated wishes. In some cases decision makers emphasize that adolescents have the cognitive capacity to form mature judgments that are independent of their favored parent's influence and manipulations. In other cases the court finds that the alienation is unreasonable and that it is not in the children's best interests to sever their relationship with a parent; nevertheless the court concludes that expectations for compliance with court orders for contact cannot be enforced with teenagers who voice strong opposition to the orders and profess to hate a parent.

Teens know what is best for them. Adolescents, in general, are more capable than younger children of mature reasoning (Steinberg & Cauffman, 1996; Wechsler, 1991) and are less sug-

gestible (Ceci & Bruck, 1993, 1995). They are also better able to convince others that their wish to avoid or disown a parent is a reasonable, thoughtful, and proportionate response to the treatment they claim to have suffered at the hands of the rejected parent. I have been involved in several cases in which the judge initially accepted the custody evaluator's conclusion that an adolescent's alienation was irrational, until the judge spoke with the child. The teenager was able to convince the judge either that the choice to reject the parent was reasonable, or that the judge could trust the teenager to reunite with the parent in the future without being compelled to do so by court order. In each case, after the litigation was over, the child remained estranged from the parent.

Despite their more mature cognitive capacities compared with younger children, adolescents are suggestible, highly vulnerable to external influence, and highly susceptible to immature judgments and behavior (Loftus, 2003; Steinberg, Cauffman, Woolard, Graham, & Banich, 2009; Steinberg & Scott, 2003). These limitations are well known in the fields of adolescent development and neuropsychology, and account in part for the consensus view of psychologists that juveniles merit different treatment by the legal system than adults receive (American Psychological Association, 2004).

Adolescents' vulnerability to external influence is why parents are wise to worry about the company their teenagers keep. At times adolescents show extreme deference to others' views. Other times they make choices primarily to oppose another's preferences (Steinberg & Cauffman, 1996). Both of these dynamics can result in the formation of a pathological alliance with one parent against the other. Grisso (1997) points out that the preferences of adolescents often are unstable. Choices made early in the process of identity formation often are inconsistent with choices that would be made when a coherent sense of identity is established, generally not before age 18. For these reasons, even the preferences of adolescents merit cautious scrutiny, rather than automatic endorsement. It is also important to keep in mind that the alienation may have arisen years before the litigation when the child was probably even more vulnerable to a parent's influence and less able to assert mature and independent judgment. Thus the custodial preferences voiced by an adolescent may reflect preferences formed by a much younger child.

Courts cannot enforce orders for parent–child contact against an alienated teen's wishes. A judge who understood that a 13-year-old's decision to sever his relationship with his father reflected impaired judgment nevertheless acquiesced to the boy's demands because, "He is now of an age where, even if he may be too immature to appreciate what is best for him, he cannot be physically forced to remain where he does not want to be" (Korwin v. Potworowski, 2006, ¶ 145). This judge is not alone. Other judges, child representatives, parenting coordinators, psychotherapists, and parents often report feeling stymied when adolescents refuse to cooperate with the court-ordered parenting time schedule (DeJong & Davies, 2012; Johnston, Walters, & Friedlander, 2001). These children can be so convincing about their resolve to have their way with respect to avoiding a parent that they convince the court that they are beyond its authority. They induce a sense of helplessness in judges.

Adults need not feel helpless in the face of oppositional behavior from alienated teens. Two studies have reported that most children's protests evaporate when reunited with a rejected parent (Clawar & Rivlin, 2013; Warshak, 2010b) and this is illustrated anecdotally by high profile cases (Warshak, in press). Instead of appeasing children's demands, the court can order an intervention to assist children in adjusting to court orders that place them with their rejected parent (Warshak, 2010b).

Adolescents comply with many rules and expectations that are not of their own choosing. It is an error to assume that they do not benefit from an assertion of authority on the part of the court and their parents. Teens need adult guidance, structure, and limits as much as if not more than do younger children. When a teen has been violent toward a rejected parent, allowing the teen's wishes to determine the outcome of a custody case can be seen as rewarding violent behavior (Warshak, 2010b). Children of any age need to understand that they are not above the law or beyond its reach.

Child custody evaluators and educative experts should inform the court about the benefits and drawbacks of various means of giving adolescents a voice in a custody dispute (Dale, 2014; Warshak, 2003b). Courts also need to learn about the suggestibility of adolescents and their susceptibility to immature judgment and external influence.

If the evidence suggests that the child's viewpoints do not reflect mature judgment independent of the other parent's unhealthy influence, or the child's expressed preferences are unlikely to serve the child's best interests, the court should impress on the adolescent, either directly or through agents of the court, the necessity of complying with the residential schedule put in place by the court. The parents and the child should understand that failure to comply with court orders will not be overlooked and will not result in the court capitulating to the overt demands of the adolescent. A firm stance by the court brings the added benefit of relieving the child of needing to maintain a parent's approval by refusing to spend time with the other parent.

8. Children Who Irrationally Reject a Parent But Thrive in Other Respects Need No Intervention

Some custody evaluators and decision makers oppose interventions for alienated children if the parent–child conflict is an exception to a child's apparent good adjustment in other spheres, such as in school and with peers. These professionals believe that children who are doing well in other aspects of life should be empowered to make decisions regarding contact with a parent. Professionals who advocate this position express concerns that interventions for resistant youth, such as court-ordered outpatient therapy, may disrupt the children's psychological stability, are likely to prove unsuccessful, and will leave children feeling angrier toward the court or the rejected parent (Johnston & Goldman, 2010). Other professionals counsel a hands-off policy toward these children until we have more studies that document long-term damage of growing up irrationally alienated from a parent.

Warshak (in press) presents three reasons to intervene on behalf of alienated children despite their apparent good adjustment in areas unrelated to their relationship with the rejected parent. First, children's apparent good adjustment may be superficial or coexist with significant psychosocial problems. Second, regardless of adjustment in other spheres, the state of being irrationally alienated from a loving parent is a significant problem in its own right and is accompanied by other indices of psychological impairment. Third, growing up apart from and in severe conflict with an able

parent risks compromising children's future psychological development and interpersonal relationships.

Psychosocial problems. Children can do well academically, participate in extracurricular activities, avoid drugs, and act polite with teachers and neighbors, while at the same time sustain significant psychological impairment evident in their relationships with friends, their favored parent, and legal authorities. The psychological processes that accompany irrational rejection and cruel treatment of a parent bleed into other relationships. These processes include global thinking about others as allies or enemies, contempt for those who see things differently, feelings of entitlement in personal relationships, and avoidance of conflict. When conflicts arise with friends, alienated children who have been empowered to reject a parent are apt to do the same with friends; they avoid conflicts by abruptly ending friendships rather than practicing skills to manage conflict and sustain relationships (Kelly & Johnston, 2001; Johnston et al., 2001).

Alienated children's relationship with their favored parent may seem ideal because of the absence of conflict and frustration. This harmony comes at the cost of normal parent–child relationships. In a shift from the usual roles in a family, some alienated children feel responsible for their favored parent's emotional well-being (Warshak, 1992). They comfort distressed parents, serve as confidantes, and reassure parents of their allegiance (Friedlander & Walters, 2010).

Alienated children often sacrifice age-appropriate independent functioning to gratify favored parents' needs to keep the children close at hand and dependent. Mental health professionals describe such parents as infantilizing their children, and refer to the overly close parent–child relationships that emerge from such parenting as enmeshed (Ellis & Boyan, 2010; Friedlander & Walters, 2010; Garber, 2011; Kelly, 2010). The extent to which a parent infantilizes a child is less evident in the child's early years. As the child gets older, the failure to achieve normal degrees of separation and independence becomes more obvious, as in the case of a teenager who continues to sleep with a parent or avoids attending summer camp.

Some children feel that the price they must pay to court the favored parent's affection, and avoid that parent's anger, is to reject the other parent (Friedlander & Walters, 2010). They conceal positive feelings for and experiences with the rejected parent and feel inhibited about giving and receiving love from that parent. This limits the genuine closeness between the favored parent and children because the children hide important aspects of themselves from the parent.

Alienated children comply with adults' expectations when these do not clash with the children's strong preferences. But when their wishes conflict with limits imposed by others, they act entitled to have their desires prevail. Thus, children who are described as model citizens in their schools and communities openly defy judges and fail to cooperate with court-ordered parenting time schedules (Clawar & Rivlin, 2013; Warshak, 2010b). The children speak and act as if they were above the law and immune from external controls on their behavior.

Psychological problems inherent in irrational rejection of a loving parent. We need not identify scholastic or social adjustment problems outside the family to be concerned about an alienated child's psychological state. Harboring irrational alienation from a parent, as with most significant irrational aversions, is a sign of a psychological problem in itself. Unreasonable anxieties or obsessive hatred and fixed negative stereotypes justify intervention to alleviate suffering and this is no less true when the target of aversion is a parent.

The rationale for interventions with families in which a child unreasonably rejects a parent goes beyond helping the family avoid the tragedies of a child losing a parent and a parent losing a child. These children need help to overcome cognitive, emotional, and behavioral impairments that accompany their alienation, and their parents need help to cope effectively with the children's behavior and to support the children's healthier functioning (Friedlander & Walters, 2010; Kelly, 2010; Warshak, 2010b, 2013, in press). In its description of the diagnostic category "Parent-Child Relational Problem," the *Diagnostic and Statistical Manual Of Mental Disorders*, fifth edition (American Psychiatric Association, 2013) gives these examples of impaired cognitive functioning, which certainly describe the alienated child's relationship to the rejected parent: "negative attributions of the other's intentions, hostility toward or scapegoating of the other, and unwarranted feelings of estrangement" (p. 715).

The damage to critical thinking is evident in cases where children align with one parent's view of reality in spite of conflicting objective evidence and the unanimous judgment of numerous professionals and the judge. In several cases a mentally ill parent has convinced a child that the police, lawyers on both sides of the case, therapists, and the judge conspired against the parent during custody litigation. Some children are coached to make false accusations against a parent. For instance, 10 years after their mother was convicted of attempted sexual abuse based on the testimony of her two sons, the boys confessed that their father coached and intimidated them into branding their mother as a sex offender (People v. Bronson, 2011). In another case, a boy gouged his face and told police that his mother did it. Such displays of impaired character development can exist alongside excellent academic, musical, or athletic performance (Warshak, 2010a) and should not be ignored by those concerned about the child.

Risks to future development. Research on the long-term outcome of children who grow up irrationally alienated from a parent is sparse. But several well-developed lines of investigation provide data relevant to understanding the consequences of parental alienating behavior and of exposing children to poorly managed interparental conflict (Cummings & Davies, 2010; Davies & Martin, 2014; Hetherington, Bridges, & Insabella, 1998; Kelly, 2005, 2010). Intrusive parenting that manipulates children's experience and expression of emotions has been linked to subsequent higher levels of depression and antisocial behavior (Barber, Stolz, & Olsen, 2005). Children who witness and are brought into conflicts between their parents show poorer long-term adjustment (Buchanan, Maccoby, & Dornbusch, 1991; Davies & Martin, 2014). In one study, the greater the discrepancy between the amount of nurturing and involvement children received from each parent—and for severely alienated children the discrepancy is the most extreme—the lower their subsequent self-esteem, life satisfaction, and quality and satisfaction with friendships, and the greater distress, romantic relationship problems, and troubled ruminations about parents these children experienced as young adults (Finley & Schwartz, 2010). Warshak (in press) reviews additional literature that demonstrates the handicapping impact of damaged and con-

flicted parent–child relationships on future psychological adjustment.

To summarize, we should not let a child's good academic grades, friends, and community activities distract attention from serious problems in character development and interpersonal relationships; from impaired functioning in cognitive, emotional, and behavioral domains; from unnecessary yet significant losses; and from the long-term consequences of growing up with such losses and with unresolved and unnecessary conflict with a loving parent. Such contemporary and future problems signal the need for intervention. Even when an alienated child is apparently well adjusted in some domains, evaluators should remain alert to the presence of such problems. In their reports and testimony evaluators should articulate the signs of the child's impaired psychological functioning and should inform the court of the short-term and long-term harm associated with the state of being unreasonably alienated from a good parent.

9. Severely Alienated Children Are Best Treated With Traditional Therapy Techniques While Living Primarily With Their Favored Parent

By the time cases with severely alienated children are adjudicated, families often have sought remedies from one or more psychotherapists. Despite the failure of previous treatments, courts frequently order another course of therapy or counseling while the children remain under the care of the parent with whom they are aligned.

Research on interventions for severely alienated children is an emerging field (Saini, Johnston, Fidler, & Bala, 2012). Case studies and clinical experience suggest that psychotherapy while children remain under the care of their favored parent is unlikely to repair damaged parent–child relationships and may make things worse (Dunne & Hedrick, 1994; Fidler & Bala, 2010; Garber, 2015; Lampel, 1986; Lowenstein, 2006; Rand & Rand, 2006; Rand et al., 2005; Warshak, 2003a; Weir & Sturge, 2006). No study has demonstrated effectiveness of any form of psychotherapy in overcoming severe alienation in children who have no regular contact with the rejected parent.

Some therapists conceptualize alienated children's problems as phobic responses to the rejected parent (Garber, 2015; Lampel, 1986). Therapists using this framework recommend cognitive–behavioral therapy methods, particularly systematic desensitization in which gradual exposure to the feared parent is paired with relaxation training (Garber, 2015). Garber gave two case illustrations using these methods. After 17 sessions interspersed with the therapist's ongoing support, an 8-year-old girl was able to tolerate only online contact with her alienated mother before litigation erupted and reunification efforts were suspended. The second case illustration reported that after seven sessions a 12-year-old boy was able to be nearly free of anxiety while *imagining* contact with his alienated father, yet the case report notably included no information about the child's actual reconciliation with his father. Lampel (1986) reported on six cases using phobia reduction techniques; none resolved the child's alienation.

One reason why phobia reduction techniques fail to overcome children's refusal to spend time with a parent is that most of these children, except preschoolers, do not really fear their rejected parent. If they act frightened of the parent, often this is a ruse to avoid contact. The lack of genuine fear is evident in the children's uninhibited denigration, expressions of hatred, and disrespect toward the rejected parent, as opposed to the obsequious or withdrawn behavior typical of children's interactions with a feared adult. Even with children who have learned to fear a parent, systematic desensitization may miss the mark for another reason. This treatment method helps children gradually overcome irrational anxieties toward places and objects (Wolpe, Brady, Serber, Agras, & Liberman, 1973). But an alienated child's aversion to one parent is not solely internally generated. Phobic children are surrounded by adults who encourage them to overcome their fears and who emphasize the benefits of doing so. By contrast, alienated children who live in the home in which their problem arose are around a parent, and perhaps siblings or other relatives, who at the very least provide no effective encouragement to overcome their aversion, and in most cases actively contribute to its perpetuation.

As opposed to the poor response of alienation to traditional therapy techniques, marked reduction of alienation has been reported for children who were placed for an extended period of time with their rejected parent (Clawar & Rivlin, 2013; DeJong & Davies, 2012; Dunne & Hedrick, 1994; Gardner, 2001; Lampel, 1986; Rand et al., 2005; Warshak, 2010b, in press). Despite limitations such as small sample sizes and lack of random assignment to treatment conditions, the collective weight of the literature suggests that contact with the rejected parent is essential to healing a damaged parent–child relationship. No evidence supports the efficacy of treating severely alienated children while they remain primarily in the custody of their favored parent and out of touch with their rejected parent. Not only is such treatment unlikely to succeed, it postpones getting children the relief they need.

When an evaluation finds that a child is severely and irrationally alienated from a parent, and that it is in the child's best interests to repair the damaged relationship, the evaluator should exercise caution about recommending a course of traditional psychotherapy while the child remains apart from the rejected parent. Recommendations for therapy in such circumstances should include advice to the court about imposing (a) a time frame after which the impact of treatment will be assessed, (b) explicit criteria for evaluating progress and success of treatment, and (c) contingency plans in the event that the treatment is ineffective. For instance, if the judge informs the parties that a failed course of therapy may result in an increase in the child's time with the rejected parent or in a reversal of custody, this may help increase the child's motivation to participate meaningfully in treatment and the favored parent's support for treatment gains.

A therapist's facilitation of a child's complaints about a parent and rehashing conflicting accounts of the parent's past behavior may be counterproductive and prevent the parent and child from having experiences that move the relationship in a positive direction. Instead interventions can teach children and parents about (a) the nature of negative stereotypes, (b) the hazards of selective attention, (c) the ubiquity of perceptual and memory distortions, (d) the importance of recognizing multiple perspectives, (e) critical thinking skills, (f) effective communication and conflict management skills, and (g) the value of maintaining positive and compassionate relationships with both parents (Warshak, 2010b).

The court should be informed that psychotherapy is most likely to be effective if (a) there have been no prior failed attempts, (b) the parent with whom the child is aligned is likely to cooperate and

support the child's treatment and progress, and (c) the child has ample time to experience care and nurturing from the rejected parent. On the other hand, if one of more attempts with psychotherapy have already failed to remedy the problem, if the aligned parent is likely to sabotage treatment, and if the child is empowered to avoid contact with the rejected parent, the court should understand that ordering another round of psychotherapy without changing the amount of contact the child has with each parent is unlikely to remedy the problem and may postpone effective intervention until it is too late. In circumstances where treatment failure is highly likely and may aggravate problems, court-appointed therapists should not unnecessarily prolong treatment. Early in the treatment the therapist may feel ethically bound to inform the court that treatment should be discontinued.

10. Separating Children From an Alienating Parent Is Traumatic

Despite repeated reports that alienation abates when children are required to spend time with the parent they claim to hate or fear, some experts predict dire consequences to children if the court fails to endorse their strong preferences to avoid a parent. Usually such predictions are vulnerable to reliability challenges because the experts cite undocumented anecdotes, irrelevant research, and discredited interpretations of attachment theory. No peer-reviewed study has documented harm to severely alienated children from the reversal of custody. No study has reported that adults, who as children complied with expectations to repair a damaged relationship with a parent, later regretted having been obliged to do so. On the other hand, studies of adults who were allowed to disown a parent find that they regretted that decision and reported long-term problems with guilt and depression that they attributed to having been allowed to reject one of their parents (Baker, 2005).

Some evaluators and expert witnesses cite attachment theory to support predictions of trauma and long-term psychological damage to children who are separated from an alienating parent and placed with their rejected parent (Jaffe et al., 2010). Such predictions are rooted in research with children who experienced prolonged institutional care as a result of being orphaned or separated from their families for other—often severely traumatic—reasons (Ludolph & Dale, 2012). A consensus of leading authorities on attachment and divorce holds that contemporary attachment theory and research do not support generalizing the negative outcomes of traumatized children who lose both parents, to situations where children leave one parent's home to spend time with their other parent (Warshak, with the endorsement of the researchers and practitioners listed in the Appendix, 2014). Despite initial protests and demands, once reunited with the rejected parent most children recover the positive feelings that had been dormant since the onset of alienation or that they did not feel free to express.

Anchoring the conversation with predictions of lasting trauma and self-destructive behavior can make it seem inhumane to enforce a child's contact with the rejected parent. When experts anchor their testimony to terms like trauma and attachment—"when a child is described as 'traumatized' if he is, instead, only unsettled"—attorneys should challenge the experts to unpack evocative jargon (Zervopoulos, 2013, p. 180). The lack of empirical support for such pessimistic predictions can be contrasted with the benefits of removing a child from the daily care of a disturbed parent whose behavior is considered psychologically abusive (Clawar & Rivlin, 2013; Kelly & Johnston, 2001; Rand, 2011) and placing the child with a parent whom the court finds to be better able to meet the child's needs, especially the need to love and respect two parents. Separating children from an alienating parent is one among several possible dispositions of a case involving alienated children (Warshak, 2010b, 2013, in press). Warshak (in press) describes 10 reasons why courts may find it to be in children's best interests to temporarily suspend their contact with their favored parent while the children reunite with the rejected parent. This will not always be the best option. But it should not be dismissed based merely on the fallacy that a child will be traumatized if expected to have contact with a good parent whom the child irrationally claims to hate or fear.

Recommendations to place a child with the rejected parent and temporarily suspend contact with the favored parent should include consideration of interventions and resources to ease the family's adjustment to the court orders. Effective interventions should provide experiences to help uncover the positive bond between child and parent. Norton (2011) draws on developmental psychology and neurobiology to emphasize the importance of providing children and adolescents with experiences that facilitate empathy, connection, and wellness: "These experiences can help them to create a new narrative about their lives, one that is more cohesive, more hopeful, and allows them to begin to see themselves in a new place" (p. 2). Family Bridges (Warshak, 2010b) is one intervention that specializes in assisting with the transition by providing face-saving, transformative experiences that help children recover their affection for their rejected parent. A 4-day workshop helps children develop compassion for both parents and prepares the children and the parent who received custody to live together by teaching respect for multiple perspectives, and skills in critical thinking, communication, and conflict management.

When a court orders a child to spend time with a rejected parent despite the child's adamant objections, some commentators regard it as a severely harsh solution even when the child has help to adjust to the transition. Given the damage to children who remain alienated from a parent, such a disposition may be seen as far less harsh or extreme than a decision that consigns a child to lose a parent and extended family under the toxic influence of the other parent who failed to recognize and support the child's need for two parents.

Summary and Conclusions

The 10 fallacies discussed in this article shape opinions and decisions regarding children who unreasonably reject a parent. The fallacies are listed below along with a brief summary of practice recommendations.

Fallacies About the Genesis of Parental Alienation

1. Children never unreasonably reject the parent with whom they spend the most time.

2. Children never unreasonably reject mothers.

Practice recommendations. Professionals should guard against allowing false assumptions about the genesis of alienation to influence the development and analysis of data. When

such biases are evident in the work of other professionals in the case, experts should expose the underlying fallacies and explain how mistaken acceptance of the fallacies limits the trustworthiness of information and opinions reported to the court. Professionals and the court should keep an open mind about the possibility that children's rejection of a parent is unwarranted and that unreasonable rejection can be directed at the parent with whom the children spend the most time, even when this parent is their mother.

Experts who opine that a child's alienation must be a realistic reaction to the rejected parent's behavior because pathological parental alienation is a bogus concept should rethink their position in the light of an extensive literature. Experts hired to critique the opinions of colleagues who deny the reality of pathological parental alienation should draw attention to the field's acceptance of the concept and phenomenon.

3. Each parent contributes equally to a child's alienation.

Practice recommendations. Evaluators should avoid anchoring data gathering and analyses with the "equal contribution" fallacy. Instead the evaluation should address a series of questions that help distinguish reasonable and justified alienation from unreasonable and unjustified alienation that is not in a child's best interests to sustain. Prominent factors to consider are the history of parent–child relationships, the timing and context of the onset of the alienation, the likelihood that each parent's behavior, on its own, would result in the child's alienation, and the motives and reasonableness of the complaints that a child makes to account for the rejection of a parent. In cases where the child's negative attitudes are traced primarily to the behavior and influence of the parent with whom the child is aligned, professionals and courts should be aware of the importance of keeping the alienated child in contact with the rejected parent. Therapists should address the cognitive processes that underlie a child's distortions of the rejected parent and work to improve relational skills of the parents and child. With an irrationally alienated child, such an approach is likely to be more productive than focusing therapy on the child's repetitive complaints about a parent.

4. Alienation is a child's transient, short-lived response to the parents' separation.

5. Rejecting a parent is a short-term healthy coping mechanism.

Practice recommendations. Knowing that it is false to assume that a child's rejection of a parent is likely to be brief, and false to regard such rejection as a healthy way to cope with a family in transition, emphasis should be placed on early identification and protection of children at risk. Interventions by therapists and the court should aim for rapid enforcement of parent–child contacts while providing support for the family to adjust to the situation. Cases in which a child—with a parent's encouragement, support, or acceptance—may refuse contact with the other parent without adequate justification, should be placed on a fast track. Rapid responses may prevent alienation from becoming entrenched. The court may implement several steps as needed, including parent education, court-ordered treatment, and contingencies to motivate an alienating parent to modify destructive behavior.

Fallacies About Remedies for Parental Alienation

6. Young children living with an alienating parent need no intervention.

Practice recommendations. Because young children who live with an alienating parent are at risk for disruptions in their identity formation and in their long-term relationship with their other parent, the court should maintain oversight and put in place mechanisms to ensure that the child has ample opportunity to develop a healthy, positive relationship with both parents. Evaluators may recommend that the child have more time with the parent who is at risk of becoming alienated, and that the court appoint professionals to help the family better manage the situation, monitor compliance with court orders, and provide needed feedback to the court. In the most severe cases children may need protection from psychological abuse by the alienating parent.

7. Alienated adolescents' stated preferences should dominate custody decisions.

Practice recommendations. Custody evaluators and educative experts should be aware, and be prepared to inform the court, that adolescents are suggestible, highly vulnerable to external influence, and highly susceptible to immature judgments, and thus we should not assume that their custodial preferences reflect mature and independent judgment. If an adolescent's best interests would be served by repairing a damaged relationship with a parent, evaluators' recommendations and court decisions should reflect the benefits of holding adolescents accountable for complying with appropriate authority. Although adolescents protest many of society's rule and expectations, they will generally respond to reasonable limits when these are consistently and firmly enforced.

8. Children who irrationally reject a parent but thrive in other respects need no intervention.

Practice recommendations. Evaluators should be careful not to overlook an alienated child's psychological impairments that may be less apparent than the child's good adjustment in domains such as school and extracurricular activities. Evaluators can assist the court's proper disposition of a case by identifying the cognitive, emotional, and behavior problems that accompany irrational aversion to a parent, as well as the potential long-term negative consequences of remaining alienated from a parent.

9. Severely alienated children are best treated with traditional therapy techniques while living primarily with their favored parent.

Practice recommendations. The poor track record of traditional psychotherapy with alienated children who live predominantly with their favored parent should inform evaluators' recommendations of interventions. Therapists should not prolong therapy with alienated children in circumstances where the therapy has little chance of success. Effective interventions provide transformative experiences that help children relinquish negative attitudes while saving face.

10. Separating children from an alienating parent is traumatic.

Practice recommendations. Custody evaluators should avoid offering opinions that reflect sensationalist predictions lacking a basis in established scientific and professional knowledge. When previous interventions have proved inadequate, a wide range of options should be considered to assist families with alienated children, including placing a child with the rejected parent, tem-

porarily separating a child from the favored parent, or apart from both parents. Rather than automatically dismiss custody options that an alienated child strenuously opposes, the evaluator should focus on which option is likely to serve the child's best interests and what interventions can help the child adjust to the custody disposition.

Future Directions for Research

Future research will shed more nuanced light on the fallacies discussed in this paper. The greatest benefit is likely to derive from longitudinal studies of alienated parent–child relationships and of various dispositions in cases involving alienated children.

Based on flawed extrapolations from attachment theory and no empirical evidence, some evaluators and educative experts make alarming predictions about the impact of a court order that separates a child from an alienating parent even when that parent has a toxic relationship with the child. The weight of current evidence reveals that children pay a high psychological price for remaining alienated from a parent and growing up without giving and receiving expressions of love from a parent. This evidence supports dispositions that require irrationally alienated children to spend time with their rejected parent while receiving interventions, and the evidence opposes options that maintain a status quo of children remaining estranged from a parent.

Nevertheless additional documentation is needed with more studies of larger samples that compare outcomes of different dispositions using a variety of measures. We need a more robust understanding of the short-term and long-term sequelae for the entire family of various options (such as placing alienated children with the favored parent, with the rejected parent, apart from both parents, or allowing children to decide when and if they will reunite with their rejected parent). Researchers should study the psychological price that children pay for becoming and remaining alienated from a parent, but also any potential costs of requiring children to repair damaged relationships. Studies that identify markers to evaluate the maturity and independence of adolescent's judgments will assist decision makers in deciding how much weight to place on a child's stated preferences about custody, as will studies that compare outcomes for adolescents whose demands to avoid a parent were accepted versus rejected.

We need better understanding of the factors and circumstances within families that affect the long-term outcome of alternative dispositions and that favor one disposition over another in cases that raise concerns about parental alienation. At the same time it is important that we not let our focus on long-term outcomes obscure attention to the damage that a child and parent experience in the present and the need to alleviate their suffering. Families in these circumstances require greater availability of interventions that reliably prevent and overcome irrational parental alienation.

The scientific literature allows us to expose the widespread fallacies addressed in this article. Given the limitations of this literature we should not presume more knowledge than we have. Rather than approach our task with humility or with hubris, in previous work I have advocated the virtue of *humbition*: a fusion of humility and ambition (Warshak, 2007). Humbition allows social scientists to draw on the best available information while exercising appropriate restraint and duly noting the limitations of the current literature.

This article challenges 10 common assumptions that detract from the quality of custody recommendations, treatment, and court decisions. Accumulation and awareness of the evidence exposing these false beliefs, and an open mind to future discoveries, should guide decision makers and those who assist them to avoid biases that result in poor outcomes for alienated children. The result will be a better understanding of the needs of alienated children and decisions that are more likely to get needed relief to families who experience this problem.

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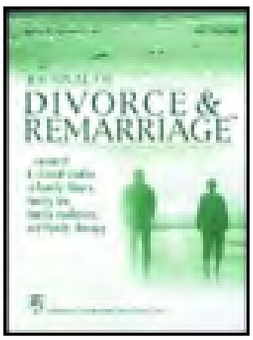

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Reclaiming Parent–Child Relationships: Outcomes of Family Bridges with Alienated Children

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ABSTRACT

A sample of 83 severely alienated children and adolescents were enrolled with the parents whom they had rejected in a 4-day Family Bridges educational workshop. The program was conducted after court orders had placed the children in the custody of their rejected parent. The parents who participated with the children in the workshop, and the professional workshop leaders, reported large improvements in the children's alienated behavior, changes that reflected statistically significant and large effects. The children's contact refusal with the rejected parent dropped from a pre-workshop rate of 85% to a post-workshop rate of 6%. Depending on the outcome measure, between 75% and 96% of the children overcame their alienation. The parents and children credited the workshop with improving their relationships and teaching them better relationship skills. Despite the children's negative initial expectations, most children felt positively about their workshop experience, regarded the workshop more like education than counseling, and reported that the professionals who led the program treated them with kindness and respect. All the parent participants and two-thirds of the children rated the workshop as excellent or good, but 8% of children retained their initial negative attitudes about the workshop and rated the workshop as poor. In sum, a significant number of intractable and severely alienated children and adolescents who participated in the Family Bridges workshop repaired their damaged relationship with a parent whom they had previously rejected for an average of 3–4 years.

KEYWORDS

alienation; custody reversal; high-conflict divorce; parental alienation; reunification

Children who reject a parent after divorce, who refuse or resist contact with a parent, or whose contacts are characterized by extreme withdrawal or gross contempt are challenges to courts, divorced families, and the professionals who serve them. Extrapolations from various studies conservatively estimate the incidence of alienated children at between 2% and 4% of those whose parents divorce (Warshak, 2015a). When the estranged parent–child relationship results primarily from poor or abusive parenting on the part of the rejected parent, child protection authorities and courts will likely and rightly

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support a child's avoidance of contact with that parent. But when the degree of a child's estrangement and hostility is not warranted by and is disproportionate to the rejected parent's behavior, courts will often determine that it serves the child's best interests to have contact with the rejected parent and to repair the damaged relationship.

Is reunification therapy a remedy?

Many judges appoint therapists to work with the family in an office to alleviate the problems without altering existing legal and physical custody orders. The intended therapy goals are to transform the children's polarized views of their parents into more balanced and realistic views of each parent, with the hope that the child will reconnect with the rejected parent (Johnston, Walters, & Friedlander, 2001; Sauber, 2013).

This therapy, often labeled reunification therapy, may meet with moderate success under several conditions. Reunification therapy is more likely to be effective with mildly alienated children who grudgingly agree to spend time with the parent they disfavor. The therapy is more likely to succeed when the child rejects a parent after discovering behavior that diminishes the child's respect for the parent, such as learning of marital infidelity, and the child's justified disappointment overshadows the child's recognition of the full context, history, and value of the parent–child relationship. Successful therapy is especially more likely when the parent whom the child favors genuinely supports and encourages the repair of the child's relationship with the rejected parent.

Reunification therapy has a poor track record with severely alienated children who refuse all contact with the rejected parent, who repeatedly leave the rejected parent's home during the scheduled time together, and the parent with whom the child is aligned is not genuinely and strongly fostering and supporting the child's reunification with the rejected parent (Clawar & Rivlin, 2013; Fidler & Bala, 2010). Unfortunately, such court-ordered therapy often continues to allow the children to refuse contact with the rejected parent, even as the therapist works to overcome the family's problems.

Children who have been permitted to regulate whether and under what circumstances they will spend time in each parent's care, bring a sense of empowerment into the reunification therapist's office. The children and their favored parent cooperate with treatment as long as the therapist agrees that these children have valid reasons for rejecting a parent, shows empathy for the children's antipathy to repairing the relationship, or never challenges the children's negative views of the rejected parent (Johnston et al., 2001). Such cooperation evaporates, though, when the therapist resolves that the status quo is untenable and believes that the child should resume a positive relationship with the rejected parent.

When reunification therapy fails

Reunification therapy moves at a glacial pace or fails when children are severely alienated and live primarily or exclusively with a parent who does not effectively support and may not value the children's relationship with the other parent (Dunne & Hedrick, 1994; Fidler & Bala, 2010; Garber, 2015; Lampel, 1986; Lowenstein, 2006; Rand & Rand, 2006; Rand, Rand, & Kopetski, 2005; Sullivan, Ward, & Deutsch, 2010; Warshak, 2003, 2015b; Weir & Sturge, 2006). Unless the rejected parent gives up active efforts to heal the relationship with the children, the failure of court-ordered therapy returns the parents to court. At that point, the court's primary custodial options of the alienated children are as follows: (a) placement with the favored parent (favored by the children) accompanied by another round of court-ordered psychotherapy, (b) placement with the rejected parent, (c) placement with neither parent, or (d) placement with the favored parent with no scheduled contacts with the rejected parent (Warshak, 2010c, 2015a).

When the court awards custody to the rejected parent, this decision usually follows a prolonged period of time in which the favored parent violated court orders with impunity and, with their children, acted as if they were beyond the reach of the court with respect to complying with the court-ordered parenting plan (Kelly, 2010). In most of these cases the court also determines that the alienation reflects the ongoing influence of the favored parent on the children's negative attitudes about the rejected parent. To maximize the chances of the children and rejected parent healing their relationship, the court may temporarily suspend the children's contact with the parent whom they favor (usually for about 90 days), hoping that a no-contact order will shield the children from negative influences that may retard their progress, and will motivate the children to comply with the court's intentions (Warshak, 2015a).

Children who have become accustomed to resisting the custodial arrangements expect that their demands, protests, and threats will continue to defeat the court's intentions in the current round of litigation. Some children appear very stressed at the thought of living with the parent they have been rejecting. They may threaten to defy court orders, run away, destroy property, harm themselves, or hurt the parent (Clawar & Rivlin, 2013; Warshak, 2010c).

Children's resistance and the risks of acting out can be reduced when the court conveys its authority and expectation of success (Warshak, 2015a; Warshak & Otis, 2010). Although the social science literature emphasizes the importance of contact between children and the rejected parent to help correct children's distorted negative perceptions, contact alone often is not enough. The judge or the parent receiving custody may consider a specialized program to help the child accept the court orders, and to help the parent and

child heal their relationship. Research on the outcomes of such programs is limited (Saini, Johnston, Fidler, & Bala, 2016; Walters & Friedlander, 2016). Some programs reported effectiveness with families in the earlier and milder stages of alienation, but no success with cases that involved repeated violations of court orders, failure of past specialized interventions, alienating behaviors considered to be emotionally abusive or harmful, inability or unwillingness of the favored parent to modify alienating behavior, parents with severe personality disorders, and risks of child abduction (Ward, Deutsch, & Sullivan, 2017). Thus, courts and professionals need information on programs that can effectively help children in the most severe cases.

Family Bridges: an educational alternative for alienated parent–child relationships

The earliest non-office-based program for troubled and severely alienated parent–child relationships is Family Bridges (Kelly, 2010; Warshak, 2010a, 2010b, 2010c; Warshak & Otis, 2010). Family Bridges is a structured, 4-day, educational and experiential workshop in which the rejected parent and one or more of his or her alienated children participate together without any other families and without the favored parent whose contact with the children the court has temporarily suspended.

The workshop's primary goals are twofold. One goal is to prepare children to cooperate with court orders that require them to live with a parent whom they have rejected while having no contact for an extended period of time with their other parent. Family Bridges has fulfilled one aim if, by the end of the workshop, the children are perceived as being ready to return home with the rejected parent who has been awarded custody.

The second goal of Family Bridges is to improve the quality of the parent–child relationship. This objective seeks to jump-start the recovery of a positive parent–child relationship and teach better communication and conflict management skills. Family Bridges also teaches children how to think critically; how to maintain balanced, realistic, and compassionate views of both parents; and how to resist outside pressures that can lead them to act against their judgment.

In an initial study, Warshak (2010c) described Family Bridges' goals and procedures and effectiveness with a small sample. The study found that 22 of 23 previously alienated children from 12 families—alienated for an average of more than 2 years—restored a positive relationship with the rejected parent by the end of the workshop, and 18 children maintained those gains 2–4 years after the workshop.

The success of Family Bridges may stem, in part, from the program's novel educational approach, now emulated by other programs (Warshak, 2016). Family Bridges contrasts with traditional approaches in several

respects. The program engages children with a curriculum of entertaining videos and attention-grabbing materials. The workshop, which takes place in a leisure setting rather than a professional office, is concentrated in four full days rather than hourly sessions spread over months and years. As opposed to some forms of psychotherapy, the workshop is designed to contain rather than facilitate expression of strong negative emotions, and to focus on the present and future rather than the past. The activities are also designed so that children can gain insight into their negative attitudes while saving face.

A comprehensive description of the rationale, procedures, and type of materials used in Family Bridges is available in Warshak (2010a, 2010c) and Warshak and Otis (2010). Kelly (2010) reviewed the program and discussed its evidence-based, scientific foundations.

The current study

The current study improves upon the previous one in several respects. First, there are four times as many families as in the previous study. In addition, the current study relies on structured measurement instruments designed for the study that elicit data from parents, children, and workshop leaders (licensed professionals). The current study also includes measures of inter-rater reliability and measures of pre- and post-workshop parent–child relationships. Also, in place of global binary judgments about whether the parent–child relationship was successfully healed, the current study's measures capture a range of outcomes providing more nuanced and multi-faceted criteria of success or failure. The data are reported with statistical tests of significance, standard error rates, confidence intervals, and measures of effect size.

This article reports children's and parents' experiences and evaluations of Family Bridges, ratings made by the workshop leaders, and the extent to which the workshop achieved its main goals. The workshop leaders were not the same for all workshops, but all were trained in the Family Bridges protocol described in detail by Warshak (2010c).

Hypotheses and questions

(1) It was predicted that at the end of the workshop, parents and the workshop leaders would perceive the children as more ready than before the workshop to cooperate with the court-ordered custody arrangements, exhibit a decrease in their alienation, and evidence improvement in their relationship with the parent who participated in the workshop.

(2) It was hypothesized that parents and children would perceive the workshop as having helped to improve the children's feelings about the parent, to better the quality of the parent–child relationship, and to enhance their ability to get along with each other, communicate, and manage their conflicts.
(3) It was anticipated that the children would begin with negative attitudes about the workshop but end with more positive feelings about the experience.
(4) The study evaluated whether the children and parents described the professionals' behavior toward the children in positive or negative terms. This question was of interest because some children who make no progress in the workshop, or who later relapse into alienation, and the parents with whom they are aligned, complain about how the children were treated during the workshop (Warshak, 2016).
(5) It was expected that children's ratings of the workshop experience and its benefits, although in a positive direction, would not be as positive as parents' and professionals' ratings because of the high levels of anger and alienation common to children prior to their enrollment in Family Bridges.

Method

Participants

The study sample consists of 83 children (40 boys, 43 girls) in 52 families and their rejected parent. See Table 1 for the sample composition. More than half of the children (N = 43) were older than 14 years, with 19 children age 16 and older. Of the 52 parents who participated in the workshop, 37% (N = 19) were rejected mothers and 63% (N = 33) were rejected fathers. According to the parents, the children had rejected them for an average of 3 to 4 years. Typically the judges, custody evaluators, and guardians *ad litem* said that this was the "worst case of parental alienation" or the "most severely alienated child" they had seen in their career. More than half of the parents first learned about Family

Table 1. Composition of child sample.

	Rejected mother		Rejected father		
Age range	Boys	Girls	Boys	Girls	Total
8 and younger	0	0	0	3	3
9–11	4	3	7	2	16
12–13	2	4	8	7	21
14–15	4	6	6	8	24
16 and older	5	4	4	6	19
Total	15	17	25	26	83

Bridges through a professional assigned to their case (mainly court-appointed child custody evaluators and a few therapists and child representatives).

Each child in this study was found by the court to be irrationally alienated from a parent in the sense of rejecting the parent without adequate justification and resisting or refusing to comply with the court-ordered parenting time schedule. Further, each case involved previous unsuccessful attempts to repair the damaged parent–child relationship. In each case the court determined that it was in the child's best interest to be placed in the custody of the parent whom they were rejecting and to have an extended period of time (typically 90 days) in which all contact with the other parent was temporarily suspended. The reasons why courts issue a no-contact order vary, such as protecting children from psychological abuse in some cases. But two reasons relevant to the children's participation in a program such as Family Bridges are to shield children from negative influences that may retard their progress, and to motivate the children to comply with the custodial arrangements and to begin healing their relationship with the rejected parent (Warshak, 2015a).

When siblings participate together in a program, researchers can designate one child as the target subject of an outcome study or include all siblings. Choosing only one child from the family would make sense if all siblings in a family were alienated to the same degree and responded in similar ways to the workshop. If that were true, larger families would disproportionally affect the outcome data. In Family Bridges, though, all siblings do not begin the workshop with the same degree of alienation and do not always respond to the workshop in the same manner. Thus, data were elicited and analyzed from all siblings who participated in the workshop except for siblings whose parents rated them as not alienated or only minimally alienated. This yielded a sample size of 83 children.

Given the expenses associated with protracted custody litigation, the participants were predominantly from middle- to upper middle-class families. The sample was predominantly White from various urban, suburban, and rural areas throughout the United States, although it should be noted that the literature provides no evidence that the dynamics of, and effective remedies for, alienated parent–child relationships differ by race, ethnic background, geographic location, or socioeconomic status.

Procedures and materials

Parents completed questionnaires and provided baseline measures prior to the workshop, either emailing the completed document prior to arrival or handing in a hard copy before the workshop began. Parents, children, and

the professionals who led the workshop completed hard-copy questionnaires at the workshop's conclusion. Most of the questionnaire items called for Likert-type ratings. Questions were added to the instrument as the study progressed, thus resulting in more responses for some variables than others. The identity of the respondent does not appear on the questionnaire, and participants were advised that their responses would be tallied confidentially. Upon completing the questionnaire, participants placed it in an envelope and sealed it. The questionnaires for each workshop shared a common ID number to allow for comparisons of ratings.

Contact cooperation versus refusal and resistance

Prior to the workshop parents rated their perception of the extent to which the child cooperated with the court-ordered parenting schedule, and at the end of the workshop parents and workshop leaders rated the same variable. Parents and children also rated the extent to which they believed that the workshop would help the child live with the parent. Each item was rated on a 4-point scale from "not at all" to "a lot."

Alienation

Parents rated aspects of their children's alienation including rejection, withdrawal, and contempt both before and after the workshop on a 4-point scale from "not at all" to "a lot." Professionals rated the same scales at the workshop's conclusion. The contact cooperation and alienation scales were added after the study was under way, with 46 children being rated by parents and workshop leaders on these scales.

Change in quality of parent–child relationship

At the end of the workshop, parents, professionals, and children rated the change in the overall quality of the parent–child relationship on a 5-point scale from "much worse" to "much better."

Relationship changes attributed to the workshop

Conceivably, a parent or child could rate their relationship as better after the workshop, but not attribute the improvement to the workshop itself. So parents and children were asked to rate, on a 4-point scale, the extent to which the workshop helped change the child's feelings about the parent, helped them have a healthier, better relationship, helped them communicate more effectively with each other, and helped them settle their disagreements and conflicts better.

Children's experiences of Family Bridges

Children rated how they felt initially about attending the workshop and how they felt at the end on 4-point scales from "very negative" to "very positive." They also rated the workshop on a 4-point scale from "poor" to "excellent,"

and they indicated whether they believed that other families in similar situations would benefit from the workshop. In addition, children were asked whether the workshop seemed more like therapy and counseling, or more like education. Finally, children assessed the extent to which the workshop leaders treated them with respect and treated them with kindness on 4-point scales from "none" to "a lot."

Parents' experiences of Family Bridges

Parents rated how the workshop leaders treated the children and whether the workshop was more like education or therapy. Also, parents rated the workshop on a 4-point scale from "poor" to "excellent."

Miscellaneous

Parents indicated how they first learned of the workshop and how long their relationship with their child had been damaged.

Results

Data reduction

To simplify substantive analyses, Cronbach's alpha was calculated to assess the internal consistency of the three alienation items—rejection, withdrawal, and contempt—as rated by parents before and after the workshop, and by professionals after the workshop. The three scales demonstrated strong internal consistency, with Cronbach's alpha = .91, .89, and .92 respectively for ratings by the parents before and after the workshop, and by professionals after the workshop. Thus, the sum of the ratings on the three scales was used as the score for analyses of the child's pre- and post-workshop alienation.

Inter-rater reliability and concurrent validity

Contact cooperation versus refusal and resistance

Inter-rater reliability of the contact cooperation versus resistance score was calculated for 46 pairs of ratings made by two professionals workshop leaders and 46 pairs of ratings made by a professional and the parent. The possible scores ranged from 1 to 4 (corresponding to "not at all or only a little," "somewhat," "moderately," and "a lot").

The percentage of exact agreement in scores made by the two professionals was 91%, and the percentage of agreement within 1 point was 98%. Only one pair of raters had a 2-point discrepancy. Thus, the rating had high inter-rater reliability. In all cases of a discrepancy, the ratings from the workshop leader previously designated as rater #1 were used for subsequent analyses.

The percentage of exact agreement between parents' and professionals' ratings was 63% and the percentage of agreement within one point was 96%. Given the different perspectives of parents and workshop leaders, it was to be expected that the rate of agreement between the parents and the professionals would be lower than the rate of agreement between pairs of professionals. In the 15 cases with a 1-point discrepancy, most parents had lower expectations for child cooperation than did the professionals. One explanation for the discrepancy is that, having been rejected for so long, parents feel more pessimistic about whether the improvements would last. Another explanation is that workshop leaders are more apt to be optimistic about the results of their work. A third explanation is that professionals' experiences with alienated children position them to predict which children have made sufficient progress during the workshop to be able to maintain those improvements.

Alienation score

Inter-rater reliability of the post-workshop alienation score was calculated for 45 pairs of professionals' ratings and for 47 pairs of ratings made by a professional and the parent. The possible scores ranged from 3 to 12. Eighty percent of the professionals' ratings were identical and 98% of their ratings differed by no more than 2 points.

For the parent and professional pairs, 66% of the ratings were identical, and 85% differed by no more than 2 points. Again, we would expect that the rate of agreement between the parents and the professionals would be lower than the rate of agreement between the pairs of professionals. Nevertheless, whether rated by the professionals or the parents, the total alienation score has high inter-rater reliability. In addition, the high degree of agreement between the professionals' and the parents' ratings of post-workshop alienation suggests that the total alienation score has concurrent validity.

Change in quality of parent–child relationship

Inter-rater reliability of the scale assessing changes in the quality of the parent–child relationship was calculated for 45 pairs of professionals and 52 pairs of a professional and the parent. The possible scores ranged from 1 to 5. Eighty-four percent of the professionals' ratings were identical and 100% were within 1 point of each other. The percentage of exact agreement between ratings made by the parents and the professionals was 75% and the percentage of agreement within 1 point was 98%. Whether rated by the professionals or the parents, the scale assessing the change in the parent–child relationship has high inter-rater reliability. In addition, the high level of agreement between the professionals' and the parents' ratings suggests that this scale has concurrent validity.

Contact cooperation versus refusal and resistance

It was hypothesized that children would be perceived as more likely to accept the court-ordered custodial arrangements after the workshop compared with their behavior before the workshop.

As seen in Table 2, at the outset the parents perceived that only 15% of the children cooperated with the orders a lot or moderately. By the end of the workshop, the percentage of perceived cooperation rose to 94% as rated by parents and 96% as rated by professionals.

A paired-samples *t*-test compared parents' ratings of their child's willingness to comply with the custody schedule before and after the workshop. Lower scores indicate less compliance and more resistance. There was a significant difference in ratings before and after the workshop (Mean = 1.61, SD = 1.00 versus Mean = 3.63, SD = 0.68; Standard error of difference = 0.18); $t = 11.24$, $df = 45$, $p < .001$. The confidence interval of the difference was 1.66–2.38. Cohen's $d = 1.65$ indicates a statistically significant large effect size.

To further assess changes, the parent's perception of the child's willingness to comply with the custody schedule before the workshop was compared with the professional's rating at the end of the workshop. The mean difference between the parent's pre-workshop rating and the professional's post-workshop rating was 2.11 (pre-workshop Mean = 1.61, SD = 1.00 versus post-workshop Mean = 3.72, SD = 0.69; Standard error of difference = 0.176); $t = 11.95$, $df = 45$, $p < 0.001$. The confidence interval of the pre- versus post-workshop difference was 1.75–2.46. Cohen's $d = 1.77$ again yielded a statistically significant large effect size.

Parents and children rated the extent to which the workshop will help the child live with the parent, using a 4-point scale (4 = the workshop helped "a lot"; 3 = "some"; 2 = a little; 1 = "not at all"). The mean parent rating was 3.84 (SD = .37), with 16% rating "some" and 84% "a lot." The mean child rating was 2.64 (SD = 1.05), with 15% rating "not at all," 33% "a little," 24%

Table 2. Contact cooperation versus refusal and resistance.

	Parents pre-workshop	%	Parents post-workshop	%	Professionals post-workshop	%
Not at all or only a little	30	65	1	2	2	4
Somewhat	9	20	2	4	0	0
Moderately	2	4	10	22	7	15
A lot	5	11	33	72	37	80
Total positive (a lot + moderately)	7	15	43	94	44	96

Pre-workshop rating by parent: *To what extent is the child living with you cooperatively in compliance with the residential schedule put in place by the court?*

Post-workshop rating by parent and professional: *By the end of the workshop, to what extent was the child prepared to live with you [for observers: the parent] cooperatively in compliance with the residential schedule put in place by the court?*

"some," and 28% "a lot." As predicted, the children's ratings were less positive than the parents', but were still on the positive end of the scale—a noteworthy outcome for a group of children who had rejected the parent for years prior to the workshop.

These results support the hypothesis that children's contact refusal and resistance would be reduced by the Family Bridges workshop and they would be more willing to accept the court-ordered custodial arrangements.

Alienation

Child alienation scores were derived from parents' pre- and post-workshop ratings and from professionals' post-workshop ratings. A paired-samples *t*-test compared the total alienation score derived from parents' ratings before and after the workshop. The range of possible scores was 3 for least alienated to 12 for most alienated. The most frequent pre-workshop rating was 12 and post-workshop was 3. The average change in ratings was –6.85, indicating a substantial reduction in alienation (pre-workshop Mean = 10.96, SD = 1.80 versus post-workshop Mean = 4.11, SD = 1.69; Standard Error of difference = 0.37); $t = -18.62$, $df = 45$, $p < 0.01$. The confidence interval was –6.11 to –7.59. Cohen's $d = -2.75$, which is classified as a statistically significant large effect.

To reduce concerns about shared method variance, the parents' rating of alienation at the outset was compared to the professionals' rating after the workshop. The mean difference between the parent's pre-workshop rating and the professional's post-workshop rating was –7.24 (pre-workshop Mean = 10.96, SD = 1.80 versus post-workshop Mean = 3.72, SD = 1.83; Standard error of difference = 0.344); $t = -21.07$, $df = 45$, $p < 0.001$. The confidence interval was –6.55 to –7.93. Cohen's $d = -3.10$, which is classified as a statistically significant large effect. Thus, whether assessed exclusively with parents' ratings before and after the workshop, or with post-workshop ratings by the professionals compared with parents' pre-workshop ratings, the children's alienated behavior declined significantly and the effect was large, just as it was for the increase in the children's cooperation with the custody arrangements (see Figure 1 for a graphical depiction of the parents' pre- and post-workshop ratings).

Another way to consider the impact of the program is to consider the proportion of post-workshop alienation scores that remained high, above the mid-range of the scale (scores of 8–12) versus scores below the mid-range (3–7). By this criterion, 4% of the children rated by parents and by workshop leaders remained alienated. In sum, the analyses supported the hypothesis that children were less alienated by the end of the workshop.

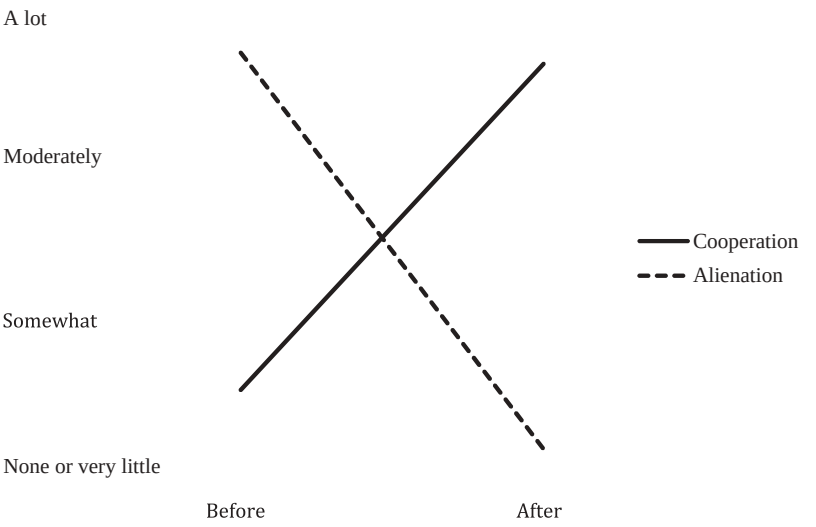

Figure 1. Improvement in cooperation with court orders, and reduction in alienation, comparing parents' mean ratings before and after the workshop.
Note: The range of scores is 1–4 for the cooperation scale and 3–12 for the alienation scale. The results were plotted proportionately.

Change in quality of parent–child relationship

At the end of the workshop, parents, professionals, and children rated the change in the overall quality of the parent–child relationship on a 5-point scale from much worse to much better. Parents and professionals most frequently rated the parent–child relationships as "much better" after the workshop, and children most frequently rated the relationships as "somewhat better." Combining the "much better" and "somewhat better" ratings revealed that parents rated 99% of the relationships as improved (75% "much better"; 24% "somewhat better"), professionals rated 94% of the relationships as improved (89% "much better"; 5% "somewhat better"), and children rated 74% of the relationships as improved (31% "much better"; 43% "somewhat better"). No parent or professional, but 7% of the children, rated the parent–child relationships as worse after the workshop. In sum, the parents and professionals were more likely than the children to report improvement in the parent–child relationships, and the adults reported higher levels of improvement. But three-quarters of the children rated the relationship with their parent as improved. See Table 3.

Relationship changes attributed to the workshop

Parents and children rated on a 4-point scale the extent to which the workshop helped improve various aspects of their relationship. As seen in Table 4, parents gave the workshop very high ratings on achieving all its goals. As

Table 3. Change in overall quality of parent–child relationship by the end of the workshop.

	Parent $N = 68$	%	Child $N = 83$	%	Workshop leader $N = 56$	%
Much better	51	75	26	31	50	89
Somewhat better	16	24	36	43	3	5
About the same	1	1	15	18	3	5
Somewhat worse	0	0	4	5	0	0
Much worse	0	0	2	2	0	0
Positive change	67	99	61	74	53	95
No change or decline	1	1	21	25	3	5

Note: The *N* varies for the three groups because at the study's outset parents were asked to rate this variable only for the child who was most alienated prior to the workshop (or oldest if children were equally alienated), and questionnaires for workshop leaders were added after the study was under way. For this reason, the percentages are the most useful for comparative purposes.

Table 4. Relationship changes attributed to the workshop.

	Parents		Children	
Workshop goals	Mean	SD	Mean	SD
Changed child's feelings about parent	3.47	0.73	2.49	1.17
Better, healthier parent–child relationship	3.86	0.35	2.76	1.00
Get along with each other better	3.84	0.37	2.88	1.06
Improved parent–child communication	3.94	0.24	3.09	0.94
Improved ability to manage parent–child conflicts	3.84	0.37	3.01	1.02

Note: Success in achieving workshop goals was rated 1 = Not at all, 2 = A little, 3 = Some, or 4 = A lot.

predicted, children's ratings were lower than parents' ratings, but still on the positive end of the scale. Children gave the workshop the most credit for improving their ability to communicate and manage conflict with their parent. But it is noteworthy that most children also credited the workshop for improving their feelings about the parent, making the relationship better, and helping them get along with each other better.

Children's experiences of Family Bridges

It was expected that children would prejudge the workshop as very negative, but would improve their attitude about the workshop after having experienced it. Children who did not benefit from the workshop would be inclined to report no change in attitude or a change in the negative direction.

Table 5 shows that, as predicted, most of the children (83%) began the workshop with negative feelings about it (χ^2 (3, $N = 83$) = 53.92, $p < .001$), Cramer's V = .81 which is classified as a statistically significant large effect. But most (78%) ended with positive feelings (χ^2 (3, $N = 83$) = 31.27, $p < .001$), Cramer's V = .62, which is classified as a statistically significant large effect. Even among the 15 children who reported "somewhat negative" feelings about their experience, 12 began with "very negative" feelings and thus the experience was not as bad as they had anticipated. In all, 74 of the 83 children (89%) felt better about the workshop than they had expected to feel.

Table 5. Children's attitudes about the workshop before and after the experience.

	Pre-workshop		Post-workshop	
	N = 83	%	*N* = 83	%
Very negative	47	57	3	4
Somewhat negative	22	27	15	18
Somewhat positive	12	14	36	43
Very positive	2	2	29	35
Total negative (very negative + somewhat negative)	69	83	18	22
Total positive (very positive + somewhat positive)	14	17	65	78

Pre-workshop rating: *When you first heard about this program, how did you feel about having to attend the workshop?*

Post-workshop rating: *Now that you have been through the workshop, how do you feel about your experience?*

Two-thirds of the 83 children rated the workshop as either "good" (the most frequent response) or "excellent" and only seven children (8% of the sample) gave a "poor" rating, χ^2 (3, N = 83) = 31.84, $p < .001$. Cramer's V = .62, which is classified as a statistically significant large effect.

Another way to tap children's genuine feelings is to ask them whether they think other families in a similar situation would benefit from the workshop. Some children might be reluctant to admit that they liked or benefited from the workshop. But they might be willing to indirectly endorse the experience by reporting that other children could benefit. More than half (53%) answered, "Yes," the workshop would help others, and another third (34%) answered, "Maybe." Only 13% answered, "No."

When asked if the workshop seemed more like therapy and counseling or more like education, 82% thought it was more like education. This may account for why so many children were satisfied with the experience. Some children (15%) reported that it was more like counseling, and three children did not admit that they had ever received counseling.

A majority of children felt that they were treated with "a lot" of respect (57%) and with "a lot" of kindness (66%). Nearly every child reported being treated with "some" or "a lot" of respect (95%) and kindness (96%). None reported that they were treated with no respect or kindness.

In sum, all five measures affirmed that the children's feelings and attitudes about the program moved in a positive direction.

Parents' experiences of Family Bridges

Parents were with their children at all times during the workshop. Thus, the parent was able to witness all interactions between the professionals and the children. Without exception every parent rated the workshop leaders as treating their children with "a lot" of kindness, and all but one parent rated the workshop leaders as treating their children with "a lot" of respect. Only one parent felt the child was treated with "some" respect and only one

thought the workshop was more like therapy than education. Parents rated the workshop even higher than did their children. No parent rated the workshop less than "good" and 75% rated it as "excellent."

Discussion

A colleague recently bemoaned a court's custody decision. The evidence was clear that an adolescent was living with an alienating parent who could not support or accept her having a loving relationship with the other parent. Despite noting parental behavior that constituted psychological abuse, the court left the child in a toxic environment because of fears that this teenager would run away or harm herself if the court did not rule as the child demanded.

Had this teen been living with a parent who had sexually or physically abused her, the court would not have hesitated to remove the child from the abusive home regardless of the child's desire to stay. Instead, the court would have prioritized protecting the child from further abuse. But faced with an alienated child's or teen's threats to defy a custody decision determined by the court to best serve the child's interests, many judges, child custody evaluators, and guardians *ad litem* feel stymied about how to resolve the impasse. A viable solution is a program that can motivate children to comply with the custodial arrangements, avoid acting out, and restore a positive relationship with their rejected parent. This study shows that the Family Bridges program was an effective option to meet these goals in this sample.

Contact cooperation versus refusal

The percentage of children perceived as resisting compliance with the court-ordered contact with their alienated parent dropped from 85% before the workshop to 6% after the workshop according to the parents and 4% according to the workshop leaders. In statistical and practical terms, the improvement was large. Although the exact percentage of such improvement may vary with other samples, these results suggest favorable odds that severely alienated children and adolescents will cooperate with the custodial arrangement after attending the 4-day Family Bridges workshop. Concerns about outright defiance are more prevalent with adolescents than with younger children. Thus, it is noteworthy that more than half of the children in this study were over the age of 14 and nearly a quarter were over the age of 16.

Gaining children's acceptance of court-ordered custody arrangements is an important goal. But if the children continue to wage a cold or hostile war against the rejected parent, the damaged relationships have not been adequately repaired.

Alienation

To determine whether children comply or resist spending time in a parent's home is fairly straightforward. Evaluating whether the children have made progress in overcoming their rejection of a parent, and repairing that relationship, is more complicated.

The parents' pre-workshop ratings confirm that their children were severely alienated. The most frequent rating was at the top of the alienation scale and the average rating was very close to the top. But after the workshop, parents' and the professionals' ratings of alienation were at the low end of the scale. If the criterion for "success" is a post-workshop alienation score in the bottom half of the scale, then 96% of the children had significantly overcome their alienation. The success rate with this sample is comparable to results reported for the smaller sample in Warshak (2010c).

The workshop's effectiveness in ameliorating alienation was also assessed by ratings of perceived changes in the quality of the parent–child relationship. The ratings of parents, professionals, and children revealed that the extent of improvement is in the eye of the beholder. Parents rated 75% of the relationships as "much better" and another 24% as "somewhat better." The professionals' perceptions resembled those of the parents.

In contrast, only 31% of the children reported that their relationship was "much better," and 43% reported "somewhat better." These results are encouraging, considering that the children were described as the most severely alienated children by the professionals with whom they were previously involved, that previous attempts to help them reconnect with their rejected parent had failed, and that most admitted experiencing very negative feelings about Family Bridges at the outset.

One possible explanation for the discrepancy between adult and child ratings is that the adults were mistaken. But the high level of agreement in the ratings of the parents and professionals points to the validity of those ratings. A more plausible explanation is that the children may not consider having warmer feelings for their parent as a sign that the relationship is "much better." Or, because these children have not felt free to express positive thoughts about the rejected parent, they may have felt obliged to report less enthusiasm about the improvement in the relationship, even though their outward behavior as rated by their parent and the professional revealed substantial change. Also, although the children were told that their questionnaire responses would be confidential, they may have feared that their other parent might learn of their responses.

Parents' experiences of Family Bridges

The results suggest a high level of parent satisfaction with the workshop. Even those parents whose children did not all sufficiently overcome their alienation rated the experience as good and beneficial. In no case did parents report that the workshop harmed their relationship with their child.

Children's experiences of Family Bridges

As predicted, most children (83%) began the workshop with predominantly negative expectations. Also as predicted, most of the children (nearly 90%) felt better about the workshop after having experienced it. Two-thirds of the children rated the workshop as "good" or "excellent," and only 8% rated it as "poor." Even among those who did not rate the workshop positively, most rated the workshop leaders as having treated them with kindness and respect. The average rating by children was positive for the workshop helping to improve their relationship with their parent, and they were most apt to perceive that the workshop helped improve their ability to communicate and manage conflict with their parent.

Based on the reports of the children, the parents, and the workshop leaders, this study does not support allegations that participating in the Family Bridges workshop traumatizes children or is coercive and punitive (Dallam & Silberg, 2016). To the contrary, five different measures affirmed that most of the children had positive feelings about the experience and about the workshop leaders.

Implications for courts, evaluators, and child representatives

The data from this study predict that a Family Bridges workshop will help most severely alienated children and adolescents adjust to a custody disposition that places them with a parent whom they have rejected. While a few children did not overcome their alienation, were not satisfied with the workshop, and would be prone to complain about the experience, this study shows that, overall, Family Bridges is a resource that judges and lawyers should consider for alienated children.

Evidence indicated that the workshop itself did not harm children and, according to the parents, was helpful even when a child did not appear to respond positively. Learning about other children's views of the workshop, such as the perception that it was more like school than therapy, may help reduce anxiety in children who are informed that they will be participating in Family Bridges. Some advocates, based on unsubstantiated anecdotes and theoretical speculations, have criticized the Family Bridges program (Dallam & Silberg, 2016). Courts should note that such opinions lack an adequate

basis in professional knowledge and are refuted by the empirical data from this study.

Although the current outcome data reveal a high level of effectiveness, the program was not successful with every child. Children who remain alienated after the workshop are prone to complain about the experience, especially when aligned with the parent who opposed their participation in the workshop (Warshak, 2016). Such complaints should be considered in the context of this study's data. In addition to the children's positive ratings, every parent reported that the professionals treated their children benevolently, and no parent perceived any mistreatment of any child. These data suggest that anecdotal reports to the contrary are best regarded as manifestations of a few children's continued alienation and condemnation of anyone who fails to endorse their rejection of a parent.

Study limitations and confounding variables

Children were not randomly assigned to different custody arrangements and different programs. Thus, we do not know whether the children and parents who participated in Family Bridges had certain characteristics that contributed to the positive outcomes. It would be difficult to partial out the impact of the court's custody decision, and the way in which it was announced to the children, from the impact of the workshop itself. The therapy prior to Family Bridges had been conducted while the children remained in regular contact with the favored parent. Professionals have observed that alienated children's favored parents can undermine the treatment process, particularly if they do not share the court's opinion that the children's estrangement is irrational and that repairing the damaged parent–child relationship is in the children's best interests (Kelly, 2010; Warshak, 2015a, 2015b). Having children participate only with their rejected parent may be one reason for the good results of Family Bridges workshops when compared with the lack of success of a "whole family intervention" (Ward et al., 2017). Family Bridges deals with children whose contact with their favored parent has been temporarily suspended. This not only provides an environment that may be more conducive to relationship repair, but it may also increase the children's motivation to cooperate with the custodial arrangements (Warshak, 2015a).

The children who did not respond positively to the workshop are too few to draw any meaningful conclusions about why they were less satisfied with the workshop. A larger sample of children who remain alienated after the workshop would allow investigation of factors that might mediate the effectiveness of the program for any individual child. This would allow courts, evaluators, and parents to do a better job of matching children to a particular approach.

The study used responses to Likert-type scales to tap children's attitudes about the workshop and its leaders. Although data such as the children's report that they were treated with respect and kindness during the workshop provide a valuable context for understanding unsubstantiated anecdotal complaints, it would be desirable to supplement these data with scores on multi-item standard scales to assess children's attitudes.

Questions for further study

This study was concerned only with the participants' experiences and the immediate outcomes of the workshop. Future work should examine the crucial and complex questions about the longevity and stability of the children's progress and about how long-term outcomes compare with a matched group of alienated children who did not participate in Family Bridges. Children's progress may be undermined if they prematurely resume contact with the parent who opposed their participation in Family Bridges and who continues to undermine their regard for the parent whom the children rejected prior to the workshop (Warshak, 2010c). If children's alienation returns shortly after they complete the Family Bridges workshop, the program may not be worth the investment of time, energy, and money.

Warshak (2010c) found that some children relapsed but the majority maintained their gains up to 4 years after completing Family Bridges. Anecdotal feedback from the parents in the current sample thus far reveals a similar pattern. But this needs to be documented and analyzed with research instruments. Gains are more likely to be sustained when the lessons and insights from the workshop are reinforced. For families that attend Family Bridges, this usually means working with a local aftercare professional. Future studies should assess the impact of aftercare.

Ratings from participants and leaders of the workshop are important data points, but future studies could supplement these data with ratings by independent observers who rate the parent–child relationship without knowing whether the family participated in Family Bridges and without the potential bias of having provided the workshop. Nevertheless, in a workshop designed to reduce the child's alienation from the parent, the combined perspectives of the parent and child are highly relevant variables. Also useful would be pre-workshop measures from the children about their attitudes toward their parents, toward the court-ordered custody arrangements, and toward the workshop. It is preferable to obtain such data prior to the children's arrival at the workshop.

In addition to documenting the outcome of the workshop, it is important to identify the elements of the experience that are most conducive to its effectiveness. The parents and the children confirmed that the workshop was more like education than therapy. The educational framework may account

in large measure for the workshop's positive outcomes with a population that had not responded to traditional forms of treatment.

Other questions remain to be explored. To what extent is the effectiveness of the program related to the less formal atmosphere in which the workshop takes place compared with treatment that takes place in an office? Would a comparison group of children who engaged in leisure activities with the rejected parent, or accompanied them on vacation, do as well as children who participated in the workshop? The author's experience with such planned vacations is that the children often refuse to participate, and when they do, the experience has not alleviated the children's alienation. Nevertheless, a research design that included such a comparison group would provide useful data. Another question to explore is which of the materials and procedures have the most beneficial impact. Future research may also shed light on which children, under which circumstances, are the best candidates for a Family Bridges workshop, and which children might benefit from an alternative approach.

Conclusion

The 83 children who participated in this study began the Family Bridges workshop with negative expectations. But by the workshop's end, most of the children felt positively about their experience, regarded the workshop as more like school than counseling, and felt that the professionals who led the workshop treated them with kindness and respect. Compared with their behavior before the workshop, by the end of it the children were perceived as significantly more willing to cooperate with custody orders and significantly less alienated, as indicated in ratings by the parents, children, and professional workshop leaders. The parents and children perceived the workshop as helping to improve their relationship skills and the quality of the parent–child relationship.

In sum, the results of this study document that a significant number of intractable and severely alienated children and adolescents who participated in the Family Bridges workshop repaired their damaged relationship with a parent whom they had rejected for many years.

Disclosure statement

Dr. Warshak previously conducted Family Bridges workshops. But for more than six years ago from the date of this paper, he has not conducted any Family Bridges workshops, nor has he had any business or legal affiliation with professionals who conduct Family Bridges workshops, nor has he had any financial interest in any Family Bridges workshops.

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Notes on contributor

Dr. Richard A. Warshak is a Clinical Professor of Psychiatry at the University of Texas Southwestern Medical Center and consults internationally in child custody proceedings. This study was conducted in the author's independent practice and not under the auspices of the university. Dr. Warshak studies the psychology of alienated children; children's involvement in custody disputes; and outcomes of divorce, child custody decisions, stepfamilies, relocations, and parenting plans for young children. His studies appear in 13 books, more than 75 articles, and more than 100 presentations. Dr. Warshak's paper on parenting plans, published in a journal of the American Psychological Association, was endorsed by 110 researchers and practitioners.

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The Parental Alienation Study Group …

is an international organization of mental health professionals, legal professionals, and child and family advocates who are interested in the study of parental alienation.

What is Parental Alienation?

Parental alienation is a mental condition in which a child – usually one whose parents are engaged in a high-conflict separation or divorce – allies himself or herself strongly with the preferred parent (the alienating parent) and rejects a relationship with the other parent (the target parent) without legitimate justification. The mental component of this condition is the false belief that the rejected parent is evil, dangerous, or not worthy of love. The behavioral component of parental alienation is the firm, persistent rejection of a relationship with the target parent.

What is Parental Alienation Study Group (PASG)?

PASG – a nonprofit corporation – consists of about 500 mental health and legal professionals and family advocates, who have a special interest in parental alienation. Our members come from more than 50 countries on six continents. The membership includes: numerous expert witnesses, such as forensic psychiatrists and psychologists; many attorneys and judges; alienated parents; presidents of national mental health organizations; and professors of psychology and psychiatry.

- Our members educate the public and mental health and legal practitioners regarding the causes, evaluation, prevention, and treatment of parental alienation.
- We have authored or edited about 60 books regarding parental alienation or a related topic and have published more than 100 articles in professional journals.
- We edited major reference books: *The International Handbook of Parental Alienation Syndrome* (2006), *Parental Alienation, DSM-5, and ICD-11* (2010), and *Parental Alienation: The Handbook for Mental Health and Legal Professionals* (2013).
- We maintain an extensive bibliography regarding parental alienation, more than 1,300 items, which is available online to the general public at http://mc.vanderbilt.edu/pasg.
- We organize international conferences; the next one is August 2018 in Stockholm, Sweden.

Do you want more information?

Visit our website at www.pasg.info.

Contact our president at william.bernet@vanderbilt.edu.

Nationally Known Interventions for Alienated Children and Rejected Parents

1. **Family Bridges:** 4 day workshop for severely alienated children and rejected parent. Empirically demonstrated to be effective. **Warshak, R. first published in the *Journal of Divorce and Remarriage*, 2018.** Traditional reunification therapy is not effective on severe cases. "Originated to help recovered abducted children who would be having no contact with the abducting parent." Phases: orientation/risk assessment; (1) basic concepts concerning perceptions, etc. (including videos); (2) divorce-related concepts and integration of learning; (3) Application of learning; (4) acquisition and practice of communication and conflict resolution skills; (5) Aftercare at home

2. **Stable Paths: Located in Florida and Boston:** "Reunification Intervention for Families Impacted by High Conflict Divorce, Parental Alienation, and Familial Abduction" Begun by Dr. Rebecca Bailey who also began **Transitioning Families** in California. Can include equine therapy and dolphin experience

3. **Overcoming Barriers Family Camp:** "Families will learn how to repair ruptured relationships in a safe and healthy environment." Various locations.

4. **MMFI:** An approach rather than a specific program. Multi-Modal Family Intervention "Child-centered, multi-tiered intervention for families in which a child aligns with one parent and resist/refuses to have contact with the other parent." Mental health professionals and legal professionals working as a collaborative team. Involves team working to achieve goals specified by the court. Team can include family therapist and parent coordinator who communicate with the court in what can be described as "customized confidentiality."

5. **Treatment Program for Severe Alienation** By Linda J. Gottlieb, LMFT, LCSW-R This program is based upon the principles of structural family therapy as established by child psychiatrist, Salvador Minuchin. The philosophy is quite simple and logical: people are most likely to change for those whom they love and for those who love them. Based on that axiom, the program elevates the rejected parent into the position of the deprogrammer and healer of the child. Requires 90 –day no contact order and transfer of custody.

Recognition of Parental Alienation by Professional Organizations
William Bernet

American Academy of Child and Adolescent Psychiatry

In 1997, the American Academy of Child and Adolescent Psychiatry (AACAP) published *Practice Parameters for Child Custody Evaluation,* an "AACAP Official Action" that was adopted by the governing body of AACAP. The practice parameters explicitly referred to and explained "Parental Alienation," stating: "There are times during a custody dispute when a child can become extremely hostile toward one of the parents. The child finds nothing positive in his or her relationship with the parent and prefers no contact. The evaluator must assess this apparent alienation and form a hypothesis of its origins and meaning. Sometimes, negative feelings toward one parent are catalyzed and fostered by the other parent; sometimes, they are an outgrowth of serious problems in the relationship with the rejected parent. ... Courts have great difficulty interpreting these dynamics and turn to evaluators for guidance.[1]

Association of Family and Conciliation Courts

In 2006, the Association of Family and Conciliation Courts (AFCC) published *Model Standards of Practice for Child Custody Evaluations.* In discussing the education and training for custody evaluators, that document explicitly referred to PA as follows: "Areas of additional specialized training include … the assessment of children's resistance to spending time with a parent or parent figure and allegations of attempts to alienate children from a parent, parent figure, or significant other."[2]

At the 2010 national AFCC conference, a survey of members found that 98% of respondents to a questionnaire agreed with the question, "Do you think that some children are manipulated by one parent to irrationally and unjustifiably reject the other parent?"[3] Of course, that question was intended to convey the essence of parental alienation (PA). Thus, both the membership and the leadership of AFCC endorse the reality and the importance of PA as one of the consequences of family conflict.

La Società Italiana di Neuropsichiatria dell'Infanzia e dell'Adolescenza

In 2007, the Italian Society of Child and Adolescent Neuropsychiatry (SINPIA) published a document titled *Guidelines on the Subject of Child Abuse.* That official document of SINPIA stated (after translation from Italian to English), "Psychological abuse includes: acts of rejection, psychological terrorism, exploitation, isolation and removal of the child from the social context. ... A further form of psychological abuse may be the alienation of a parent figure by the other until the cooperation of a child in "Parental Alienation Syndrome."[4] That publication by the child and adolescent neuropsychiatrists of Italy demonstrates how an awareness of the importance of PA moved from U.S. to Europe.

Asociación Española Multidisciplinar de Investigación Sobre Interferencias Parentales

In 2010, the Spanish Association for Multidisciplinary Research on Parental Interference (ASEMIP) published a document regarding the inclusion of parental alienation disorder in DSM-5. The official document of ASEMIP stated, "Bearing in mind that the American Psychiatric Association is in the process of drafting the fifth edition of Diagnostic and Statistical Manual of Mental Disorders (DSM-5), which will be published in May 2013, and its approval to study and review of the proposal of including Parental Alienation Disorder as formulated in August 2008, the Board of ASEMIP has agreed to endorse the inclusion of this disorder in this review within the terms defined by the authors of the recently published article 'Parental alienation, DSM-V, and ICD-11.'" (citations omitted)[5] This topic was discussed by mental health professionals in Spain. Some of them agreed with the proposal that PA be included in DSM-5; some did not.

American Psychological Association

In 2015, the American Psychological Association published the *APA Handbook of Forensic Psychology,* Fourth Edition*,* which is part of a series, the *APA Handbooks in Psychology.* The APA describes the *Handbooks* as "the authoritative psychology reference book series," which provides "a comprehensive overview and an in-depth study of specific subfields within psychology."[6] The *APA Handbook of Forensic Psychology* contains a chapter on "Child Custody and Access," which has a section with the heading, "Child Alienation." The chapter authors stated, "Over the past 25 years, considerable discussion has focused on the dynamics and processes of child alienation. Several different models describe child alienation"[7] The chapter authors then discussed the work of Judith Wallerstein and Joan Kelly, Richard Gardner, Joan Kelly and Janet Johnston, and Leslie Drozd and Nancy Olesen. Through its official publications, it is clear that the American Psychological Association accepts the reality and the significance of PA.

American Academy of Matrimonial Lawyers

In 2015, the American Academy of Matrimonial Lawyers (AAML) published *Child Centered Residential Guidelines.* That document does not include the words "parental alienation," but clearly describes the problem: "A child may also resist parenting due to contrived or magnified concerns regarding a parent that may be supported by the non-rejected parent. In cases where the concerns are unsupported or exaggerated, early and ongoing Court intervention is imperative to halt the conduct of the parent and to provide immediate consequences for the violation of court orders."[8]

American Academy of Pediatrics

In 2016, the American Academy of Pediatrics published a clinical report called "Helping Children and Families Deal with Divorce and Separation." That report said, "Alienation of the child and the targeted parent is a frequent problem that needs practical professional input to

correct the negative effects on all parties."[9] The report from the American Academy of Pediatrics cited publications by experts regarding child custody and parental alienation such as Douglas Darnall, Judith Wallerstein, William Fabricius, Edward Kruk, Katherine Andre, Amy J. L. Baker, and Janet Johnston.

American Professional Society on the Abuse of Children

In 2016, the American Professional Society on the Abuse of Children (APSAC) published *Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution.* That document explicitly refers to PA: "If interpersonal violence is determined unlikely, one possible explanation for the false allegation may be an attempt to alienate the child from a parent. … Such indoctrination is a form of psychological maltreatment."[10]

In 2017, APSAC published *The Investigation and Determination of Suspected Psychological Maltreatment of Children and Adolescents.* Although that document does not include the words "parental alienation," it clearly states that the following are forms of psychological abuse:

- "Belittling, degrading and other forms of hostile or rejecting treatment of those in significant relationships with the child such as parents, sibling, extended kin."[11]
- "Modeling, permitting, or encouraging betraying the trust of or being cruel to another person."[12]
- "Restricting or interfering with or directly undermining the child's important relationships (e.g., restricting a child's communication with his/her other parent and telling the child the lack of communication is due to the other parent's lack of love for the child)."[13]

It is clear that the leadership of APSAC consider causing PA in a child – that is, engaging in persistent ABs – to be a form of child psychological abuse.

Asociația Română pentru Custodia Comună

In 2016, two professional organizations in Romania – the Romanian Association for Common Custody and the Judicial Psychology Institute – agreed on a protocol regarding PA. Article 1 of the protocol stated, "Hereby the parental alienation phenomenon is acknowledged. Parental alienation represents a specific form of emotional child abuse. Under this Protocol, the parties shall request the state's entitled bodies to apply to the legislation and judicial practice the foreign good practices related to combating this phenomenon."[14] Thus, in Romania a mental health professional organization and a legal professional organization joined in recognizing the reality of PA.

IMPORTANT DIAGNOSTIC MANUALS

Diagnostic and Statistical Manual of Mental Disorders

The *Diagnostic and Statistical Manual of Mental Disorders,* Fifth Edition (DSM-5) is published by the American Psychiatric Association. While the actual words "parental alienation" were not included when DSM-5 was published in 2013, the concept was clearly expressed in that book. Children who experience PA can be identified by diagnostic terms that are in DSM-5 such as the following:

- *Child affected by parental relationship distress* (CAPRD) (V61.29), which "should be used when the focus of clinical attention is the negative effects of parental relationship discord (e.g., high levels of conflict, distress, or disparagement) on a child in the family, including effects on the child's mental or other medical disorders."[15]
- *Parent-child relational problem* (V61.20), which includes "negative attributions of the other's intentions, hostility toward or scapegoating of the other, and unwarranted feelings of estrangement."[16]
- *Child psychological abuse* (995.51), which includes "harming/abandoning … people or things that the child cares about."[17]

Since the definition of CAPRD in DSM-5 consisted of only one sentence, Bernet, Wamboldt, and Narrow published a detailed explanation of this new diagnosis. They said that CAPRD "may be used for four troublesome family circumstances that are distinct but interrelated," including intimate partner distress, intimate partner violence, loyalty conflict ("trying to maintain affection for both parents, who are in conflict with each other"), and parental alienation ("gravitating to one parent and wrongly believing that the rejected parent is dangerous").[18]

Some critics of PA have wrongly stated that the editors of DSM-5 rejected the concept of PA because the words "parental alienation" were not included when the book was published. That assertion is not correct. Actually, when DSM-5 was being developed, members of the DSM-5 Task Force never said that they doubted the importance of PA. However, they explained that PA did not meet their standard definition of a mental disorder, that is, "the requirement that a disorder exists as an internal condition residing within an individual."[19] The members of the DSM-5 Task Force said that PA should be considered an example of a relational problem – as in CAPRD and parent-child relational problem – because it involves a disturbance in the child's relationship with one or both parents.

International Classification of Diseases

The *International Classification of Diseases,* Eleventh Edition (ICD-11) is published by the World Health Organization. When ICD-11 was published in 2018, PA was not included as a separate diagnosis with its own identifying number. However, "parental alienation" and "parental estrangement" were included as index terms for an ICD-11 diagnosis, *caregiver-child relationship problem.* PA is considered an alternative term for caregiver-child relationship problem, which is defined as "substantial and sustained dissatisfaction within a caregiver-child relationship associated with significant disturbance in functioning."[20] Thus, if a reader searches ICD-11 for "parental alienation," they are taken to the definition of caregiver-child relationship problem. It is clear that the editors of ICD-11 accepted the reality of PA.

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[12] *Id.*

[13] *Id.*

[14] Asociația Română pentru Custodia Comună and Institutul de Psihologie Judiciară, *Protocol Concluded between the Romanian Association for Common Custody and the Judicial Psychology Institute* (2016).

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[16] *Id.* at 715.

[17] *Id.* at 719.

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*Warshak, R. (2015) Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy. American Psychological Association235-249. http://dx.doi.org/10.1037/pr0000031.

*Included in handouts

Parental Alienation: Don't Be Fooled ©

Counterintuitive
Controversial
Clinically Diagnosable
Child/Domestic Abuse
Conundrum

Parental Alienation: Don't be Fooled ©

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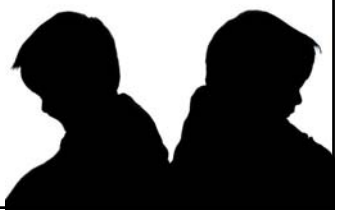


What is in your handouts?

1. **Reference page including full citations for all articles discussed in presentation**
2. **A list of international groups who recognize parental alienation**
3. **Information about PASG (Parental Alienation Study Group) International group studying PA**
4. **Three articles in their entirety: Richard Warshak (2), CDV article**
5. **Interventions to help alienated children and their parents reconnect**

Counterintuitive: Empirical proof

We have added 300 new cases to our original sample of 700 for a total of 1,000 cases…Our research continues to confirm that even under court order, traditional therapies are of little, if any benefit in regard to treating this form of child abuse."

Children Held Hostage. Identifying Brainwashed Children. Presenting a Case and Crafting Solutions. **Clawar and Rivilin From the Second Edition published by the American Bar Association, 2013. (Preface, page xxvii)**

Counterintuitive: Legally

The High Conflict Model as utilized in the courtroom and therapy office:

- **Assumes that both parents are significantly and more or less equally responsible for the family dynamics.**
- **Fails to properly consider the possibility that one party is an aggressor and the other is in defense mode, trying to manage a horrific family crisis.**
- **Entails multiple severe cognitive errors.**
- **From both clinical and legal perspectives, use of the High Conflict Model in a case of parental alienation is a recipe for disaster.**
- **These cases do not respond well to mediation because most involve a parent with a diagnosable personality disorder.**

Counterintuitive: Therapeutically

"Therapists who insist on a trial of conventional therapy are exceedingly unlikely to succeed….Such an approach is worse than worthless because while the therapist provides futile treatment, the child, already injured , is deprived of effective intervention—including protection."

Miller, Steven G. *Working with Alienated Children and Families. A Clinical Guidebook.* Ed. Amy Baker and Richard Sauber. Chapter 2: "Clinical Reasoning and Decision-making in Cases of Child Alignment." (Page 16)

(Emphasis added.)

Counterintuitive: Conceptually

- **Reunification of the alienated child with the rejected parent is not the highest priority: This isn't only about custody but rather about *child protection.*** *We would never leave a physically or sexually abused child with the abuser.* **We are talking about psychological and emotional maltreatment and abuse—which has been shown to be at least as damaging and probably more damaging than physical and/or sexual abuse.**

The [Pseudo] Controversy

"Is Parental Alienation a Syndrome?"

- **Syndrome A grouping of signs and symptoms, based on their frequent co-occurrence that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection.**

The actual definition of a syndrome from the DSM-III, DSM-IV, DSM-IV-TR, DSM-5 published by the American Psychiatric Association

Controversy: Alienation vs Estrangement

- **Alienated children do not resemble estranged children except superficially. Although there is individual variation, alienation generally presents in a highly characteristic fashion that can be identified via pattern recognition.**
  - **The 8 manifestations and the 17 strategies are known to be accurate—highly characteristic.**
  - **This has been confirmed through hundreds of empirical reports.**
- **Another source of information is the literature on foster care, specifically children who have been removed from their homes for documented abuse or neglect. With few exceptions, those children do not reject their abusive parents the way alienated children do; they do not display the eight manifestations of PA.**
  - **Rather, they defend and cling to their abusive parents.**

Is Alienation a Legitimate Concept?

- American Academy of Child and Adolescent Psychiatry (AACAP)
- Association of Family and Conciliation courts (AFCC)
- American Psychological Association (APA Handbook of Forensic Psychology)
- American Bar Association (ABA)
- American Academy of Pediatrics (AAP)
- American Academy of Matrimonial Lawyers (AAML)
- American Professional Society on the Abuse of Children (APSAC)
- Spanish Association for Multidisciplinary Research on Parental Interference (ASEMIP)
- Romanian Association for Common Custody and the Judicial Psychology Institute
- Italian Society of Child and Adolescent Psychiatry

All these international and professional entities say "YES!"

Is Alienation a Legitimate Concept?

- **Diagnostic and Statistical Manual of Mental Disorders (DSM-5) American Psychiatric Association (2013)**

  1. Child Affected by Parental Relationship Distress (Z62.898)
  2. Parent Child Relational Problem (Z62.82)
  3. Child Psychological Abuse (T74.32X[A][D])
  4. Delusional disorder (F22)
  5. Factitious disorder (F 68.10)

- **International Classification of Diseases (ICD-11) World Health Organization (2018)**

  1. Caregiver-Child Relationship Problem ("Parental alienation" included in definition)

Yes it is a legitimate diagnosis in manuals utilized nationally and internationally

Clinically diagnosable

Established science worldwide shows what to look for:
Alienating (favored) parent strategies

- Badmouthing/brainwashing
- Limiting/obstructing contact (scheduling activities during targeted parent's time)
- Interfering with communication (phone is off, not charged, left at home)
- Erasing target parent presence, (ignoring him/her or removing pix)
- Withholding love and approval
- Telling/hinting that other parent doesn't really love him/her
- Forcing child to choose between parents
- Creating impression the other parent is dangerous
- Confiding in the children
- Often targeting/enlisting oldest child then having that child participate in alienation of younger siblings

Clinically diagnosable

Established science worldwide shows what to look for:
Alienating (favored) parent strategies

- Putting child into loyalty bind and/or rejecting other parent
- Asking child to spy on/record other parent
- Encouraging child to keep secrets from other parent
- Referring to step-parent as “mom” or “dad”
- Withholding medical, social, educational, extracurricular info
- Changing child’s name to disrupt identity/association with other parent
- Undermining authority
- Inserting him/herself into other’s parenting time
- Enlisting friends, family, community

Clinically diagnosable

Behaviors unique to alienated children

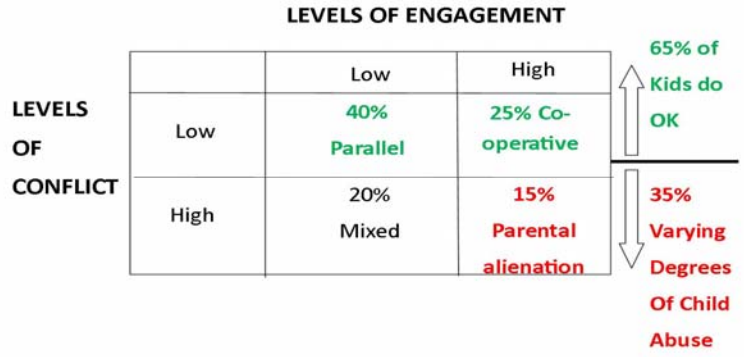
- **A campaign of denigration against rejected parent**
- **Weak, frivolous or absurd reasons for the rejection**
- **Lack of ambivalence**
- **Reflexive support of the alienating parent**
- **Absence of guilt**
- **Borrowed scenario**
- **Rejection of friends and extended family**
- **“Independent thinker” phenomenon**

Clinically diagnosable

Additional Important Symptoms of Alienated children
Note: it is the behaviors/symptoms of the children (not only the parent) that determines the presence or absence of alienation

- **Although those eight signs are well-known, there are other important indicators, for example:**
  - *There was a previously-good baseline relationship between the child and the parent.*
  - The child denies or downplays positive memories of the rejected parent ("erasing of positive memories").
  - Over-empowerment of the child.
  - Signs of pathological enmeshment:
    - Infantilization. Adultification. Parentification.

Child abuse potential: post divorce



Child Abuse/Maltreatment

DSM-5 Definition (© 2013 APA, p. 719):

Child psychological abuse *is non-accidental verbal, symbolic acts by a child's parent or caregiver that result, or have the reasonable potential to result in significant psychological harm to the child*

Berating, disparaging, or humiliating the child; threatening the child; harming/abandoning—or indicating that the alleged offender will harm/abandon—*people or things that the child cares about* [emphasis added]

Is this reportable?

Child Abuse/Maltreatment

The APSAC definition of psychological maltreatment: (© 2017 and 2018 p. 147)

Psychological maltreatment is defined as a repeated pattern or extreme incident(s) of caretaker behavior that thwart the child's basic psychological needs (e.g. safety, socialization, emotional and social support, cognitive stimulation, respect) and convey a child is worthless, defective, damaged goods, unloved, unwanted, endangered, primarily useful in meeting another's needs, and/or expendable.

Child Abuse/Maltreatment (APSAC)

TERRORIZING

- *Placing a child in a loyalty conflict by making the child unnecessarily choose to have a relationship with one parent or the other*

Child Abuse/Maltreatment (APSAC)

Exploiting/ Corrupting

- *Modeling, permitting, or encouraging betraying the trust of or being cruel to another person*
- *Restricting or interfering with or directly undermining the child's important relationships (e.g. restricting a child's communication with his/her other parent and telling the child the lack of communication is due to the other parent's lack of love for the child)*

Child Abuse/Maltreatment (APSAC)

Exploiting/Corrupting

- *Coercing the child's submission through extreme over-involvement, intrusiveness, or dominance, allowing little or no opportunity for support for the child's feelings and wishes; micromanaging child's life, and/or manipulating (e.g. inducing guilt, fostering anxiety, threatening withdrawal of love, placing a child in a double bind in which the child is doomed to fail or disappoint, or disorienting the child by stating something is true/false when it is patently not so).*

Enmeshment: The Beating Heart of Alienation

- **Modeling, permitting, or encouraging developmentally inappropriate behavior (e.g. parentification, adultification, infantilization, living the parent's dream).**
- **This a definition of enmeshment: therefore this establishes enmeshment as a form of child abuse. <u>All</u> enmeshment is pathological and <u>all</u> cases of parental *alienation include enmeshment* .**

Child Abuse/Maltreatment

Centers for Disease Control and Prevention (CDC) Department of Health and Human Services (HHS) © 2008 p. 11

- *Child maltreatment: any act or series of acts of commission or omission by a parent or other caregiver that results in harm, potential for harm, or threat of harm to a child.*
- *Acts of commission (Child abuse): Words or overt actions that cause harm, potential harm, or threat of harm to a child.*
- *Acts of omission include emotional neglect.*

Child Abuse is Domestic Violence

- **Largely unacknowledged by legal and health professionals;**
  - ***Narrative must change***
- **A form of family violence: intimate partner violence**
- **Power imbalance seen in custody disputes**
- **Parental behavior is an outcome of aggressive behaviors with the intent to cause harm.**
- **Direct lines drawn between emotional/psychological aggression and the behavior of alienating parents**
- **Those aggressive behaviors impact the children as well as the targeted parent**
- ***Children are used as weapons in parental alienation***

**Harman, J.J, Et. Al. Parental alienating behaviors: An unacknowledged form of family violence. *Psychological Bulletin (American Psychological Association)* 2018 *(p.1275-1299)*

Consequences: Impact of Alienation Without Intervention

1. **Medical Illnesses (heart and cardiovascular or lung disease, cancer, resulting in premature death)***This is the so-called ACE study by Felitti, V.J., et.al 1998. Study of 9500+ individuals and was first published in* ***The American Journal of Preventive Medicine.***
2. **Permanent structural damage ("rewiring" the brain), functional impairment, changes in brain structure resulting in behavioral abnormalities and mental health problems.** Anda, R.F. Felitti, V.J., et. al. *Utilizing the same study subjects from the ACE Study consisting of 17,337 people first appeared in 2006; published in the European* ***Archives of Psychiatry and Clinical Neuroscience.***
3. **Interference with cognitive development, reduction in gray matter in the brain.** *Edmiston, E.E., Wang, F, et.al. 2011 first published in* ***Archives of Pediatric Adolescent Medicine 2011.***

- **4. Psychological and emotional abuse is at least as damaging to children as physical and sexual abuse.** *Spinazzola, J. Hogdon, H., et.al.* ***First published in Psychological Trauma 2014.***

Consequences: Impact of Alienation Without Intervention

5. **Psychiatric impairment and mental health disorders.** ***Nurius, P.S., Green, Logan-Greene., et.al. first published in Child Abuse & Neglect, 2015.***
6. **Personality disorders and mental health disorders.** *Taillieu, et.al. First Published in* ***Child Abuse & Neglect, 2016.*** *Analysis of 34,653 individuals.*
7. **Structural changes to cells on a molecular level.** ***Mitchell, C., McLanahan,*** *et.al. First published in* ***Pediatrics, 2017.*** *This study looked at individuals who had suffered father loss and were found to have shortened telomeres that are markers for aging or injury. There is also evidence that there is the presence of genetic alleles that enhance stress sensitivity.*

Consequences: Impact of Alienation Without Intervention

8. Based on guidelines from the **Individuals with Disabilities Acts and Amended (IDEAA)** it was noted problems of interpersonal thoughts, feelings and behaviors: anxiety, depression, negative self concept, and negative cognitive styles that increase susceptibility to depression, alcoholism, and suicidal thoughts. There are attachment problems. There is a cognitive, conative, and affective impact.
9. The incidence of so-called "spontaneous reconciliation" with a previously rejected parent is abysmally small: estimated to be about 10%. The average length of time of separation and alienation is as short as about 7 years (representing the bulk of the an individual's childhood) to 46 years. 50% of alienated children go on to be alienated from their own children.
10. Individuals develop an inability to form or to sustain healthy relationships—often resulting in their own abusive relationships and often alienate or are alienated from their own children.

Conundrum: When litigation becomes necessary

Common alienating behaviors occurring specifically during litigation

- Violating Court Orders: exploiting ambiguities/loopholes; continually reinterpreting in the name of being "flexible".
- Filing multiple RTSCs and other abuses of judicial system (these folks are "frequent fliers" in court).
- Clandestine contact with child during periods of court ordered protective separation ("no contact order").
- False allegations of physical and/or sexual abuse. It is a dead giveaway if the charges only start upon separation and/or divorce. Abused children do ***not*** typically reject their abuser.
- **Favored parents often present very well both in court and the counselor's office,** because they usually have personality disorders and are master manipulators. **Rejected parents** may present poorly: angry, anxious, paranoid.

Conundrum: When litigation becomes necessary

- **TIME SENSITIVE:** early intervention is critical; alienation becomes more resistant to change as time goes on.
- **Custody reversal** is necessary in addressing severe alienation. Contrary to what is intuitive, it is not traumatic for children.

**Warshak, R. (2015) Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy. American Psychological Association235-249. http://dx.doi.org/10.1037/pr0000031.

- **Protective separation** (aka "no contact period")—usually 90 days with "consequences" if there is clandestine contact.
- **GAL** must be versed in alienation to recognize what s/he is seeing. Delay will exacerbate the alienation.

Conundrum: When litigation becomes necessary

- **Unending conflict post divorce is the most damaging part of divorce**
- **When there is repeated court intervention, it puts strain on the whole family system: parents, children, emotional, financial**
- **Without court intervention, the alienator will not stop and the child will not be protected**
- ***Collaborative treatment is vital*: well-trained mental health professionals working alongside well-prepared, cognizant legal professionals: attorneys, Guardians *ad litem,* and sophisticated, courageous Judges.**

Clarity in the Courtroom

- **Court Orders have to be unambiguous,** They need to be as detailed as possible (more than usual) because of virtual certainty of non-compliance. Alienating parents often feign lack of understanding in hopes of employing "plausible deniability" as a defense for breaking the Order.
- **Custody reversal,** followed by protective separation (no contact) is not only appropriate but necessary in severe cases. It allows the child to psychologically separate from the alienator and enough time to rebuild the lost relationship with the other parent. It is crucial to understand this concept is of great import in determining success. **Warshak, R. (2018) Reclaiming Parent-Child Relationships: Outcomes of Family Bridges with Alienated Children. Journal of Divorce and Remarriage. DOI: 10.1080/1050.2556. 1529505
- **Rules to Show Cause are often not effective**—usually because of lack of effective consequences as well as the time needed to get back into court. In the meantime, the alienation continues unabated. Sanctions should be appropriately severe and should be levied for abuse of the judicial system by alienating parents.
- Favored parents often rely on the **status quo** to allow them to continue in their defiance of Court Orders

Summary

- **Appropriate, specific Court Order interventions are the only means of protecting these children**

  Favored parents will not stop and left to their own devices, only 1 in 10 alienated children will spontaneously reunite with their rejected parent. **Lorandos, et.al.**

  Parental Alienation.
  The Handbook for Mental Health and
  Legal Professionals. Published in 2013

  - Favored parents will not willingly participate in therapy; there must be a careful selection of mental health professional.
  - Court Orders must require the parents to comply with mental health professional's directives as part of the judicial order or they will obstruct the process.

Summary

- **Alienation is not an abstract phenomenon; it is well defined, proven, backed by science, and recognized worldwide**
- **Diagnosable and distinguishable from bona fide physical and/or sexual abuse on the part of the targeted parent, based upon scientifically established behaviors and patterns**
- **In the case of actual abuse, the child tries to appease, not reject the abuser**
- **Alienation is consistent with scientifically accepted definition of psychological abuse/maltreatment, and domestic/intimate violence**

Finally…..

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Handling Abuse Allegations

Heather Smith

Materials not provided at this time

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Caselaw Update

Brooke Evans

CASELAW UPDATE

Brooke Chapman Evans

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STANDARD OF REVIEW

Stoney v. Stoney, 422 S.C. 593, 813 S.E.2d 486 (2017)

GAL HEARSAY

Bojilov v. Bojilov, Opinion No. 5595 (S.C. Ct. App. 2018)

CUSTODY/VISTIATION

Burgess v. Arnold, Opinion No. 5531 (S.C. Ct. App. 2018)

Urban v. Kerscher, et al., Opinion No. 5560 (S.C. Ct. App. 2018)

Jobst v. Martin, et al., Opinion No. 5567 (S.C. Ct. App. 2018)

Grantham v. Weatherford, Opinion No. 5594 (S.C. Ct. App. 2018)

Brown v. Key, Opinion No. 5610 (S.C. Ct. App. 2019)

TPR/ADOPTION

SCDSS v. Boulware, 422 S.C. 1, 809 S.E.2d 223 (2018)

Ex Parte: Carter, 422 S.C. 623, 813 S.E.2d 686 (2018)

Clark v. Clark, Opinion No. 5558 (S.C. Ct. App 2018)

SCDSS v. Smith, 423 S.C. 60, 814 S.E.2d 148 (2018)

422 S.C. 593 (2017)
813 S.E.2d 486

Lori Dandridge STONEY, Respondent,
v.
Richard S.W. STONEY Sr., Petitioner, and
Theodore D. Stoney Jr., Petitioner.

Opinion No. 27758.

Supreme Court of South Carolina.

Submitted November 29, 2017.
Filed December 20, 2017.

Appeal From Orangeburg County, Appellate Case No. 2016-002076, The Honorable Peter R. Nuessle, Family Court Judge.

REVERSED AND REMANDED.

Charles H. Williams, of Williams & Williams, of Orangeburg, Donald Bruce Clark, of Charleston, and James B. Richardson Jr., of Columbia, for Petitioners.

J. Michael Taylor, of Taylor/Potterfield, of Columbia, and Peter George Currence, of McDougall, Self, Currence & McLeod, of Columbia, for Respondent.

594 *594PER CURIAM:

Petitioners each seek a writ of certiorari to review the decision of the court of appeals in *Stoney v. Stoney,* 417 S.C. 345, 790 S.E.2d 31 (Ct. App. 2016). In *Stoney,* the court of appeals directed the family court judge to conduct a new trial after holding the judge abused his discretion or otherwise erred in regards to multiple issues. Finding error in the standard of review applied by the court of appeals on issues III to XI, we grant the petitions, dispense with further briefing, reverse the court of appeals, and remand the case to the court of appeals to decide the appeal applying the appropriate standard of de novo review articulated in *Lewis v. Lewis,* 392 S.C. 381, 709 S.E.2d 650 (2011).[1]

In *Lewis,* this Court extensively analyzed the applicable standard of review in family court matters and
595 reaffirmed that it is de novo.[2] We noted that, while the term "abuse of *595 discretion" has often been used in this context, it is a "misnomer" in light of the fact that de novo review is prescribed by article V, § 5 of the South Carolina Constitution. *See* S.C. Const. art. V, § 5 (stating in equity cases, the Supreme Court "shall review the findings of fact as well as the law, except in cases where the facts are settled by a jury and the verdict not set aside").

We observed that de novo review allows an appellate court to make its own findings of fact; however, this standard does not abrogate two long-standing principles still recognized by our courts during the de novo review process: (1) a trial judge is in a superior position to assess witness credibility, and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial judge.

In the current appeal, the court of appeals cited *Lewis,* but it veered from a complete application of this benchmark. The court of appeals repeatedly referenced an "abuse of discretion" standard throughout its findings, which culminated in a reversal and remand for a new trial on numerous issues. As recognized by the

parties, once the court of appeals found error in one aspect of the family court judge's ruling, it impacted other components, creating a "domino effect."

Although appellate courts have been citing *Lewis* for the appropriate standard of review in family court matters since its publication in 2011, there appears to be lingering confusion over the actual implementation of this standard. This is evidenced by the fact that in some decisions the courts have cited *Lewis* while also
596 simultaneously referencing cases citing an abuse of discretion standard.[3] In addition, some *596 attorneys continue to cite an abuse of discretion standard in their briefs to this Court. This trend is troubling in light of the fact that application of the correct standard of review is often crucial in an appeal. *See Dorman v. Dep't of Health & Envtl. Control*, 350 S.C. 159, 565 S.E.2d 119 (Ct. App. 2002) (high-lighting the critical importance of a court's standard for review). For these reasons, we reiterate that the proper standard of review in family court matters is de novo, rather than an abuse of discretion, and encourage our courts to avoid conflating these terms in appeals from the family court.

Accordingly, we reverse the decision of the court of appeals and remand this case for consideration of the issues on appeal applying the de novo standard.

REVERSED AND REMANDED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

[1] We vacate our previous opinion in this case, and substitute this opinion. *See Stoney v. Stoney*, 421 S.C. 528, 809 S.E.2d 59 (2017).

[2] *Lewis* did not address the standard for reviewing a family court's evidentiary or procedural rulings, which we review using an abuse of discretion standard. *See, e.g., Broom v. Jennifer J.*, 403 S.C. 96, 115, 742 S.E.2d 382, 391 (2013) (stating on appeal from the family court "the admission or exclusion of evidence is within the trial judge's discretion" (citing *Fields v. Reg'l Med. Cent. Orangeburg*, 363 S.C. 19, 25-26, 609 S.E.2d 506, 509 (2005))); *Gov't Employee's Ins. Co., Ex parte,* 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007) (stating on appeal from the family court, "The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court"); *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013) (stating on appeal from the family court, "The decision to deny or grant a motion made pursuant to Rule 60(b), SCRCP is within the sound discretion of the trial judge.").

[3] *See, e.g., McKinney v. Pedery*, 413 S.C. 475, 776 S.E.2d 566 (2015); *Crossland v. Crossland*, 408 S.C. 443, 759 S.E.2d 419 (2014); *Wilburn v. Wilburn*, 403 S.C. 372, 743 S.E.2d 734 (2013); *Woods v. Woods*, 418 S.C. 100, 790 S.E.2d 906 (Ct. App. 2016); *Ricigliano v. Ricigliano*, 413 S.C. 319, 775 S.E.2d 701 (Ct. App. 2015); *Srivastava v. Srivastava*, 411 S.C. 481, 769 S.E.2d 442 (Ct. App. 2015); *Hawkins v. Hawkins*, 403 S.C. 228, 742 S.E.2d 677 (Ct. App. 2013); *Lewis v. Lewis*, 400 S.C. 354, 734 S.E.2d 322 (Ct. App. 2012); *Sheila R. v. David R.*, 396 S.C. 41, 719 S.E.2d 682 (Ct. App. 2011); *Moeller v. Moeller*, 394 S.C. 365, 714 S.E.2d 898 (Ct. App. 2011); *Reed v. Pieper*, 393 S.C. 424, 713 S.E.2d 309 (Ct. App. 2011).

Susan Schaefer Bojilov, Respondent/Appellant,

v.

Blago Metodiev Bojilov, Appellant/Respondent.

Opinion No. 5595.

Court of Appeals of South Carolina.

Heard December 5, 2017.
Filed September 19, 2018.

Appeal From Berkeley County, Appellate Case No. 2015-000991, Wayne M. Creech, Family Court Judge.

AFFIRMED IN PART AND REVERSED IN PART.

T. Ryan Phillips, of the Law Office of T. Ryan Phillips, of Charleston, for Appellant/Respondent.

Gregory S. Forman, of Gregory S. Forman, P.C., of Charleston, for Respondent/Appellant.

WILLIAMS, J.

In this domestic relations matter, Blago Metodiev Bojilov (Husband) appeals the family court's final divorce decree, arguing the court erred in (1) awarding Susan Schaefer Bojilov (Wife) $200 per month permanent periodic alimony, (2) awarding Wife sole legal and physical custody of the parties' minor child (Son), (3) awarding Wife discretion in obtaining a passport for Son, (4) classifying Husband's Bulgarian Fibank account as a marital asset, (5) apportioning Husband insufficient equity in the marital residence, and (6) awarding Wife $30,000 for attorney's fees. Wife cross-appeals, asserting the family court erred in (1) apportioning Wife insufficient equity in the marital residence; (2) not including Husband's unaccounted-for funds in the equitable distribution; (3) making Wife pay Husband his equitable distribution in post-tax, non-retirement assets; and (4) not awarding Wife attorney's fees incurred while defending Husband's motion to reconsider. We affirm in part and reverse in part.

FACTS/PROCEDURAL HISTORY

Husband and Wife married in Berkeley County, South Carolina, on August 8, 1998. When the parties married, Husband was a Bulgarian citizen and sought asylum in the United States. In lieu of asylum, Husband voluntarily returned to Bulgaria in February 1999 and returned to the United States in March 2001. Wife remained in South Carolina and resided at 104 Duncan Court—a residence Wife purchased from her previous husband in 1988. In February 2001, Wife paid the remaining $36,000 she owed on the 104 Duncan Court mortgage with inheritance Wife received from her father.[1] In October 2006, Wife sold 104 Duncan Court and utilized $100,000 of the sale proceeds towards the down payment for the parties' new residence.

Wife obtained an associate's degree in Automotive Technology and in the Arts. Wife worked throughout the marriage, except for periods of unemployment for fourteen months in 2010 and 2011, and for two months in 2013. Husband received some post-secondary education in Bulgaria and obtained various certificates in South Carolina. Husband earned the majority of the parties' income during the marriage. However, due to income from a trust that represented the majority of Wife's inheritance from her parents (the nonmarital Brown Advisory accounts), the parties' net incomes were similar. Throughout the marriage, Husband's Bank of America bank statements exhibited numerous deposits in the $400 to $1,000 range, all of which were unreported in Husband's financial declarations. In 2011, Husband opened a bank account with Fibank in Bulgaria. Husband

contended the opening deposit of $32,120 was a nonmarital gift from his parents to hold in trust for his parents' care. Husband failed to disclose the Fibank account in his initial interrogatory answers and financial declaration.

The couple had one child from the marriage; Son was twelve years old at the time of the divorce hearing. Due to his autism spectrum disorder (autism) and attention deficit hyperactivity disorder (ADHD), Son required substantial care and thrived on stability. Despite Son's considerable care needs, Husband traveled to Bulgaria annually, leaving Wife and Son for three or more weeks at a time.[2] Husband also engaged in an extra-marital affair including overnight stays with his paramour.

On August 13, 2013, Wife filed an action in family court, seeking a divorce on the grounds of adultery;[3] alimony; sole legal and physical custody of Son; child support; equitable division of the marital estate; certain restraining orders; and an award of attorney's fees and costs. Husband answered and counterclaimed, seeking joint custody; Wife's cooperation in obtaining a passport for Son to go to Bulgaria; equitable division of the marital estate; certain restraining orders; and an award of attorney's fees and costs.

At trial, witness testimony revealed Husband and Wife often disagreed on the appropriate schooling and medical treatment for Son's special needs. Husband advocated for completely mainstreaming Son in school and discontinuing Son's ADHD medications. Conversely, Wife agreed with educational and health provider suggestions that Son remain in certain special needs classes and continue his ADHD medications. Husband claimed that he and Wife also disagreed on the appropriate diet, exercise, and sleep regimen for Son. However, Husband did not adhere to the diet he proposed for Son, nor did he maintain Son's sleep schedule. Dr. Poon, Son's developmental behavioral pediatrician, testified medical staff reported that Husband tried to intimidate them by showing up at the medical facility without an appointment. The guardian ad litem (GAL) also testified that Son's medical and educational providers reported to the GAL that on certain occasions Husband was confrontational when he disagreed with them.

On January 29, 2015, the family court issued a final divorce decree, granting Wife a divorce on the ground of Husband's adultery. The court found Husband's testimony was not credible and believed Husband consistently presented false evidence through his affidavits, financial declarations, deposition testimony, and trial testimony. With the exception of the marital residence, the court awarded a 50/50 equitable apportionment of the marital estate. With regard to the marital residence, the court apportioned 60% to Wife and 40% to Husband. Moreover, the court awarded Wife exclusive use, possession, and ownership of the marital residence; sole legal and physical custody of Son; and instructed that Wife was not required to obtain a passport for Son.

Wife reported a gross income of $2,882.17 per month from wages with a total gross monthly income of $3,990.07 when adding Wife's inheritance interest from the nonmarital Brown Advisory accounts. The court noted Wife had invaded the nonmarital Brown Advisory accounts during the last few years of the marriage for household expenses, and Wife's interest in the accounts would continue to decline if she had to invade them post-separation. The court found that Husband grossly overstated his post-separation monthly expenses, and as evident from Husband's bank statements, that Husband earned at least $200 per month in additional income from odd side jobs that he failed to list on his financial declarations.[4] After imputing an additional income of $200 per month to Husband, which brought Husband's monthly gross income to $3,420.53, the court ordered Husband to pay $200 per month to Wife in permanent periodic alimony. In addition, the court ordered Husband to pay $512 per month in child support. Further, the court awarded Wife $30,000 in attorney's fees and costs related to the divorce action.

Thereafter, Husband and Wife each filed a motion to alter or amend the judgment. The family court denied both motions on March 30, 2015. The family court also denied Wife's request for attorney's fees and costs for defending Husband's motion to alter or amend. This cross-appeal followed.

STANDARD OF REVIEW

The appellate court reviews decisions of the family court de novo. *Stoney v. Stoney*, 422 S.C. 593, 596, 813 S.E.2d 486, 487 (2018) (per curiam). In a de novo review, the appellate court is free to make its own findings of fact but must remember the family court was in a better position to make credibility determinations. *Lewis v. Lewis*, 392 S.C. 381, 385, 709 S.E.2d 650, 651-52 (2011). "Consistent with this de novo review, the appellant retains the burden to show that the family court's findings are not supported by a preponderance of the evidence; otherwise, the findings will be affirmed." *Ashburn v. Rogers*, 420 S.C. 411, 416, 803 S.E.2d 469, 471 (Ct. App. 2017). On the other hand, evidentiary and procedural rulings of the family court are reviewed for an abuse of discretion. *Stoney*, 422 S.C. at 594 n.2, 813 S.E.2d at 486 n.2.

LAW/ANALYSIS

I. Husband's Appeal

On appeal, Husband argues the family court erred in (1) awarding alimony to Wife, (2) awarding Wife sole custody of Son, (3) awarding Wife discretion in obtaining a passport for Son, (4) apportioning Husband insufficient equity in the marital residence, (5) classifying Husband's Bulgarian bank account as a marital asset, and (6) awarding Wife attorney's fees. We address each argument in turn.

A. Alimony

First, Husband contends the family court erred in ordering him to pay Wife $200 per month in permanent periodic alimony. We disagree.

"Permanent[] periodic alimony is a substitute for support which is normally incidental to the marital relationship." *Butler v. Butler*, 385 S.C. 328, 336, 684 S.E.2d 191, 195 (Ct. App. 2009). "Alimony should ordinarily place the supported spouse, as nearly as is practical, in the same position he or she enjoyed during the marriage." *Hinson v. Hinson*, 341 S.C. 574, 577, 535 S.E.2d 143, 144 (Ct. App. 2000) (per curiam). The family court has a duty to formulate an alimony award that is "fit, equitable, and just if the claim is well[-] founded." *Allen v. Allen*, 347 S.C. 177, 184, 554 S.E.2d 421, 424 (Ct. App. 2001).

In making an alimony award, the family court must consider the following statutory factors: (1) the duration of the marriage; (2) physical and emotional health of the parties; (3) educational background of the parties; (4) employment history and earning potential of the parties; (5) standard of living established during the marriage; (6) current and reasonably anticipated earnings of the parties; (7) current and reasonably anticipated expenses of the parties; (8) marital and nonmarital properties of the parties; (9) custody of children; (10) marital misconduct or fault; (11) tax consequences; (12) prior support obligations; and (13) any other factors the court considers relevant. S.C. Code Ann. § 20-3-130(C) (2014).

Specifically, Husband argues the family court erred in (1) failing to consider Wife's nonmarital property and (2) failing to make a finding of Wife's need for alimony and Husband's ability to pay.

We find the family court did not err in awarding alimony to Wife. The family court analyzed the statutory factors extensively in determining its award. Among them, the family court stated Husband and Wife were in a marriage of about sixteen years, and found Husband's adultery and habitual deceit contributed to the demise of the marriage. The court found that, after 2010, Husband earned a majority of the parties' income, with a net income of $2,334.21. However, the parties' net monthly incomes were similar due to Wife's $1,942.53 net income from wages and Wife's $1,107.90 income from the nonmarital Brown Advisory account. The family court found Wife's monthly expenses were reasonable and that Wife's September 2013 and November 2014

financial declarations reflected a post-separation reduction in her monthly expenses to $4,874.84. Conversely, the family court found Husband grossly overstated his monthly expenses and failed to report consistent income of at least $200 per month from side jobs. As a result, the court imputed $200 per month to Husband in additional income.

Regarding Husband's claim that the family court erred in failing to consider Wife's nonmarital property, we find the court explicitly considered Wife's nonmarital Brown Advisory accounts in finding the parties had similar incomes. Moreover, the court found Wife invaded, and effectively reduced the value of, her nonmarital Brown Advisory accounts to cover pre-separation household expenses, and if Wife were required to continue invading her nonmarital property post-separation, her anticipated income would decline. The court also stated that Wife should not have to liquidate her nonmarital Brown Advisory accounts to pay ongoing expenses. Thus, we find competent evidence in the record that demonstrates the family court considered Wife's nonmarital property in awarding alimony. *See* *Lewis*, 392 S.C. at 392, 709 S.E.2d at 655 (providing the appellant bears the burden of convincing the appellate court that the preponderance of the evidence is against the family court's findings).

Based on our de novo review of the evidence, we find the family court's alimony award is appropriate. *See id.* at 384, 709 S.E.2d at 651 (holding the appellate court may find facts in accordance with its own view of the preponderance of the evidence); *Allen*, 347 S.C. at 184, 554 S.E.2d at 424 (stating the family court has a duty to formulate an alimony award that is "fit, equitable, and just if the claim is well[-]founded"). Accordingly, we affirm the family court's alimony award.

B. Custody

Husband contends, based upon the evidence presented, the family court erred in not awarding the parties joint legal custody of Son because (1) the record did not support the negative findings against Husband and (2) the finding that Husband repeatedly intimidated and bullied caretakers was based on inadmissible hearsay and improper pitting of witnesses. We address each argument in turn.

i. Negative Findings Against Husband

Husband argues the record does not support the family court's findings that Husband was "unwilling to accept other's viewpoints," that he was a "disruptive influence" at meetings, and that the parties would be unable to effectively co-parent so as to foreclose the possibility of joint legal custody. We disagree.

The controlling considerations in child custody cases are the welfare and the best interests of the child. *Woodall v. Woodall*, 322 S.C. 7, 11, 471 S.E.2d 154, 157 (1996). In making its custody determination, "[t]he family court must consider the character, fitness, attitude, and inclinations on the part of each parent as they impact the child," and it should also consider "the psychological, physical, environmental, spiritual, educational, medical, family, emotional[,] and recreational aspects of the child's life." *Id.* "[A]ll the conflicting rules and presumptions should be weighed together with all of the circumstances of the particular case, and all relevant factors must be taken into consideration." *Id.* "Although there is no rule of law requiring custody be awarded to the primary caretaker, there is an assumption that custody will be awarded to the primary caretaker." *Patel v. Patel*, 359 S.C. 515, 527, 599 S.E.2d 114, 120 (2004).

In the instant case, the family court considered a wide range of issues when determining the welfare and best interests of Son, including: each parent's character, fitness, attitudes, attributes, and resources; the opinions of third parties; and the age and health of Son. The family court found that Wife was Son's primary caretaker and that Wife was more active in overseeing and arranging Son's autism treatment and more involved in Son's educational development. Further, Son's teacher testified Son made substantial improvement since Husband and Wife separated in September 2013, and the family court awarded Wife primary physical custody of Son. Employees of Son's daycare also recalled Husband only coming once or twice a year to pick Son up, which

was consistent with testimony of other witnesses' accounts regarding Husband's daily parental duties. The family court considered Husband's conduct, including: annually traveling to Bulgaria, leaving Son and Wife for three or more weeks at a time; sometimes staying out late at night; and leaving Son and Wife alone overnight when he met with his paramour.

In considering the totality of the circumstances in this case, we find the preponderance of the evidence supports the view that it is in Son's best interest to award Wife sole legal and physical custody of Son. *See Woodall*, 322 S.C. at 11, 471 S.E.2d at 157 ("The welfare and best interests of the child are paramount in custody disputes."); *Parris v. Parris*, 319 S.C. 308, 310, 460 S.E.2d 571, 572 (1995) ("In making custody decisions the totality of the circumstances peculiar to each case constitutes the only scale upon which the ultimate decision can be weighed."). Accordingly, we affirm the family court's finding on this issue.

ii. Admission of the GAL's Testimony

Husband further argues the family court erred by admitting the GAL's testimony over Husband's objections on the grounds of inadmissible hearsay and improper pitting of witnesses. We disagree.

"Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted." *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 758 (1997). Pitting of a witness refers to a question that asks one witness to comment on the veracity or truthfulness of another witness. *See Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) (stating it is improper for a solicitor to ask a defendant "to comment on the truthfulness or explain the testimony of an adverse witness" such that "the defendant is in effect being pitted against the adverse witness"). Witnesses are generally not allowed to testify as to whether another witness is telling the truth. *Id.* However, to warrant reversal based on the erroneous admission or exclusion of evidence, the complaining party must show both error and resulting prejudice. *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 405, 175 S.E.2d 805, 819 (1970). When evidence is merely cumulative to other evidence, its admission is harmless and does not constitute reversible error. *S.C. Dep't of Soc. Servs. v. Smith*, 343 S.C. 129, 140, 538 S.E.2d 285, 290-91 (Ct. App. 2000); *see also Burgess*, 329 S.C. at 91, 495 S.E.2d at 447 (holding the petitioner was not prejudiced by improper witness pitting in light of the other evidence presented in the case).

Husband contends Wife tried to pit the GAL's testimony—regarding statements that witnesses made to the GAL concerning Husband's intimidating behavior— against in-court statements made by the same witnesses. Specifically, Husband objected to Wife asking the GAL whether Dr. Poon's testimony at trial, regarding Husband's intimidating and bullying behavior, was more or less damaging to Husband than previous statements Dr. Poon made to the GAL regarding Husband. Husband contends the GAL's testimony was inadmissible hearsay because Wife offered the testimony to prove Husband was aggressive and disruptive.

Regarding Husband's hearsay argument, we find the GAL's testimony was not inadmissible hearsay. A GAL's testimony and report, which contains evidentiary materials such as hearsay statements from persons interviewed by the GAL, is admissible if the report is made available to the parties and the testifying witnesses are subject to cross-examination. *See Richmond v. Tecklenberg*, 302 S.C. 331, 334, 396 S.E.2d 111, 113 (Ct. App. 1990) (admitting the GAL's testimony and report over hearsay objections when the GAL interviewed forty-one witnesses, twenty of whom testified; the names of all persons interviewed were made available to counsel; each could have been deposed by the mother's counsel; and counsel had the full right to cross-examine the testifying witnesses); *Collins v. Collins*, 283 S.C. 526, 530, 324 S.E.2d 82, 85 (Ct. App. 1984) ("[W]he[n] the [GAL's] report contains statements of fact, the litigants are entitled to cross-examine the [GAL] and any witnesses whose testimony formed the basis of the [GAL's] recommendation."). The GAL interviewed sixteen witnesses; seven of the sixteen testified, including Dr. Poon. The GAL's report and the names of the witnesses were available to Husband. Husband had the opportunity to cross-examine the GAL and the testifying witnesses who formed the basis of the GAL's opinion. We find no reversible error.

Regarding Husband's pitting argument, we find Wife's line of questioning was an improper pitting of witness testimony.[5] Wife improperly asked the GAL to comment on the veracity of Dr. Poon's testimony by asking the GAL to compare Dr. Poon's in court testimony against Dr. Poon's previous statements to the GAL. Nonetheless, we find that Husband was not unfairly prejudiced by this testimony. *See* State v. Kelsey, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) (stating that although it is improper for counsel to question a witness in such a manner as to force the witness to attack the veracity of another witness, "improper `pitting' constitutes reversible error only if the accused was unfairly prejudiced"). The GAL's testimony was cumulative to other properly-admitted evidence illustrating that Husband was aggressive and disruptive. *See* Smith, 343 S.C. at 140, 538 S.E.2d at 290-91 (stating when evidence is merely cumulative to other evidence, its admission is harmless and does not constitute reversible error). Without objection, the GAL's report was placed into evidence; the report included accounts from numerous witnesses that stated Husband physically intimidated medical and educational providers. In addition, without objection, the GAL testified she observed the same behavior that other witnesses complained of—"the overbearing physical presence; standing up during meetings; authoritative assertion of his position"—at Husband's deposition. Dr. Poon testified medical staff at the facility reported that Husband tried to intimidate them by showing up without an appointment. We find that any error in regard to pitting was not unfairly prejudicial to Husband and find no reversible error.

Accordingly, we affirm the family court's award of sole physical and legal custody of Son to Wife.

C. Passport

Husband argues the family court erred in denying his request to require Wife to cooperate in obtaining a passport for Son. We disagree.

As an initial matter, we find Husband abandoned this issue and it is not preserved for our review. *See* Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."). Nevertheless, we address this issue because "procedural rules are subservient to the court's duty to zealously guard the rights of minors." Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 107, 536 S.E.2d 372, 374 (2000).

Upon our de novo review of the record, we find evidence supports the family court's finding that, if Husband obtained a passport for Son and traveled to Bulgaria, Husband may not return with Son. The family court found Husband appeared to have hidden assets in Bulgaria and found witnesses' assertions credible that Husband previously stated his intentions to leave Son in Bulgaria and seek Bulgarian citizenship for Son. We also agree with the family court's finding that the harm to Son would be great if he remained in Bulgaria under Husband's control. The Son thrives on stability and long trips without Wife will negatively impact Son. *See* Dobson v. Atkinson, 232 S.C. 12, 17, 100 S.E.2d 531, 533 (1957) (allowing the custodial parent to take the minor child to a foreign country *only after* finding that the child would have adequate care and would not be subjected to any undue danger if taken by the custodial parent and her new spouse to a foreign country for a two-year period). Thus, we find the preponderance of the evidence supports granting Wife discretion in obtaining a passport for Son and affirm the family court.

D. Bulgarian Bank Account

Husband argues the family court erred by including his Bulgarian Fibank account in the marital estate and crediting it against him. We disagree.

"The family court does not have authority to apportion nonmarital property." Gilley v. Gilley, 327 S.C. 8, 11, 488 S.E.2d 310, 312 (1997). "The burden to show property is not subject to equitable distribution is upon the one

claiming that property acquired during the marriage is not marital." *Brown v. Brown*, 379 S.C. 271, 283, 665 S.E.2d 174, 181 (Ct. App. 2008) (per curiam).

Husband argues the Fibank account, opened during the parties' marriage, constitutes a $32,120 nonmarital gift from his parents to hold in trust, and the family court should not have included the account in the marital estate. However, prior to trial, Husband failed to disclose information regarding the account and in response to Wife's motion to compel, Husband falsely claimed that he would have to go to Bulgaria to obtain the account records. Only after receiving a court order did Husband produce a three-sentence, translated document stating Husband's father withdrew $32,120 from his bank and deposited it into Husband's Fibank account for Husband to hold in trust. The evidence does not support Husband's claim that he held the Fibank funds in trust for his parents. In its factual findings, the family court noted that Husband's parents' names were not on the account; Husband was unable to produce a bank statement indicating the funds originated from his father; Husband repeatedly made withdrawals and deposits into the Fibank account while in Bulgaria; and Husband testified funds from his Bank of America account were deposited into the Fibank account.

The family court found Husband repeatedly failed to provide reliable financial documentation or testimony regarding his finances. *See Lewis*, 392 S.C. at 385, 709 S.E.2d at 651-52 (holding de novo review does not require the appellate court to ignore the fact the family court, which saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony). Upon our de novo review, we find Husband failed to carry his burden in showing the preponderance of the evidence is against the family court's findings. *See id.* at 392, 709 S.E.2d at 655 (stating the appellant bears the burden of convincing the appellate court that the preponderance of the evidence is against the family court's findings). Accordingly, we affirm the family court's inclusion of Husband's Bulgarian Fibank account in the marital estate.

E. Marital Residence

Husband claims the family court erred in awarding him only 40% of the marital residence because (1) Wife's nonmarital funds used for purchasing the marital residence transmuted into marital property; (2) both parties contributed equally to the mortgage during the years of living together in the marital residence; and (3) the court failed to consider Wife's nonmarital property. Conversely, Wife, in her cross-appeal, argues her greater contribution to the down payment on the marital residence, coupled with her greater homemaking contributions and her equal contribution to the mortgage while the parties lived together entitled her to more than 60% of the marital residence. We agree with Wife's argument.

With certain exceptions, marital property is "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation . . . regardless of how legal title is held." S.C. Code Ann. § 20-3-630(A) (2014). "Equitable distribution of marital property `is based on the recognition that marriage is, among other things, an economic partnership.'" *Crossland v. Crossland*, 408 S.C. 443, 456, 759 S.E.2d 419, 426 (2014) (quoting *Morris v. Morris*, 335 S.C. 525, 531, 517 S.E.2d 720, 723 (Ct. App. 1999)). Moreover, "[u]pon dissolution of the marriage, marital property should be divided and distributed in a manner [that] fairly reflects each spouse's contribution to its acquisition, regardless of who holds legal title." *Id.* (quoting *Morris*, 335 S.C. at 531, 517 S.E.2d at 723).

In making an equitable apportionment of marital property, the family court must give weight in such proportion as it finds appropriate to the following factors: (1) the duration of the marriage; (2) marital fault; (3) the value of the marital property and the contribution of each spouse to the acquisition, preservation, depreciation, or appreciation in value, including contributions as homemaker; (4) the income and earning potential of the parties and the opportunity for future acquisition of capital assets; (5) the parties' physical and emotional health; (6) additional training or education needed; (7) the parties' nonmarital property; (8) the existence or nonexistence of vested retirement benefits; (9) the award of alimony; (10) the desirability of awarding the family home; (11) tax consequences; (12) prior support obligations; (13) liens and any other encumbrances upon the marital

property; (14) child custody arrangements and obligations; and (15) any other factors the court considers relevant. S.C. Code Ann. § 20-3-620(B) (2014).

These criteria are intended to guide the family court in exercising its discretion over apportionment of marital property. *Johnson v. Johnson,* 296 S.C. 289, 297, 372 S.E.2d 107, 112 (Ct. App. 1988). "The ultimate goal of [equitable] apportionment is to divide the marital estate, as a whole, in a manner that fairly reflects each spouse's contribution to the economic partnership and also the effect on each of the parties of ending that partnership." *King v. King,* 384 S.C. 134, 143, 681 S.E.2d 609, 614 (Ct. App. 2009).

The record reflects that Wife, using premarital funds that transmuted into marital property, contributed $100,000 of the $115,000 down payment for the acquisition of the marital residence. *SeeDawkins v. Dawkins,* 386 S.C. 169, 173, 687 S.E.2d 52, 54 (2010) (per curiam) ("[A] transmutation of inherited nonmarital property into marital property [does] not extinguish the inheritor's right for special consideration upon divorce."), *abrogated on other grounds by Lewis,* 392 S.C. at 385-86, 709 S.E.2d at 651-52; *id.* at 173-74, 687 S.E.2d at 54 ("[T]he correct way to treat [an] inheritance is as a contribution by [the inheriting party] to the acquisition of marital property [and that] [t]his contribution should be taken into account in determining the percentage of the marital estate to which [the inheriting party] is equitably entitled upon distribution." (alterations in original) (quoting *Toler v. Toler,* 292 S.C. 374, 380 n.1, 356 S.E.2d 429, 432 n.1 (Ct. App. 1987))); *id.* (overruling *Cooksey v. Cooksey,* 280 S.C. 347, 312 S.E.2d 581 (Ct. App. 1984), to the extent it may be read to allow a family court to separate and subtract the inheritance amount from the marital estate and then award this "special equity" to the inheritor in addition to his or her portion of the court-ordered division of the marital estate). Post filing, Wife assumed sole responsibility for the mortgage payments and reduced the mortgage balance from $97,060.15 at the time of filing to $84,002.94 at the time of trial.

Additionally, the record reveals that the parties were married for fifteen years; lived in the marital residence for seven years; and Husband engaged in marital misconduct, which caused the breakup of the marriage. Wife was the primary homemaker and the primary caregiver of Son. Both parties made similar income contributions during the marriage. The family court found that Wife's nonmarital accounts decreased throughout the marriage and continued to decrease post-filing, and Husband failed to provide reliable financial documentation or testimony regarding his finances. After de novo review, we find the family court's 60/40 split of the marital residence, in favor of Wife, resulted in an unfairly low apportionment to Wife in light of the aforementioned circumstances. *See Doe v. Doe,* 370 S.C. 206, 214, 634 S.E.2d 51, 55 (Ct. App. 2006) ("Even if the family court commits error in distributing marital property, that error will be deemed harmless if the overall distribution is *fair.*" (emphasis added)); *see also* S.C. Code Ann. § 20-3-620(B) (2014) (listing factors the family court must consider when making an equitable apportionment of marital property); *Fredrickson v. Schulze,* 416 S.C. 141, 149, 785 S.E.2d 392, 397 (Ct. App. 2016) (finding the wife's substantial down payment on the marital residence with premarital funds should be taken into account in determining the equitable distribution of the martial estate and affirming the $60,000 consideration given to the wife).

Based on our view of the preponderance of the evidence, the more equitable division of the marital residence would be 70% to Wife and 30% to Husband. *See Lewis,* 392 S.C. at 384-85, 709 S.E.2d at 651-52 (holding that, in appeals from the family court, the appellate court reviews factual issues de novo and may find facts in accordance with its own view of the preponderance of the evidence); *Fredrickson,* 416 S.C. at 157, 785 S.E.2d at 401 (affirming the family court's 70/30 equitable distribution of the marital estate in favor of the wife when the parties' marriage lasted seven years, the wife contributed 84% of the parties' income, the wife was the primary homemaker and caregiver to the parties' son, the wife brought significant nonmarital property into the marriage, and the wife's wealth decreased during the marriage); *Brandi v. Brandi,* 302 S.C. 353, 357-58, 396 S.E.2d 124, 126-27 (Ct. App. 1990) (per curiam) (affirming a 70/30 division in equitable distribution).

F. Attorney's Fees

Last, Husband asserts the family court erred by giving too much weight to Husband's conduct during trial in awarding Wife attorney's fees. We disagree.

In determining whether to award attorney's fees, the family court should consider the following factors: "(1) the party's ability to pay his/her own attorney's fee; (2) beneficial results obtained by the attorney; (3) the parties' respective financial conditions; [and] (4) effect of the attorney's fee on each party's standard of living." *E.D.M. v. T.A.M.*, 307 S.C. 471, 476-77, 415 S.E.2d 812, 816 (1992). To determine the amount of an award of attorneys' fees, the court should consider: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; [and] (6) customary legal fees for similar services." *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). When a party's uncooperative conduct in discovery and litigation increases the amount of the other party's fees and costs, the court can use this as an additional basis to award the other party attorney's fees. *Spreeuw v. Barker*, 385 S.C. 45, 72-73, 682 S.E.2d 843, 857 (Ct. App. 2009).

In the instant case, the family court ordered Husband to pay $30,000 of the $46,407.01 that Wife requested for attorney's fees and costs at the time of trial.[6] First, upon de novo review we find the family court considered the appropriate factors in awarding Wife attorney's fees, including that Wife prevailed on the issues of primary custody of Son and equitable distribution. *See* *E.D.M.*, 307 S.C. at 476, 415 S.E.2d at 816 (noting the family court should consider, among other things, the beneficial results obtained by the attorney). Additionally, during its discussion of attorney's fees in the final order, the family court specifically found Husband was uncooperative during discovery, in settlement negotiations, and at trial. *SeeBodkin v. Bodkin*, 388 S.C. 203, 223, 694 S.E.2d 230, 241 (Ct. App. 2010) ("This court has previously held when parties fail to cooperate and their behavior prolongs proceedings, this is a basis for holding them responsible for attorney's fees."); *Spreeuw*, 385 S.C. at 72-73, 682 S.E.2d at 857 (affirming the family court's award of attorney's fees and costs based on the appropriate factors and taking into account the father's uncooperative conduct in discovery and his evasiveness in answering questions with respect to his finances). Thus, we affirm the family court's award of $30,000 to Wife for attorney's fees at the time of trial.[7]

II. Wife's Cross-Appeal

On cross-appeal, Wife asserts the family court erred in (1) apportioning Wife insufficient equity in the marital residence;[8] (2) not including Husband's unaccounted-for funds in the marital estate; (3) making Wife pay Husband his equitable distribution in post-tax, non-retirement assets; and (4) not awarding Wife attorney's fees incurred in defending Husband's motion to reconsider. We address each remaining argument in turn.

A. Unaccounted-for Funds

Wife contends the family court erred in its equitable distribution award by not crediting Husband with funds for which he could not account. We disagree.

For the family court to properly include property within the marital estate, two factors must coincide. *Shorb v. Shorb*, 372 S.C. 623, 632, 643 S.E.2d 124, 129 (Ct. App. 2007); *see also* S.C. Code Ann. § 20-3-630(A) (2014). "First, the property must be acquired during the marriage" and "[s]econd, the property must be owned on the date of filing or commencement of marital litigation." *Shorb*, 372 S.C. at 632, 643 S.E.2d at 129. The ownership prong may present problematic issues if the family court overlooks assets that should have been included in the marital estate, but were non-existent on the date of filing due to a party's misconduct. *Id.* "Consequently, if a party attempts to unfairly extinguish ownership of marital property before the date of filing or to improperly delay ownership of marital property until after litigation is commenced, the family court must include that property in the marital estate." *Id.* Concluding otherwise would "promote fraud, reward misconduct, and contravene legislative intent." *Id.* (quoting *Bowman v. Bowman*, 357 S.C. 146, 155, 591 S.E.2d 654, 659

(Ct. App. 2004)). However, such property will be included in the marital estate only if the party seeking to classify the property as marital property introduces clear and convincing evidence of fraud in relation to the disposal of the property. *See id.* at 633, 643 S.E.2d at 129 ("Proceeds from [the h]usband's stock options will be considered marital only if the [w]ife introduces clear and convincing evidence to establish fraud in relation to [the h]usband's sale of the options."); *see alsoDevlin v. Devlin*, 89 S.C. 268, 272, 71 S.E. 966, 968 (1911) ("[F]raud will not be presumed, but [one] who alleges it must prove it."); *Armstrong v. Collins*, 366 S.C. 204, 219, 621 S.E.2d 368, 375 (Ct. App. 2005) ("Fraud must be shown by clear and convincing evidence.").

Specifically, Wife argues the family court should have credited Husband with: (1) $20,000 Husband transferred to his father's account in Bulgaria on January 3, 2007; (2) $5,000 Husband transferred to his father's account in Bulgaria on July 3, 2008; (3) $5,000 Husband transferred to his mother's account in Bulgaria on April 15, 2013; (4) $29,821.37 Husband liquidated from his Bank of America certificate of deposit (CD) shortly before July 29, 2008; and (5) $10,500 Husband withdrew from his Bank of America account on October 10, 2010.

As an initial matter, we find the family court did credit Husband with (1) the $20,000 Husband transferred to his father's account in Bulgaria on January 3, 2007; (2) the $5,000 Husband transferred to his father's account in Bulgaria on July 3, 2008; and (3) the $5,000 Husband transferred to his mother's account in Bulgaria on April 15, 2013. After finding Husband's testimony not credible regarding the source of the Fibank funds, the family court equated the $30,000 in the Fibank account as funds from the three aforementioned transfers and ordered the Fibank account to be divided equally between the parties. Thus, we find the family court accounted for the three Bulgarian account transfers and affirm the family court's inclusion of these funds in the marital estate.

With respect to the $29,821.37 Husband liquidated from his Bank of America CD and the $10,500 Husband withdrew from Bank of America on October 10, 2010, we find no error in the family court's exclusion of these funds from the marital estate. We find Husband's disposal of these funds before the date of filing negated the ownership prong necessary to classify the funds as marital property. *See Shorb*, 372 S.C. at 633, 643 S.E.2d at 130 (finding the sale of stock options, which were acquired during the marriage but were sold before the date of filing, negated the ownership prong, which was necessary to classify the proceeds from the sale of the options as marital). Thus, the $29,821.37 and the $10,500 would be considered marital property only if Wife introduced clear and convincing evidence of fraud, in relation to Husband's disposal of the funds. *See id.* at 633, 643 S.E.2d at 129 ("Proceeds from [the h]usband's stock options will be considered marital only if the [w]ife introduces clear and convincing evidence to establish fraud in relation to [the h]usband's sale of the options.").

In support of her assertion that Husband fraudulently disposed of the funds, Wife provided Husband's bank statements which evidenced Husband withdrew the funds and liquidated the CD. However, despite the family court's finding that Husband's financial testimony was not credible,[9] Wife failed to provide clear and convincing evidence that established how the funds were used—whether for marital or nonmarital purposes—after the funds were withdrawn and liquidated. Without further evidence to contravene Husband's assertion that he may have utilized the funds for marital purchases, we find Wife failed to provide clear and convincing evidence of Husband's fraud. *See id.* (asserting that, because the wife presented no additional corroborating evidence beyond her assertion of fraud contained in her affidavit, the court "cannot presume [the h]usband acted in a fraudulent manner" when the husband asserted the wife received money from the sale proceeds and the husband paid the wife's debts with the proceeds). Accordingly, because the ownership prong is negated by Husband's disposal of the $29,821.37 and the $10,500 before the date of filing and because no clear evidence exists that Husband committed fraud when he disposed of the funds, we affirm the family court's exclusion of the $29,821.37 and the $10,500 from the marital estate.

B. Tax Consequences

Wife argues the family court erred in apportioning Wife predominantly illiquid and pre-tax retirement assets in the equitable distribution without considering the tax consequences of a forced liquidation. We disagree.

The family court is required to consider the tax consequences to each party resulting from equitable apportionment. *See* S.C. Code Ann. § 20-3-620(B)(11) (2014). However, if the apportionment order does not contemplate the liquidation or sale of an asset, then the family court should not consider the tax consequences from a speculative sale or liquidation. *Wooten v. Wooten,* 364 S.C. 532, 543, 615 S.E.2d 98, 103 (2005); *see also Bowers v. Bowers,* 349 S.C. 85, 97-98, 561 S.E.2d 610, 617 (Ct. App. 2002) (finding no error when the family court did not expressly consider the tax consequences resulting from its award to the wife of one-half the value of the husband's 401(k) account because the court's order did not require or contemplate liquidation of the account).

The family court awarded Wife two major assets in the equitable distribution—the marital residence and Wife's Jones Ford 401(k). Wife argues that, because she will remain in the marital residence to accommodate Son's need for stability, she will be forced to liquidate her pre-tax retirement Jones Ford 401(k), which will result in tax consequences and penalties, in order to pay Husband's equitable distribution award. However, the order does not contemplate the sale of the marital residence or the liquidation of Wife's 401(k). We find no error and affirm the family court on this issue.

C. Attorney's Fees

Last, Wife argues the family court erred in not awarding her attorney's fees and costs for successfully defending Husband's motion to reconsider. Specifically, Wife argues she achieved successful results in defending Husband's motion that raised fifty-four issues in a cursory manner. We agree.

In light of our decision to reverse the family court's apportionment of the marital residence, we find it appropriate to reconsider the family court's denial of Wife's request for attorney's fees and costs for defending Husband's motion to reconsider. *See Woods v. Woods,* 418 S.C. 100, 124, 790 S.E.2d 906, 918 (Ct. App. 2016) ("Whe[n] beneficial results are reversed on appeal, the attorney's fee award, or lack thereof, must also be reconsidered."). The appellate court may reverse an attorney's fees award when the beneficial results achieved by trial counsel are reversed on appeal. *Myers v. Myers,* 391 S.C. 308, 321, 705 S.E.2d 86, 93 (Ct. App. 2011).

The family court awarded Wife $42,664.80 of the $59,071.81 in attorney's fees and costs that Wife incurred at the time of trial. The family court denied Wife's fee request for an additional $1,350 in attorney's fees and costs for defending Husband's motion to reconsider.[10] Accordingly, Wife is responsible for $17,757.01 of her own attorney's fees and costs. In considering each party's ability to pay their own attorney's fees, we note the family court awarded $41,164 in liquid assets to Husband and only $6,552 in liquid assets to Wife in the equitable distribution. Moreover, throughout the parties' marriage and subsequent filing, Wife's income from her nonmarital Brown Advisory accounts decreased and will continue to decrease—creating a greater discrepancy between the parties' income—if Wife depletes her nonmarital Brown Advisory accounts to pay her attorney's fees and costs.

Consequently, given the allocation of liquid assets, the parties' respective financial conditions, each party's ability to pay their own attorney's fees, and our favorable disposition of Wife's equity in the marital residence on appeal, we reverse the family court's denial and award Wife the $1,350 in attorney's fees sought for defending Husband's motion to reconsider. *See E.D.M.,* 307 S.C. at 476-77, 415 S.E.2d at 816 (stating that when determining whether to award attorney's fees and costs the family court must consider: "(1) the party's ability to pay his/her own attorney's fee; (2) beneficial results obtained by the attorney; (3) the parties' respective financial conditions; [and] (4) effect of the attorney's fee on each party's standard of living"); *see also Buist v.*

Buist, 410 S.C. 569, 579, 766 S.E.2d 381, 386 (2014) (Pleicones, C.J., concurring) (recognizing "the threshold question of entitlement [to fees] always turns, at least in part, on the beneficial results obtained").

CONCLUSION

Based on the foregoing analysis, the family court's order is

AFFIRMED IN PART and REVERSED IN PART.

THOMAS and McDONALD, JJ., concur.

[1] Throughout his voluntary departure, Husband contributed no financial support to Wife.

[2] Husband's parents resided in Bulgaria.

[3] Husband stipulated that his adultery was grounds for Wife to obtain a divorce.

[4] Husband testified he occasionally worked odd jobs, such as doing repair work at friends' homes.

[5] The appellate court review's evidentiary and procedural rulings of the family court for an abuse of discretion. *Stoney,* 422 S.C. at 594 n.2, 813 S.E.2d at 486 n.2

[6] Wife incurred $59,071.81 in fees and costs, $12,664.80 of which the family court awarded to Wife prior to trial.

[7] We note that Husband lists additional grounds in his brief for overruling the family court, including: (1) for purposes of calculating alimony and child support, the record does not support imputing $200 per month in additional income to Husband; (2) in determining alimony, the family court improperly considered the impact of Son's special needs on Wife's ability to work under subsection 20-3-130(C)(9) of the South Carolina Code (2014); and (3) Wife is not entitled to attorney's fees because the family court did not consider (i) the income-to-attorney's fee ratio, (ii) Wife's ability to pay her own fees, and (iii) the parties' respective incomes and the effect a fee award would have on their respective standards of living.

We decline to address the three aforementioned issues as these issues are not preserved for our review. We find that, by failing to substantiate issues one and two with supporting case law, Husband abandoned both issues on appeal. *See Lewis v. Lewis,* 392 S.C. 381, 392, 709 S.E.2d 650, 655 (2011) (holding the appellant bears the burden of convincing the appellate court that the preponderance of the evidence is against the family court's findings); *Tirado v. Tirado,* 339 S.C. 649, 655, 530 S.E.2d 128, 131 (Ct. App. 2000) (deeming an issue abandoned if the argument in the brief is not supported by authority or is only conclusory). Further, we find issue three unpreserved because Husband failed to raise the issue in his Rule 59(e) motion. *See Sweeney v. Sweeney,* 420 S.C. 69, 82, 800 S.E.2d 148, 154 (Ct. App. 2017) (finding because the husband did not raise an argument in his Rule 59(e) motion—thereby not allowing the family court the opportunity to rule upon the issue or correct any alleged mistakes in its final order—the issue was not preserved on appeal).

[8] Wife's marital estate apportionment issue is discussed *supra,* Part I.E.

[9] The family court found Husband's testimony was not credible regarding the source of his funds, the location of various funds after they were withdrawn from his bank accounts or liquidated from the CD, and his purpose for transferring funds to the Bulgarian bank accounts. The court also did not find credible Husband's testimony that he transferred part of the funds to his parents as repayment for a $30,000 debt when Husband produced no evidence of an actual debt obligation.

[10] Wife filed an affidavit seeking compensation for 4.5 hours of work billed at $300 per hour for defending Husband's motion to reconsider.

Maxie Burgess, Respondent/Appellant,

v.

Brooke L. Arnold, Appellant/Respondent.

Opinion No. 5531.

Court of Appeals of South Carolina.

Submitted December 4, 2017.
Filed January 24, 2018.

Appeal From Horry County, Appellate Case No. 2016-000398, Timothy H. Pogue, Family Court Judge.

REVERSED AND REMANDED.

Michael J. Anzelmo, of Columbia, and Carolyn R. Hills and Jennifer D. Hills, both of Hills & Hills, P.C., of Myrtle Beach, for Appellant/Respondent.

Nicole Nicolette Mace, of West Palm Beach, Florida, for Respondent/Appellant.

GEATHERS, J.

In this child custody action, Brooke L. Arnold (Mother) seeks review of the family court's order awarding Maxie Burgess (Father) primary custody of their eight-year-old son (Son) should Mother relocate to Florida. Mother argues the family court erred by (1) creating a custody arrangement that penalizes Mother for relocating to Florida; (2) applying an initial custody analysis rather than a change-in-circumstances analysis; and (3) imposing a joint custody arrangement based on a finding that the parties had been operating under a joint custody arrangement prior to Father's filing of this action. In Father's cross-appeal, he challenges the family court's ruling that automatically reinstates Mother's primary custodian status if she returns to South Carolina after relocating to Florida. Father argues a substantial change in circumstances must be shown before the family court may change custody and the family court did not have jurisdiction to make such a ruling. We reverse and remand.[1]

FACTS/PROCEDURAL HISTORY

Mother and Father were never married to each other, but they were in a committed relationship until Son was eighteen months old. Subsequently, Mother continued her sexual relationship with Father until 2012 "in hopes they would become a family." Except for a few months in 2008, Father has not paid child support, and prior to this action, Mother never sought a court order imposing child support payments on Father.

Mother met LaBaron Paschall, an Army Ranger instructor, in May 2012 during Bike Week. At that time, Paschall was stationed in Fort Bragg, North Carolina, and was vacationing in Myrtle Beach. Both Mother and Father were living in Surfside Beach. Mother's relationship with Paschall became romantic in July 2012. Within the following few months, Paschall moved to Florida, but he continued his relationship with Mother. By early 2014, Mother and Paschall decided to marry, and they began discussing Mother's relocation to Florida; however, their wedding was postponed until June 27, 2015.

By May 2014, Father was concerned about Mother taking Son to Florida with her, and he filed this action seeking custody of Son. Mother later filed an answer and counterclaim seeking custody of Son. In June 2014, Mother sought counseling for Son to address his anxiety over the possibility of moving to Florida as well as disciplinary issues between Mother and Son.

The family court conducted a final hearing from August 3 through August 5, 2015. At the time of the hearing, Paschall was stationed at Elgin Air Force Base near Fort Walton Beach, Florida, and he had plans to retire by February 1, 2016, and start a private security business. Also, at this time, Mother was pregnant with Paschall's child. On September 28, 2015, the family court filed its final order granting Mother and Father joint custody of Son, with Mother having primary custody "over all issues except education" and granting Father primary custody of Son in the event that Mother relocated to Florida.

Mother and Father filed cross-motions to alter or amend the final order, and the family court granted in part and denied in part each motion. Specifically, as to the issues relevant to this appeal, the family court granted Father's request to address Mother's possible return to Horry County after relocating to Florida and ruled that Mother's primary custody of Son would be reinstated should such a contingency occur. The family court denied Mother's request to reconsider its finding that the parties had a joint custody arrangement before Father filed this action. The family court also rejected Mother's arguments that it should have applied a change-in-circumstances analysis to its custody determination and it should have awarded sole custody to Mother. These cross-appeals followed.

ISSUES ON APPEAL

Was the family court's joint custody award in Son's best interests?

Was the family court's award of primary custody to Father in the event Mother relocates to Florida in Son's best interests?[2]

STANDARD OF REVIEW

"In appeals from the family court, [the appellate c]ourt reviews factual and legal issues de novo." *Crossland v. Crossland*, 408 S.C. 443, 451, 759 S.E.2d 419, 423 (2014). "Thus, [the appellate c]ourt has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence; however, this broad scope of review does not require the [c]ourt to disregard the findings of the family court, which is in a superior position to make credibility determinations." *Id.* In fact, "[t]he burden is upon the appellant to convince the appellate court that the preponderance of the evidence is against the family court's findings." *Simcox-Adams v. Adams*, 408 S.C. 252, 260, 758 S.E.2d 206, 210 (Ct. App. 2014).

LAW/ANALYSIS

I. Joint Custody

Mother argues the family court erred by awarding joint custody to both parents rather than awarding Mother sole custody. Mother also challenges the family court's finding that Mother and Father had been operating under a joint custody arrangement prior to this action. We conclude the family court correctly characterized the parties' custody arrangement prior to this action.[3] However, we agree with Mother that the family court should have awarded her sole custody.

The family court's finding that the parties had been operating under a joint custody arrangement prior to this action was supported by not only the testimony of the parties but also the report of the Guardian ad Litem. However, we disagree with the family court's perception that continuing the prior arrangement is in Son's best interests. "In custody decisions, the best interest of the child is the paramount consideration." *Gandy v. Gandy*, 297 S.C. 411, 414, 377 S.E.2d 312, 313 (1989); *see* S.C. Code Ann. § 63-15-230(A) (Supp. 2017) ("The court shall make the final custody determination in the best interest of the child based upon the evidence

presented."). "Custody is based on a determination of the character, fitness, attitude[,] and inclinations on the part of each parent." *Gandy,* 297 S.C. at 414, 377 S.E.2d at 313-14.

Further, "[a]lthough the legislature gives family court judges the authority `to order joint or divided custody [when] the court finds it is in the best interests of the child,' . . . joint or divided custody should only be awarded [when] there are exceptional circumstances." *Patel v. Patel,* 359 S.C. 515, 528, 599 S.E.2d 114, 121 (2004) (quoting S.C. Code Ann. § 20-7-420(42) (Supp. 2003)[4]). "[G]enerally, joint custody is disfavored" and will be awarded only when exceptional circumstances dictate that such an arrangement is in a child's best interests. *Scott v. Scott*, 354 S.C. 118, 125, 579 S.E.2d 620, 624 (2003); *see also Lewis v. Lewis*, 400 S.C. 354, 365, 734 S.E.2d 322, 327 (Ct. App. 2012) (noting South Carolina courts have determined joint custody "is usually considered harmful to and not conducive to the best interest and welfare of a child"); *but see* S.C. Code Ann. § 63-15-230(C) (Supp. 2017) ("If custody is contested or if either parent seeks an award of joint custody, the court *shall consider all custody options, including, but not limited to, joint custody,* and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision." (emphasis added)).

In *Scott,* our supreme court found exceptional circumstances warranted joint custody due to "the potential for the custodial parent to effectively alienate [the child] from the non-custodial parent" in a sole custody arrangement between those particular parents. 354 S.C. at 126, 579 S.E.2d at 624. The court also noted the family court "fashioned the joint custody to alternate in four-week intervals" that would not be as disruptive as shorter intervals. *Id.*

Here, Son expressed a desire to continue the joint custody arrangement that was in place before this action was filed. However, the record indicates this arrangement has been stressful for him due to Mother and Father's contrasting parenting styles. Further, Mother has indicated a willingness to allow Father generous visitation with Son even if she relocates to Florida. Father has also indicated a willingness to accommodate Mother's relationship with Son. Nevertheless, we are troubled by Father's recording of conversations in which Son recounted certain actions taken by Mother and Father questioned Son about the reasons for, and morality of, these actions.

The record also indicates Mother is more attuned to Son's emotional needs and more open-minded about her own need for self-improvement. Critically, Mother has recognized the need to have Son tested for Attention Deficit Disorder and the need for counseling to address his emotional needs, whereas Father has been close-minded about these concerns despite his active involvement in Son's education. While Father argues he has cooperated with Mother in these two areas, we are concerned that if he has primary custody of Son upon Mother's relocation to Florida, he would be less likely to follow through with counseling or testing. Moreover, whereas Mother's parenting style was initially undisciplined, she has recognized the need for more structure and consistency in her discipline of Son and her enforcement of school assignments, and she has improved in these areas.

On the other hand, the family court recognized that Father "has a very controlling personality" and "[i]n his mind, his way is the right way and he knows what is best for his child." (family court's emphasis). The record supports the family court's assessment of Father's personality, including his troubling habit of recording conversations with Son and also with Mother without her knowledge.

Additionally, both the family court and the Guardian ad Litem expressed "great concern" over Son's "perceived fear of [Father]." The Guardian ad Litem noted Son was more comfortable expressing his feelings with Mother and seemed more relaxed with Mother. We are also concerned about Son's statement to his counselor that Father "gets women pregnant, they have babies, and he leaves them" and Son's perception that Father lies to him "a great deal." While Son's fear of Father has not discouraged Son from wanting to spend time with Father, Father's continued joint custody of Son, and the possible increase in time Son would spend with Father should Mother relocate to Florida, would eventually take its toll on Son's emotional well-being.

Finally, the new reality of Mother's marriage to Paschall removes the primary reason for the parties' previous joint custody arrangement, i.e., the long hours and travel that Mother's job required of her. Both Mother and Paschall testified Paschall earns enough income to allow Mother to stay at home with Son and her other child. In the alternative, Mother will have the freedom to take a job that would not require her to work as many hours as her then-current job required. Any initial instability Son may experience in adjusting to a new custody arrangement will be outweighed not only by the long-term benefit of living with Mother and her new family but also the potential long-term harm to Son should the parties' joint custody arrangement continue. We further discuss Son's best interests in the following section addressing Mother's possible relocation to Florida.

II. Mother's Relocation

Mother asserts the family court erred by awarding Father primary custody of Son should Mother relocate to Florida because the court focused too heavily on Father's decreased time with Son rather than whether the relocation would be in Son's best interests.

"[T]he question of whether relocation will be allowed requires a determination of whether the relocation is in the best interest of the children, the primary consideration in all child custody cases." *Rice v. Rice*, 335 S.C. 449, 454, 517 S.E.2d 220, 222 (Ct. App. 1999); *see also Latimer v. Farmer*, 360 S.C. 375, 382, 602 S.E.2d 32, 35 (2004) ("The effect of relocation on the child's best interest is highly fact specific. It should not be assumed that merely relocating and potentially burdening the non-custodial parent's visitation rights always negatively affects the child's best interests."); *id.*at 380, 602 S.E.2d at 34 (overruling *McAlister v. Patterson*, 278 S.C. 481, 299 S.E.2d 322 (1982), to the extent it "established a presumption against relocation"). In *Rice,* the mother moved to Maine after the father filed a divorce action against her but before either party requested any temporary relief. 335 S.C. at 452, 517 S.E.2d at 221. The family court granted custody of the parties' children to the mother but ordered the mother "to return to South Carolina or to any other location within 250 miles of Conway as long as the [f]ather resided there." *Id.* at 452, 517 S.E.2d at 222. Our supreme court reversed the family court's order requiring mother to return from Maine. *Id.* at 466, 517 S.E.2d at 229.

Here, Mother has not yet moved to Florida but is seriously contemplating relocating because her husband lives there. The family court found, "A relocation out of [s]tate will most certainly interrupt one parent's ability to maintain as close a relationship with [Son] as he or she is free to do currently." The family court also found, "It is clear from the comparison of his existing residences and the proposed residences that [Son] would be much more stable in his present residences."

We acknowledge that Son's relocation to Florida with Mother will involve the initial instability that inevitably accompanies the relocation of any family. There will be an adjustment period for Son. Nevertheless, the family court gave undue weight to this factor at the expense of the critical factors we discussed in Part I as well as the benefits of living with Mother in Florida. *See id.* at 460, 517 S.E.2d at 226 (finding the quality of life for the parties' children would be "vastly improved" in the state of the mother's relocation (Maine), "which strongly suggest[ed] that the best interest of the children would be served by allowing them to remain with the [m]other in Maine"); *Gandy,* 297 S.C. at 414, 377 S.E.2d at 313-14 ("Custody is based on a determination of the character, fitness, attitude[,] and inclinations on the part of each parent.").

While Son's opportunity to spend more time with Mother will undoubtedly come at the expense of less time with Father and his paternal grandparents,[5] Mother's sole custody of Son, regardless of whether she relocates to Florida, is in Son's overall best interests. *See Rice,* 335 S.C. at 465-66, 517 S.E.2d at 229 (placing priority on the child's best interests over the decreased time the child would have with the father). In addition to the factors discussed in Part I, we note Son has a good relationship with Paschall and Son's relocation with Mother will allow him to be not only with his half-brother but also with his two step-sisters and his maternal grandmother, who plans to move to Florida with Mother. Son has never met Father's other son, who had become an adult by the time Father filed the present action.

In sum, the preponderance of the evidence shows Son's long-term interests will be best served by Mother's sole custody of him even if she relocates to Florida.

CONCLUSION

Accordingly, we reverse the family court's order granting joint custody and remand for entry of an order granting Mother sole custody of Son and a determination of Father's visitation schedule.

REVERSED AND REMANDED.

SHORT, J., concurs.

KONDUROS, J., concurs in a separate opinion.

KONDUROS, J.

I write separately to clarify my position regarding the majority's finding the family court "correctly characterized the parties' custody arrangement prior to this action" as a joint custody arrangement. A family court should not interpret parents' conduct as a custody agreement affecting the standard under which first-time custody determinations are evaluated. *See* *Purser v. Owens,* 396 S.C. 531, 534, 722 S.E.2d 225, 226 (Ct. App. 2011) (rejecting the notion the conduct of the parties created a de facto custody agreement sufficient to warrant the application of a change in circumstances standard in determining child's custody). However, the family court in this case found the parties had, prior to the initiation of the action, shared responsibility for and time with Son—conduct generally consistent with joint custody. This was a permissible factual finding appropriately used in the court's evaluation of the totality of the circumstances.

[1] We granted the parties' joint motion to decide this case without oral argument.

[2] In light of our disposition, we need not decide Mother's and Father's remaining issues. *See* *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address the remaining issues on appeal when resolution of a prior issue is dispositive).

[3] This finding was merely one of several findings on which the family court relied in determining the totality of the circumstances. *See* *Paparella v. Paparella,* 340 S.C. 186, 189, 531 S.E.2d 297, 299 (Ct. App. 2000) (requiring consideration of the "totality of circumstances unique to each particular case" in an initial child custody determination). The family court did not rely on this finding to require either party to show a change in circumstances.

[4] The current version of this statute is found at S.C. Code Ann. § 63-3-530(42) (2010).

[5] Again, Mother has indicated a willingness to allow Father generous visitation with Son even if she relocates to Florida, and the family court has the discretion to fashion a visitation schedule serving Son's best interests. *See* *Arnal v. Arnal,* 363 S.C. 268, 291, 609 S.E.2d 821, 833 (Ct. App. 2005) (holding the determination of child visitation is within the family court's discretion and is controlled by the child's best interests), *modified on other grounds by* 371 S.C. 10, 636 S.E.2d 864 (2006).

Nataschja Tonya Urban, Appellant,

v.

Leo W. Kerscher, Mary Jean Crew, and Jeffrey Brain Poston, Respondents.

Opinion No. 5560.

Court of Appeals of South Carolina.

Heard April 11, 2018.
Filed May 23, 2018.

Appeal From Orangeburg County, Appellate Case No. 2016-001213, Michael S. Holt, Family Court Judge.

REVERSED and REMANDED.

Leon Edward Green, of Leon E. Green, PC, of Aiken, for Appellant.

James B. Jackson, Jr., of Nester & Jackson, PA, of Orangeburg, for Respondents.

GEATHERS, J.

This is a child custody dispute between Nataschja Urban and family friends, Leo Kerscher and Mary Crew, over Urban's minor daughter (Child). Urban appeals the ruling of the family court granting custody of Child to Kerscher and Crew. Urban argues the factors outlined in *Moore v. Moore*, 300 S.C. 75, 386 S.E.2d 456 (1989) govern and militate the return of Child to her custody. Alternatively, Urban argues she has met the higher burden of demonstrating a substantial change in circumstances warranting the return of Child to her custody.[1] We reverse and remand.

FACTS/PROCEDURAL HISTORY

Urban and Jeffrey Poston were in a romantic relationship resulting in the birth of Child in October 2009. Urban and Poston never married, and until May 2014, Urban had sole custody of Child. On May 16, 2014, Urban left Child in the care of family friends, Kerscher and Crew, in Orangeburg, South Carolina, while Urban left to pursue and secure a permanent home and employment in Pennsylvania. At the time, Urban intended for Child to stay with Kerscher and Crew only for the summer of 2014. Urban's Pennsylvania employment fell through after a week, and she relocated to Mississippi, where she worked for a few months at a convenience store.

Prior to leaving Child with Kerscher and Crew, Urban signed a letter that purported to allow them to care for Child's medical and educational needs in Urban's absence. However, Crew claimed the letter was ineffectual because her last name was incorrectly stated and the letter could not be notarized. As a result, on June 11, 2014, while Urban was still in Mississippi, Kerscher and Crew filed a complaint seeking permanent custody of Child. Specifically, Kersher and Crew requested "temporary and permanent custody of [Child], which they need [ed] for purposes of educating [Child] and providing for her medical needs." Urban was served with the complaint and filed an answer agreeing to let Kerscher and Crew have custody of Child.[2] On September 5, 2014, the family court held a final hearing on the complaint for custody and issued its final order on September 16, 2014, granting Kerscher and Crew permanent custody. Urban did not attend the final hearing, and despite the court's reference to Urban's Mississippi residence, Urban had returned to South Carolina in August.

Two months later, on November 14, 2014, Urban filed a complaint seeking the return of Child to her custody. In April 2015, Urban filed a motion for temporary relief, seeking custody of Child during litigation. The family court

held a hearing on the motion in June 2015 and issued its order maintaining Child's custody with Kerscher and Crew but granting Urban visitation.

The final hearing was held in March 2016, and the court issued its order the following month. The court declined to return custody of Child to Urban but continued to allow Urban visitation. The court also required the child support being paid by Child's father to be sent to Kerscher and Crew. This appeal followed.

ISSUES ON APPEAL

1. Did the family court err in granting custody to third parties over a natural parent?

2. Did the family court err in finding there was not a substantial change in circumstances warranting a change in custody?

STANDARD OF REVIEW

"[T]he proper standard of review in family court matters is de novo . . . ." *Stoney v. Stoney,* Op. No. 27758 (S.C. Sup. Ct. filed April 18, 2018) (Shearouse Adv. Sh. No. 16 at 11); *Lewis v. Lewis,* 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). In a de novo review, the appellate court is free to make its own findings of fact but must remember the family court was in a better position to make credibility determinations. *Lewis,* 392 S.C. at 385, 709 S.E.2d at 651-52. "Consistent with this de novo review, the appellant retains the burden to show that the family court's findings are not supported by a preponderance of the evidence; otherwise, the findings will be affirmed." *Ashburn v. Rogers,* 420 S.C. 411, 416, 803 S.E.2d 469, 471 (Ct. App. 2017). On the other hand, evidentiary and procedural rulings of the family court are reviewed for an abuse of discretion. *Stoney,* Op. No. 27758 (Shearouse Adv. Sh. No. 16 at 10, n.2).

LAW/ANALYSIS

The family court denied Urban's petition for custody by applying two competing analyses—finding Urban had not met the factors established in *Moore v. Moore,* 300 S.C. 75, 386 S.E.2d 456 (1989) or the higher burden of demonstrating a substantial change in circumstances. Urban argues the family court should have applied only the *Moore* factors but also contends she has met the burden of proof under either theory. We find the *Moore* factors govern exclusively.

I. Appropriate Standard

Our supreme court in *Moore* outlined certain criteria for a court to apply when a natural parent seeks to reclaim custody of his or her child after having temporarily relinquished custody to a third party. 300 S.C. at 79-80, 386 S.E.2d at 458. Beginning with "a rebuttable presumption that it is in the best interest of any child to be in the custody of its biological parent," the court outlined the following four factors:

(1) "[t]he parent must prove that he [or she] is a fit parent, able to properly care for the child and provide a good home";

(2) "[t]he amount of contact, in the form of visits, financial support[,] or both, [that] the parent had with the child while [he or she] was in the care of a third party";

(3) "[t]he circumstances under which temporary relinquishment occurred"; and

(4) "[t]he degree of attachment between the child and the temporary custodian."

Id. The question is not who has the most suitable home at the time of the hearing but whether circumstances "overcome the presumption that a return of custody to the biological parent is in the best interest of the child." *Sanders v. Emery*, 317 S.C. 230, 234, 452 S.E.2d 636, 638-39 (Ct. App. 1994).

The *Moore* court found these factors best addressed the dilemma between safeguarding the welfare of a child and ensuring "parents who temporarily relinquish custody for the child's best interest can regain custody when conditions become more favorable." 300 S.C. at 79, 386 S.E.2d at 458. The court reasoned a parent should be able to regain custody by showing the condition requiring relinquishment has been resolved. *Id.* at 81, 386 S.C. at 459. The court further noted a third party should not be awarded custody of a child over a biological parent through "adverse possession." *Id.*

Because *Moore* is limited to situations involving the temporary relinquishment of custody to a third party, it stands to reason that *Moore* would not apply when custody of a child is transferred permanently, involuntarily, or to the other natural parent. *See, e.g., Baker v. Wolfe*, 333 S.C. 605, 610, 510 S.E.2d 726, 729 (Ct. App. 1998) (finding the *Moore* factors did not apply because a mother voluntarily relinquished custody of her children to the children's father, not a third party). Here, it is undisputed Urban voluntarily transferred custody of Child to third parties, Kerscher and Crew. The question remains, however, whether Urban's relinquishment was temporary or permanent.

On one occasion, this court has addressed the temporary nature of a biological parent's relinquishment of custody to a third party. *See Harrison v. Ballington,* 330 S.C. 298, 302, 498 S.E.2d 680, 682 (Ct. App. 1998). In *Harrison,* a father and mother divorced, and the mother had sole custody of their son. *Id.* at 301, 498 S.E.2d at 681. Six months later, the mother passed away, and the child's grandparents took physical custody of the child. *Id.,* 498 S.E.2d at 681-82. The grandparents filed an action seeking custody of the child, and the parties reached an agreement, which the family court adopted, granting the grandparents custody and allowing the father visitation. *Id.,* 498 S.E.2d at 682. A year and a half later, the father filed for legal custody of the child based on changed circumstances. *Id.* This court determined the family court erred in applying a changed-circumstances analysis because the family court order did not specify the father's relinquishment was permanent or that the father "waived his priority status as a biological parent to reclaim custody"; and, the agreement upon which the order was based indicated the parties had contemplated the eventual return of the child to the father. *Id.* at 302, 498 S.E.2d at 682-83. Therefore, the *Moore* factors applied. *Id.* at 303, 498 S.E.2d at 683.

We interpret *Harrison* as allowing for an examination of the circumstances surrounding relinquishment to determine the nature of the relinquishment, with particular focus on the biological parent's intent. *Id.* at 302-03, 498 S.E.2d at 682-83 (examining the initial custody agreement, which was not incorporated into the order, and determining the father never intended to permanently relinquish custody or waive "his priority status as a biological parent to reclaim custody"). We find this reading of *Harrison* best comports with our state's public policy of reuniting children with their families in timely manner and this court's duty to zealously safeguard the rights of minors. *See* S.C. Code Ann. § 63-1-20(D) (2009) ("It is the policy of this [s]tate to reunite the child with his family in a timely manner, whether or not the child had been placed in the care of the [s]tate voluntarily."); *Harrison*, 330 S.C. at 303, 498 S.E.2d at 683 (stating the public policy of South Carolina, in child custody disputes, is to reunite children with their parents); *see also S.C. Dep't of Soc. Servs. v. Roe*, 371 S.C. 450, 463, 639 S.E.2d 165, 172 (Ct. App. 2006) ("The duty to protect the rights of minors and incompetents has precedence over procedural rules otherwise limiting the scope of review . . . .").

Additionally, examining the circumstances surrounding relinquishment and focusing on the biological parent's intent, even in the face of an award of permanent custody, reinforces the repeated recognition by our supreme court and the Supreme Court of the United States of a biological parent's fundamental liberty interest in "the companionship, care, custody, and management of his or her children." *Santosky v. Kramer,* 455 U.S. 745, 758 (1982) (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981)); *Moore*, 300 S.C. at 79, 386 S.E.2d at 458 ("[T]his [c]ourt [has] placed a substantial burden on any third party attempting to take custody over a

biological parent and `. . . recognize[s] the superior rights of a natural parent in a custody dispute with a third party.'" (quoting *Kay v. Rowland,* 285 S.C. 516, 517, 331 S.E.2d 781, 782 (1985))); *cf. Ex parte Reynolds,* 73 S.C. 296, 303, 53 S.E. 490, 492 (1906) ("Those who receive children from parents without the deed provided by statute, relying upon estoppel of the parents, are charged with notice that the presumption is very strong that a right so precious as that of a parent to a child will not be unconditionally given away except for very cogent reasons . . . .").

Accordingly, pursuant to our interpretation of *Harrison,* we find Urban's custody dispute is governed exclusively by the *Moore* factors. Although the family court's 2014 order awarded "permanent" custody to Kerscher and Crew, the record on appeal does not establish that Urban waived her priority status as a biological parent to have custody of Child returned and the circumstances surrounding relinquishment indicate the parties contemplated the eventual return of Child. Urban left South Carolina to pursue permanent employment and to establish a home for Child and herself. Prior to leaving, Urban wrote a letter allowing Kerscher and Crew to care for Child in Urban's absence. However, due to Crew's alleged concern that the letter was ineffective, Kerscher and Crew filed a complaint for custody while Urban was in Mississippi. Urban, unrepresented, accepted service and answered the complaint, agreeing to relinquish custody. Urban later testified she thought she was signing a waiver to allow Crew to care for Child in case of emergency. After her out-of-state employment fell through, and three months after she had left the state, Urban returned to South Carolina and attempted to have Child returned. Text messages between Urban and Crew that were read into the record at trial show Crew was willing to return Child if Urban could demonstrate her ability to provide for Child to Crew's satisfaction. Furthermore, the appealed 2016 family court order recognized the temporary duration of Kerscher and Crew's custody of Child, stating Child was supposed to be in their custody only for the summer of 2014. Therefore, Urban's custody dispute is governed by the *Moore* factors.

II. Moore Factors

1. Fitness as a Parent

"The parent must prove that he [or she] is a fit parent, able to properly care for the child and provide a good home." *Moore,* 300 S.C. at 79, 386 S.E.2d at 458. In determining the natural parent's fitness, courts consider the quality of the home the natural parent can provide as well as the parent's employment stability. *See Dodge v. Dodge,* 332 S.C. 401, 411-12, 505 S.E.2d 344, 349 (Ct. App. 1998) (noting the natural parent rented a large, clean home and had stable employment as a property manager). Further, the willingness of a parent's spouse and his or her ability to provide for the child weighs in favor of finding the parent is fit and able to care for the child. *Malpass v. Hodson,* 309 S.C. 397, 399, 424 S.E.2d 470, 472 (1992). However, the natural parent's history of instability and financial dependence upon others can factor against finding the parent is fit. *See Kramer v. Kramer,* 323 S.C. 212, 219, 473 S.E.2d 846, 849 (Ct. App. 1996).

Here, the court found Urban was not fit and not able to properly care for Child and provide a good home. The court acknowledged Urban was in a better place— in a clean and stable home with her fiancée Brittany Carter. However, the court was concerned because Urban was unemployed and dependent on her fiancée for financial support and housing. The court also noted Urban was receiving child support from Child's father, Poston, but not passing that on to Kerscher and Crew.

Pursuant to our de novo review, we find Urban is a fit parent, able to properly care for Child and provide a good home. Urban lives with her fiancée in a clean and stable home. Child has her own room and has a good relationship with Urban and Carter. Urban's character references, as discussed in the Guardian ad Litem's report, indicated Urban was a good mother, and no one indicated issues with temper, alcohol, or drugs. Further, during oral argument, the Guardian ad Litem stated that Urban was a fit parent and expressed no concerns with Urban's ability to care for Child. We find the family court gave undue weight to Urban's financial

dependence on her fiancée. At the time of the hearing, Urban was unemployed and her fiancée testified she was willing to use her income to support Child and Urban. The family court was concerned with the dependence, but we take an opposite view. Financial dependence on a significant other should not reflect poorly on a natural parent's ability to provide a good home unless the significant other is not in a position to provide financial support. *Compare* *Malpass*, 309 S.C. at 399, 424 S.E.2d at 472 (finding a husband's willingness and ability to provide for his wife's child weighed in favor of finding the wife was a fit parent, able to care for the child), *with* *Kramer*, 323 S.C. at 219, 473 S.E.2d at 849 (holding neither a mother's past conduct nor her present financial dependence on her husband supported finding she was a fit parent; the husband's $16,000 in child support arrearages did not suggest he was "in a position to provide financial support" for the child).

Additionally, despite Urban's unemployment, she was attending Phoenix University, receiving $2,500 quarterly in financial aid, and receiving child support from Poston. Moreover, we are less concerned than the family court that Urban kept the child support rather than relinquishing it to Kerscher and Crew for two reasons. First, there is evidence in the record that Urban offered to forward the money to Kerscher and Crew but they refused it. Second, Urban has been using that money to specifically provide for Child's needs, and thus, it contributes to Urban's ability to care for Child. Urban used the child support to provide for the care of Child when Child visited Urban, and the Guardian ad Litem's report indicated Child had "her own room[] with adequate facilities and toys" at Urban's home. Therefore, we find the first *Moore* factor weighs in favor of returning custody of Child to Urban.

2. Contact in the Form of Visits and Financial Support

The second *Moore* factor considers "[t]he amount of contact, in the form of visits, financial support[,] or both, [that] the parent had with the child while [the child] was in the care of a third party." *Moore*, 300 S.C. at 79, 386 S.E.2d at 458. The more the natural parent visits his or her child and provides financial support, the more likely a court is to return custody to the parent. *Compare* *Dodge*, 332 S.C. at 413, 505 S.E.2d at 350 (acknowledging father faithfully exercised his visitation and, while imprisoned, frequently called his children and sent them letters), *with* *Kramer*, 323 S.C. at 219, 473 S.E.2d at 849-50 (noting the mother visited once or twice a year over a four-year period, didn't provide financial support, did not send Christmas presents, and never petitioned the court for visitation after the father had acquired custody). Additionally, courts consider whether the third party limited the natural parent's contact with the child or refused financial assistance from the natural parent. *See* *Moore*, 300 S.C. at 80, 386 S.E.2d at 459 (noting the third party refused increased financial contribution from the natural parent, limited the natural parent's visitation, and rebuffed the natural parent's attempts to regain custody).

It is undisputed Urban did not visit Child while in Pennsylvania or Mississippi, did not promptly notify Kerscher and Crew of her return to South Carolina in August 2014, and did not relinquish the child support paid by Child's father to Kerscher and Crew. However, even though Urban did not physically visit Child while she was out of state, she spoke with Child on the phone and messaged Crew via phone and social media to check on Child. Considering Urban's financial status, her contact with Child was what she could accomplish within her means. *See* *Dodge*, 332 S.C. at 413, 505 S.E.2d at 350 (acknowledging the father frequently called his children and sent them letters while imprisoned). Furthermore, on more than one occasion, Kerscher and Crew would not allow Urban to speak with Child. Despite Urban's failure to promptly notify Kerscher and Crew when she returned to South Carolina in August 2014, Urban frequently contacted Crew through phone and social media, checking on Child's well-being and requesting to talk with or visit Child, but Crew ignored or rebuffed those attempts. After Crew's repeated refusal to allow contact and visitation, Urban filed for custody of Child in November 2014; however, a visitation schedule was not established by the court until June 2015.

Moreover, we find that Urban's failure to forward the child support to Kerscher and Crew does not reflect so poorly on Urban. Similar to our analysis under the first *Moore* factor, there is evidence Urban offered to forward

the child support to Kerscher and Crew, but they refused it, and Urban used the child support to provide for Child when Child visited Urban once she returned to South Carolina. Considering Urban's circumstances and Kerscher and Crew's actions in refusing visitation, we find the second *Moore* factor weighs in favor of returning custody of Child to Urban.

3. Circumstances of Temporary Relinquishment

In addressing this factor, courts examine whether the circumstances surrounding the relinquishment have been resolved. *See* *Malpass*, 309 S.C. at 400, 424 S.E.2d at 472 (noting mother relinquished custody of child while she was a victim of an abusive spouse but had since remarried and was capable of providing for the child); *Kramer*, 323 S.C. at 220, 473 S.E.2d at 850 (stating this factor weighed against returning custody as mother's relinquishment was markedly different from *Moore*—she abandoned her child on his first birthday, left the state to pursue a life of her own, and did not contact the child for months).

When Urban left Child with Kerscher and Crew in May 2014, Urban was leaving South Carolina to pursue an employment opportunity in Pennsylvania because she was unemployed, essentially homeless, and did not own a vehicle. At the time of the hearing, Urban had returned to South Carolina and established a home with her fiancée. Although Urban was unemployed,[3] she was attending school, receiving excess financial aid, and her fiancée had committed to supporting her and Child. Urban still did not own a vehicle but had access to her fiancée's vehicle if she needed it. We find the circumstances surrounding Urban's relinquishment of custody have substantially been resolved. Therefore, we find this factor weighs in favor of returning custody of Child to Urban.

4. Degree of Attachment between Child and Temporary Custodian

The fact that a strong bond exists between a third party and a child is not sufficient to award custody to the third party. *Harrison*, 330 S.C. at 304-05, 498 S.E.2d at 684. Courts will consider whether a third party's actions in limiting the natural parent's contact with the child allowed the bond between the third party and the child to foster. *See* *Moore*, 300 S.C. at 80-81, 386 S.E.2d at 459 (noting the existence of strong relationship between the third party and the child is an insufficient ground on which to award permanent custody; especially when that relationship was allowed to flourish due to the third party's overt acts inhibiting "the development of a normal relationship between the natural parent and his child"). Under this factor, a court is more likely to award custody to the third party when the third party is the only parent the child has ever known. *Compare* *Malpass*, 309 S.C. at 400, 424 S.E.2d at 472 (finding a child had bonded with his mother despite living with his grandparents), *with* *Kramer*, 323 S.C. at 220, 473 S.E.2d at 850 (finding the temporary custodians were the only parents the child had ever known).

Here, the family court's consideration of this factor extended merely to the recognition that Child "is very attached to [Kerscher and Crew] and is thriving in their care." Although we recognize the close degree of attachment between Child and Kerscher and Crew, the "existence of such a bond is an inadequate ground to award custody to" Kerscher and Crew. *Harrison*, 330 S.C. at 305, 498 S.E.2d at 684. Moreover, unlike *Kramer,* Kerscher and Crew are not the only parents Child has known. Child considers herself as having two families—one with Urban and Carter and another with Kerscher and Crew. Therefore, we find this factor does not favor granting Kerscher and Crew custody of Child.

We acknowledge Kerscher and Crew are able to provide a good home for Child. However, the question is not who has the most suitable home at the time of the hearing but whether circumstances "overcome the presumption that a return of custody to the biological parent is in the best interest of the child." *Sanders*, 317 S.C. at 234, 452 S.E.2d at 638-39; *Harrison*, 330 S.C. at 305, 498 S.E.2d at 684; *see also* *McCann v. Doe*, 377 S.C. 373, 390, 660 S.E.2d 500, 509 (2008) (citing the presumption from *Moore* that, in custody matters, it is in

the best interest of a child to be placed with a biological parent over a third party and determining custody should be returned to a biological parent because the biological parent's consent to adoption was invalid and both parties had "an equal ability to care for the child"). We find the presumption has not been overcome and custody of Child should be returned to Urban.

Furthermore, it is commendable that Urban recognized her previous inability to care for Child and, in good faith, left Child with people willing and able to provide for Child while Urban attempted to better her family's circumstances. Child's custody should not be subject to adverse possession when Urban is a fit parent who has substantially remedied the circumstances surrounding custodial relinquishment. *See* *Moore*, 300 S.C. at 81, 386 S.E.2d at 459 ("If a party relinquishes custody in good faith because of some temporary inability to provide for the child, such parent should be able to regain custody upon a showing that the condition [that] required relinquishment has been resolved. Child custody should not be subject to change because of adverse possession."). In conclusion, we reverse the family court's order maintaining custody with Kerscher and Crew and remand for an order granting Urban custody of Child.

REVERSED and REMANDED.

HUFF and McDONALD, JJ., concur.

[1] Kerscher and Crew did not file a brief in response to this appeal.

[2] Urban's answer was not included in the record on appeal.

[3] At the hearing, Urban indicated she had a job lined up but was waiting for management's final approval before being extended a formal offer of employment.

Karl and Lisa Jobst, Respondents,

v.

Bryan Jobst, Brittany Martin, and South Carolina Department of Social Services, Of whom Brittany Martin is the, Appellant, and South Carolina Department of Social Services is the Respondent. In the interest of a minor under the age of eighteen.

Opinion No. 5567.

Court of Appeals of South Carolina.

Heard March 14, 2018.
Filed June 6, 2018.

Appeal From Spartanburg County, Appellate Case No. 2016-002439, Monét S. Pincus, Family Court Judge.

AFFIRMED.

Melinda Inman Butler, of The Butler Law Firm, of Union, for Appellant.

George Brandt, III, of Henderson Brandt & Vieth, PA, of Spartanburg, for Respondents Karl and Lisa Jobst; and Robert C. Rhoden, III, of Spartanburg, for Respondent South Carolina Department of Social Services.

KONDUROS, J.

Brittany Martin (Mother) appeals an order awarding custody of her minor child (Child) to Karl (Grandfather) and Lisa Jobst (Grandmother, collectively Grandparents). On appeal, Mother argues the family court erred in (1) finding Grandparents had standing to seek custody, (2) dismissing the South Carolina Department of Social Services (DSS) from the action, and (3) holding Mother in contempt for failing to attend mediation. We affirm.

FACTS

Child was born in 2013. Mother and Brian Jobst (Father) are Child's parents, and Grandparents are Child's paternal grandparents. On June 5, 2015, Mother was arrested for driving under the influence (DUI), possession of marijuana, and child endangerment because Child was in the car with Mother at the time of her arrest. The following day Mother and Father signed a Safety Plan with DSS agreeing Father would act as Child's protector and not allow Mother to have unsupervised contact with Child during DSS's investigation. Because of Father's work schedule, Mother and Father asked Grandmother, who lived in Texas, to come to South Carolina and care for Child. Grandmother came to South Carolina, and on June 11, 2015, Grandparents filed this action alleging Mother and Father were unfit, Grandparents were Child's de facto custodians or psychological parents, and custody with Grandparents was in Child's best interest. On June 15, 2015, the family court issued an order granting Grandparents temporary custody of Child and requiring them to remain in South Carolina. On August 17, 2015, the family court issued a second order granting Grandparents temporary custody of Child and allowing Child to move to Texas, where Grandparents lived.

On October 4, 2016, the family court held a final hearing. Grandmother testified Mother and Father previously lived with Grandparents in South Carolina while Mother was pregnant, and Mother, Father, and Child lived with Grandparents until Child was about one year old. She stated everyone got along well during that time and testified, "We took care of the baby. [Father] took care of the baby. [Mother] at times took care of the baby." However, she believed Mother was not always attentive to Child. She explained, "[Mother] would get up at two

o'clock [p.m.] and take a shower, smoke a couple of cigarettes[,] and get dressed and go off to work, and we wouldn't see her until two, three, four in the morning, whenever she came home. . . ." Grandmother added "Sometimes she would do the two o'clock feeding before she went to work and sometimes she wouldn't. She didn't say much. She just went on her way."

Grandmother stated Father worked full-time and attended school, and he "was a little disappointed that [Mother] wasn't . . . doing more with [Child]." She stated she and Grandfather were able to help care for Child in part because Grandmother worked two days per week and Grandfather had been laid off from his job. Grandmother testified she and Grandfather moved to Texas in July 2014.

When Grandmother arrived in South Carolina following Mother's arrest, the DSS caseworker told her "if Father and Mother did not pass their drug test, that either [Grandmother] could get custody of [Child] or she would go to a foster home, . . . and that if [Grandmother] wanted [custody], [she] needed to get an attorney."

Grandmother testified Father visited Child "every night after work" when she lived in South Carolina with Child under the temporary custody order. She testified, "[Child] was happy to see him, glad to see him." Grandmother testified Mother had scheduled visitation on Wednesdays, Saturdays, and Sundays and "[s]ometimes she would come for the visitation. Sometimes she wouldn't." Grandmother described Mother's behavior during that time as "weird." She stated Mother had "[j]erking movements, tremors. She had facial expressions. Sometimes . . . her pupils were really dilated." Grandmother stated she asked Mother whether she had entered drug treatment or done anything required by the court; Mother replied, "[W]hat are you talking about? No one told me I had to do anything."

Grandmother testified the modified temporary order allowing Grandparents to take Child to Texas required Grandparents to pay Mother's travel expenses for monthly visits. The order also required Mother to pay child support, which she generally failed to do with the exception of August of 2015 and January 2016.

Regarding Mother's visits to Texas, Grandmother testified Mother generally acted bizarre—exhibiting tremors, making odd facial expressions, staying up late, and going outside frequently. Grandmother further testified Mother had limited engagement with Child, argued with Child on several occasions over trivial matters, like tea sets, water guns, and coloring. Grandmother estimated Mother spent about twenty to forty minutes with Child during visits and the visits were largely unproductive. She stated Mother "call[ed Child] here and there, not on a regular basis," but Child "usually didn't want to talk to her."

Grandmother testified Child attended preschool, did not have special needs or concerns, and was thriving in Grandparents' custody. She stated Father had moved to Texas to live with them and helped pay household expenses. She further stated Texas Child Protective Services (CPS) visited their home monthly at DSS's request, she was not aware of any negative reports, and CPS's last visit was in June 2016. Grandmother testified she and Grandfather had driven to South Carolina for court-ordered mediation with Mother, but Mother did not attend. Grandmother stated she spent $400 for the mediator, $300 per hour for her attorney, and around $1,000 in travel expenses. She requested Mother be held in contempt for not appearing at mediation or paying child support.

On cross-examination, Grandmother acknowledged the visits between Child and Mother had "gotten a little bit better" but maintained the visits were still "not good." Grandmother stated Child did not appear upset when Mother left, and Mother's ability to interact with Child had not improved. Grandmother also acknowledged DSS planned to file a removal action against Mother and Father in 2014 after Father failed a drug test, but tesitifed DSS allowed Father to have unsupervised contact with Child after he passed a drug test in May 2016. She stated DSS "was still directing this case" at that time.

Grandfather testified he was married to Grandmother and earned $120,000 per year in Texas. He described Child as "a great joy," believed Child was doing "wonderful[ly]," and believed it would be in Child's best interest to remain in Grandparents' custody. Grandfather stated he and Grandmother tried to encourage a relationship

between Mother and Child during visits. He stated he never saw any indication Mother had stopped using drugs; however, he "was quite convinced [Father] stopped using them." Grandfather noted Father's job required a drug test.

Dana Lyles, a human services specialist for DSS, testified she became involved with this family when DSS received a report on June 5, 2015, that Child may have been abused or neglected. She testified Mother and Child were living with Angela Ivey, Mother's mother. Lyles visited them at Ivey's house on June 6. Lyles stated DSS determined Child "would need a kinship caregiver," but Ivey could not "serve in that position because she was listed in the central registry, and her husband Ronald . . . was the perpetrator on a past indicated child abuse and neglect case." Lyles indicated DSS agreed to a safety plan "allowing [Father] to be the protector of [Child] and [providing] he would supervise all contact between Child [and Mother]." She testified DSS requested Father submit to a drug screen; while they were awaiting the results of that test, DSS learned "[Grandmother] was flying in and that she wanted to be the protector of [Child] because [Father] was working." Lyles clarified she "didn't place [C]hild with [Grandparents]. [She] placed [C]hild with [Father]." On cross-examination, Lyles explained the safety plan did not address custody; it "only addresse[d] placement of [C]hild and how [C]hild would be protected in the presence of the alleged perpetrator."

Lyles explained she was "subpoenaed to come to court for [Grandmother's] private action" before the results of Father's drug screen came back. She testified Grandmother obtained temporary custody, and DSS transferred the case to the family preservation department. Lyles acknowledged DSS "didn't object to [Grandmother] getting custody." She explained the family court entered the temporary custody order before DSS completed its investigation, but DSS continued its investigation. Lyles stated DSS indicated a case for physical neglect against Mother but did not address custody because of the private action.

Lyles's involvement with the case ended in July 2015, when the case was transferred to Stefanie Hill, a DSS family preservation worker. Hill's role was "to work with the family on correcting the reasons for DSS involvement." Hill testified she was assigned the case in August 2015, and she met with Mother to discuss a treatment plan. She stated DSS asked Mother to complete a drug and alcohol assessment and also parenting classes. Hill testified she discussed the treatment plan with Mother, Mother was aware of the services she had to complete, and Mother signed the treatment plan on August 4, 2015. Hill provided she maintained regular contact with Mother "in an effort to get her to complete" treatment, and Mother "started doing it, but she did not fully complete it."

Hill testified DSS referred Mother to a twelve-week parenting program; Mother began the classes on August 17, 2015; "[h]er last session there was January 25, 2016"; and she only completed eight of the twelve sessions. Hill stated DSS also referred Mother to a drug program but Mother was inconsistent with the program. Hill stated Mother began treatment on November 30, 2015, but "by January 20th, 2016[,] she was told that she could no longer attend the agency" because she "broke confidentiality" by discussing another client in the program. Hill indicated she told Mother the agency could refer her to another agency, and Mother knew "she had to speak to that agency so they [could] make referrals, but she never went back in."

Hill testified she continued contacting Mother "off and on" "until about June" 2016. She testified, "Most of the time I couldn't get in contact with [her]." She explained, "[W]hen I would call [Mother], it would be there is something going on with her phone, voicemail not set up, or no answer. . . . [S]ince I didn't get her by phone, I would go to the home and sometimes nobody would be there or answer the door."

Hill stated she spoke to Mother the day before the May 2016 mediation, and Mother told her she had transportation and planned to attend. However, Mother did not attend. Hill testified she went to Mother's home on June 11, 2016, and a male answered the door indicating Mother was home and said he would get her. However, Ivey came to the door and said Mother was not feeling well. Hill testified Ivey said "she would [bring Mother] to the [DSS] office by two o'clock," but Mother did not appear. Hill testified she never saw Mother after that, and she closed the DSS file in July 2016. Hill indicated Mother did not cooperate with her a majority of the

time. She testified she did not observe any behavioral changes in Mother that indicated Mother was stable or complying with treatment. Hill stated DSS never filed a removal action because Grandmother filed a private custody action. She acknowledged the last time she spoke to Mother was May 2016. Hill testified she explained to Mother the steps she could take to attempt to regain custody in the private action if DSS closed its case. Hill believed DSS should be dismissed as a party to the private action.

Following Hill's testimony, DSS moved to be dismissed from the action, asserting it did not "have a position on the custody." Mother objected, asserting "DSS is the reason this child got removed." Mother then requested the "hearing be considered a merits hearing and that DSS be ordered to put the court-ordered treatment plan in place and for [the family] court to adopt the treatment plan." The family court deferred ruling on DSS's motion.

After Grandparents rested, Mother moved for a nonsuit, arguing Grandparents were not de facto custodians or psychological parents, and thus, did not have standing to file the custody action. The family court denied Mother's motion.

Father testified in his case and asked the court to grant Grandparents custody of Child because Child was thriving in their care. Father testified he lived with Grandparents, saw Child daily, and did not have immediate plans to move out of their home. Father acknowledged he and Mother lived with Grandparents before they moved to Texas, and stated he and Mother fostered a parent-like relationship between Child and Grandparents. Father stated he earned between $55,000 and $60,000 per year and contributed to Child's care. He acknowledged testing positive for marijuana when this action began but stated he had completed a twelve-week drug and alcohol program, and he tested negative for drugs prior to starting his job. Father did not believe Mother could adequately care for Child.

The guardian ad litem (GAL), Ken Shabel, stated he met with Mother in August 2015, and "it was pretty clear . . . she knew what she needed to do. She had actually already had her [drug] assessment and was waiting on the group enrollment program to begin." However, he stated he never saw any drug screens after January 2016 or certificates of completion for the treatment programs. The GAL testified he reviewed the public index and learned Mother was arrested on July 13, 2016, for possession of marijuana, "public drunkenness, or being intoxicated on a state highway or city road, and possession of drug paraphernalia"; Mother was convicted in her absence on July 29. The GAL stated Mother had either served her time or paid the fine for that charge. He believed Father "rectified [his] drug issues." He also believed Child was "well taken care of" with Grandparents.

Following the close of evidence, Mother renewed her directed verdict/involuntary non-suit motion, asserting Grandparents were not psychological parents or de facto custodians. The family court denied the motion.

In its final order, the family court found clear and convincing evidence showed Mother was unfit. The court found Mother tested positive for amphetamines, opiates, and marijuana; she was arrested for possession of marijuana in March 2015 and pleaded guilty in April 2015; she was arrested again for possession of marijuana in June 2015 and pleaded guilty in February 2016; and she was arrested a third time for possession of marijuana in July 2016 and convicted in her absence. The family court found DSS determined Mother physically neglected Child, DSS referred Mother for drug treatment, Mother did not complete the treatment, and Mother did not cooperate with DSS. The family court determined Father was not unfit but was not contesting custody.

Regarding standing, the family court found Grandparents were not Child's de facto custodians because they did not have custody of Child for six months before they filed the custody action. However, the family court found, "[S]tanding under this statute was not needed since [Grandparents] received physical custody from the parents either through their consent or acquiescence at the time when neither parent could retain custody. . . ." The family court found Child was "bonded with [Grandparents] as if they [were] her parents and she was entirely dependent upon them for all her needs," and she lived with Grandparents during the first year of her life. The family court determined, "[Grandparents] may, in fact, be psychological parents, but because the parents are either unfit or unwilling to have custody and [Grandparents] have a loving, bonded parental-type

relationship with [C]hild, it is in her best interest to remain in the permanent custody of [Grandparents.]." The family court granted DSS's motion to be dismissed as a party, suspended Mother's visitation until she tested negative for drugs, and ordered Mother to pay child support. The family court also ordered Mother to reimburse Grandparents $400 in mediation fees and $600 in attorney fees for the missed mediation. This appeal followed.

STANDARD OF REVIEW

On appeal from the family court, this court reviews factual and legal issues de novo. *Simmons v. Simmons,* 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *see also Lewis v. Lewis,* 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). Although this court reviews the family court's findings de novo, we are not required to ignore the fact that the family court, which saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. *Lewis,* 392 S.C. at 385, 709 S.E.2d at 651-52. The burden is upon the appellant to convince this court that the family court erred in its findings. *Id.* at 385, 709 S.E.2d at 652.

LAW/ANALYSIS

I. STANDING

Mother argues Grandparents did not have standing to pursue custody of Child. We disagree.

"As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris,* 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). "One must be a real party in interest, *i.e.,* a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.* "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013).

Section 63-3-550 of the South Carolina Code (2010) provides, "[A]ny person having knowledge or information of a nature which convinces such person that a child is neglected . . . may institute a proceeding respecting such child." While no cases have interpreted this provisions in this particular context, both the plain language of the statute and existing case law support a finding Grandparents had standing to institute a custody action in this case.

In *Middleton v. Johnson,* 369 S.C. 585, 633 S.E.2d 162 (Ct. App. 2006), Middleton brought an action seeking visitation with his ex-girlfriend's biological son based on the fact he had played a prominent role in the child's life. *Id.* at 588, 633 S.E.2d at 164. The court of appeals determined Middleton was the child's psychological parent and allowing him visitation was in the child's best interest. *Id.* at 604, 633 S.E.2d at 172. In considering whether Middleton had standing to pursue his case, the court observed:

> To further promote the goal of safeguarding the best interests of children, the General Assembly has recognized that in certain circumstances, persons who are not a child's parent or legal guardian may be proper parties to a custody proceeding. Section 20-7-420(20)[[1]] of the South Carolina Code grants the family court jurisdiction to award custody of a child to the child's parent or "any other proper person or institution." *Pursuant to that statute, third parties have been allowed to bring an action for custody of a child.*

Id. at 594, 633 S.E.2d at 167 (emphasis added).

Furthermore, the plain language of section 63-3-550 gives a broad grant of standing specifically in cases involving abuse or neglect. Recently, in *South Carolina Department of Social Services v. Boulware*, 422 S.C. 1, 809 S.E.2d 223 (2018), our supreme court considered whether foster parents had standing to petition for adoption of a child prior to DSS making an adoption placement. The court noted its case turned upon the interpretation of section 63-9-60 of the South Carolina Code (2010 and Supp. 2017), which provides "[a]ny South Carolina resident may petition the court to adopt a child" provided such petition is filed prior to the child being "placed" for adoption by DSS. *Id.* at 7, 809 S.E.2d at 226 (quoting S.C. Code Ann. § 63-9-60). The court concluded the analysis to determine standing was simple and required only looking at the statute's plain language even though such reading could lead to anomalous situations. *Id.* at 13-14, 809 S.E.2d at 229; *see id.* at 14, 809 S.E.2d at 230 (Hearn, J., concurring) (concluding in the majority the analysis is simple but acknowledging in the concurrence that the plain language could produce an anomaly unintended by the General Assembly).

Here, the plain language of section 63-3-550, indicates any person may bring a proceeding when he or she believes a child has been abused or neglected. The general principles of standing—that a party have an interest and personal stake in the matter—overlay that broad interpretation, but otherwise the statute simply provides "any person."

Grandparents filed the action after DSS became involved due to allegations of drug use by Mother and Father and Mother's arrest. Grandparents alleged Mother and Father were unfit and unable to comply with a DSS safety plan. Based on these allegations, Grandparents had standing under section 63-3-550, and the family court properly considered the merits of this action. Further, because Grandparents had standing under section 63-3-550, they were not required to establish they were de facto custodians or psychological parents.[2]

II. DISMISSAL OF DSS

Mother argues the family court erred in dismissing DSS as a party to the case. We disagree.

First, DSS remained a party to the action until the conclusion of the case. Therefore the dismissal of DSS could not have prejudiced Mother in any meaningful way. Mother's real argument centers on the fact DSS did not proceed with its own removal action, and therefore she did not receive certain benefits pursuant to the removal statutes—primarily a court-appointed attorney and court-ordered treatment plan. Again, we disagree.

DSS "may promulgate regulations and formulate policies and methods of administration to carry out effectively child protective services, activities, and responsibilities." S.C. Ann. § 63-7-910(E) (2010). DSS must investigate allegations of child abuse or neglect. S.C. Code Ann. § 63-7-920(A) (2010). DSS "is charged with providing, directing, or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their welfare. . . ." S.C. Code Ann. § 63-7-960 (2010). "Services must not be construed to include emergency protective custody. . . ." *Id.* Whenever a child is placed in emergency protective custody, DSS must conduct a preliminary investigation. S.C. Code Ann. § 63-7-640 (2010). "During this time [DSS] . . . shall convene[] a meeting with the child's parents or guardian . . . to discuss the family's problems that led to intervention and possible corrective actions, including placement of the child." *Id.* If DSS assumes legal custody of a child following an investigation, it "shall begin a child protective investigation" and "initiate a removal proceeding in the appropriate family court." S.C. Code Ann. § 63-7-700(B)(1) (2010). DSS "may petition the family court for authority to intervene and provide protective services without removal of custody if [DSS] determines by a preponderance of evidence that the child is an abused or neglected child and that the child cannot be protected from harm without intervention." S.C. Code Ann. § 63-7-1650(A) (2010).

In this case, Mother agreed to the DSS safety plan naming Father as Child's protector. DSS investigated the case as it was required to do and indicated a case against Mother for abuse and neglect. DSS prepared a treatment plan and referred Mother for services as it was required to do. However, DSS never assumed legal

custody of Child, and therefore, the removal statutes were not triggered. *See* § 63-7-700(B)(1) (providing DSS shall file a removal action *if* it assumes legal custody after a child is placed in emergency protective custody and DSS conducts its preliminary investigation). Consequently, we affirm the ruling of the family court dismissing DSS as a party to the case.

III. CONTEMPT

Mother argues the family court erred in holding her in contempt of court for failing to attend mediation because DSS cases are exempt from mediation. We disagree. "A determination of contempt is a serious matter and should be imposed sparingly; whether it is or is not imposed is within the discretion of the trial judge, which will not be disturbed on appeal unless it is without evidentiary support." *Haselwood v. Sullivan,* 283 S.C. 29, 32-33, 320 S.E.2d 499, 501 (Ct. App. 1984). "An adult who wilfully violates, neglects, or refuses to obey or perform a lawful order of the court . . . may be proceeded against for contempt of court." S.C. Code Ann. § 63-3-620 (Supp. 2017). "Once the movant makes a prima facie showing by pleading an order and demonstrating noncompliance, `the burden shifts to the respondent to establish his defense and inability to comply.'" *Eaddy v. Oliver,* 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001) (quoting *Henderson v. Henderson,* 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989)). "[A]ll contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules unless the parties agree to conduct an arbitration." Rule 3(a), SCADR. "ADR is not required for . . . family court cases initiated by [DSS]." Rule 3(b)(8), SCADR.

> If any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause, the court may, on its own motion or motion by any party, impose upon that party, person[,] or entity, any lawful sanctions, including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP.

Rule 10(b), SCADR.

Mother's arrest for DUI and DSS's resulting involvement was the catalyst for Grandparents' pursuing custody of Child. Furthermore, DSS continued "directing" the case in many ways throughout the course of the proceedings. However, the only cases exempt from mediation are those "initiated" by DSS. *See* Rule 3(b)(8), SCADR ("ADR is not required for . . . family court cases initiated by [DSS]."). Here, Grandparents initiated the custody action in family court. The family court ordered mediation and the record demonstrates Mother had notice of the mediation. In light of Mother's failure to attend, the family court awarded costs as permitted by Rule 10(b), SCADR, and we affirm that award.

CONCLUSION

We affirm the family court's ruling Grandparents had standing to file their action pursuant to section 63-3-550. Furthermore, we affirm the family court's dismissal of DSS from the case and affirm the award of costs and fees against Mother for failing to attend mediation. Accordingly, the family court's order is

AFFIRMED.

LOCKEMY, C.J., and WILLIAMS, J., concur.

[1] This section is now codified at section 63-5-530(A) and reads identically to the prior version cited in *Middleton. See* S.C. Code Ann. § 63-5-530(A)(20) (2010). It provides the family court has jurisdiction "to award the custody of the children, during the term of any order of protection, to either spouse, or to any other proper person or institution." S.C. Code Ann. § 63-5-530 (A)(20).

[2] While the family court relied at least in part on these theories and Child's best interests to determine Grandparents had standing, we base our finding in the additional sustaining ground raised by Grandparents on appeal that section 63-3-550 afforded standing to them under the facts of this case. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (instructing that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court").

David Grantham and Evelyn Grantham, Respondents,

v.

James F. Weatherford, Appellant.

In the interest of minors under the age of eighteen.

Opinion No. 5594.

Court of Appeals of South Carolina.

Submitted June 1, 2018.
Filed September 5, 2018.

Appeal From Darlington County, Appellate Case No. 2016-000459, Michael S. Holt, Family Court Judge.

AFFIRMED.

William W. Wheeler, III, of Jennings & Jennings, PA, of Bishopville, for Appellant.

James H. Lucas and Cody Tarlton Mitchell, both of Lucas Warr & White, of Hartsville, for Respondents.

WILLIAMS, J.

In this domestic relations matter, James Weatherford (Father) appeals the family court's order awarding maternal grandparents Evelyn Grantham (Grandmother) and David Grantham (collectively, Grandparents) limited visitation with their grandchildren. Father argues the family court erred in unconstitutionally applying section 63-3-530(A)(33) of the South Carolina Code (Supp. 2011) by requiring a fit parent to proceed with grandparent visitation. We affirm.[1]

FACTS/PROCEDURAL HISTORY

Kasey Weatherford (Mother) married Father on August 25, 2001. Mother and Father had two minor children during the marriage. Shortly after the second child's birth, Mother began to suffer from severe depression and substance abuse, and required frequent help caring for the children. Because Father often worked long shifts and traveled out of town, Grandparents, Father's parents, and Father's aunts helped Mother take care of the children. Grandparents were involved in the children's lives since birth, often taking care of the children multiple times each week. Grandparents maintained a relationship with the children much like parents: taking and picking up the children from school, cooking for the children, bathing the children, buying clothes for the children, and taking the children to doctor's appointments. The children had a positive relationship with Grandparents' adopted children, who were very close in age.

In February 2013, Mother and Father separated. In June 2013, Mother and Father signed a custody agreement, granting custody of the children to Father and reasonable visitation to Mother. The parties agreed Mother's visitation would occur at Grandparents' house under Grandmother's supervision. That same month, Father became romantically involved with Rebecca, who quickly became another caretaker for the children. Mother's supervised visitation continued until November 9, 2013, when Mother tragically committed suicide. At Mother's funeral, the minister—whom Grandparents selected to deliver the eulogy—made harsh statements referencing Mother's "abusive marriage" and implying Father bore responsibility for Mother's death. Grandparents apologized to Father and Rebecca after the funeral and denied giving the minister the information behind the statements. However, the parties' relationship quickly began to deteriorate.

After the funeral, Father immediately limited how often Grandparents saw the children. The parties' relationship worsened after a public altercation between Grandparents and Rebecca in front of the children, an argument between Grandparents and Father in which Grandparents blamed Father for Mother's death, and another confrontation between Rebecca and Grandparents around Christmas 2013 when Grandparents expressed their frustration over the small amount of time they spent with the children during the holidays. Due to the parties' strained relationship, Grandparents only visited with the children twice since the funeral, notwithstanding some incidental contact, before Father stopped Grandparents from seeing the children altogether. In January 2014, Grandparents filed this action seeking visitation with the children. The family court appointed a guardian ad litem (GAL) and held a final merits hearing. Subsequently, the family court issued an order awarding Grandparents limited visitation.

Relying on *Marquez v. Caudill,*[2] the family court awarded Grandparents one weekend of visitation per month from 5:00 P.M. on Thursday until 5:00 P.M. on Sunday, one week of summer visitation, and visitation any other time the parties agreed. The family court also ordered the parties to attend reunification counseling, forbid Grandparents from associating Father with Mother's death, and charged the GAL with providing recommendations for implementing the court-ordered visitation. Father filed a Rule 59(e), SCRCP, motion seeking reconsideration, which the family court denied. This appeal followed.

ISSUE ON APPEAL

Did the family court err by requiring a fit parent to proceed with grandparent visitation due to an unconstitutional application of section 63-3-530(A)(33) of the South Carolina Code (Supp. 2011)?

STANDARD OF REVIEW

"[T]he proper standard of review in family court matters is de novo. . . ." *Stoney v. Stoney,* 422 S.C. 593, 596, 813 S.E.2d 486, 487 (2018) (per curiam). Although this broad scope of review grants the appellate court the authority to find facts in accordance with its own view of the preponderance of the evidence, the appellate court is not required to ignore the family court's superior position to make credibility determinations and to assign comparative weight to witness testimony. *Lewis v. Lewis,* 392 S.C. 381, 384-85, 709 S.E.2d 650, 651-52 (2011). The appellant bears the burden of convincing the appellate court that the preponderance of the evidence is against the family court's findings. *Id.* at 388, 709 S.E.2d at 653.

LAW/ANALYSIS

Father argues the family court erred in unconstitutionally applying section 63-3-530(A)(33) of the South Carolina Code (Supp. 2011) by requiring a fit parent to proceed with grandparent visitation. Specifically, Father contends the family court erred in not considering the children's best interests, giving too much weight to the Grandparents' relationship with the children, and making findings inconsistent with the GAL's report. We disagree.

Parents have a fundamental right to make decisions concerning the care, custody, and control of their children. *See Troxel v. Granville,* 530 U.S. 57, 66 (2000); *Camburn v. Smith,* 355 S.C. 574, 579, 586 S.E.2d 565, 567 (2003). When considering grandparent visitation over a parent's objection, the family court must allow a presumption that a fit parent's decision is in the best interest of the child. *Camburn,* 355 S.C. at 579, 586 S.E.2d at 567 (citing *Troxel,* 530 U.S. at 68-69). Although parents and grandparents are not on equal footing in a visitation contest, the family court may still award visitation over a parent's objection if the contesting grandparents can meet certain requirements. *Id.* at 579-80, 586 S.E.2d at 568. Subsection 63-3-530(A)(33) codified these requirements and granted the family court the exclusive jurisdiction

> to order visitation for the grandparent of a minor child whe[n] either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that:
>
> (1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and
>
> (2) the grandparent maintained a relationship similar to a parent-child relationship with the minor child; and
>
> (3) that awarding grandparent visitation would not interfere with the parent-child relationship; and:
>
> (a) the court finds by clear and convincing evidence that the child's parents or guardians are unfit;[3] or
>
> (b) the court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.

§ 63-3-530(A)(33) (Supp. 2011).[4]

As to the first requirement, we find Father unreasonably denied Grandparents visitation with the minor children for a period exceeding ninety days. The record demonstrates Mother is deceased and Grandparents presented undisputed testimony that Father unreasonably deprived Grandparents of the opportunity to visit with the children for a period exceeding ninety days.[5]

As to the second requirement, we find that Grandparents had a significant and extensive relationship with the children. The record indicates Grandparents maintained a parent-child relationship with the children: taking the children to and from school, cooking for the children, bathing the children, buying clothes for the children, and taking the children to doctor's appointments.

As to the third requirement, we find awarding grandparent visitation will not interfere with Father's relationship with the children. Grandmother's testimony demonstrates that the children developed a positive relationship with Grandparents prior to Mother's death and spent time with Mother at Grandparents' house. Grandmother knew the children had a loving relationship with Father, respected that relationship, and insisted that visitation would not interfere with Father's ability to parent. Therefore, we find granting limited grandparent visitation of one weekend per month and one week during the summer will not interfere with Father's relationship with the children. *See Marquez,* 376 S.C. at 249, 656 S.E.2d at 747 (finding an award of two weeks visitation during the summer and one week during the Christmas holidays did not interfere with the father's relationship with the child); *Dodge v. Dodge,* 332 S.C. 401, 416, 505 S.E.2d 344, 352 (Ct. App. 1998) (finding the proposed visitation amount reasonable under the circumstances and awarding grandparents one weekend of visitation with grandchildren each month and two weeks during the summer after the death of grandchildren's biological mother).

Finally, we find compelling circumstances justify granting visitation over Father's objection.[6] Our supreme court specifically addressed the issue of compelling circumstances in *Marquez.* The acutely similar facts make *Marquez* dispositive of this issue.

In *Marquez,* a maternal grandmother sought visitation of her daughter's youngest child after her daughter's suicide. 376 S.C. at 233-34, 656 S.E.2d at 739. The maternal grandmother only saw her daughter's children intermittently since their birth due to her living and working out of state. *Id.* at 238-39, 656 S.E.2d at 741-42. In *Marquez,* because the youngest child's stepfather adopted the child, the supreme court recognized the

stepfather is treated as the child's parent. *Id.* at 249 n.11, 656 S.E.2d at 747 n.11. Our supreme court affirmed the family court's limited visitation award—two weeks during the summer months and one week during the Christmas holidays—to the grandmother. *Id.* at 249, 656 S.E.2d at 747. Addressing its decision in *Camburn* and applying section 63-3-530, our supreme court held, "a biological parent[`]s death and an attempt to maintain ties with that deceased parent[`]s family may be compelling circumstances justifying ordering visitation over a fit parent[`]s objection." *Id.*

Turning to the present case, we find the family court correctly relied on *Marquez* to find compelling circumstances existed to justify ordering visitation over Father's objection. Father argues the facts of this case are unique and different from *Marquez.* Notwithstanding the similarity in the death of a biological parent, the circumstances here provide a stronger basis for finding compelling circumstances than in *Marquez.* Unlike the maternal grandmother in *Marquez,* who only saw her grandchildren rarely before moving closer to them just before seeking visitation, Grandparents developed deep ties with their grandchildren from birth, and saw the children multiple times each week until Mother's funeral. Grandparents fostered this relationship by taking the children to and from school, cooking for the children, bathing the children, buying clothes for the children, and taking the children to doctor's appointments. Even after Mother's death, Grandparents continued to attempt to visit the children. Although one witness advocated against visitation, other witnesses advocated for Grandparents' visitation, testifying that the children loved Grandparents, the children wanted Grandparents involved in their lives, and that prohibiting Grandparents' visitation could be harmful to the children. *See Camburn*, 355 S.C. at 579, 596 S.E.2d at 568 (finding significant harm to the child constituted compelling circumstances). Therefore, we find compelling circumstances exist to justify granting grandparent visitation over Father's objection.

Because we find Grandparents satisfied section 63-3-530(A)(33)'s requirements, the family court's limited visitation award to Grandparents is

AFFIRMED.

LOCKEMY, C.J., and KONDUROS, J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

[2] 376 S.C. 229, 249, 656 S.E.2d 737, 747 (2008) (finding "a biological parent[`]s death and an attempt to maintain ties with the deceased parent[`]s family may be compelling circumstances justifying ordering visitation over a fit parent[`]s objection").

[3] Grandparents concede that Father is a fit parent.

[4] Despite Father's contention that the subsequent 2014 amendment to subsection 63-3-530(A)(33) should apply, Grandparents filed their action in January 2014 when the 2010 amendment was in effect. Therefore, we apply the 2010 amendment. *See Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 397, 596 S.E.2d 42, 46-47 (2004) ("In South Carolina, the law in effect at the time the cause of action accrued controls the parties' legal relationships and rights." (quoting *Stephens v. Draffin,* 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997))).

[5] On appeal, Father does not contest that Grandparents met this statutory requirement.

[6] Father argues the family court improperly considered Grandparents' best interest, rather than the children's best interest, when the family court found, "[Grandparents] are fit and proper individuals and there is no evidence that having a relationship with the minor children is not in *their* best interest." (emphasis added). Father contends "their" refers to the Grandparents' best interests and not the children's. When read in context of the preceding sentence in the family court order, which referenced the best interest of the minor children, we find "their" refers to the minor children, not Grandparents. Therefore, we find the family court did not improperly consider Grandparents' best interests.

Lori Brown, Respondent,

v.

Heather Key, Appellant.

Opinion No. 5610.

Court of Appeals of South Carolina.

Heard November 8, 2018.
Filed January 4, 2019.

Appeal From Aiken County, Appellate Case No. 2016-001575, Dale Moore Gable, Family Court Judge.

REVERSED.

Brian Austin Katonak, of Law Office of Brian Katonak, PA, of Aiken, for Appellant.

Bradford M. Owensby, of Brad Owensby Law Firm, L.L.C., of Aiken, for Respondent.

KONDUROS, J.

Heather Key (Mother) appeals the family court's order mandating visitation between her child (Child) and Child's paternal grandmother, Lori Brown (Grandmother). Mother maintains the family court erred in finding Grandmother established her right to visitation pursuant to section 63-3-530(33) of the South Carolina Code (Supp. 2018). We reverse.

FACTS/PROCEDURAL BACKGROUND

Mother and Grandmother's son, Justin Cantwell (Father), dated when they were teenagers. Child is a product of that relationship, born in March 2012. In April 2013, when Child was a little over one year old, Father was killed in a car accident. Approximately two weeks prior to Father's death, the relationship between Father and Mother became strained as it appeared Father had become involved with another girl. The relationship between Mother and Grandmother had also become strained as it appeared Grandmother may have been promoting this new relationship. Prior to that time, Mother and Father had spent some time together at Grandmother's home, and after Child was born, Mother and Child would come to Grandmother's house to spend time. Mother and Child would occasionally spend the night at Grandmother's house, but about half of that time, Grandmother left to spend the night with her boyfriend.

After Father's death, the relationship between Mother and Grandmother further deteriorated. For reasons that are not entirely clear, Mother opened a probate case for Father.[1] Notice regarding this matter was received by Grandmother immediately following Father's funeral—a matter that

greatly upset Grandmother. A few weeks later, Mother sent a letter to Grandmother stating the probate case was being dropped and neither she nor Child desired anything from Father's estate. According to Mother, this was in response to harassment from Grandmother about the case. The letter also stated, "If you would like to check on [Child] or set up a time to see [Child], you can contact my parents at 803-[XXX-XXXX] or 803-[XXX-XXX]." Mother and Child lived with Mother's parents at all relevant times in this case.

The record demonstrates the parties communicated primarily via text messages.[2] Mother offered to let Grandmother visit with Child on several occasions but wanted those visits to be supervised. Mother testified this was because Child did not have a particularly close bond with Grandmother and because significant tension existed between the parties after several incidents.[3] Mother testified she offered to let Grandmother visit with Child at least once a month for the year after Father's death. Grandmother filed a complaint against Mother in February of 2014 seeking unsupervised visitation.

Grandmother testified she could not specifically recall the date she first contacted Mother about seeing Child but indicated she had texted Mother and Mother's mother, Lisa Day, regarding her desire to visit with Child in the months after Father's death. However, none of those text messages resulted in a visit and the exchanges often deteriorated into an argument. Specifically, in June 2013, Grandmother texted Mother, asking "Can I pick [Child] up Saturday and keep her two hours?" Either Mother or Mrs. Day responded: "I understand nobody has asked to see [Child] but Billy[4]and he meets us and comes here. The one time that you asked." The record does not reveal any further communication from Grandmother at that point, but the parties agree a visitation did not occur. Grandmother testified she sent a text on June 28 seeking to pick up Child and spend a few hours together but received no response. At some point, Mother texted Grandmother stating "This is Heather and I told you from now on it has to be supervised. I'm not trying to be mean, but she's still young and you haven't been around her but a few times." In another text, Mother stated, "so you want to see [Child]. Can be supervised. Let me know. Bye." Grandmother responded, "I will not be supervised." Mother also offered to let Grandmother and her boyfriend visit Child at Grandmother's sister's home. Grandmother responded she did not get along with her sister and would just let the judge decide.

On Halloween of 2013, Grandmother requested to see Child and told Mother if she did not hear from her by 2 p.m. she was going to take the case to court. Mother responded that "because you don't want — want to have somebody around, you can come by the house if you want to bring her something before I take her trick or treating." According to Grandmother, she did not go to Mother's house to visit because she was advised by her attorney not to do so. Two days later, Grandmother contacted the Department of Social Services (DSS) to do a well-being check on Child.[5]

During the months after Father's death, Child visited with other members of Father's family—all supervised and with Mother's support. Grandmother did visit with Child in November 2014 as part of the mediation process in this case and that visit went reasonably well.[6] Grandmother testified a second visitation was set for December 2014 but when she arrived Mother and Child

were not there. Mother testified her understanding was that the parties would evaluate how the November visitation went and then determine whether to have a second visitation. Mother testified she was not contacted by her attorney about a December visitation.[7]

The family court determined Mother had unreasonably denied visitation with Grandmother for a period exceeding ninety days and "there are compelling reasons for allowing grandparental visitation; to wit, this is the only child of grandmother's deceased child and the child will likely not know her or her father or the child's paternal family unless visitation is ordered." The family court ordered visitation for every fourth weekend of the month from Saturday at 10 a.m. until Sunday at 6 p.m. This appeal followed.

STANDARD OF REVIEW

On appeal from the family court, this court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *see also Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). "Although this court reviews the family court's findings de novo, we are not required to ignore the fact that the [family] court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony." *Sanders v. Sanders*, 396 S.C. 410, 415, 722 S.E.2d 15, 17 (Ct. App. 2011). "The burden is upon the appellant to convince this court that the family court erred in its findings." *Id.*

LAW/ANALYSIS

Mother contends the family court erred in its application of section 63-3-530(33) resulting in the grant of visitation to Grandmother. We agree.

Section 63-3-530(33) provides the family court has authority:

> to order visitation for the grandparent of a minor child where either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that:
>
> (1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and
>
> (2) awarding grandparent visitation would not interfere with the parent-child relationship; and:
>
> (a) the court finds by clear and convincing evidence that the child's parents or guardians are unfit; or

> (b) the court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.

Mother argues Grandmother did not prove all the elements required by the statute, including that Grandmother was unreasonably deprived of the opportunity to visit Child for a period of ninety days. No South Carolina cases have directly addressed the issue of what constitutes an unreasonable deprivation of the opportunity to visit for a period of ninety days as required by section 63-3-530(33).[8] However, the inclusion of the ninety-day requirement suggests our legislature seeks to curb the granting of court-ordered visitation simply because visitation is not of the quantity the grandparent would like. Such a time restriction is in line with preserving the right of parents to make decisions regarding the custody and control of their children. *See* *Troxel v. Granville*, 530 U.S. 57, 66 (2000) ("[W]e have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").

Both parties acknowledge Grandmother had only visited Child twice in the years prior to trial. However, the record reveals Grandmother was offered supervised visitation with Grandmother on multiple occasions during the year following Father's death. Grandmother's central point of contention is that Mother's insistence that visitation be supervised was unreasonable.[9] We cannot agree. Cases from other states considering this issue are instructive. Indiana courts have considered whether a refusal to give grandparents the visitation they request is sufficient to support court-ordered visitation. In *Swartz v. Swartz*, 720 N.E.2d 1219, 1222-23 (Ind. Ct. App. 1999), the court held grandparents are not automatically entitled to "have the type of visitation they want." In *In re Visitation of C.S.N.*, 14 N.E.3d 753, 761-62 (Ind. Ct. App. 2014), the court further expanded on this concept. In that case, the court considered whether the grandparents' desire for overnight visitation was sufficient to override Mother's decision to limit visitation to Sunday afternoons:

> This factor [Mother's permitting Sunday visitation] is significant because "once a parent agrees to some visitation, the dispute is no longer over whether the grandparent will have any access to the child, but instead over how often and how much visitation will occur." Where a parent has denied all visitation, the grandparent must "pursu[e] the right to have a relationship with the child." Thus, "the case for judicial intervention" is strengthened. However, where there is merely a "disagreement between parent and grandparent over how much access is appropriate[,]" judicial intervention is more likely to infringe upon the parent's fundamental right.

Id. (citations omitted).

Missouri has a similar statute to the one at issue in this case and its case law suggests the grandparents' opinion as to the quality of the visitation is not controlling in evaluating whether visitation was unreasonably denied. In a case from the Missouri Court of Appeals, the court noted:

> The grandparents argue that if we conclude the statute requires unreasonable denial of visitation for more than 90 days as a precondition to court-ordered visitation, then the trial court was still able to determine that they were in fact denied visitation for more than 90 days. They maintain that "there was some visitation within the 90 days, but that does not prohibit the trial court from finding that Mother still unreasonably denied visitation for a period exceeding 90 days." Essentially, the grandparents argue that some of their visits—such as those involving a couple of hours when dropping off gifts for the child, attending a party with the child at her daycare, or having the child in their home for several hours while they wrote thank-you notes after the father's funeral—should not count because the visits perhaps were not as long or as involved or as private as the grandparents wished. . . . This argument lacks merit.

Massman v. Massman, 505 S.W.3d 406, 413 (Mo. Ct. App. 2016).

In the present case, Grandmother saw Child in April 2013, at the time of Father's death. For the year following that, Mother testified she was willing for Grandmother to see Child but wanted the visitation supervised because of the hostility between the parties following Father's death and because Child was young and had not spent much time with Grandmother. The record reveals Grandmother's continuing and clear resistance to this condition.[10]

Examining the record as a whole, we find the family court erred in concluding Mother unreasonably deprived Grandmother of the opportunity to visit Child for a period of ninety days. With the exception of the supervised mediation visit, Grandmother refused visitation Mother offered because of the conditions Mother imposed—conditions that were reasonable under the circumstances. Instead, Grandmother insisted on unsupervised visitation and then filed the present action.

We do not suggest a parent can circumvent the statute by intentionally and disingenuously thwarting a grandparent's ability to meet the statutory requirements—for example, by allowing grandparents a fleeting visit with a child every eighty-nine days or intentionally offering visitation when parent knows grandparent cannot be available. Each case must be decided on the particular facts and circumstances presented. However, grandparents refusing to accept the type of visitation offered, provided it is reasonable, likewise fail to carry the day.

Mother could have chosen to give Grandmother the visitation Grandmother desired, but Mother is the party in the superior position in making such decisions. *See Camburn v. Smith*, 355 S.C. 574, 579, 586 S.E.2d 565, 568 (2003) ("[P]arents and grandparents are not on an equal footing in a contest over visitation."). Grandmother's continuing refusal to be supervised during visitation, threats of a lawsuit, and other antagonistic behavior only exacerbated the tension between the parties.

Furthermore, we cannot base our analysis on what Grandmother states her conduct will be in the future or that she regrets how she may have behaved in the past in the hopes that something good will result for Child. Section 63-3-530(33) is in derogation of the common law

and therefore must be strictly construed. *See* *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) ("[S]tatutes in derogation of the common law are to be strictly construed."); *see also* *Bowen v. Bowen*, 421 S.W.3d 339, 341 (Ark. Ct. App. 2012) ("Grandparent visitation is a statutorily created right and in derogation of common law; therefore, we must strictly construe the statute."); *In re Visitation of C.R.P.*, 909 N.E.2d 1026, 1028 (Ind. Ct. App. 2009) ("The [Grandparent Visitation Act] was enacted in derogation of the common law and must be strictly construed."); *Spears v. Weatherall*, 385 S.W.3d 547, 550 (Tenn. Ct. App. 2012) (concluding grandparent visitation statutes must be narrowly construed because they are in derogation of the parents' constitutional rights).

Because Grandmother was not unreasonably denied the opportunity to visit with Child, the family court was without authority to impose court-ordered visitation. The current discord between the parties may mean Mother will be reluctant to deal with Grandmother going forward without court intercession. However, that is a matter on which we cannot speculate and one which does not affect whether the prongs of 63-3-530(33) were satisfied at the time of trial. *SeeSloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("The court does not concern itself with moot or speculative questions."). Because this issue is dispositive, we decline to address Mother's remaining arguments on appeal. *See* *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues when a prior issue was dispositive).

Accordingly, the decision of the family court is

REVERSED.

McDONALD and HILL, JJ., concur.

[1] Because Child was Father's only heir, Child would have been the beneficiary of Father's estate. The settlement of a lawsuit related to Father's accident ultimately became property of Father's estate. Otherwise, Father had no estate assets.

[2] While some of these texts were admitted at trial, they are not included in the record on appeal. However, several were read into the record or their contents were addressed in witness testimony.

[3] In addition to the probate matter, the parties had some dispute regarding ownership of guns and a television, and Grandmother filed a police report suggesting Mother had stolen family wedding rings, which Mother denied.

[4] Billy is Grandmother's ex-husband and Child's paternal grandfather.

[5] Grandmother testified she did not contact DSS in retaliation for not seeing Child on Halloween, but because she had heard someone involved with drugs was around Child.

[6] Family issues and illnesses prevented the trial of this case from occurring in a more timely manner as it had to be rescheduled twice before the 2016 hearing.

[7] The family court's order does not contain any findings regarding the credibility of the parties.

[8] In this court's recent case, *Grantham v. Weatherford,* 425 S.C. 111, 117 n.5, 819 S.E.2d 765, 768 n.5 (Ct. App. 2018), the family court's finding on this issue was not appealed.

[9] This is demonstrated by the following exchange between Grandmother and her attorney at trial:

Q. Do you believe that visitation for you with [Child] was withheld? Rephrase the question. Sorry. Do you believe it was unreasonable and continues to be unreasonable for [Mother] to place certain demands on your visitation and/or not allow you to have individual one-on-one visitation with the child?

A. I do.

Q. Why do you believe that?

A. I'm not — I've never been in jail. Never been in trouble in my life. I've worked in law enforcement. I'm no drug head. I don't do any drugs. I don't drink. I don't go out here and hang out at bars and things. I have a very good reputation in the community and all I want to do is just spend some time with her.

When asked why she should be allowed to see Child unsupervised on a regular basis Grandmother replied:

A. How many other people are supervised to see the baby? — Am I different because I lost my child? — What I'm getting to the point at is everyone else has been able to enjoy the baby but me, my ex-husband and [Father's] family.

[10] The record on appeal does not address any specific contact directly between the parties following their exchange on Halloween 2013. In or around October 2013, Mother filed a police report against Grandmother because of what she characterized as "blowing up her phone and following her." Mother filed a second report in December after which police advised Grandmother she should not contact Mother. Mother testified, "The reason she was told not to contact was because I told her all along in those texts that she did not need to contact me unless it was about [Child], but she was contacting me about other things."

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SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, Respondent,

v.

Allyssa N. BOULWARE, John A. Stafford, and Jonathan Boulware, Respondents, and Darryl Armstrong and Ruth Ann Armstrong and Edward Dalsing and Tammy Dalsing, Intervenors,

Of whom Edward Dalsing and Tammy Dalsing are Petitioners, and Darryl Armstrong and Ruth Ann Armstrong are Respondents.

In the interest of a minor under the age of eighteen.

Opinion No. 27759.

Supreme Court of South Carolina.

Heard May 2, 2017.
Filed January 3, 2018.

Appeal from Union County, Appellate Case No. 2016-001625, Coreen B. Khoury, Family Court Judge.

REVERSED AND REMANDED.

Larry Dale Dove, of Dove Law Group, LLC, of Rock Hill, for Petitioners.

Ernest M. Spong III, of Winnsboro, Alexandria Marie Wolf, of Callie A. Charles, LLC, of Spartanburg, Melinda Inman Butler, of The Butler Law Firm, of Union, and David E. Simpson, of Rock Hill, and Shawn L. Reeves, of Columbia, all for Respondents.

3 *3 JUSTICE JAMES:

In this case, the Court must decide whether Petitioners Edward and Tammy Dalsing have standing to pursue a private action to adopt a child who has been placed in their foster care by the South Carolina Department of Social Services (DSS). The family court found Petitioners do not have standing, and the court of appeals affirmed. *S.C. Dep't of Soc. Servs. v. Boulware,* Op. No. 2015-001571, 2016-UP-220, 2016 WL 2944266 (S.C.
4 Ct. App. filed May 19, 2016). We reverse and *4 remand to the family court, as we conclude Petitioners have standing to pursue a private adoption under the facts of this case.

FACTUAL AND PROCEDURAL HISTORY

On August 27, 2013,[1] law enforcement took the minor child (Child) into emergency protective custody after discovering an active methamphetamine lab outside the home where Child resided with Allyssa and Jonathan Boulware. Child was sunburned, had several insect bites, suffered from severe diaper rash, and tested positive for methamphetamine, cocaine, and marijuana. DSS placed Child in foster care with Petitioners on the same day and then commenced an abuse and neglect removal action. Child's biological parents are Allyssa Boulware and John Stafford (Parents), and Child's legal father by marriage is Jonathan Boulware.

After a hearing on October 9, 2013, the family court issued an order finding a permanent plan of reunification with Parents was in the best interest of Child and adopting a treatment plan requiring Parents to attend parenting classes and substance abuse counseling. In February 2014, the family court held the initial

permanency planning hearing and discovered Parents were not attending substance abuse counseling, were not supporting Child, and had been arrested for possession of methamphetamine. The family court approved DSS's recommendation of a permanent plan of termination of parental rights (TPR) and adoption, with a concurrent plan of reunification with Parents. In the meantime, the Foster Care Review Board issued its report recommending TPR and adoption within six months.

The instant controversy began when DSS and Parents reached an agreement for Child to be placed with relatives Darryl and Ruth Ann Armstrong (Aunt and Uncle) in order to give Parents more time to work on the treatment plan. The proposed placement with Aunt and Uncle was not an adoptive placement. DSS intended to close its case after Parents completed the treatment plan. On May 31, 2014, DSS notified Petitioners of its
5 intent to remove Child from their home and *5 place Child with Aunt and Uncle. Petitioners immediately moved to intervene in DSS's removal action and commenced a private TPR and adoption action.[2] The family court held a second permanency planning hearing on June 4, 2014, but declined to rule on DSS's new permanent plan of relative placement with Aunt and Uncle until the court ruled on Petitioners' motion to intervene.[3]

In September 2014, the family court granted Petitioners' motion to intervene and granted their request for a full evidentiary hearing on DSS's motion to change the permanent plan to a plan of relative placement with Aunt and Uncle. Aunt and Uncle were added as parties to DSS's action. At a January 2015 permanency planning hearing, DSS changed its treatment plan recommendation to TPR and adoption. The family court approved that plan and scheduled a TPR hearing for March 2015. The family court also ordered Petitioners and Aunt and Uncle to be named parties in the DSS TPR action.

After the March 2015 hearing, the family court terminated the parental rights of Parents. The family court also dismissed Petitioners' adoption action on the basis Petitioners did not have standing to pursue a private action for adoption of a child in DSS custody, citing *Michael P. v. Greenville County Department of Social Services*, 385 S.C. 407, 684 S.E.2d 211 (Ct. App. 2009), and *Youngblood v. South Carolina Department of Social Services*, 402 S.C. 311, 741 S.E.2d 515 (2013). Relying upon *Youngblood,* the family court concluded "the entire legislative scheme should be allowed to work without interference from foster parents who are there to take care of the child, not to generate an adoption for themselves." The court noted Petitioners and Aunt and
6 Uncle could present their case for adoption to the DSS adoption committee but ruled none had *6 standing to pursue a separate adoption action in the family court. The family court continued:

> [T]he terminology in S.C. Code Ann. § 63-9-60 (B), when read in context with the full law regarding child protective services actions, requires that the South Carolina Department of Social Services approve the placement of a child, over whom they have custody, for adoption by that particular family before that family will have standing to proceed to adopt the child.

The family court granted custody of Child to DSS "with all rights of guardianship, placement, care and supervision, including the sole authority to consent to any adoption...." This appeal followed.

The court of appeals affirmed the family court in an unpublished per curiam opinion. *S.C. Dep't of Soc. Servs. v. Boulware,* Op. No. 2015-001571, 2016-UP-220, 2016 WL 2944266 (S.C. Ct. App. filed May 19, 2016). Relying on *Youngblood,* the court of appeals held "foster parents do not have standing under section 63-9-60 to file an adoption petition, regardless of whether they are former or current foster parents or whether DSS has made an adoption placement decision." *Id.* The court stated its decision was consistent "with the overall policy of the Children's Code" and concluded the General Assembly did not intend "to grant standing to foster parents who file adoption actions early in the process while foreclosing standing to foster parents who wait until after DSS has made an adoption placement decision." *Id.* We granted Petitioners a writ of certiorari to review the court of appeals' decision.

STANDARD OF REVIEW

In appeals from the family court, this Court reviews factual and legal issues de novo. *Simmons v. Simmons,* 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011). Questions of statutory interpretation are "questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below." *State v. Whitner,* 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012).

7 *7 ## APPLICABLE LAW AND ANALYSIS

A. Statutory Construction

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P.,* 385 S.C. at 415, 684 S.E.2d at 215. Prior to commencing an action, a party must possess standing either "by statute, through the principles of constitutional standing, or through the public importance exception." *Youngblood,* 402 S.C. at 317, 741 S.E.2d at 518. Statutory standing exists "when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation."[4] *Id.*

Adoption proceedings are conducted pursuant to the South Carolina Adoption Act. *See* S.C. Code Ann. §§ 63-9-10 to -2290 (2010 & Supp. 2017).[5] This case turns upon the interpretation of section 63-9-60, which provides:

> (A)(1) Any South Carolina resident may petition the court to adopt a child.
>
> . . . .
>
> (B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption.

S.C. Code Ann. § 63-9-60 (2010 & Supp. 2017).

8 "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges* *8 *v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *Michael P.,* 385 S.C. at 414, 684 S.E.2d at 215. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges,* 341 S.C. at 85, 533 S.E.2d at 581 (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Appellate courts must follow a statute's plain and unambiguous language, and when the language is clear, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* This Court looks beyond a statute's plain language only when applying the words literally would lead to a result so patently absurd that the General Assembly could not have intended it. *Cabiness v. Town of James Island*, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011).

B. *Youngblood* and *Michael P.*

In *Youngblood,* we addressed the issue of whether foster parents can petition to adopt a child after DSS has placed the child elsewhere for adoption. We concluded the verb "place" is used in section 63-9-60(B) and by DSS to mean "the selection of an adoptive family," even when the child was not yet physically placed in the adoptive home. *Youngblood,* 402 S.C. at 314 n.2, 741 S.E.2d at 516 n.2.

Before reviewing *Youngblood,* we must first briefly review the court of appeals' holding in *Michael P.* In *Michael P.,* DSS removed a child from his mother and placed the child in foster care. 385 S.C. at 410, 684 S.E.2d at 212. When DSS asked the foster parents if they wanted to adopt the child, the foster parents declined. *Id.* DSS then placed the child with another family for adoption. *Id.* The former foster parents did not approve of the proposed adoptive family and petitioned to adopt the child, asserting they had standing to petition for adoption pursuant to section 63-9-60. *Id.* at 410-12, 684 S.E.2d at 212-13. The court of appeals disagreed:

> We find the plain meaning of the statute and the intent of the Legislature when enacting subsection (B) of 63-9-60 was to clarify that not just "any South Carolina resident" can petition to adopt a child *when the child has been placed by DSS in another home for the purposes of*
9 *adoption. [The* *9 *former foster parents] do not have standing based on this statute because [the child] was placed by DSS in [another] home for purposes of adoption.*

Id. at 415, 684 S.E.2d at 215 (emphasis added).

In *Youngblood,* DSS removed a child from her biological parents and placed her with foster parents. 402 S.C. at 313, 741 S.E.2d at 516. DSS then removed the child from the foster parents' home and placed the child for adoption with a different family. *Id.* at 314, 741 S.E.2d at 516. The former foster parents then petitioned to adopt the child, claiming they had standing under section 63-9-60. *Id.* We disagreed, noting, "Thus, while section 63-9-60(A) broadly grants standing to `any South Carolina resident,' section 63-9-60(B) makes that grant of standing inapplicable *to a child placed for adoption by DSS*." *Id.* at 318, 741 S.E.2d at 518 (emphasis added) (citing *Michael P.,* 385 S.C. at 415, 684 S.E.2d at 215).

In the instant case, DSS contends our holding in *Youngblood* compels the conclusion that the foster parent relationship is temporary and is insufficient to create standing to petition to adopt. We indeed so held in *Youngblood,* but did so only when addressing the narrow question of whether the foster parent relationship *in and of itself* creates standing to petition to adopt. 402 S.C. at 322, 741 S.E.2d at 520. The foster parent relationship itself does not create standing for Petitioners, but that reality does not foreclose allowing standing under section 63-9-60 when the "broad grant" of standing has not been closed by the placement of a child elsewhere for adoption.

Here, the court of appeals concluded our holding in *Youngblood* should not be limited to situations in which former foster parents petition for adoption after DSS has placed the child elsewhere for adoption. The court of appeals found the General Assembly did not intend to grant standing to foster parents who petition for adoption early in the process but at the same time foreclose standing to foster parents who wait until after DSS has made an adoption placement decision. The court of appeals held foster parents do not have standing to petition for adoption under section 63-9-60, regardless of whether they are former or current foster parents or whether DSS has made an adoption placement decision.

10 *10 Petitioners argue the court of appeals' holding exceeds the scope of our decision in *Youngblood.* Petitioners contend they have standing under section 63-9-60 because they are residents of South Carolina and because they brought their adoption action (1) before DSS placed Child for adoption but while Child was placed in foster care with Petitioners and (2) before DSS was vested with authority to consent to an adoption. We agree. The reasoning employed by the court of appeals would undermine the broad grant of standing we recognized in *Youngblood* and would rewrite section 63-9-60(B) to (1) read that once DSS acquires custody of a child, that child has been "placed," and (2) require that DSS approve the adoptive placement of a child with a particular family before that family has standing to petition for adoption. Neither of these interpretations is supported by a plain reading of the statute.

C. Respondents' Claim of Absurd Result

We note the settled rule that courts may disregard the plain meaning of a statute if the result is so patently absurd the General Assembly could not have intended it. *Cabiness,* 393 S.C. at 192, 712 S.E.2d at 425. The court of appeals found that granting standing to Petitioners would yield the absurd result of encouraging foster parents to prematurely petition for adoption, thereby contradicting the underlying policy of the Children's Code. [6] Respondents argue that granting standing to Petitioners would subvert the policy behind the South Carolina Adoption Act to provide permanency for children after a determination there will be no reunification with the biological parents.

We disagree with both contentions. First, section 63-1-20(A) of the Children's Code (2010) provides, "A children's policy is hereby established for this State." Section 63-1-20(D) provides in pertinent part, "When children must be permanently removed from their homes, they *shall be placed in adoptive homes* so that they may become members of a family by legal adoption or, absent that possibility, other permanent settings." (emphasis added). This provision reveals the legislature's intent and clear mandate that adoption is the first
11 preferred *11 option if the family court determines a child will not be reunited with his or her biological parents. Here, Child was removed from her biological parents, and the family court ruled their parental rights should be terminated. As reunification has been ruled out by the family court, the South Carolina Adoption Act clearly mandates adoption as the preferred permanent setting for Child. Instead, DSS seeks nonadoptive relative placement with Aunt and Uncle, which can hardly be considered the path to a permanent setting for Child and is contrary to the clear mandate of section 63-1-20(D).

Likewise, a review of section 63-11-720(A) of the Children's Code (Supp. 2017) defeats the contention that a finding of standing is an absurd result. This code section sets forth the functions and powers of local foster care review boards. Section 63-11-720(A)(5) provides that one such function and power is to advise foster parents of their right to "*petition the family court*" for TPR and for adoption to "encourage ... foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child." S.C. Code Ann. § 63-11-720(A)(5) (Supp. 2017) (emphasis added).

While section 63-11-720(A)(5) does not create standing for Petitioners, it does reveal the General Assembly's intent that Petitioners could initiate TPR and adoption proceedings in the family court once the local foster care review board determined it would not be in Child's best interest to be returned to Parents. Here, on January 21, 2014, the local board recommended a plan of TPR and adoption after Child had been in Petitioners' care for almost six months. As the General Assembly contemplated, Petitioners petitioned the family court for TPR and adoption.

D. Contract Signed by DSS and Petitioners

When Child was placed in foster care with Petitioners, DSS and Petitioners signed a form contract that is customarily entered into by DSS and foster parents when a child is placed in foster care. The contract provides, *inter alia,* that Petitioners desire to temporarily care for Child, that Petitioners agree to accept Child
12 for an indefinite time, and that if Child *12 becomes legally free for adoption and Petitioners desire to adopt Child, a DSS placement committee will determine the adoptive placement that would be in Child's best interest. Aunt and Uncle concede Child had not been legally freed for adoption. Still, they contend Petitioners' sole rights to Child derive from this contract and that this contract does not create any greater right in Petitioners to adopt Child.[7] We agree the contract does not *create* any right in Petitioners to adopt Child. However, nothing in the contract *prohibits* Petitioners from petitioning the family court for adoption provided they have standing under section 63-9-60.

We acknowledged in *Youngblood* that the foster care relationship is a temporary and contractual relationship created by the State, and we further noted foster care is "a temporary living arrangement ... utilized while permanent placement plans are being formulated for the involved children." 402 S.C. at 321-22, 741 S.E.2d at

520 (quoting 10 S.C. Code Ann. Regs. 114-550(A)(1) (2012)). Accordingly, we held "the foster parent relationship, absent statutory law to the contrary, is insufficient to create a legally protected interest in a child and therefore, does not create standing to petition to adopt." *Id.* at 322, 741 S.E.2d at 520. It is indeed settled that the foster care relationship is temporary and does not in and of itself create standing to commence a private adoption action. However, this does *not* foreclose the existence of standing for foster parents under section 63-9-60, provided the foster parents reside in South Carolina, and provided the foster child has not been placed for adoption by DSS (or by agency under contract with DSS).

CONCLUSION

The issue in this case is not whether Petitioners signed a contract or whether the foster relationship creates standing. Likewise, whether a person who commences a private adoption action under the attendant circumstances is a current foster parent or a former foster parent is of no consequence to the issue of standing
13 under section 63-9-60. To attain standing, *13 the person who petitions for adoption must first simply be a resident of South Carolina. Second, the child must not have been placed by DSS for adoption. Again, in *Youngblood,* we noted "while section 63-9-60(A) broadly grants standing to `any South Carolina resident,' section 63-9-60(B) makes that grant of standing inapplicable to a child *placed for adoption* by DSS." 402 S.C. at 318, 741 S.E.2d at 518 (emphasis added). In *Youngblood,* our interpretation of section 63-9-60 and our holding did not turn upon whether the Youngbloods were current or former foster parents, but rather upon whether the child had or had not been placed for adoption by DSS.[8]

In sum, *Youngblood* and section 63-9-60 compel a simple analysis. Petitioners are South Carolina residents. When Petitioners commenced their adoption action, Child had not been placed for adoption by DSS. The plain meaning of section 63-9-60 affords standing to Petitioners. *See also Michael P.,* 385 S.C. at 415, 684 S.E.2d at 215 (holding former foster parents did not have standing to adopt under section 63-9-60 *because the child had been placed by DSS for adoption*).

Our holding aligns with a plain reading of section 63-9-60, is in accord with the purpose of the South Carolina Adoption Act to establish fair and reasonable procedures for adoption, and does not impede the policy behind the South Carolina Children's Code to provide permanency for children after a determination there will be no reunification with the biological parents. While allowing Petitioners standing pursuant to the plain meaning of section 63-9-60 may not be a result which DSS prefers, it is not a result so absurd that the General Assembly could not have intended it. We acknowledge the solemn authority entrusted to DSS to safeguard the children of this State and to ensure rapidity in permanently resolving placement issues. Our holding solely answers the
14 question of Petitioners' standing pursuant to section 63-9-60. We do not *14 decide today who, if anyone, Child's adoptive parents will be — we simply recognize Petitioners' standing to ask.

We hold Petitioners have standing to pursue a private action for adoption pursuant to section 63-9-60 because Petitioners are residents of South Carolina and because, at the time Petitioners commenced their adoption action, Child had not yet been placed for adoption by DSS. Accordingly, we reverse the decision of the court of appeals and remand to the family court to proceed with Petitioners' action for adoption.[9]

REVERSED AND REMANDED.

BEATTY, C.J. and FEW, J., concur. HEARN, J., concurring in a separate opinion in which KITTREDGE, J., concurs.

JUSTICE HEARN:

I concur in the analysis and result reached by the majority but write separately to express my belief that the General Assembly did not intend to grant standing to all South Carolina residents to file an action for the adoption of a child who has been placed in DSS custody. I further believe the court of appeals reached a

commonsensical result in construing Section 63-9-60(B) (2010 & Supp. 2017), when it stated: "We do not believe the General Assembly intended to grant standing to foster parents who file adoption actions early in the process while foreclosing standing to foster parents who wait until after DSS has made an adoption placement decision." *S.C. Dep't of Soc. Servs. v. Boulware,* Op. No. 2015-001571, 2016-UP-220, 2016 WL 2944266 (S.C. Ct. App. filed May 19, 2016). However reasonable this construction may be, it is at odds with the clear language of Section 63-9-60(B). Moreover, I agree with the majority that the result which emanates from employing the plain meaning of the words of the statute is not necessarily absurd; nevertheless, it is an anomaly that I doubt the General Assembly contemplated. I join the majority opinion because the result is not
15 only warranted by the clear *15 wording of the statute, it is also in this child's best interest. Yet I am concerned that foster parents and others who are anxious to adopt a child will hail our decision today as a green light to file an adoption action when a child is taken into protective custody — at a time when DSS is working to fulfill its statutory mandate for reunification. Such actions will burden our family court system and may not always produce results which are best for the child and his or her family. However, finding absurd results in order to produce a more logical and orderly result is not the prerogative of this Court, and I trust the General Assembly will act to change the statute if the current plain language does not reflect its true intent.

KITTREDGE, J., concurs.

[1] The dates referenced in this opinion are primarily for temporal context and are of no substantive import.

[2] Petitioners also filed an administrative appeal of DSS's decision to remove Child from their home and an application with the DSS Adoption Unit to adopt Child. These filings are not relevant to this appeal.

[3] The family court ruled at this hearing that Child should remain with Petitioners until further hearing but permitted Aunt and Uncle unsupervised weekend visitation with Child. The parties subsequently agreed Child would spend Monday through Thursday each week with Petitioners and visit Aunt and Uncle Friday through Sunday each week. These living arrangements are still in effect.

[4] In *Youngblood,* we held foster parents did not have constitutional standing. 402 S.C. at 321-22, 741 S.E.2d at 520 ("[T]he foster parent relationship, absent statutory law to the contrary, is insufficient to create a legally protected interest in a child and therefore, does not create [constitutional] standing to petition to adopt."). While a party may also acquire standing through the public importance exception, Petitioners do not raise the exception in this action.

[5] "The adoption of a child was a proceeding unknown to the common law." *Hucks v. Dolan,* 288 S.C. 468, 470, 343 S.E.2d 613, 614 (1986). As such, "[a]doption exists in this state only by virtue of statutory authority which expressly prescribes the conditions under which an adoption may legally be effected." *Id.* "Since the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed." *Id.*

[6] The Children's Code is codified in Title 63 of the South Carolina Code (2010 & Supp. 2017).

[7] In their brief, Aunt and Uncle quote with emphasis a passage purporting to be from a form DSS foster parent contract. Similar language is found in the contract actually signed by Petitioners and DSS.

[8] At oral argument, DSS asserted the word "placed" as used in section 63-9-60(B) simply refers to when a child is initially placed in DSS custody. At oral argument, Aunt and Uncle asserted the word "placed" refers to when a child is placed in the foster parents' home, regardless of whether the placement is for adoption. These interpretations do not comport with either a plain reading of the statute or our interpretation of the word "placed" in *Youngblood.*

[9] Because this issue is dispositive of the appeal, we decline to address Petitioners' remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing this Court need not address remaining issues when disposition of prior issue is dispositive of the appeal).

422 S.C. 623 (2018)
813 S.E.2d 686

EX PARTE: Mickey Ray CARTER, Jr. and Nila Collean Carter, Movants, Of Whom Nila Collean Carter is Petitioner. In Re: John Roe and Mary Roe, Respondents, v. L.C. and X.C., minors under the age of seven years, Defendants.

Opinion No. 27786.

Supreme Court of South Carolina.

Heard January 31, 2018.
Filed March 21, 2018.
Withdrawn, Substituted, and Refiled April 11, 2018.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS.

Appeal from Charleston County, Appellate Case No. 2017-000806, Edgar H. Long, Jr., Family Court Judge.

REVERSED AND REMANDED.

A. Mattison Bogan, of Nelson Mullins Riley and Scarborough, LLP, of Columbia, for Petitioner.

K. Jay Anthony, of the Anthony Law Firm, PA, of Spartanburg, Emily McDaniel Barrett and Thomas P. Lowndes, Jr., both of Charleston, for Respondents.

624 *624 ## ORDER

The petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn. Any petition for rehearing regarding the substituted opinion must be actually received by this Court within five (5) days of the date of this order.

/s/ John W. Kittredge, A.C.J. /s/ Kaye G. Hearn, J. /s/ John Cannon Few, J. /s/ George C. James, Jr., J. /s/ Doyet A. Early, III, A.J.

625 *625 PER CURIAM:

In this adoption matter, Petitioner Nila Collean Carter sought to revoke her consent to the adoption of her two biological children. Throughout the resulting procedural morass, Petitioner was never provided an opportunity to be heard on the merits of her claim before the adoption was finalized. We issued a writ of certiorari to review the court of appeals' unpublished decision affirming the family court's denial of Petitioner's motion to set aside the final adoption decree pursuant to Rule 60(b), SCRCP. *Ex Parte Carter,* Op. No. 2017-UP-043, XXXX-XXXXXX, 2017 WL 164493 (S.C. Ct. App. filed Jan. 13, 2017). Because Petitioner's Rule 60(b) motion was timely filed and sufficiently alleged extrinsic fraud, we reverse and remand this matter to the family court for further proceedings.

I.

Petitioner and her ex-husband Mickey Ray Carter, Jr.[1] are the biological parents (collectively "the Carters") of two children — a daughter born in 2009 and a son born in 2011. The Carters were married in May 2010, and by early 2014, the couple was experiencing financial and marital stressors. Given the difficult circumstances facing the Carters and the unavailability of extended family support, the Carters began discussing private adoption as an alternative that they believed was preferable to the children being placed in foster care.

Petitioner reached out to attorney Emily McDaniel Barrett, who arranged the adoption on behalf of both couples.[2] From the beginning, Petitioner insisted on taking an active part in the adoption process and explained that she wanted an open adoption because that was "the only way this won't destroy me. I need them to know how much I love them."

In April 2014, the Carters each signed a consent to adoption of their two children by Respondents John and Mary Roe ("Adoptive Couple"). Four days later, the adoption action was filed. Notably, the documents signed by the Carters included a provision waiving service and notice of the adoption action.

626 *626 Eight days after the adoption action was filed, the Carters each executed a notarized document titled "Withdrawal of Parental Consent to Adoption" purporting to revoke consent on the basis of emotional duress. Thereafter, the Carters sought through many avenues to withdraw their consent.[3]

The South Carolina Adoption Act provides that:

> Withdrawal of any consent or relinquishment is not permitted except by order of the court after notice and opportunity to be heard is given to all persons concerned, and except when the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion. Any person attempting to withdraw consent or relinquishment shall file the reasons for withdrawal with the family court. The entry of the final decree of adoption renders any consent or relinquishment irrevocable.

S.C. Code Ann. § 63-9-350 (2010).

The Carters were initially represented by counsel, who filed on their behalf a motion to intervene in the adoption action, along with supporting affidavits to contest the validity of the consents.[4] At the motion hearing before the family court, the Carters' counsel explained that the Carters faced difficult life circumstances and felt pressured to sign the consents. In support of his argument, counsel cited this Court's decision in *McCann v. Doe,* 377 S.C. 373, 660 S.E.2d 500 (2008), for the proposition that the confluence of several emotional stressors can render an otherwise validly executed consent to adoption involuntary and revocable.

Counsel for the Adoptive Couple opposed the motion, arguing that because adoption proceedings are private and confidential proceedings, the Carters' recourse was not as intervenors in the adoption action but through a
627 separate action *627 challenging the consents "outside the adoption itself." The family court agreed and denied the Carters' motion to intervene, stating "I don't believe procedurally that's the way that this should be handled." The family court expressly declined to reach the merits of whether the consents should be withdrawn. From this point forward, the Carters proceeded pro se.[5]

At the direction of the family court, a week later, the Carters filed a separate action, along with affidavits supporting their challenge to the validity of the consents, and requested that a hearing be scheduled before the final adoption hearing. Between August 2014 and April 2015, the Carters appeared and asked to be heard at *seven separate hearings* before six different family court judges, each of whom refused to address the merits of the Carters' claim based on perceived procedural abnormalities and gave the Carters inconsistent (and at times incorrect) instructions on the proper procedure through which the Carters should have pursued their

claim.[6] In every instance, the Carters timely followed these instructions. Nevertheless, the Carters' claim was never evaluated on the merits.

Meanwhile, the Adoptive Couple, through counsel, requested a final adoption hearing. The Adoptive Couple's counsel gave no notice to the Carters. On December 15, 2014, a final hearing was held in the adoption case and a final order of adoption was issued on that date by a *seventh* family court judge who, according to the record before us, was unaware of the Carters' pending challenge to the consents. Although counsel for the Adoptive Couple was well aware of the Carters' separate pending challenge, the final adoption hearing
628 transcript includes no reference to this. Rather, when the *628 family court judge asked if there was anything else that needed to be placed on the record before the first witness was sworn, counsel for the Adoptive Couple never mentioned the Carters' pending action and stunningly responded "I think we're good, Your Honor." Conversely, it would be stunning to think a family court judge would have proceeded with the adoption had the judge been made aware of the separate pending action. However, allegedly without the benefit of this critical information, the family court entered an order approving the adoption.

Armed with the final adoption order, counsel for the Adoptive Couple filed a motion to dismiss the Carters' separate action challenging the validity of their consents. At the April 1, 2015 motion hearing, counsel for the Adoptive Couple "ask[ed] for this matter to be dismissed on the grounds that there's been an adoption granted and everything that has been filed in the [Carters'] Amended Petition ... is a moot point right now, and if they have any issues to take up, it would be based on extrinsic fraud and they have not pled that." The court responded by reciting the last sentence of section 63-9-350 — "The entry of the final decree of adoption renders any consent or relinquishment irrevocable."

Petitioner, understandably frustrated that the adoption had been finalized before the separate action had been heard, informed the court that "we had a right to be notified of that final hearing and they didn't notify us of that final hearing and allow us to ... appear in court to explain that."[7] The family court understood the Carters' position — "your argument [is that] you were ... robbed of your opportunity to appear and contest the validity of your consent[s]." In this regard, the court agreed with counsel for the Adoptive Couple that the Carters only remaining recourse was to file a motion alleging extrinsic fraud. The court further informed the Carters that their challenge should have been "in connection with the adoption proceeding." The court then found fault with the Carters' filing of the separate action: "You see you don't file a new action trying to undermine or say that our
629 consents are invalid. You can't do that because the law won't allow it, okay *629... that would be handled not by a separate action as you've done." As noted above, the Carters' filing of the separate action was directed by another family court judge who rejected the Carters' attempt to challenge their consents in connection with the adoption proceeding.

The Carters wasted no time in filing the motion suggested by the family court judge. Just six days after the April 1, 2015 hearing, the Carters filed a Rule 60, SCRCP motion in the adoption action, requesting relief from the final adoption order, alleging the consents were involuntary and the product of duress, coercion, and extrinsic fraud in that the Carters' attempts to be heard were systematically thwarted by the Adoptive Couple's attorneys.[8]

Three days later, a different family court judge summarily denied the Carters' Rule 60(b) motion on the ground that it was untimely. The Carters appealed, arguing the family court erred in denying their Rule 60 motion as untimely and that the validity of the adoption was compromised because the Carters' challenge to their consents was not resolved before the adoption was finalized.

The court of appeals affirmed the family court's denial of the Carters' Rule 60(b) motion. *Ex Parte Carter,* Op. No. 2017-UP-043, XXXX-XXXXXX, 2017 WL 164493 (S.C. Ct. App. filed Jan. 13, 2017). Thereafter, this Court issued a writ of certiorari to review the court of appeals' decision.

II.

Petitioner argues the court of appeals erred in finding her Rule 60(b) motion did not allege extrinsic fraud and that the family court erred in finding the motion was not timely filed. We agree.

A.

Once a final adoption decree is entered, a *validly* executed consent to adoption is irrevocable. S.C. Code Ann.
630 § 63-9-350 (emphasis added). However, a court retains its *630 authority to grant collateral relief from an adoption decree on the ground of extrinsic fraud. S.C. Code Ann. § 63-9-770(B) (2010). Extrinsic fraud "is `fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Hagy v. Pruitt*, 339 S.C. 425, 431, 529 S.E.2d 714, 718 (2000) (quoting *Hilton Head Center of S.C. v. Pub. Serv. Comm'n,* 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

In their Rule 60(b) motion, the Carters alleged, "under 63-9-770 there was extrinsic fraud committed ... by not allowing us the right to be heard on filing multiple motions of intent to contest consents and to attack the merits of the adoption with this Honorable Court." The motion further stated:

> Mickey and Nila Carter have tried repeatedly to withdraw[] consents which [were] illegally obtained and they informed... the Adoptive Couple[,] ... in addition to this Honorable Court yet they have never been heard on this issue[,] and further, [counsel for the Adoptive Couple] and the Law firm she works for have continuously attempted to block our access to the Honorable Court so we may be heard on this matter.

The court of appeals erred in finding the Carters' Rule 60(b) motion did not sufficiently allege extrinsic fraud. The Carters' motion expressly asserted "extrinsic fraud" and specifically cited section 63-9-770, which is the statutory provision addressing the family court's authority to set aside an adoption decree on that basis. The motion further alleged the Carters were misguided and misled into signing the consents and waiving the right to notice of the proceedings and that their subsequent attempts to appear and be heard as to the validity of the consents were repeatedly thwarted by opposing counsel.

Moreover, at the heart of the extrinsic fraud claim is the Adoptive Couple's effort, through counsel, to push through the final adoption hearing knowing full well of the Carters' repeated requests to be heard on their pending separate action. Most troubling is counsel's alleged failure to be candid with the family court when asked if there was "anything else." These specific averments manifestly state a claim for extrinsic fraud. Thus, extrinsic fraud was sufficiently alleged in the Rule 60(b) motion, and the court of appeals erred in affirming the
631 family court's dismissal on that basis. *See Hagy*, 339 S.C. *631 at 431-32, 529 S.E.2d at 718 (holding allegations that fraudulent actions which induced a mother to sign a consent to adoption thereby waiving her right to notice and appearance in the adoption proceeding sufficiently alleged extrinsic fraud); *Greer v. McFadden*, 295 S.C. 14, 17, 366 S.E.2d 263, 265 (Ct. App. 1988) (holding even if a pro se claim is not framed with expert precision, where the point is clear, the issue should be addressed); cf. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart*, 827 N.W.2d 169, 172-74 (2013) (finding an attorney's failure to disclose to the family court the existence of separate pending actions that could potentially impact the family court's division of marital assets constituted extrinsic fraud). We turn now to the issue of whether the family court erred in finding the Carters' Rule 60(b) motion was untimely.

B.

Rule 60(b), SCRCP, provides that a party may be relieved from a final judgment on the basis of "fraud, misrepresentation, or other misconduct of an adverse party." A motion pursuant to Rule 60(b) "shall be made

within a reasonable time, and ... not more than one year after the judgment, order, or proceeding was entered or taken."

The final adoption decree was entered December 15, 2014. At a hearing on April 1, 2015, the family court instructed the Carters to file the Rule 60(b) motion. The Carters did so on April 7, 2015. Because this period of time is both reasonable and not more than one year after the entry of the final adoption decree, we find the family court abused its discretion in finding the Carters' Rule 60(b) motion was untimely. *See Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (where Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely). Because the Rule 60(b) motion was timely filed, Petitioner is entitled to an opportunity to be heard on the merits of her claim therein.

III.

In reversing, we have made plain our grave concern for the manner in which this matter was handled in the family court. We, however, emphasize that we express no opinion on the merits of Petitioner's claim that her consent was not validly obtained.

632 *632 We reverse the court of appeals' decision and remand this matter to the family court[9] for a hearing on the merits of the Rule 60(b) motion. We direct the family court to appoint an attorney to represent Petitioner in the proceedings upon remand within ten (10) days of the date the remittitur is sent to the lower court. We further direct this matter to be heard within ninety (90) days of the date the remittitur is sent and that an order addressing the merits be issued by the family court within thirty (30) days of the date of the hearing.

REVERSED AND REMANDED.

KITTREDGE, Acting Chief Justice, HEARN, FEW, JAMES, JJ., and Acting Justice Doyet A. Early, concur.

[1] Although Mr. Carter participated in proceedings below, he did not join the petition for rehearing to the court of appeals and is not a party on certiorari to this Court.

[2] Petitioner's brief indicates that she located Ms. Barrett through her website in the course of an internet search and that Petitioner believed Ms. Barrett represented both the Carters and the Roes.

[3] Once the Carters expressed an intent to challenge the validity of their consents, they were no longer permitted visitation with the children.

[4] It appears the Carters' efforts to intervene were delayed due to confusion over the county in which the (sealed) adoption proceeding was pending; the Carters were residents of Horry County and the Adoptive Couple resided in Berkeley County, yet the adoption action was filed in Charleston County.

[5] The record reveals the Carters wished to proceed with the assistance of counsel but could not afford additional legal fees following the initial hearing.

[6] Family court judges assigned to hear this matter avoided hearing the Carters' case for a variety of reasons, including the claim of insufficient docket time requested, finding fault with the Carters for doing precisely what other family court judges told them to do, and perhaps the most troubling reason for not hearing the Carters' case was the hearing "should not have been scheduled on a Friday." Mr. Carter eventually abandoned his claim; we find it remarkable that Petitioner did not throw in the towel as well.

[7] It appears from Respondents' rehearing petition that the Carters were sent an email in the morning of December 15, 2014, advising them of the adoption hearing later that day.

[8] In response, counsel for the Adoptive Couple filed a motion, along with a supporting memorandum, and affidavits seeking a Rule to Show Cause for why the Carters should not be held in civil and criminal contempt for "proceed[ing] to file a series of motions in an attempt to disrupt the adoption."

[9] Given judicial department budgetary constraints, we direct the chief administrative family court judge to assign this matter to any available judge.

Tyrus J. Clark, Respondent,

v.

Amika T. Clark, Appellant.

Opinion No. 5558.

Court of Appeals of South Carolina.

Heard November 6, 2017.
Filed May 2, 2018.

Appeal From Greenville County, Appellate Case No. 2015-002326, David Earl Phillips, Family Court Judge.

AFFIRMED.

Jessica Ann Salvini and Liza Marie Deever, both of Salvini & Bennett, LLC, of Greenville, for Appellant.

Gwendolynn Wamble Barrett, of Barret Mackenzie, LLC, of Greenville, for Respondent.

KONDUROS, J.

In this divorce action, Amika T. Clark (Wife) appeals the family court's awarding joint custody to her and Tyrus J. Clark (Husband) of their daughter (Child). She contends the court erred in finding exceptional circumstances supported such an award. She also maintains the family court erred in granting Husband's motion to reconsider the parties' settlement agreement in regards to the equitable division of property. We affirm.

FACTS/PROCEDURAL HISTORY

Husband and Wife married in 2006 and Child was born in December of 2009. Husband has another daughter, who was born in 2002, as a result of a previous relationship, who lives with her mother in Arizona.

In 2012, Husband initiated divorce proceedings against Wife but the matter was later administratively dismissed. He filed another action against Wife on October 28, 2013, but did not serve Wife. The parties continued to reside together. On March 16, 2014, the parties had a physical altercation at their home. Both parties called the police and alleged physical abuse by the other party.[1] Wife was arrested for criminal domestic violence.

On March 24, 2014, Wife filed an action against Husband seeking a divorce and sole custody of Child, alleging physical and verbal abuse. She also sought an order of protection against Husband. The family court held a hearing and denied Wife's request for the order of protection, consolidated Husband's and Wife's actions, and issued a joint restraining order. Husband amended his pleadings to allege Wife physically abused him and sought a restraining order. He also requested primary custody of Child and served Wife with the pleadings. Shortly thereafter, the family court held an expedited temporary hearing and as result, issued a temporary order providing the parties would have joint custody of Child and share parenting time on a week-to-week basis.

A final hearing was held May 19 through 21, 2015.[2] At the beginning of the hearing, the family court sent the parties out of the courtroom to give them more time to reach an agreement in the case. When the parties returned to the courtroom about an hour later, they advised the court they had reached a partial settlement agreement resolving the equitable division of property. The parties agreed they would each keep the personal property they had in their possession. Husband would reimburse Wife $3,000 for the difference in the value of

property they had in their possession. The parties provided they agreed to a 50/50 split and gave the family court a list of assets and debts. Some of the balances of accounts were missing but were to be filled in by the parties with the balances at the time of filing. Also, alimony was waived. Both parties were questioned as to whether they wanted the family court to approve their settlement agreement and if they knew the agreement would not be reviewable and would be final in nature. Both parties agreed. The family court approved the agreement, and the hearing proceeded on the remaining contested matters.

At the hearing, both parties as well as two of Child's teachers testified Child was doing well and was happy. Wife visited Child each day at preschool for thirty minutes during the weeks Husband had custody of Child. Husband did the same but less often than Wife. Husband called Linda Hutton to testify, who the parties stipulated was an expert in the field of psychotherapy for adolescents and children. Hutton testified Child was doing well with the week-to-week custody arrangement and at the current time did not need therapy. Hutton indicated she did not know how a change in custody might affect Child.

The guardian ad litem (GAL) testified she did not have any concerns with Child's health and well-being with either party. However, the GAL noted the parties have a difficult time making joint decisions. She also indicated Child first began seeing Hutton because the GAL believed Child was "drawing back a little bit." Yet, according to the GAL, Hutton found Child was in the normal range and did not observe the behavior the GAL had noticed. Still, the GAL continued to notice the drawing back but acknowledged Hutton was an expert in the field, whereas she was not. The GAL believed Child would, like anyone, experience some stress from changing the custody situation but that she was resilient. She stated Child had "done remarkably well so far." The GAL determined Child enjoyed and appreciated the time she spent with Husband. The GAL provided some of her concerns could be alleviated by parents' decision-making responsibilities being divided with one parent making the final decision in certain areas and the other parent making the final decision in other areas, instead of them trying to make decisions together. The GAL described Child as being a joy to work with and very polite, articulate, kind, smart, empathetic, and perceptive. The GAL stated her "biggest concern here is that ability to get to a final conclusion that they could move forward on" because "it's very difficult for these parties to move forward."

Husband testified he currently works out of his home for a computer science business. He provided he travels some for work but only when Child was not in his custody. He indicated his negotiations for employment with his current employer included his getting to pick and choose when he travels in order to accommodate the custody schedule. He stated his previous job with IBM involved a lot of mandatory travel. Husband also testified that when Child was in his custody he encouraged Child to call Wife and tell her she loves her frequently. Husband believed a change in the custody schedule would hurt Child because it would break the routine to which she has become accustomed and cause her anxiety. He thought it took Child a long time to overcome Wife's arrest and she had "finally stabilized and . . . taken off."

Wife testified she typically works Monday through Friday from 8:00 a.m. to 5:00 p.m. On Fridays when Child is scheduled to go to Husband's for the week, Wife works from 11:00 a.m. to 7:00 p.m. to spend more time with Child that morning. She provided her employer is flexible with her schedule. She indicated she travels sometimes for her job and Child stays with her parents at those times. Wife asserted that during the marriage, she had been Child's primary caregiver because Husband was often out of town for work or busy working even when he was home. Wife was not in favor of the current week-to-week custody schedule because she believed Child was accustomed to her being the primary caregiver. Wife thought Child needed a "home base" to do her homework assignments timely, which Wife did not believe Husband would ensure. Wife indicated she believed Husband was a good father.

The family court issued a final order and divorce decree awarding the parties joint custody of Child, alternating placement from week to week,[3] with Wife being the final decision maker. The court noted it had concerns about the parties' inability to communicate with one another. Based on the totality of the record, the court determined exceptional circumstances existed warranting joint physical custody to continue and that it was in

Child's best interest. The court found because Child had thrived for the fourteen months prior to the final hearing under the current placement schedule, it was best to continue it. The family court was concerned about the effect of adding a change in custody when Child was soon to begin a new school program.

The family court later filed a supplemental order, which included the distribution of assets. Wife filed a motion for reconsideration, arguing the family court should have awarded her sole custody and Husband visitation only. The family court denied her motion. Husband filed a motion to reconsider and alter or amend judgment pursuant to Rules 52, 59(e), and 60, SCRCP, arguing a twelve-foot trailer included in the marital estate was accounted for twice in the supplemental order. The family court amended the supplemental order to include the trailer only once. This appeal followed.

STANDARD OF REVIEW

The appellate court reviews decisions of the family court de novo. *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). The appellate court generally defers to the findings of the family court regarding credibility because the family court is in a better position to observe the witness and his or her demeanor. *Id.* at 385, 391, 709 S.E.2d at 651-52, 655. The party contesting the family court's decision bears the burden of demonstrating the family court's factual findings are not supported by the preponderance of the evidence. *Id.* at 388-89, 709 S.E.2d at 653-54.

Our supreme court recently reiterated its holding from *Lewis,* stating:

> In *Lewis,* this [c]ourt extensively analyzed the applicable standard of review in family court matters and reaffirmed that it is de novo. We noted that, while the term "abuse of discretion" has often been used in this context, it is a "misnomer" in light of the fact that de novo review is prescribed by article V, § 5 of the South Carolina Constitution.
>
> We observed that de novo review allows an appellate court to make its own findings of fact; however, this standard does not abrogate two long-standing principles still recognized by our courts during the de novo review process: (1) a trial judge is in a superior position to assess witness credibility[] and (2) an appellant has the burden of showing the appellate court that the preponderance of the evidence is against the finding of the trial judge.

Stoney v. Stoney, Op. No. 27758 (S.C. Sup. Ct. refiled April 18, 2018) (Shearouse Adv. Sh. No. 16 at 9, 10-11) (per curiam) (footnote and citation omitted).

LAW/ANALYSIS

I. Custody

Wife contends the family court erred in finding exceptional circumstances warranted Husband and Wife having joint custody of Child. We disagree.

"The paramount and controlling factor in every custody dispute is the best interests of the children." *Brown v. Brown*, 362 S.C. 85, 90, 606 S.E.2d 785, 788 (Ct. App. 2004); *see also Davis v. Davis*, 356 S.C. 132, 135, 588 S.E.2d 102, 103-04 (2003) (finding in a child custody case, the welfare of the child and the child's best interests are the primary, paramount, and controlling considerations of the court). "[T]he appellate court should be reluctant to substitute its own evaluation of the evidence on child custody for that of the [family] court." *Woodall v. Woodall,* 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). "This is especially true in cases involving the welfare and best interests of children." *Dixon v. Dixon,* 336 S.C. 260, 263, 519 S.E.2d 357, 359 (Ct. App. 1999) (quoting *Aiken Cty. Dep't of Soc. Servs. v. Wilcox,* 304 S.C. 90, 93, 403 S.E.2d 142, 144 (Ct. App. 1991)). "[A]

determination of the best interest[s] of the children is an inherently case-specific and fact-specific inquiry." *Rice v. Rice,* 335 S.C. 449, 458, 517 S.E.2d 220, 225 (Ct. App. 1999).

> (A) The court shall make the final custody determination in the best interest of the child based upon the evidence presented.
>
> (B) The court may award joint custody to both parents or sole custody to either parent.
>
> (C) If custody is contested or if either parent seeks an award of joint custody, the court shall consider all custody options, including, but not limited to, joint custody, and, in its final order, the court shall state its determination as to custody and shall state its reasoning for that decision.
>
> (D) Notwithstanding the custody determination, the court may allocate parenting time in the best interest of the child.

S.C. Code Ann. § 63-15-230 (Supp. 2017).

> The family court considers several factors in determining the best interest of the child, including: who has been the primary caretaker; the conduct, attributes, and fitness of the parents; the opinions of third parties (including [the guardian ad litem], expert witnesses, and the children); and the age, health, and sex of the children.

Patel v. Patel (*Patel I*), 347 S.C. 281, 285, 555 S.E.2d 386, 388 (2001), *superseded by statute on other grounds by* S.C. Code Ann. §§ 20-7-1545 to -1557. "The family court must consider the character, fitness, attitude, and inclinations on the part of each parent as they impact the child. In addition, psychological, physical, environmental, spiritual, educational, medical, family, emotional[,] and recreational aspects of the child's life should be considered." *Woodall,* 322 S.C. at 11, 471 S.E.2d at 157 (citation omitted). "While numerous prior decisions set forth criteria that are helpful in such a determination, there exist no hard and fast rules and the totality of circumstances peculiar to each case constitutes the only scale upon which the ultimate decision can be weighed." *Davenport v. Davenport,* 265 S.C. 524, 527, 220 S.E.2d 228, 230 (1975). "Thus, when determining to whom custody shall be awarded, all the conflicting rules and presumptions should be weighed together with all of the circumstances of the particular case, and all relevant factors must be taken into consideration." *Woodall,* 322 S.C. at 11, 471 S.E.2d at 157. Although a parent's morality "is a proper factor for consideration," it is only relevant if it directly or indirectly affects the welfare of the child. *Davenport,* 265 S.C. at 527, 220 S.E.2d at 230. "Custody of a child is not granted a party as a reward or withheld as a punishment." *Id.*

> In South Carolina, in custody matters, the father and mother are in parity as to entitlement to the custody of a child. When analyzing the right to custody as between a father and mother, equanimity is mandated. We place our approbation upon the rule that in South Carolina, there is no preference given to the father or mother in regard to the custody of the child. The parents stand in perfect equipoise as the custody analysis begins.

Brown, 362 S.C. at 91, 606 S.E.2d at 788 (quoting *Kisling v. Allison,* 343 S.C. 674, 678, 541 S.E.2d 273, 275 (Ct. App. 2001)).

The family court has jurisdiction to order joint custody when it finds it is in the child's best interests. S.C. Code Ann. § 63-3-530(A)(42) (2010). However, "[a]lthough the legislature gives family court judges the authority to order joint or divided custody whe[n] the court finds it is in the best interests of the child, . . . joint or divided custody should only be awarded whe[n] there are exceptional circumstances." *Lewis v. Lewis,* 400 S.C. 354, 365, 734 S.E.2d 322, 327 (Ct. App. 2012) (omission by court) (quoting *Patel v. Patel* (*Patel II*), 359 S.C. 515, 528, 599 S.E.2d 114, 121 (2004)). "Absent exceptional circumstances, the law regards joint custody as typically harmful to the children and not in their best interests." *Spreeuw v. Barker,* 385 S.C. 45, 61, 682 S.E.2d 843, 851 (Ct. App. 2009); *see Patel II,* 359 S.C. at 528, 599 S.E.2d at 121) (noting joint custody should be ordered only under exceptional circumstances); *Courie v. Courie,* 288 S.C. 163, 168, 341 S.E.2d 646, 649 (Ct.

App. 1986) ("Divided custody is avoided if at all possible[] and will be approved only under exceptional circumstances.").

> In determining joint custody is usually considered harmful to and not conducive to the best interest and welfare of a child, our courts have explained the disfavor as follows:
>
> The courts generally endeavor to avoid dividing the custody of a child between contending parties, and are particularly reluctant to award the custody of a child in brief alternating periods between estranged and quarrelsome persons. Under the facts and circumstances of particular cases, it has been held improper to apportion the custody of a child between its parents, or between one of its parents and a third party, for ordinarily it is not conducive to the best interests and welfare of a child for it to be shifted and shuttled back and forth in alternate brief periods between contending parties, particularly during the school term. Furthermore, such an arrangement is likely to cause confusion, interfere with the proper training and discipline of the child, make the child the basis of many quarrels between its custodians, render its life unhappy and discontented, and prevent it from living a normal life.

Lewis, 400 S.C at 365, 734 S.E.2d at 327-28 (quoting *Scott v. Scott*, 354 S.C. 118, 125-26, 579 S.E.2d 620, 624 (2003)).

In *Spreeuw,* this court found:

> [T]he exceptional nature of this case demands that we affirm the family court's award of joint physical custody. In this case, a seven[-]year delay occurred between the issuance of the family court's final order . . . and oral argument before this panel. . . . The reasons for the delay in this case range from the acceptable — Father's bankruptcy proceeding — to the unacceptable — the rash of motions filed by both parties. Since the family court's final order, the children have grown from the ages of five and twelve to the ages of twelve and nineteen. Undoubtedly, many things have changed in the children's lives since 2002. However, the custodial arrangement has remained constant. At this point, we are reluctant to order a change in the custody arrangement based on a record which most certainly has become cold. Accordingly, we affirm the family court's decision to award both parties joint physical custody of the children.

385 S.C. at 61-62, 682 S.E.2d at 851.

Likewise, we affirm the family court's custody award in the present case. Wife argues the record contains no evidence she engaged in conduct to alienate Child from Husband. However, Husband testified that during the marriage, due to Wife's influence, Child could not tell him she loved him and told him she could only give him one hug. He provided he "stopped [the] marriage because [he] wanted [Child] to be able to freely love who she wanted to love." Husband testified Child was acclimated to the current custody arrangement and knew when it was time for the exchange between Wife and Husband. He believed Child needed both her parents in order to become a well-adjusted child and adult and neither parent had a greater position in her life than the other. Wife testified she wanted Husband and Child to have a strong bond. She also provided Husband loves Child and is a good father.

While joint custody is generally disfavored, this arrangement worked well for Child for the fourteen months before the final hearing.[4] This custody arrangement has now continued from the time of the hearing (May 2015) until present, which is an additional twenty-nine months, amounting to a total of forty-three months or about three and a half years — close to half of Child's life. The teachers, parents, GAL, and therapist all testified about how well Child was doing. Many witnesses commented on how happy and well-adjusted she was at the time of the final hearing. We find the passage of time and the good reports on Child's welfare and mental adjustment to the situation comprise exceptional circumstances warranting joint custody. While

disfavored, no evidence has been presented to allow the family court or this court to rule differently. Accordingly, we affirm the family court's joint custody award.

II. Settlement Agreement

Wife maintains the family court erred when it issued an order granting Husband's motion to reconsider the parties' settlement agreement equitably allocating the marital estate. We disagree.

"[P]arties may enter into contracts resolving issues of alimony and equitable distribution and . . . the family court has jurisdiction over those contracts." *Swentor v. Swentor,* 336 S.C. 472, 479, 520 S.E.2d 330, 334 (Ct. App. 1999). "The family court has exclusive jurisdiction: . . . (25) to modify or vacate any order issued by the court." S.C. Code Ann. § 63-3-530(A) (2010). "However, `the law in South Carolina is exceedingly clear that the family court does not have the authority to modify court ordered property divisions.'" *Simpson v. Simpson,* 404 S.C. 563, 571, 746 S.E.2d 54, 58-59 (Ct. App. 2013) (quoting *Green v. Green,* 327 S.C. 577, 581, 491 S.E.2d 260, 262 (Ct. App. 1997)); *see* S.C. Code Ann. § 20-3-620(C) (2014) ("The court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal."); *Swentor,* 336 S.C. at 480 n.2, 520 S.E.2d at 334 n.2 ("[A]n agreement regarding equitable apportionment claims is final and may not be modified by the parties or the court. . . .").

In *Green,* during a divorce proceeding, the parties reached a property settlement agreement, which was approved by the family court. 327 S.C. at 578, 491 S.E.2d at 261. Later, the wife moved to adjust the agreement to decrease the value of an office building allocated to her in the settlement, contending "the husband and his expert `fraudulently concealed and withheld evidence of the true condition of the building and the fact that there was structural as well as other damage to the building which would have a cost of approximately $36,500 to repair.'" *Id.* at 578-79, 491 S.E.2d at 261. "The wife conceded that neither she nor the husband really knew the extent of the damage to the building at the time they entered into the agreement." *Id.* at 579, 491 S.E.2d at 261. The family court concluded "it was within the `equitable powers' of the court to reopen and modify the parties' agreement." *Id.* at 581, 491 S.E.2d at 262. However, this court found "the law in South Carolina is exceedingly clear that the family court does not have the authority to modify court ordered property divisions." *Id.*

Rule 60(a), SCRCP, permits trial courts to correct clerical errors at any time: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." Nevertheless,

> The family court's correction of clerical errors may not extend to "chang[ing] the scope of the judgment." *Michel v. Michel,* 289 S.C. 187, 190, 345 S.E.2d 730, 732 (Ct. App. 1986). "Except for those matters over which a court retains continuing jurisdiction, terms of a final property settlement agreement, once approved, are binding on the parties and the court." *Price v. Price,* 325 S.C. 379, 382, 480 S.E.2d 92, 93 (Ct. App. 1996); *accord Doran v. Doran,* 288 S.C. 477, 478, 343 S.E.2d 618, 619 (1986) ("A trial judge loses jurisdiction to modify an order after the term at which it is issued, except for the correction of clerical [errors]. Once the term ends, the order is no longer subject to any amendment or modification which involves the exercise of judgment or discretion on the merits of the action.").

Brown v. Brown, 392 S.C. 615, 622, 709 S.E.2d 679, 683 (Ct. App. 2011) (alterations by court).

The situation here is unlike that in *Green.* Wife does not allege she and Husband owned more than one trailer. The order included the trailer in two different places, thus accounting for it twice. Changing the order to only include the trailer once was not a change in the scope of judgment but was merely a correction of a clerical error. Accordingly, the family court was allowed to correct this. The fact that the parties reached the settlement

on the division of marital property after being sent out in the hall for an hour to negotiate at the beginning of the final hearing likely contributed to the parties submitting forms that had been hastily prepared or had not been double checked. Therefore, the family court did not err in correcting the order to only account for the twelve-foot trailer one time instead of two.

CONCLUSION

The family court did not err in awarding joint custody as this case presented exceptional circumstances. Further, the family court did not err in granting Husband's motion to modify the marital division due to the erroneous inclusion of the trailer twice. Accordingly, the family court's decision is

AFFIRMED.

SHORT and GEATHERS, JJ., concur.

[1] Police were called to the parties' home eleven times between 2012 and 2014.

[2] At the time of the final hearing, the domestic violence charge against Wife was still pending. Wife testified she chose not to participate in a pretrial intervention program because she believed it would require her to admit to guilt. As a result, a no contact order, which prevented the parties from communicating, remained in effect at the time of the final hearing.

[3] During summer, the rotation would be month-to-month.

[4] Child was about four and a half years old when her parents starting living apart and began sharing custody, was about five and a half years old at the time of the final hearing, and is now over eight years old.

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SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, Respondent, and Sherry Powers, Edward Anthony Dalsing and Tammy Gaye Causey Dalsing, Intervenors,
of whom Edward Anthony Dalsing and Tammy Gaye Causey Dalsing, are Petitioners,
v.
Erica SMITH and Andrew Jack Myers, Respondents.
In the interest of a minor under the age of eighteen.

Opinion No. 27797.

Supreme Court of South Carolina.

Heard October 19, 2017.
Filed May 9, 2018.

Appeal from Union County, Appellate Case No. 2017-000784, Rochelle Y. Conits, Family Court Judge.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

REVERSED.

James Fletcher Thompson, of James Fletcher Thompson, LLC, of Spartanburg; and Larry Dale Dove, of Dove Law Group, LLC, of Rock Hill, for Petitioners.

Melinda Inman Butler, of The Butler Law Firm, of Union; Debra A. Matthews, of Debra A. Matthews, Attorney at Law, LLC, and Carol Ann Tolen, of Coleman & Tolen, LLC, both of Winnsboro; David E. Simpson, of Rock Hill, and Shawn L. Reeves, of Columbia, both of South Carolina Department of Social Services; all for Respondents.

Allison Boyd Bullard, of Harling & West, LLC, of Lexington, for Amici Curiae Law Professors and Lecturers James Dwyer, Paulo Barrozo, Elizabeth Bartholet, J. Herbie Difonzo, Jennifer Drobac, Crisanne Hazen, Jennifer Mertus, Deborah Paruch, Iris Sunshine, Lois A. Weithorn, and Crystal Welch.

66 *66 JUSTICE JAMES:

In this matter, Petitioners Edward and Tammy Dalsing (Foster Parents) are seeking to adopt a young girl (Child). Foster Parents' private action for termination of parental rights (TPR) and adoption was consolidated with the South Carolina Department of Social Services' removal action against Erica Smith (Mother) and Andrew Myers (Father). At the final hearing, the family

court (1) adopted the permanent plan of TPR and adoption; (2) terminated Mother's parental rights; (3) found Father was not a person whose consent was required for Child's adoption, but as a further sustaining ground, terminated Father's parental rights; and (4) granted Foster
67 Parents' petition for adoption. Father appealed, and *67 the court of appeals vacated in part, reversed in part, and remanded the case to the family court for a new permanency planning hearing. *S.C. Dep't of Soc. Servs. v. Smith*, 419 S.C. 301, 797 S.E.2d 740 (Ct. App. 2017). This Court granted certiorari to review the court of appeals' decision. For the reasons discussed below, we reverse the court of appeals and reinstate the family court's grant of adoption to Foster Parents.

STANDARD OF REVIEW

On appeal from a matter in the family court, this Court reviews factual and legal issues de novo. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). Although this Court reviews the family court's factual findings de novo, we are not required to ignore the fact that the family court, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. *Lewis*, 392 S.C. at 385, 709 S.E.2d at 652. Also, "*de novo* review neither relieves an appellant of demonstrating error nor requires us to ignore the findings of the family court." *Id.* at 389, 709 S.E.2d at 654. Because of our de novo standard of review, we will undertake a detailed review of both the facts of this case and its tortuous procedural history.

FACTUAL AND PROCEDURAL HISTORY

Mother and Father were living together, unmarried, at the time Child was conceived in 2012. Mother has a long history of drug addiction and instability, and Father has a troubled history as a teenager and young adult, which includes the use of illegal drugs and other criminal activity. Mother and Father did not have stable housing, and Mother was working to pay the bills at the time Child was conceived. In October 2012, a week or two after learning about the pregnancy, Father voluntarily surrendered to Maryland authorities on outstanding criminal charges. Mother testified she and Father discussed Father's outstanding charges and decided Father should surrender to authorities to timely serve his sentence in order for him to assist Mother in raising
68 Child upon his *68 release. Father remained incarcerated in Maryland until June 2013, when he was transferred to a penal facility in Virginia to serve even more prison time for two contempt of court charges; two fraud, bank notes, or coins charges; and one probation violation. At the time of the final family court hearing in 2015, Father's expected release date was November 1, 2016.

Mother testified that after Father went to prison, "I was just bouncing from here to there, [living] wherever I could." Around Thanksgiving 2012, Mother contacted Sherry Powers (Grandmother), [1] who lived in Virginia, and asked if Grandmother could pick her up in South Carolina. Mother was approximately three months pregnant at the time. Grandmother testified Mother called and asked her to come pick her up because Mother had been beaten up, had been in the hospital,

and had nowhere to go. Grandmother and Step-Grandfather (collectively, Grandparents) picked up Mother in South Carolina and took her to Virginia to live with them.

Mother lived with Grandparents for approximately four months. During this time, Grandmother provided food, shelter, transportation, and support for Mother. Grandmother purchased items in anticipation of Child's birth and attended Mother's prenatal appointments. Grandmother testified she provided these items for Child on Father's behalf. Grandmother believed that after Child's birth, Child was going to live in her house. Father never sent Mother or Grandmother any money in anticipation of Child's birth. However, according to Mother, Father "frequently" contacted her via phone calls and letters during the time she was living with Grandparents.

In late March or early April 2013 — prior to Child's birth — Mother left Grandparents' home, taking some of the items Grandmother purchased for Child. Mother testified she left Grandparents' home after Step-Grandfather made sexual advances toward her on more than one occasion. Mother went to live with her father in South Carolina. Within a week of her
69 moving, Father called and sent Mother a letter. Mother *69 testified that following her receipt of Father's phone call and letter, she never received another call, letter, or offer of support from him. Mother testified she ended her relationship with Father around the time she left Virginia but noted she never prohibited Father from contacting her.

Mother gave birth to Child in South Carolina on May 15, 2013. Grandparents were present and brought the remaining items they had purchased for Child. Mother tested positive for opiates and amphetamines at Child's birth; however, because Child's meconium drug screen was inconclusive, Mother was permitted to take Child home. On May 31, 2013, Child was given a hair strand drug screen, and Child tested positive for cocaine and benzoylecgonine (the main metabolite of cocaine).

On June 6, 2013, law enforcement took emergency protective custody of Child. On the same day, the South Carolina Department of Social Services (DSS) placed her in foster care with Foster Parents and filed an action for removal against Mother and Father. DSS's Affidavit of Reasonable Efforts accompanying its removal complaint noted Mother informed DSS that she did not want Child placed with Grandmother. A probable cause hearing was held on June 10, 2013, and the family court found probable cause for Child's removal and for DSS to assume legal custody of Child. Grandmother testified she was surprised to hear Child was removed and placed in foster care because she thought DSS would have contacted her first. She explained she had previously contacted DSS and sought Child's placement in her home. However, because Grandparents lived in Virginia, Grandparents were required to complete a home study pursuant to the Interstate Compact on the Placement of Children (ICPC).[2]

At the June 19, 2013 merits hearing, the matter was continued; however, the family court ordered an ICPC home study for Grandparents. The family court also ordered a paternity test for Father and permitted him to file and serve an affidavit attesting he was Child's natural father. On June 27, 2013, Father executed an affidavit acknowledging paternity indicating he was aware of

Child's birth and his responsibility to support Child. A September 2013 DNA paternity test
70 confirmed *70 Father's paternity. Grandmother scheduled and paid for the test.

At the required merits hearing on July 18, 2013, the family court adopted the agreement of the parties and made a finding of physical abuse against Mother. The family court's order from the merits hearing — signed August 13, 2013 — again ordered an ICPC home study for Grandparents[3] and required Father's child support obligation be held in abeyance, referencing Father's incarceration. On August 20, 2013, Grandparents filed a motion to intervene in DSS's action and sought custody of Child; their motion to intervene was granted in November 2013. Additionally, on August 20, 2013, Grandmother filed an answer, counterclaim, and crossclaim in DSS's action, alleging neither Mother nor Father were "*capable, suitable, fit, or proper persons to be granted custody of Child.*" (emphasis added).

On November 8, 2013, Mother signed a consent and relinquishment of her parental rights, specifying Foster Parents as her desired adoptive parents for Child. Foster Parents filed a private TPR and adoption action on November 19, 2013. In their complaint, Foster Parents alleged Father was Child's natural father and that he was not a person from whom consent was required under section 63-9-310(A) of the South Carolina Code (2010). In December 2013, Father — still in prison — filed an answer contesting Child's adoption by Foster Parents, contesting his TPR, and seeking Child's placement with Grandmother.

In January 2014, Foster Parents filed a motion to intervene and requested dismissal of DSS's action against Mother and Father. Alternatively, Foster Parents asked the family court to change Child's permanent plan to TPR and adoption — identifying themselves as Child's adoptive
71 resource. At the *71 January 8, 2014 hearing, the family court granted shared legal custody of Child to DSS and Foster Parents and granted physical custody of Child to Foster Parents, pending a determination of Father's rights to Child. The family court also consolidated Foster Parents' private action with DSS's action.

In their February 10, 2014 amended complaint, Foster Parents alleged (1) Father had not established parental rights in and to Child pursuant to section 63-9-310(A)(4) of the South Carolina Code, thereby rendering unnecessary his consent to Child's adoption and (2) even if Father had established parental rights, statutory grounds for TPR existed, and TPR was in Child's best interest. Father's answer to Foster Parents' amended complaint was filed on March 12, 2014, objecting to Foster Parents' adoption of Child. On April 9, 2014, Grandparents filed an answer and counterclaim as Intervenors, alleging Foster Parents were not entitled to relief and seeking to adopt Child with Father's consent and Mother's TPR.

On May 2, 2014 — almost an entire year after Child was placed with Foster Parents and well into the litigation of this case — Father sent a letter to DSS stating he was unable to visit Child until she was in Grandmother's custody. In the letter, Father explained he asked Grandmother to stop sending him $50 per month for food and to use the money for Child's needs. Father wrote, "I would love nothing more than to see [Child]." Father asked for Foster Parents' phone number so he could call Child. Grandmother admitted Father never paid money for Child's support;

however, she confirmed Father directed her in or around May 2014 to stop sending him "food packages" each month and to use the money for Child. Grandmother has consistently traveled from Virginia to South Carolina to visit Child during DSS scheduled visitations, bringing supplies for Child when she visited.

On May 8, 2014, only a few days after Father wrote to DSS, Father wrote a letter to his attorney and enclosed a birthday card for Child. Father's attorney forwarded this card to DSS. Stephanie Kitchens, Child's Guardian ad Litem (GAL), testified she sent Father a "questionnaire-type letter" a couple of months before the July 31, 2014 hearing, and Father responded within a week.

72 *72 On July 31, 2014, Judge David G. Guyton convened a hearing in Foster Parents' action to determine whether Father was a person who established or maintained parental rights to the extent his consent for Child's adoption was required pursuant to section 63-9-310(A). Although Judge Guyton issued an order finding Father's consent was not necessary for Child's adoption and noting that even if his consent was required, TPR was appropriate, his order was vacated by this Court because, between the time Judge Guyton held his hearing on July 31, 2014, and issued his order on October 7, 2014, former Chief Justice Toal issued an order consolidating the actions and vesting Judge Michelle M. Hurley with exclusive jurisdiction to hear the consolidated cases.

On October 2, 2014, Father signed a consent for Child's adoption by Grandparents. At the end of October 2014, Foster Parents received a certified letter from DSS informing them that DSS intended to remove Child from their home and place her with Grandparents. Subsequently, Foster Parents served DSS and the DSS Appeals Unit with their Notice of Appeal of DSS's decision to remove Child from their home. At the February 20, 2015 permanency planning hearing, Judge Hurley ordered a permanent plan of relative placement concurrent with TPR and adoption to maintain the status quo during the pendency of any appeals.

On April 23, 2015, former Chief Justice Toal issued an order vesting Judge Rochelle Y. Conits with exclusive jurisdiction to hear and dispose of all of the consolidated cases. At the June 4, 2015 pretrial hearing, DSS explained "that if [Grandparents] and [Foster Parents were] both seeking adoption, then DSS would not oppose the plan of adoption with either of them." Step-Grandfather was dismissed as a party to the actions because of his recent separation from Grandmother.

The consolidated cases were tried in July 2015. The family court permitted Foster Parents and Grandmother to intervene in the DSS action and allowed Father and Grandmother to intervene in Foster Parents' action. The deposition of First Sergeant Lori Mabry, a records custodian for New River Valley Regional Jail in Dublin, Virginia, was admitted into evidence by consent. Mabry testified Father was incarcerated at New River Jail from June 11, 2013 until May 14,
73 2014, when *73 he was moved to Nottoway Correctional Center. She testified that during the time Father was incarcerated in New River Jail, a total of $1,894.98 was deposited into his commissary account. Mabry noted that even though Father was able to use these funds for child support, $557 of the funds were used to place phone calls and $1,284.05 of the funds were used to purchase commissary items such as food, clothing, hygiene items, stationery, and stamps. No

funds were expended from his account for child support. Mabry also described several disciplinary incidents involving Father during his time at New River Jail.

By order dated September 1, 2015, the family court: (1) adopted a permanent plan of TPR and adoption; (2) terminated Mother's parental rights; (3) found Father was not a person whose consent was required for Child's adoption, but as a further sustaining ground, terminated Father's parental rights;[4] and (4) granted Foster Parents' petition for adoption. Father appealed, and the court of appeals vacated in part, reversed in part, and remanded the case to the family court. *S.C. Dep't of Soc. Servs. v. Smith*, 419 S.C. 301, 797 S.E.2d 740 (Ct. App. 2017).

The court of appeals held the family court erred in granting Foster Parents' petition for adoption because the family court had ruled Foster Parents did not have standing to pursue a private adoption action. The court of appeals held that since Foster Parents did not appeal the family court's ruling that they lacked standing to file their adoption action, this unappealed ruling became the law of the case. The court of appeals further ruled the family court properly found Foster Parents lacked standing to file a private adoption petition under the rationale of *Youngblood v. South Carolina Department of Social Services*, 402 S.C. 311, 741 S.E.2d 515 (2013). The court of appeals also ruled that because the issue of Father's consent to adopt was tied to Child's adoption, the issue of consent was not properly before the family court. Thus, the court of appeals vacated both the family court's finding that Father's consent was not required
74 for the adoption and the *74 family court's order granting Foster Parents' adoption of Child.

Additionally, the court of appeals ruled the family court erred in terminating Father's parental rights, finding Foster Parents failed to prove by clear and convincing evidence a statutory ground for TPR existed. The court of appeals found the record did not contain clear and convincing evidence to show that Father abandoned Child, willfully failed to visit Child, or willfully failed to support Child. The court of appeals remanded the matter to the family court for a new permanency planning hearing.

This Court granted Foster Parents' petition for a writ of certiorari to review: (1) whether the court of appeals erred in reversing the family court's order terminating Father's parental rights on the statutory grounds of abandonment and willful failure to visit;[5] (2) whether, if the court of appeals did so err, the family court properly found termination of Father's parental rights was in Child's best interest; and (3) whether the court of appeals erred in holding the family court had no authority to determine any adoption issues because it found Foster Parents lacked standing to bring the private adoption action.

DISCUSSION

I. TPR

The United States Constitution requires fundamentally fair procedures when the State seeks to sever the relationship between a natural parent and their child. U.S. CONST. amend. XIV, § 1;

Santosky v. Kramer, 455 U.S. 745, 753-54, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). In *Santosky,* the United States Supreme Court provided:

> The fundamental liberty interest of natural parents in the care, custody, and
> 75 management of their child does not *75 evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. ... When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

455 U.S. at 753-54, 102 S.Ct. 1388.

In South Carolina, the family court may order TPR upon finding one or more of twelve statutory grounds is satisfied and upon finding TPR is in the best interest of the child. S.C. Code Ann. § 63-7-2570 (Supp. 2017). The South Carolina Children's Code provides the TPR statute "must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent-child relationship." S.C. Code Ann. § 63-7-2620 (2010).

In TPR cases, there are often two competing interests: those of a parent and those of a child. *S.C. Dep't of Soc. Servs. v. Cochran,* 364 S.C. 621, 626, 614 S.E.2d 642, 645 (2005). "Parents have a fundamental interest in the care, custody, and management of their children. Parental rights warrant vigilant protection under the law and due process mandates a fundamentally fair procedure when the state seeks to terminate the parent-child relationship." *Id.* "However, a child has a fundamental interest in [TPR] if the parent-child relationship inhibits establishing secure, stable, and continuous relationships found in a home with proper parental care. In balancing these interests, the best interest of the child is paramount to that of the parent." *Id.* at 626-27, 614 S.E.2d at 645.

In the instant case, Child was removed from Mother's care a few weeks after birth and was placed in Foster Parents' home on June 6, 2013, after Child tested positive for cocaine and benzoylecgonine. Father was incarcerated out-of-state at the time Child was removed. On November 8, 2013, Mother signed a consent and relinquishment of her parental rights and expressed her desire for Foster Parents to adopt Child. Subsequently, on November 19, 2013,
76 Foster Parents brought a private action seeking TPR and adoption. Even if Foster *76 Parents did not have standing to bring their private adoption action, it was well within Foster Parents' statutory right to file their TPR action. *See* S.C. Code Ann. § 63-7-2530(A) (Supp. 2017) (providing "any interested party" may file a TPR petition); S.C. Code Ann. § 63-7-20(17) (Supp. 2017) (including a foster parent as a "[p]arty in interest"); *Dep't of Soc. Servs. v. Pritchett*, 296 S.C. 517, 520-21, 374 S.E.2d 500, 501-02 (Ct. App. 1988) (concluding the Children's Code provides a foster parent standing to petition for TPR). Because it is well-settled that Foster Parents have standing to petition for TPR, we first address the court of appeals' decision to reverse the family court's termination of Father's parental rights.

A. Statutory Grounds

The grounds for TPR must be proven by clear and convincing evidence. *S.C. Dep't of Soc. Servs. v. Headden*, 354 S.C. 602, 608, 582 S.E.2d 419, 423 (2003). "On appeal, pursuant to its de novo standard of review, the Court can make its own determination from the record of whether the grounds for termination are supported by clear and convincing evidence." *Broom v. Jennifer J.*, 403 S.C. 96, 111, 742 S.E.2d 382, 389 (2013).

1. Abandonment

Foster Parents argue the family court correctly held Father's parental rights should be terminated for abandoning Child. We agree.

A statutory ground for TPR is met when the child has been abandoned. S.C. Code Ann. § 63-7-2570(7) (Supp. 2017). "`Abandonment of a child' means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child." S.C. Code Ann. § 63-7-20(1) (Supp. 2017). Willfulness is a question of intent which requires an analysis of the facts and circumstances of each case. *S.C. Dep't of Soc. Servs. v. Broome*, 307 S.C. 48, 52, 413 S.E.2d 835, 838 (1992). "Conduct of the parent [that] evinces a settled purpose to forgo parental duties may fairly be characterized as `willful' because it manifests a conscious indifference to the rights
77 of the child to receive *77 support and consortium from the parent." *Id.* at 53, 413 S.E.2d at 839. In considering whether a parent's conduct was willful, the family court may consider all relevant conduct by the parent and is not limited to considering only the months immediately preceding TPR. *Headden*, 354 S.C. at 611, 582 S.E.2d at 424. The element of willfulness must be established by clear and convincing evidence. *Broome*, 307 S.C. at 52, 413 S.E.2d at 838.

"Terminating the parental rights of an incarcerated parent requires consideration of all of the surrounding facts and circumstances in the determination of wilfulness. The voluntary pursuit of lawless behavior is one factor which may be considered, but generally is not determinative." *S.C. Dep't of Soc. Servs. v. Wilson*, 344 S.C. 332, 340, 543 S.E.2d 580, 584 (Ct. App. 2001). "[I]ncarceration alone is insufficient to justify [TPR]." *S.C. Dep't of Soc. Servs. v. Ledford*, 357 S.C. 371, 376, 593 S.E.2d 175, 177 (Ct. App. 2004). In *Ledford,* the court of appeals found Ledford, an incarcerated father, abandoned his child because "[i]n addition to `breathing oxygen,' [Ledford] was required to take the necessary steps to assure that his daughter was being continually cared for." *Id.* The court of appeals noted that aside from unsuccessfully sending a birthday card to child, Ledford admitted he only attempted to locate his daughter one time. *Id.* The court of appeals found Ledford "neither made arrangements for his child's care nor showed concern for the status of her current arrangements." *Id.*

Here, the family court found Father abandoned Child "by and through his omission to make any arrangement whatsoever for [Child]'s needs or the continuing care of [Child] prior to reporting to prison." The family court found Father knew of Mother's "long history of drug abuse and

instability, yet he left his unborn child at the mercy of this dysfunctional person." However, the court of appeals disagreed, finding the family court erred in finding Father abandoned Child because Father: (1) voluntarily started his prison sentence early; (2) sent a letter to DSS expressing his desire to visit Child; (3) asked DSS for Foster Parents' phone number to call Child; (4) asked Grandmother to use $50 per month to support Child instead of sending it to him
78 in prison; (5) asked his attorney for an update on the case; (6) voluntarily signed an affidavit *78 acknowledging paternity; (7) obtained a DNA test to prove paternity despite DSS failing to assist with the test; (8) sent a letter to the GAL seeking to pursue a relationship with Child; (9) completed and returned a questionnaire from the GAL within one week, and (10) sent Child a birthday card expressing his love. Although the court of appeals' list of actions taken by Father may appear sufficient to find clear and convincing evidence did not support this statutory ground for TPR, a close analysis of the record reveals otherwise. Several of the actions listed separately by the court of appeals were not actually separate and distinct actions, but rather occurred within a month's time of one another, and approximately one year *after* Child's birth.

We find the record contains clear and convincing evidence that Father abandoned Child. Father emphasizes that he voluntarily turned himself in to Maryland authorities so he could plead guilty to outstanding Maryland charges, serve his prison sentence, and then begin his life with Mother and Child. Of course, after completing the Maryland sentence in 2013, Father was transported back to Virginia to serve prison time for two contempt of court charges, two financial crimes, and a probation violation. While some may consider admirable Father's efforts to put his troubles behind him, the fact remains that Father was a "wanted man" in both Virginia and Maryland. We are not inclined to give him credit for voluntarily surrendering his status as a fugitive from justice, as it was incumbent upon him to do so. Even if Father were entitled to some dispensation from this Court for surrendering to Maryland authorities, he did nothing to prepare for and provide the proper care of Mother and Child during his period of incarceration. *See* *Ledford*, 357 S.C. at 376, 593 S.E.2d at 177 (finding evidence that an incarcerated father abandoned his child because he failed to take the necessary steps to ensure his daughter was being *continually* cared for). When Mother was asked where she lived after Father went to prison, Mother replied, "I was just bouncing from here to there, wherever I could." Mother had a history of drug abuse and instability; nevertheless, Father left pregnant Mother without money or evidence of a plan for her or Child's well-being. Further, Father had money in his prison account but did not send any
79 money for Mother's prenatal care or Child's care following her *79 birth.[6] Even though Grandmother provided for Mother for several months while Mother was pregnant, it was *Mother* who reached out to Grandmother for assistance — not *Father.* Mother called and asked Grandmother to come pick her up because Mother had been beaten up, had been in the hospital, and had nowhere to go.

Further, Father's belated efforts to establish contact with Child in May 2014 were only a miniscule attempt to remain a part of Child's life. *See* *Ledford*, 357 S.C. at 376, 593 S.E.2d at 177 (finding there was evidence an incarcerated father abandoned his child when he "made only a miniscule attempt to remain a part of his daughter's life"). Despite his incarceration throughout this litigation, Father had the ability to place phone calls and write letters. Father demonstrated

this ability by calling and writing Mother up until approximately one month before Child's birth. However, after Mother broke off her relationship with Father prior to Child's birth, there is no evidence Father ever placed a phone call to Mother, DSS, or Foster Parents to inquire about Child.[7] However, the record does indicate that Father spent over $557 on other phone calls during the first year of Child's life.

It was not until May 2, 2014 — almost an entire year after Child's birth and several months after litigation had commenced — when Father finally wrote a letter to DSS: (1) explaining he was unable to visit Child until she was placed in Grandmother's custody, (2) noting he would like to see Child, (3) explaining he directed Grandmother to stop sending him $50 per month for food and to use the money for Child's needs, and (4) asking for Foster Parents' phone number to
80 speak with Child.[8] A few days later on May 8, 2014, Father *80 sent a letter to his attorney inquiring about possible court dates and enclosing a birthday card for Child. There is no evidence in the record explaining why Father failed to reach out to Child sooner, and there is no evidence in the record that Father made any other attempts to contact Child prior to the family court's final hearing in July 2015.

We find additional clear and convincing evidence of Father's abandonment of Child through his relinquishment of his parental rights in conjunction with his October 2, 2014 consent to Grandparents adopting Child. Although Father argues this was a tactical move for him to maintain a relationship with Child, this maneuver clearly and convincingly establishes Father's settled purpose to forgo his parental duties. *See* *Broome*, 307 S.C. at 53, 413 S.E.2d at 839 (providing "[c]onduct of the parent [that] evinces a settled purpose to forgo parental duties may fairly be characterized as `willful'"). By relinquishing his parental rights in his consent for Grandparents to adopt Child, Father confirmed he had considered the alternatives to placing Child for adoption and believed adoption was in Child's best interest. There is no evidence in the record that Father has ever sought to withdraw his consent. We find clear and convincing evidence supports a finding that TPR is appropriate on the ground of abandonment.

2. Failure to Visit

Foster Parents argue the family court correctly held Father's parental rights should be terminated for willfully failing to visit Child. We agree.

A statutory ground for TPR is satisfied when:

> The child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child. The court may attach little or no weight to incidental visitations, but it must be shown that the parent was not prevented from visiting by the party having custody or by court order. The distance of child's placement from the parent's home must be taken into consideration when determining the ability to visit.

81 *81 S.C. Code Ann. § 63-7-2570(3) (Supp. 2017). Here, it is clear Child has "lived outside the home of either parent" for much longer than six months as she was removed from Mother's home on June 6, 2013. Child has not since been returned to live with Mother or Father. Thus, the narrow question before this Court is whether there is clear and convincing evidence Father willfully failed to visit Child.

"Whether a parent's failure to visit ... a child is `willful' within the meaning of the statute is a question of intent to be determined in each case from all the facts and circumstances." *Broome*, 307 S.C. at 52, 413 S.E.2d at 838. "Conduct of the parent [that] evinces a settled purpose to forego parental duties may fairly be characterized as `willful' because it manifests a conscious indifference to the rights of the child to receive support and consortium from the parent." *Id.* at 53, 413 S.E.2d at 839. "Willfulness does not mean that the parent must have some ill-intent towards the child or a conscious desire not to visit; it only means that the parent must not have visited due to [his] own decisions, rather than being prevented from doing so by someone else." *Broom,* 403 S.C. at 114, 742 S.E.2d at 391.

Here, the family court found Father willfully failed to visit Child for six months and was not prevented from visiting or having meaningful interaction with Child by DSS and Foster Parents. The family court found Father's incarceration was the result of his own willful misconduct and determined Father's conduct indicated he failed to take advantage of his ability to initiate and have contact with Child, DSS, or Foster Parents. The family court noted the few actions that were taken by Father demonstrated both his ability to initiate and have contact with Child and Foster Parents, as well as his failure to do so in a timely manner.

The court of appeals disagreed, finding there was not clear and convincing evidence that Father willfully failed to visit Child. The court of appeals noted Father: (1) voluntarily started his prison sentence early; (2) sent a letter to DSS expressing his desire to visit Child; (3) asked DSS for Foster Parents' phone number to call Child; (4) asked his attorney for an update on the case; (5)
82 voluntarily signed an affidavit acknowledging paternity; (6) obtained a DNA test to prove *82 paternity despite DSS failing to assist with the test; (7) sent a letter to the GAL seeking to pursue a relationship with Child; (8) completed and returned a questionnaire from the GAL within one week; and (9) sent Child a birthday card expressing his love.[9] Also, the court of appeals noted Eison's testimony that DSS would not have allowed Child to visit Father because he was imprisoned in another state and further noted there was no evidence in the record that DSS ever provided Father with Foster Parents' phone number. Further, the court of appeals found Father repeatedly expressed his desire for Child to be placed with Grandmother so she could facilitate visitation and communication with Child. The court of appeals stated, "[If not] for Foster Parents' administrative appeal, DSS could have placed Child with Grandmother in November 2014, which would have facilitated visitation and communication between Father and Child."

We find clear and convincing evidence establishes Father willfully failed to visit Child. Father's unlawful conduct contributing to his incarceration is a factor that must be considered by this Court when determining whether he willfully failed to visit Child; however, we choose to not give it substantial weight in this situation because Father's unlawful conduct occurred *before* Child

was conceived. After learning of Mother's pregnancy, Father voluntarily surrendered to authorities in order to raise Child with Mother upon his release. Although Father's incarceration alone is insufficient to create a ground for TPR, his incarceration does not insulate him from performing his parental duty of visiting Child within his ability.

Father has not visited with Child face-to-face, and the record does not indicate he ever requested DSS to allow Child to visit him. However, Eison testified that she did not believe Child would have been permitted to travel out of state to visit with Father in prison. Father could
83 possibly have had face-to-face visitation if Child was placed with Grandmother; however, *83 Grandmother was required to go through the ICPC process because she did not live in South Carolina. The record indicates there was a delay on DSS's side in beginning the ICPC process. Although the family court first ordered an ICPC home study at the June 19, 2013 merits hearing, the ICPC home study was not submitted until October 29, 2013. However, when Grandmother first received a positive home study in February 2014, Mother had not consented to Child living with Grandparents, and Foster Parents had already filed for adoption. Therefore, we do not penalize Father for his failure to visit with Child face-to-face.

Nevertheless, Father's failure to even attempt to make contact with Child for almost an entire year constitutes clear and convincing evidence that Father willfully failed to visit Child. *See* § 63-7-2570(3) (stating a statutory ground for TPR is met when "[t]he child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to visit the child"). Despite any inconveniences in visitation due to Father's incarceration, Father's disregard in reaching out to Child for almost an entire year evinces a conscious indifference to the rights of Child to receive much-needed communication and consortium from Father. This is particularly noteworthy considering Father spent $557 of his commissary funds on phone calls alone during this time. Further, prior to the final family court hearing in July 2015, Father made no attempt to contact Child other than his May 2014 communications.

We find the facts that Father (1) voluntarily started his prison sentence early; (2) voluntarily signed an affidavit acknowledging paternity; and (3) obtained a DNA test to prove paternity relied upon by the court of appeals in its analysis do not rescue Father from a finding that he willfully failed to visit Child. We also find Father's communication with the GAL and his legal filings contesting Foster Parents' adoption to be nothing more than Father participating in the ongoing litigation. Further, we find the relevant actions Father did take were judicially motivated and insufficient to cure his willful failure to visit. *See* *S.C. Dep't of Soc. Servs. v. Cummings*, 345 S.C. 288, 296, 547 S.E.2d 506, 510-11 (Ct. App. 2001) ("A parent's curative conduct after the
84 initiation of TPR proceedings may be considered by the court on the issue of intent; *84 however, it must be considered in light of the timeliness in which it occurred."); *id.* at 296, 547 S.E.2d at 511 ("Rarely does judicially-motivated repentance, standing alone, warrant a finding of curative conduct. It must be considered together with all the relevant facts and circumstances."). DSS removed Child from Mother's care and placed her with Foster Parents on June 6, 2013. Subsequently, Mother signed a consent for Foster Parents to adopt on November 8, 2013, and Foster Parents filed their private adoption/TPR action on November 19, 2013. Although Father attempted to communicate with Child and inquire about her well-being by writing letters to (1)

DSS on May 2, 2014, and (2) his attorney on May 8, 2014, these communications occurred approximately one year after Child was removed from Mother's care and occurred over five months after Foster Parents had filed their adoption/TPR petition. We find it particularly noteworthy that Father's first and only attempts to communicate with Child occurred *after* Foster Parents filed their amended complaint alleging TPR was appropriate pursuant to statutory grounds including Father's abandonment and willful failure to visit Child. We conclude this evidence clearly and convincingly establishes these communications were judicially motivated. We find Father's actions insufficient to be curative of his willful failure to visit Child.

For the foregoing reasons, we hold clear and convincing evidence establishes Father willfully failed to visit Child. Therefore, TPR is warranted on this ground.

B. Best Interest

The family court determined TPR was in Child's "absolute best interest." The family court noted Father was not a person on whom Child could rely for her permanent care, custody, protection, or security. Because the court of appeals found there was not clear and convincing evidence to support any statutory ground for TPR, it did not address the issue of whether TPR was in Child's best interest. *See* S.C. Code Ann. § 63-7-2570 (Supp. 2017) (providing TPR is appropriate upon finding one or more of twelve statutory grounds is satisfied *and* also finding TPR is in the child's best interest). However, since we find clear and convincing evidence supports *85 more than one statutory ground for TPR, a best interest analysis is necessary. We hold TPR is in Child's best interest.

In a TPR case, the best interest of the child is the paramount consideration. *S.C. Dep't of Soc. Servs. v. Smith*, 343 S.C. 129, 133, 538 S.E.2d 285, 287 (Ct. App. 2000). "The [interest] of the child shall prevail if the child's interest and the parental rights conflict." S.C. Code Ann. § 63-7-2620 (2010). "The purpose of [the TPR statute] is to establish procedures for the reasonable and compassionate [TPR] where children are abused, neglected, or abandoned in order to protect the health and welfare of these children and make them eligible for adoption ...." S.C. Code Ann. § 63-7-2510 (2010). "Appellate courts must consider the child's perspective, and not the parent's, as the primary concern when determining whether TPR is appropriate." *S.C. Dep't of Soc. Servs. v. Sarah W.*, 402 S.C. 324, 343, 741 S.E.2d 739, 749-50 (2013).

Viewed from Child's perspective, we find TPR is in Child's best interest. Child was placed in foster care shortly after her birth, and at the time the family court issued the order challenged by Father, she had lived with Foster Parents for over two years. She has now lived with Foster Parents for over four years. Father has never met Child, and no bond has formed between them. *See* *Charleston Cty. Dep't of Soc. Servs. v. King*, 369 S.C. 96, 104-06, 631 S.E.2d 239, 243-44 (2006) (holding TPR was in the child's best interest because child had bonded with his foster family and did not remember his biological family); *S.C. Dep't of Soc. Servs. v. Cameron N.F.L.*, 403 S.C. 323, 329, 742 S.E.2d 697, 700 (Ct. App. 2013) ("The Supreme Court of South Carolina has considered bonding when determining whether TPR is in a child's best interest."). Father

has willfully failed to play a meaningful role in Child's life, despite his ability to write and place phone calls while in prison. It is important to delineate Grandmother's efforts from Father's lack of effort. It was Grandmother who stepped up and provided for Mother during the pregnancy when Mother reached out to her for help — not Father. It was Grandmother who maintained contact with Child and continued to provide support for Child — not Father. Clearly, Grandmother has shown an interest in Child's well-being; unfortunately, we cannot say the same for Father.

86 *86 Child has lived with Foster Parents for her entire life, and Grandmother visits with Child regularly. Both Foster Parents and Grandmother want to adopt Child and would provide her with permanency and stability as compared to Father. *See* *Cameron N.F.L.*, 403 S.C. at 329, 742 S.E.2d at 700 (considering future stability when determining whether TPR is in a child's best interest).

We disagree with DSS's and the GAL's recommendation of relative placement with Grandmother. At the time of the final hearing before the family court, relative placement would have had Grandmother serving as a placeholder for Father until he finished his prison sentence, and the uncertainty of Father's desire and ability to parent weighs heavily against Child's stability and permanency. As noted above, Grandmother admitted in her pleadings that Father — her own son — was not a "capable, suitable, fit, or proper person[] to be granted custody of Child." This is hardly a ringing endorsement of the prospect of a stable and suitable permanent environment for Child should Child be placed with Grandmother. This Court cannot and will not prolong the uncertainty of Child's stability and permanency any longer. *See* S.C. Code Ann. § 63-1-20(D) (2010) ("When children must be permanently removed from their homes, they *shall be placed in adoptive homes* so that they may become members of a family by legal adoption or, absent that possibility, other permanent settings.") (emphasis added). Therefore, we find TPR is in Child's best interest.[10]

II. Foster Parents' Standing

Foster Parents argue the court of appeals erred in holding the family court had no authority to determine any adoption issues. We agree.

The court of appeals found the family court concluded Foster Parents did not have standing to file an adoption action. The court of appeals found Foster Parents failed to appeal the family
87 court's determination that they lacked standing *87 to file their adoption petition; therefore, the court of appeals held, this unappealed ruling became the law of the case. DSS and Father both urge this Court to apply this procedural bar in affirming the court of appeals' conclusion. *See* *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance.").

The parties disagree as to whether the family court's order concluded Foster Parents did not have standing to bring their private adoption action. Regardless of whether the family court held Foster Parents lacked standing to bring their private adoption action — arguably making this

unappealed ruling the law of the case — this Court has the power to refuse to allow such a procedural bar from prohibiting our ability to address this issue on appeal because the rights of a minor child are involved. *See* *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 107, 536 S.E.2d 372, 374 (2000) ("[P]rocedural rules are subservient to the court's duty to zealously guard the rights of minors."); *Galloway v. Galloway*, 249 S.C. 157, 160, 153 S.E.2d 326, 327 (1967) ("The duty to protect the rights of minors has precedence over procedural rules otherwise limiting the scope of review and matters affecting the rights of minors can be considered by this court."). Therefore, because Child's rights are heavily involved, we choose to address the merits of whether Foster Parents have standing to bring their private adoption action.[11]

Regarding the merits, the court of appeals found, under the rationale of *Youngblood v. South Carolina Department of Social Services*, 402 S.C. 311, 741 S.E.2d 515 (2013), Foster Parents
88 did not have standing to file their adoption petition. *88 We disagree, and hold Foster Parents have standing to bring their private adoption action.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right" and is a fundamental prerequisite to instituting an action. *See* *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009). "As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation." *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). Standing "may exist by statute, through the principles of constitutional standing, or through the public importance exception." *Youngblood*, 402 S.C. at 317, 741 S.E.2d at 518. Statutory standing exists "when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Id.*

Adoption proceedings are conducted pursuant to the South Carolina Adoption Act. *See* S.C. Code Ann. §§ 63-9-10 to -2290 (2010 & Supp. 2017). Importantly, section 63-9-60 provides:

> (A)(1) Any South Carolina resident may petition the court to adopt a child.
>
> . . . .
>
> (B) This section does not apply to a child placed by the State Department of Social Services or any agency under contract with the department for purposes of placing that child for adoption.

S.C. Code Ann. § 63-9-60 (2010 & Supp. 2017). Because "the right of adoption in South Carolina is not a natural right but wholly statutory, it must be strictly construed." *Hucks v. Dolan*, 288 S.C. 468, 470, 343 S.E.2d 613, 614 (1986).

This Court recently addressed the issue of a foster parent's standing to bring a private adoption action in *South Carolina Department of Social Services v. Boulware*, 422 S.C. 1, 809 S.E.2d 223 (2018). In *Boulware,* we held the foster parents had standing to pursue a private adoption action pursuant to a plain reading of section 63-9-60 because the foster parents were residents of South Carolina and because, at the time the foster parents commenced their adoption action,

89 the child had *89 not yet been placed for adoption by DSS. *Id.* at 14, 809 S.E.2d at 229. We concluded our interpretation of section 63-9-60 did not produce an absurd result and was appropriate under the overarching policies of the South Carolina Children's Code. *Id.* at 13, 809 S.E.2d at 229.

Boulware compels a simple analysis in the instant case. Foster Parents are South Carolina residents and filed their private adoption action on November 19, 2013. At the time Foster Parents filed their private adoption action, Child had not been placed for adoption by DSS — Child was only placed by DSS in Foster Parents' home for "fostering." Therefore, we hold Foster Parents have statutory standing to bring their private adoption action.

III. Adoption

Because we hold the court of appeals erred in not considering the issue of adoption, in the interest of providing much-needed stability and permanency for Child, we will review the family court's decision to grant Child's adoption by Foster Parents. The family court noted both Foster Parents and Grandmother were viable adoptive placements for DSS to have considered.[12] The family court ultimately determined it was in Child's best interest to be adopted by Foster Parents. We agree.

During trial, Dr. Cheryl Fortner-Wood, an expert in the field of psychology, specifically child development and attachment, testified before the family court that Child was "securely attached" to Foster Parents. She believed Child's removal from Foster Parents' home would be traumatic for Child and would more likely than not have permanent implications. Dr. Fortner-Wood opined Child had not spent a sufficient amount of time with Grandmother to develop an "attachment relationship." Dr. Fortner-Wood believed Child's attachment to Foster Parents "trumps biology."

Grandmother believed it was in Child's best interest to be in her home — whether through
90 relative placement or adoption. Grandmother testified she came to all of the DSS scheduled *90 visitations with Child. Grandmother testified she was forty-one years old and had three children of her own. Grandmother stated she had a bachelor's degree in psychology and expressed a desire to become a school counselor. Grandmother explained her household consisted of herself, a twenty-year-old son, and a sixteen-year-old daughter. Grandmother admitted she had moved approximately thirty times since 1990 and explained she was currently living in a three bedroom, one bathroom home. She testified to working several different jobs over the past few years. Grandmother noted she had been married three different times and her third marriage was to Step-Grandfather. Grandmother admitted she allowed Step-Grandfather, who she knew in high school, to move into her house after two months of reconnecting with him online. She testified they were currently separated. Grandmother testified a man that she met online had recently come with her on some of her visitations, but Grandmother denied any romantic involvement with that man.

The family court admitted into evidence "sexually provocative" Facebook pictures of Grandmother's daughter in "suggestive and profane" shirts. Grandmother explained her other

son had his GED and had previously experienced depression. Grandmother stated Father (twenty-four years old at the time of the final family court hearing) was first arrested when he was fifteen years old. She explained she pressed charges against Father for an altercation involving her other son. She also noted Father was arrested for stealing and using credit cards when he was sixteen years old, possession of crack cocaine when he was nineteen years old, and was subsequently arrested for a probation violation and a counterfeiting charge. She stated the plan was for Father to live with her after his release from prison. She admitted she alleged in her pleadings that Father was an unfit father; however, she testified she believed he would be an excellent father if given the chance. Grandmother admitted Father has another child with a different woman and that Father does not pay any support to that child.

Grandmother's financial declaration showed she had a monthly net income of $1,640.13, which included the earnings from her two part-time jobs and $500 of child support for her daughter.
91 Grandmother acknowledged her daughter would *91 turn eighteen years old the following year. Grandmother's financial declaration also showed monthly expenses of $1,453. Grandmother testified she had approximately $66,000 in student loan debt she will have to start repaying once she obtains gainful employment. She stated she had spent approximately $15,000 in attorney and expert fees for this case. She testified she was considering opening an in-home daycare if she received custody of Child. Grandmother noted she had the support of family members and Father's release date was November 1, 2016. She testified she had never received any negative ICPC home studies.

Dr. Jane Freeman, a certified adoption investigator, testified that if Child was placed with Grandmother at the time of the final hearing, Grandmother would fall below the poverty guidelines provided by the United States government. She stated Foster Parents, given their level of income and number of people in their home, were above the poverty guidelines. Dr. Freeman "strongly recommended" Foster Parents be approved for Child's adoption.

Tammy Dalsing (Foster Mother) testified she was forty-eight years old and married to Edward Dalsing (Foster Father). Foster Mother noted they had a current foster and adoptive license. She stated a total of ten people lived in their home: her and Foster Father; three biological children (ages twenty-two, twenty, and eighteen); two adopted children (ages five and four); and three foster children (including Child and her half-sister) (ages two, two, and one). Foster Mother testified she and Foster Father were currently in the process of a contested adoption regarding Child's half-sister. She testified she and Foster Father had both been previously married. Foster Mother testified she and Foster Father met in 1992 and married shortly thereafter. She noted her family started fostering children to help and "give back to the community." Foster Mother testified she, Foster Father, and their children had never been arrested. She testified she wants her children to have a relationship with God and be successful.

Foster Mother testified Foster Father was retired from the military and had been employed at Snyder's-Lance for the past five years. She testified she previously worked as a legal secretary
92 but was currently a "full-time homemaker" and *92 homeschooled all of their school-aged children. She noted they converted a dining room into a playroom/schoolroom. Foster Mother

stated she was unable to get approval or permission for Child to have a special helmet to address Child's cranial issue and droopy eye through DSS until she and Foster Father were granted custody of Child. She stated that once they were awarded custody, they were able to pay for the medical care Child needed.

Foster Mother believed adoption by her and Foster Father was in Child's best interest. Foster Mother noted she and Foster Father supported Mother's attempts to complete her treatment plan and had Mother's consent to adopt Child. Foster Mother testified she loved Child and believed it would be "devastating" for Child and the rest of her family if Child were removed from their home. She noted she was open to Mother, Grandmother, and Father having a relationship with Child if Foster Parents were granted Child's adoption.

The GAL testified she believed Child was attached to both Grandmother and Foster Parents. In her report, the GAL stated Child was "doing wonderfully in [Foster Parents'] home and ha[d] bonded with [Foster Parents] and foster siblings." The GAL reported Grandmother was "loving" and "very protective" of Child. She explained Child had bonded with Grandmother during the short periods of time they had spent together. The GAL believed Grandmother financially demonstrated an ability to "meet every day needs." She recommended Child be placed with Grandmother so Father could have the opportunity to know Child. DSS also believed relative placement with Grandmother was in Child's best interest.

"It is the policy of this State to reunite the child with his family in a timely manner, whether or not the child has been placed in the care of the State voluntarily." S.C. Code Ann. § 63-1-20(D) (2010). But, "[w]hen children must be permanently removed from their homes, they shall be placed in adoptive homes so that they may become members of a family by legal adoption or, absent that possibility, other permanent settings." *Id.* Section 63-7-1700(G) (Supp. 2017) requires DSS to "assess[] the viability of adoption" and to "demonstrate[] that [TPR] is not in the
93 child's best interests" before the family *93 court can award "custody or legal guardianship, or both, to a suitable, fit, and willing relative or nonrelative."

In an adoption proceeding, the best interest of the child is the paramount consideration. *Chandler v. Merrell,* 291 S.C. 227, 228, 353 S.E.2d 135, 136 (1987). In *McCutcheon v. Charleston County Department of Social Services,* 302 S.C. 338, 339, 396 S.E.2d 115, 116 (Ct. App. 1990), paternal grandparents filed a petition for adoption, and DSS requested denial of the petition and TPR. The child's foster parents intervened and petitioned for adoption and TPR. *Id.* The child was placed with foster parents when she was less than four months old, and she had lived with foster parents for approximately two years. *Id.* at 347, 396 S.E.2d at 120. The evidence showed the child was bonded with her foster family. *Id.* Although grandparents' home was not "unsuitable," the court of appeals concluded the child's "best interests would be served by staying with the family she has known as such for nearly all her life." *Id.* The court of appeals noted grandparents were not entitled to any preferences — "[t]heir status, as blood relatives, is but one factor in determining the child's best interests." *Id.*

Importantly, Child has lived with Foster Parents since being removed from Mother's home on June 6, 2013. Foster Parents are the only parent figures Child has known, and Dr. Fortner-

Wood, an expert in child development and attachment, testified Child was "securely attached" to Foster Parents and believed Child's removal from Foster Parents' home would be traumatic for her and would have permanent implications. Because Child is strongly bonded with Foster Parents, it is not in her best interest to be removed from their home. Although Grandmother has consistently visited Child, we agree with Dr. Fortner-Wood's assessment that Child has not spent a sufficient amount of time with Grandmother to develop an "attachment relationship."

We find the biological relationship between Grandmother and Child is relevant to this Court's consideration; however, this factor is not determinative. *See* *Dunn v. Dunn*, 298 S.C. 365, 367-68, 380 S.E.2d 836, 838 (1989) (recognizing the "grandparent-status" is but one of the factors
94 used in determining a child's best interest). We acknowledge and admire *94 Grandmother's strong sense of family and the fact that she will go to extraordinary lengths to preserve and protect her family unit. But, adoption by Foster Parents would not necessarily sever all connections Child has with her biological family. At the time of the final hearing, Foster Parents were in the middle of a contested adoption proceeding to adopt Child's half-sister. Additionally, Foster Mother testified she was open to Mother, Grandmother, and Father having a relationship with Child if Foster Parents were granted Child's adoption.

Although we do not find Grandmother's home is unsuitable for Child, we do have concerns regarding her ability to serve as Child's adoptive parent. Our concerns focus on Grandmother's prior parenting history, financial situation, and unhealthy relationship with Father. Grandmother's most recent ICPC approval in this Court's record was rescinded because the Virginia ICPC was unable to verify Grandmother's income information. Further, the record does not indicate an adoptive placement home study has ever been performed on Grandmother's home. Nevertheless, even if Grandmother's home is suitable for Child's adoption, we find adoption by Foster Parents is in Child's best interest. *See* *McCutcheon*, 302 S.C. at 347, 396 S.E.2d at 120 (finding adoption by foster parents was in the child's best interest despite her grandparents' home being suitable). We cannot possibly find it to be in Child's best interest for her to be removed from the only home she has ever known — especially when that home is safe and suitable for Child. The justification for severing this developed attachment relationship simply does not exist under the facts of this case.

Both Foster Parents and Grandmother love Child and would be viable adoptive placements. Foster Parents and Grandmother have dedicated tremendous amounts of time and energy to this litigation and have worked hard to ensure Child's needs have continuously been met. However, after thoroughly considering the evidence in the record and Child's best interest, we conclude Foster Parents' petition to adopt Child should be granted. *See* *Chandler*, 291 S.C. at 228, 353 S.E.2d at 136 (providing the child's best interest is paramount in an adoption proceeding).

95 *95 **CONCLUSION**

We hold: (1) clear and convincing evidence establishes that Father abandoned and willfully failed to visit Child; (2) TPR is in Child's best interest; and (3) based on the facts of this case, Foster Parents have standing to bring their private adoption action. We also hold the family court properly granted Child's adoption to Foster Parents. Therefore, the court of appeals' decision is REVERSED, and the family court's order granting adoption to Foster Parents is reinstated.

BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.

[1] Grandmother is Father's mother. Both paternal grandparents were initially parties in this action; however, Eric Powers, paternal step-grandfather (Step-Grandfather), was dismissed as a party after he and Grandmother separated.

[2] *See* S.C. Code Ann. § 63-9-2200 (2010) (enacting the ICPC into law to ensure placements for children across state lines are safe).

[3] Stacie Eison, a DSS treatment worker and investigator, testified DSS delayed the start of the ICPC home study because it was waiting on the signed family court orders and results of Father's paternity test. Eison also testified she was unfamiliar with the ICPC process and explained it took her some time to complete the required paperwork. Eison testified the ICPC was not completed and submitted by DSS until October 29, 2013. She believed that if Grandmother had resided in South Carolina, Child would have been placed in Grandmother's custody. Eison testified Grandmother never received a negative ICPC home study.

[4] In terminating Father's parental rights, the family court found Father: (1) willfully failed to support Child; (2) willfully failed to visit Child; and (3) abandoned Child. The family court also found TPR was in Child's best interest.

[5] This Court did not grant certiorari to review the statutory ground of willful failure to support. *See* S.C. Code Ann. § 63-7-2570(4) (Supp. 2017) (stating a statutory ground for TPR is met when "[t]he child has lived outside the home of either parent for a period of six months, and during that time the parent has wilfully failed to support the child" because the parent failed to make a material contribution in money or necessities).

[6] We acknowledge the family court's order signed August 13, 2013, held Father's child support obligation in abeyance; however, no monetary support was paid to Mother by Father during her pregnancy and during the three months following Child's birth. The record indicates that between June 12, 2013, and August 13, 2013, Father's prison accounts received deposits of $264.98, $97.00, and $100.00. None of this money was sent for Child's care. Father's earlier prison account records are not included in the record.

[7] Mother testified that after she broke up with Father, she did not prohibit Father from contacting her.

[8] The record does not indicate Father was given Foster Parents' phone number. However, the record does indicate Grandmother had Foster Parents' phone number. At oral argument, DSS admitted Father *could have* and *should have* obtained Foster Parents' phone number from Grandmother. DSS acknowledged Father "should have done more."

[9] Again, although the court of appeals' list of actions taken by Father may appear sufficient to find clear and convincing evidence did not support this statutory ground for TPR, a close analysis of the record reveals otherwise. Several of the actions listed separately by the court of appeals are not actually separate and distinct actions, but rather occurred within a month's time of one another, approximately one year after Child's birth.

[10] Because we hold TPR was appropriate and dispositive of the issue, we decline to address the family court's finding that Father's consent for Child's adoption was unnecessary. *See* *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when disposition of a prior issue is dispositive).

[11] Further, if the family court did hold Foster Parents lacked standing to bring their private adoption action, we find Foster Parents were not aggrieved by the family court's ruling and were not required to appeal its decision. *See* Rule 201, SCACR (providing "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal"); *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (defining an aggrieved party as "a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest"). Foster Parents clearly benefited from the

family court's ultimate decision. Foster Parents desired to adopt Child, and the family court granted them Child's adoption. Nevertheless, the court of appeals uses the law of the case doctrine to effectively nullify Foster Parents' adoption.

[12] We also note that at the pretrial hearing, DSS stated "that if [Grandmother] and [Foster Parents were] both seeking adoption, then DSS would not oppose the plan of adoption with either of them."

South Carolina Bar
Continuing Legal Education Division

2019 Guardian *ad Litem* Training and Update

Friday, January 25, 2019

Decoding Psychological Evaluations in Custody Cases

Davis Henderson

Decoding Psychological Evaluations in Custody Cases

Davis Henderson, PhD

When to Request an Evaluation

- Concerns about a parent's emotional state or parenting practices that could influence a child's adjustment and/or development
- Marked changes in child's relationship with one parent or another
- Concerns that one parent is influencing a child against another parent
- Best interest of child when parent is relocating to another area

Which Type of Evaluation to Request

- Psychological Evaluation
- Parental Fitness
- Child Custody/Relocation
- Parental Alienation

What to Expect in an Evaluation

- Review of Court Documents
- Clinical and forensic Interviews with parents, children
- Observation of Parent-Child Interactions
- Collateral interviews with key informants
- Psychological testing

To Test or Not to Test

- There is controversy about the effectiveness of testing (Garber and Simon, 2018; Rappaport, Gould, and Dale, 2018)
  - Are normative samples appropriate for forensic populations?
  - Are the tests reliable given the current family stressors?
  - If the tests are not reliable, then are they valid?
  - Are psychological tests looking for pathology in parents?

What to Look for in Testing Results

- Minnesota Multiphasic Personality Inventory – 2nd Edition –Restructured Format (MMPI-2-RF)
  - Most commonly used instrument in child custody evaluations
  - MMPI-2-RF is a reliable and valid instrument with child custody litigants (Kauffman, Stolberg, and Madero, 2015)
  - MMPI-2-RF has many validity indicators with K-r and L-r most commonly elevated
  - RC6 (Ideas of Persecution), Stress/Worry, and Anxiety are commonly elevated scales

What to Look for in Testing Results

- Personality Assessment Inventory (PAI)
  - Second most commonly used instrument in child custody evaluations
  - PAI is a reliable and valid instrument with child custody litigants (Hynan, 2014)
  - PAI has several validity indicators with Positive Impression Management (PIM) most commonly elevated
  - Paranoia (PAR), Stress (STR) and Treatment Rejection (RXR) are commonly elevated scales

What to Look for in Testing Results

- Millon Clinical Multiaxial Inventory-III (MCMI-III)
  - Third most commonly used instrument in child custody evaluations
  - MCMI-III is a reliable and valid instrument with child custody litigants (Stolberg and Kauffman, 2015)
  - MCMI-III not reliable as norms are based on clinical sample (Hynan, 2014)
  - MCMI-III has many validity indicators with Scale Y (Desirability) most commonly elevated
  - Histrionic, Compulsive, and Narcissistic are commonly elevated scales

What to Look for in Testing Results

- Parenting Stress Inventory -4th Edition (PSI-4)
  - PSI-4 is a reliable and valid instrument with child custody litigants (Archer, 2013)
  - PSI-4 has a validity indicator with Defensive Responding score below 24
  - Spouse/Parenting Partner Relationship and Life Stress scales are commonly elevated

What to Look for in Testing Results

- Child Abuse Potential Inventory (CAPI)
  - CAPI is a reliable and valid instrument with child custody litigants (Costello, Shook, Wallace, and McNeil, 2017)
  - More appropriate for cases of moderate to high abuse (Hynan, 2014)
  - CAPI has a validity indicator with Lie, Random Response, and Inconsistency

Protective and Risk Factors for Children

Protective Factors	Risk Factors
Healthy coparenting relationship	Hostile parental relationship
Warmth in parent-child relationship	Economic hardship
Frequent contact with each parent	Inconsistent parental contact
Consistency in schedule	Exposure to multiple relationships
Stable home environment	Frequent moving of residences

Recommendations

- Individual counseling for one or both parents
- Individual counseling for children
- Coparent or parallel parent counseling
- Use of a Parenting Coordinator
- Parenting plans based on child age and development

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