

WHEN YOU SUSPECT THE WORST
Bad-faith relocation, fabricated child sexual abuse, and parental alienation

Carol Holstein Sanders

from FAMILY ADVOCATE, Winter, 1993

You have analyzed a father's case for custody and decided to take the case. Your preliminary investigation shows that the father is an emotionally and financially stable individual. He was more involved than the mother in the care of the children before the separation. You have given him your best advice about measures he should take to strengthen the case during the pendency of the action, but now you are faced with one of three scenarios:

1. You receive a frantic call from your client who has discovered that the mother has immediate plans to move to another state with the child. The mother has refused to provide information about why and where she will move.
2. You receive a call from the local protective services agency advising you that the mother has filed a report accusing the father of child sexual abuse.
3. Your client calls to report that the child is suddenly being disrespectful and is making derogatory remarks to him. The remarks are inaccurate and pertain to matters the child could have heard only from the mother.

Your routine custody case has just become every family lawyer's nightmare! You must understand the dynamics of these scenarios and the best strategies to turn them to your advantage. Delay will be the death knell of your case.

Before taking action, make sure that your client is not the problem. In some situations, a client conference may be enough to satisfy your ethical and moral obligation. Witness interviews may be necessary. In serious and complicated situations, an independent psychological evaluation or polygraph may be warranted. Once you are satisfied that the mother is the culprit, take immediate steps to disarm her and preserve your client's chances of attaining custody.

A mother who wants to rob a father of his relationship with the child frequently resorts to bad-faith relocation, fabricated child sexual abuse, and/or parental alienation. Although these ploys may seem different, they are strikingly similar in that the father is set up to appear to be the malevolent parent. If the parents are otherwise equal, the father can win the custody case by proving the mother's malevolence.

Proof is difficult, however, because of the subjective and subconscious nature of the mother's motivations. It is essential that you recognize that the mother is especially formidable because her vindictiveness is often unconscious or subconscious. She can be expected to be believable because she may not recognize the inappropriate nature of her own actions. Conscious or subconscious, the manipulation is harmful; it also is assessable and provable through expert and lay witnesses.

Relocation

Although relocation statutes and case law vary from state to state, the ultimate issue is the best interests of the child. The father may win custody if you can prove that the intent of relocation is to interfere with the father-child relationship. Although all of the traditional factors are important, you must uncover and attack the mother's reasons for the move. Because motivation for the move is subjective and difficult to prove, winning a relocation case is one of the greatest challenges a family lawyer faces.

Before agreeing to take a relocation case, determine whether the father is a good candidate for custody or whether his primary interest is retaliation.

Consider the mother's openness and attitude about the move. If the mother has been the primary parent and her reasons for the move relate to remarriage or to significant advancement of her career, the father should strongly consider negotiating a compromise. If the mother offers reasonable concessions on visitation, it may be difficult to prove malevolence on her part.

If you decide to pursue custody, take immediate action. If the forum state does not require a parent to get permission to move from the jurisdiction, procure temporary injunctive relief to prevent the move with the child. If the mother is allowed to establish a new residence and life-style, the father is left in the more difficult position of asking that the child move a second time.

Consult a psychologist early in the case to ascertain the best situation for the child and to develop the evidence needed to prevail on custody in the short term and the long term.

Many judges see the threat of relocation as an emergency justifying an ex parte order or an emergency hearing. In that case, the mother must demonstrate that she has a compelling reason to move and that it is in the best interests of the child to move with her. The father must be prepared to show that he is a suitable temporary custodial parent and that the child should not be uprooted without the opportunity for full development of evidence.

Treat the preliminary hearing as seriously as you would the final determination. Because it is difficult for a judge to make a preliminary decision on the basis of conflicting testimony and evidence, present expert testimony at the preliminary stage. Although experts are reluctant or unwilling to give an opinion on custody without evaluating both parents, they will usually give an opinion on the fitness of one parent to have custody. If the child is old enough, the psychologist may also offer an expert opinion as to whether it would be in the best interests of the child to stay in the forum state during the pendency of the action.

Although there is no test specifically designed to determine the real motivation for the move or the impact of relocation on the child, both are assessable through information gathered from psychological tests and clinical interviews. For example, psychological evaluation could reveal a personality type or a psychopathology linked to the motivation to move. The impact on the child can be measured by analyzing such factors as age, details of relationships, school placement, temperament, extracurricular activities, and extended family.

To get a strong and decisive professional opinion, you may need to procure an order requiring the child and the mother to submit to evaluation. The more information available to the psychologist from different sources, the more valid the professional opinion. Give the psychologist a list of important witnesses, such as teachers, baby-sitters, and extended family members.

If the child is old enough,
the psychologist may also offer
an expert opinion as to whether
it would be in the
best interests of the child
to stay in the forum state.

In addition to mental health experts, vocational, economic, and education experts can be used to prove the relocating mother's bad motives, if the relocating mother contends that she is moving for professional advancement, ask a vocational expert to analyze the two areas. A cost-of-living comparative analysis should be done to determine whether the net effect of the move would be a significant improvement. Lay or expert witnesses can be used to refute an alleged improvement in the quality of life.

Fabricated sexual abuse

Now that more reliable techniques have been developed to determine whether sexual abuse allegations have been fabricated or encouraged by a mother, this issue has assumed new significance. Not only can the father exculpate himself so as to resume contact with the child, but he also can use the intentional fabrication to win custody.

When determining the validity of the allegations, evaluators once relied on detail provided by the child. Because the detail of sexual activity and abuse is available to children through educational programs and other media, it has now become necessary to use a more sophisticated approach. Although several tests, plans, and scales have been developed to determine the validity of sexual abuse allegations, there is no definitive approach.

Mothers who fabricate abuse exhibit certain characteristics as do children whose mothers have programmed or encouraged them to do so. For example, in bona fide sexual abuse situations, the mother and the child tend to be embarrassed, whereas in fabricated abuse situations, they tend to be open in their accusations. The characteristics are highly developed and have certain variables for age and other factors.

Because the differentiating criteria can be thwarted by other factors, continued therapy following the diagnostic period is helpful in reaching a final determination. A therapist should be appointed for the child on the assumption that the child is being mistreated, either by sexual abuse or by malicious manipulation. The parents may also be evaluated using the Minnesota Multiphasic Personality Inventory (MMPI) and the Rorschach test. Although not conclusive, these tests reveal certain traits that are consistent with child sexual abuse and certain traits that are often found in mothers who falsely accuse their spouses of incest.

Time is of the essence when a father is confronted with sexual abuse allegations. If his contact with the child is interrupted for an extended period in an environment charged with accusations from the mother, his relationship with the child can be permanently damaged. In addition, research indicates that repeated interviews of the child before evaluation can be damaging to the child and affect the validity of the test results.

Make a motion immediately that the mother and the child submit to psychological evaluation. The best alternative is for the child to be interviewed by one psychologist who has been trained in child sexual abuse assessments. Psychological testing for alleged sexual abuse is still uncharted territory for many judges, and one should not assume that a judge will know the pitfalls involved in the usual processes. It may be necessary to make an emergency motion and be armed with expert testimony to achieve the most appropriate approach for the child. If sexual abuse allegations are disproved early in the case, there will be time for the father's relationship with the child to be rehabilitated during the pendency of the action.

At the final hearing, lay witnesses should be used to establish the father's active role in the child's life and the absence of any negative allegations against the father before the separation. Expert testimony should be used to refute the sexual abuse allegations and establish that the father is fit to have custody of the child. If the evaluator has had the opportunity to evaluate both parties and the child, he or she may also give an expert opinion on the ultimate issue of custody. If the expert has concluded that intentional fabrication of sexual abuse has taken place, that testimony will be weighed heavily in the expert's custody recommendation and in the final decision by the court.

Parental alienation

Manipulation of children by mothers has increased with the erosion of the tender years doctrine, which assumed that the mother was a naturally superior parent. That doctrine was replaced with the presumption that the sex of the parent should be disregarded and that custody determinations should be based on other direct criteria of parenting capacity. As the father's chances of winning custody improved, the mother's increased vulnerability caused some mothers to use various forms of manipulation to strengthen their cases for custody.

Parental alienation takes many different forms in divorce situations. It can be overt brainwashing, whereby a parent consciously sets out to program a child against the other parent. More frequently, however, it involves a subconscious or unconscious effort to achieve that goal.

Richard A. Gardner, M.D., has termed the latter disorder "parental alienation syndrome." Although the term is widely recognized and understood by mental health experts, it has not been officially recognized in DSM III, nor will it be in DSM IV. Regardless of the terminology used, mental health professionals and judges are becoming increasingly aware of this harmful process and their responsibility to arrest it.

Unless the expert educates
the court, a judge may assume
that a restraining order
against alienation
or requiring the mother
to undergo therapy
will alleviate the problem.

Once parental alienation is detected, make every effort to seek immediate relief from the court. An order requiring psychological evaluations of the child and the mother will be needed to prove the alienation and to recommend the appropriate remedial measures. A restraining order against the indoctrination will serve to either control future damage or create stronger evidence for the final custody hearing. Even a brief delay can result in irreparable denigration of the father-child relationship. In cases of active programming of a child against the father, a mental health expert may confirm that it will not be possible to correct the problem with therapy while the child remains in the mother's home. This gives the father a basis to seek custody or a change in temporary custody.

Before the final hearing, psychologists should assess both the presence of and the seriousness of parental alienation. A child who has been programmed against a father is quick to criticize that parent, using phraseology that is not typical of the child. The child may express extended anger or hatred toward the father. It is particularly telling when the child's comments are a parroting of comments made by the mother.

Another symptom of parental alienation is the tendency of the child to have exclusively negative feelings about the father. As a result, in the evaluation the child would not be able to list anything good about the father. The negative attitude toward the father is often generalized to his entire family, even though nothing specific has occurred to change the child's previous relationship with the father's family.

Another symptom of parental alienation is frustration of visitation by the mother and refusal of visitation by the child.

For a father to win custody, the psychologist must be prepared to give a strong opinion on the severity of the problem and the improbability that individual therapy for the mother will correct

the problem. Unless the expert educates the court, the judge may well assume that a restraining order against alienation or an order requiring the mother to undergo therapy will alleviate the problem.

If the alienation is severe enough, the psychologist should be willing to say that the child's relationship with the father will never be repaired unless the child is removed from the custody of the mother. If all else is equal, custody should be awarded to the parent who is most likely to encourage a healthy and positive relationship with the other party; otherwise, the child is likely to end up with a relationship with only one parent.

Bad-faith relocation, fabricated sexual abuse, and parental alienation have devastating effects on the father-child relationship. If the underlying problems are not detected, proved, and addressed when custody and visitation are decided, there may never be another meaningful opportunity for the father to change the pattern.

Carol Holstein Sanders is a partner with Young & Sanders in Columbia, South Carolina.