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The Kids Are Not All Right: Using the Best Interest Standard to Prevent Parental Alienation and a Therapeutic Intervention Approach to Provide Relief

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THE KIDS ARE NOT ALL RIGHT: USING THE BEST INTEREST STANDARD TO PREVENT PARENTAL ALIENATION AND A THERAPEUTIC INTERVENTION APPROACH TO PROVIDE RELIEF

Abstract: Parental alienation, when one parent engages in behaviors to turn a child against the other parent, is a serious problem. Such behavior can manifest following a parents' divorce or separation and can have long-lasting and damaging effects on children. Although both family law and tort law offer various remedies for parental alienation, this Note argues that parental alienation is best handled through family law. Accordingly, the best interest of the child standard should be modified to include parental alienation to prevent it from occurring in the first place. Additionally, courts should utilize the therapeutic intervention approach to mitigate the harms of parental alienation when it has already occurred instead of automatically modifying custody.

INTRODUCTION

*Dad, this is James. Please check your voice mail and then come and get me either today or tomorrow and don't call back, don't call back cause I get in trouble Don't tell them that I told you to come. Please just come and get me today or tomorrow, please . . . and John . . . he wants to come home too. Bye, Love you.*¹

—Voicemail message from one of the parties to his father

In a later interview with the court, James denied that he actually wanted to see his father.² In fact, he had nothing positive to say about his father.³ James' siblings referred to their father by his first name, claimed to have no memories of their father, and were insistent that he had no redeeming qualities.⁴

In 2010, in *Noland-Vance v. Vance*, the Missouri Court of Appeals affirmed the trial court's finding of parental alienation and awarded custody

¹ *Noland-Vance v. Vance*, 321 S.W.3d 398, 409 (Mo. Ct. App. 2010).

² *See id.* James claimed that he just wanted to go back to his father because of "all my things and friends." *Id.*

³ *See id.*

⁴ *See id.* at 407, 409.

of the minor children to the father.⁵ Following the mother's allegations of the father's abuse of the children, the court ordered a clinical psychologist to conduct a psychological evaluation of the family.⁶ The psychologist found no credible evidence that the father had abused the children.⁷ The mother, however, admitted that she never said anything positive about the father to the children.⁸ She would berate him in front of the children and incite in them a fear of him.⁹ The psychologist concluded that the mother caused severe trauma to the children by alienating them from their father.¹⁰ In fact, the psychologist noted that this was the worst case of parental alienation he had ever seen.¹¹

Parental alienation is when one parent intentionally disrupts the child's relationship with the other parent.¹² Parental alienation generally involves behaviors that denigrate the alienated parent, reduces contact between the child and the alienated parent, and ultimately causes the child to reject the alienated parent.¹³ These behaviors have become a serious problem for children of divorce or unhappy relationships.¹⁴

⁵ See *id.* at 417–18. The mother and father separated in 2005 and the trial court had granted the mother temporary custody of the six children, including James. See *id.* at 403.

⁶ See *id.* at 403–04.

⁷ *Id.* at 405.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See Amy J.L. Baker & Jaclyn Chambers, *Adult Recall of Childhood Exposure to Parental Conflict: Unpacking the Black Box of Parental Alienation*, 52 J. DIVORCE & REMARRIAGE 55, 56 (2011). Hereinafter “alienating parent” will be used to describe the parent who intentionally acts to damage the relationship between the child and the other parent, and “alienated parent” will be used to describe the parent targeted by this behavior. See *id.* at 57 (using the terms “alienating parent” and “targeted parent” to distinguish the parents’ roles in the alienation).

¹³ See Edward Kruk, *The Impact of Parental Alienation on Children*, PSYCHOL. TODAY (Apr. 25, 2013) <http://www.psychologytoday.com/blog/co-parenting-after-divorce/201304/the-impact-parental-alienation-children>, archived at <http://perma.cc/D8ZF-N92F>. Hatred of a parent is not a natural emotion for a child; hatred is taught by the parent. See *id.* “[W]hen the child is alienated . . . the child is saying . . . I am so weak I need to kind of terminate one parent and align myself completely with the other.” Mary E. v. Usher E., 967 N.Y.S.2d 868, 880 (Sup. Ct. 2013) (quoting testimony by a forensic evaluator).

¹⁴ See, e.g., H.R. 113, 98th Gen. Assemb., 1st Reg. Sess. (Ill. 2013) (designating April 2013 as “Stop Parental Alienation Awareness Month”); H.R. 202, 197th Gen. Assemb., Reg. Sess. (Pa. 2013) (designating April 2013 as “Parental Alienation Awareness Month”); H.R. 582, 196th Gen. Assemb., Reg. Sess. (Pa. 2011) (describing parental alienation as a form of child abuse that has led to kidnapping, murder, and suicide); see also Richard A. Gardner, *Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?*, 30 AM. J. FAM. THERAPY 93, 95 (2002) (noting that parental alienation syndrome occurs almost exclusively in child-custody disputes). The alienation usually manifests following separation or divorce. See Joan B. Kelly & Janet R. Johnston, *The Alienated Child: A Reformulation of Parental Alienation Syndrome*, 39 FAM. CT. REV. 249, 249 (2001) (explaining that the alienation of a child from a parent after the parents’ separation or divorce has led to legal and psychological

Parental alienation is controversial among mental health and legal professionals as to whether it is a psychological disorder and what the appropriate legal remedy should be when it occurs.¹⁵ This Note argues that parental alienation is a serious legal concern in need of attention.¹⁶ Part I explains the difference between parental alienation syndrome and parental alienation.¹⁷ Part II then discusses the different legal remedies available in family law and tort law.¹⁸ Finally, Part III argues that family law is the best forum to address parental alienation, that the best interest standard should explicitly include parental alienation, and that courts should follow a therapeutic intervention approach before modifying custody.¹⁹

I. PARENTAL ALIENATION: A SYNDROME OR NOT?

Parental alienation syndrome and parental alienation are similar but distinct classifications of when a child rejects a parent.²⁰ Parental alienation

controversy); *see also* Ludwig F. Lowenstein, *Is the Concept of Parental Alienation a Meaningful One?*, 54 J. DIVORCE & REMARRIAGE 658, 662 (2013) (noting that six years after divorce 20–25% of studied couples engaged in behavior that led to parental alienation, and in another study, 80% of couples engaged in some type of programming to impart negative ideas about the other parent).

¹⁵ *See* Leslie M. Drozd, *Rejection in Cases of Abuse or Alienation in Divorcing Families*, in THE SCIENTIFIC BASIS OF CHILD CUSTODY DECISIONS 403, 406 (Robert M. Galatzer-Levy et al. eds., 2d ed. 2009) (noting the criticisms of parental alienation—particularly as a syndrome—and providing suggestions for treatment). Parental alienation syndrome was recently not accepted for the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (“DSM”). *See News Release: American Psychological Association Board of Trustees Approves DSM-5*, AM. PSYCHIATRIC ASS’N (Dec. 1, 2012), <http://www.psychiatry.org/file%20library/advocacy%20and%20newsroom/press%20releases/2012%20releases/12-43-dsm-5-bot-vote-news-release--final-3-.pdf>, *archived at* <http://perma.cc/HD8K-G9HW>. The DSM is a handbook published by the American Psychiatric Association to assist professionals in diagnosing mental disorders. *See Frequently Asked Questions*, AM. PSYCHIATRIC ASS’N, <http://www.dsm5.org/about/Pages/faq.aspx>, *archived at* <http://perma.cc/58DW-VKQK> (last visited Mar. 10, 2014). Arguments for the inclusion of parental alienation syndrome included the need to establish diagnostic criteria to assist with research and treatment, along with decreasing the misuse of the syndrome in court. *See* William Bernet, *Parental Alienation Disorder and DSM-V*, 36 AM. J. FAM. THERAPY 349, 351 (2008). Other professionals view the alienation as a problem with the relationship between the child and parent or between the parents, which does not qualify as a mental disorder. *See* David Cray, *Parental Alienation Not a Mental Disorder*, *American Psychiatric Association Says*, HUFFINGTON POST, Sept. 21, 2012, http://www.huffingtonpost.com/2012/09/21/parental-alienation-is-no_n_1904310.html, *archived at* <http://perma.cc/58W3-2LEE> (“It’s a relationship problem—parent-child or parent-parent. Relationship problems per se are not mental disorders.”).

¹⁶ *See infra* notes 20–236 and accompanying text.

¹⁷ *See infra* notes 20–67 and accompanying text.

¹⁸ *See infra* notes 68–148 and accompanying text.

¹⁹ *See infra* notes 149–236 and accompanying text.

²⁰ *See* Sandi S. Varnado, *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DEPAUL L. REV. 113, 117 n.12 (2011) (explaining that parental alienation refers to a wide scope of behavior by the parent while parental alienation syndrome focuses on a narrow scope of behavior by the parent and the child); *see also* Douglas Darnall, *Parental Alienation: Not in the Best Interest of the Children*, 75 N.D. L. REV. 323, 325

is far more studied, respected, and less controversial.²¹ Part A of this Section describes parental alienation syndrome.²² Part B then explains parental alienation and its effects on children and their parents.²³

A. Parental Alienation Syndrome

Dr. Richard Gardner, credited for labeling and defining parental alienation syndrome, defined it as the programming or brainwashing of a child to denigrate the other parent while the child makes contributions to the denigration.²⁴ To diagnose parental alienation syndrome, Dr. Gardner recognized eight symptoms that manifest in the child, which include a campaign of denigration against the parent, unfounded rationalizations for the denigration against the parent, and reflexive support of the alienating parent.²⁵

(1999) (explaining that one of the main differences between parental alienation and parental alienation syndrome is parental alienation syndrome requires that the child participate in the degradation of the alienated parent).

²¹ Compare *infra* notes 24–42 and accompanying text (explaining parental alienation syndrome), with *infra* notes 43–67 (describing parental alienation and its effects).

²² See *infra* notes 24–42 and accompanying text.

²³ See *infra* notes 43–67 and accompanying text.

²⁴ See Gardner, *supra* note 14, at 95 (explaining that it is the combination of the parent's indoctrination and the child's vilification that constitutes parental alienation syndrome). Dr. Gardner notes: "In this disorder we see not only programming ('brainwashing') of the child by one parent to denigrate the other parent, but self-created contributions by the child in support of the alienating parent's campaign of denigration against the alienated parent." *Id.* Dr. Gardner was the first professional to label and define parental alienation as a psychological syndrome. See LINDA J. GOTTLIEB, *THE PARENTAL ALIENATION SYNDROME: A FAMILY THERAPY AND COLLABORATIVE SYSTEMS APPROACH TO AMELIORATION* 3 (2012) (explaining that Dr. Gardner was the first to label parental alienation a syndrome based on grouping symptoms in the child). *But see* Drozd, *supra* note 15, at 406 (criticizing Dr. Gardner's failure to demonstrate a "regularly recurring pattern of associated signs and symptoms that supports the use of the term 'syndrome' with regard to either patterns of children being alienated from parents or parental efforts to alienate children from the other parent"). Although Dr. Gardner is credited for first labeling and defining parental alienation syndrome, others first identified when children align with one parent. See JOHNSTON ET AL., *IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICTED AND VIOLENT DIVORCE* 362 (2d ed. 2009).

²⁵ See Richard A. Gardner, *Introduction*, in *THE INTERNATIONAL HANDBOOK OF PARENTAL ALIENATION SYNDROME* 5, 9 (Richard A. Gardner et al. eds., 2006) (noting that the diagnosis of parental alienation syndrome is based upon the level of symptoms in the child); see also GOTTLIEB, *supra* note 24, at 5 (explaining that the diagnosis of parental alienation syndrome is made on the child's symptoms as exhibited by their thoughts, feelings, attitudes, and behaviors towards the alienated parent). The eight symptoms are: the campaign of denigration against the parent, unfounded rationalizations for the denigration against the parent, a lack of ambivalence towards the parents, the independent-thinker phenomenon, reflexive support of the alienating parent, an absence of guilt, borrowed scenarios, and extending animosity to family and friends of the alienated parent. See Amy J.L. Baker & Douglas C. Darnall, *A Construct Study of the Eight Symptoms of Severe Parental Alienation Syndrome: A Survey of Parental Experiences*, 47 *J. DIVORCE & REMARRIAGE* 55, 56–57 (2007) (explaining the eight factors of parental alienation syndrome); Gardner, *supra*, at 8 (explaining each of the manifestations of parental alienation).

Dr. Gardner developed criteria for determining the child's level of alienation as mild, moderate, or severe.²⁶ The primary diagnostic symptoms include an assessment of the eight identified symptoms along with additional diagnostic considerations, including transitional difficulties, behavior during visitation, bonding with the alienating parent, and bonding with the alienated parent prior to alienation.²⁷

Although not central to the diagnosis of parental alienation, Dr. Gardner similarly classified the alienating parent's symptom levels as mild, moderate, and severe.²⁸ In measuring these levels, Dr. Gardner considered numerous factors, including the frequency of programming thoughts, frequency of complaints to police or child protection services, frequency of court order violations, and the risk of intensifying programming if awarded primary custody.²⁹

A later approach to understanding parental alienation syndrome criticized Dr. Gardner for focusing too much on the parent's alienating behavior rather than the behavior of the alienated child.³⁰ This later formulation of parental alienation rejected the notion that the alienating parent is the sole reason for the child's rejection of the other parent and instead focused on

²⁶ See Gardner, *supra* note 25, at 8 tbl.1.1, 9 tbl.1.2 (categorizing what symptoms are present in the mild, moderate, and severe forms of parental alienation syndrome); see also Gardner, *supra* note 14, at 96 (explaining that the disorder can progress from mild to moderate to severe). Dr. Gardner did not specify the frequency of their occurrence required to distinguish between mild, moderate or severe. See Baker & Darnall, *supra* note 25, at 57. For a mild classification, Dr. Gardner noted that certain symptoms are "minimal," such as the campaign of denigration and the use of borrowed scenarios. See Gardner, *supra* note 25, at 8 tbl.1.1. For a moderate classification, Dr. Gardner noted that certain symptoms were "moderate" or "present," such as the independent thinker phenomenon and unfounded rationalizations. See *id.* For a severe classification, Dr. Gardner noted that symptoms were "formidable" or "present," such as the spread of animosity to extended family and the campaign of denigration. See *id.*

²⁷ See Gardner, *supra* note 25, at 8–9 (specifying that additional considerations for determining severity are the transitional difficulties the child has going back and forth between parents and the child's behaviors during visitation). Establishing the severity of the alienation is important for the court and therapy interventions. See *id.* at 9.

²⁸ See *id.* at 8, 9 tbl.1.2. Dr. Gardner noted that although the diagnosis of parental alienation should be based on the symptoms of the child, what a court should do as a result of the alienation should be based primarily on the parent's symptom level. See *id.* at 9.

²⁹ See *id.* at 9 tbl.1.2 (listing the parent factors present in parental alienation syndrome and distinguishing between mild, moderate, and severe symptom levels). Other factors include an assessment of the presence of psychopathology prior to separation, frequency of programming verbalizations, frequency of exclusionary behaviors, litigiousness, successful manipulation of the legal system to bolster programming, frequency of complaints to police or child protection services, and episodes of hysteria. See *id.*

³⁰ See Kelly & Johnston, *supra* note 14, at 251 (forwarding an approach focusing on the child's behaviors rather than the parent's behaviors); see also Nicholas Bala et al., *Alienated Children and Parental Separation: Legal Responses in Canada's Family Courts*, 33 QUEEN'S L.J. 79, 85–86 (2007) (explaining that parental alienation was reformulated by American psychologists to focus on the alienated child).

understanding the child.³¹ After all, an alienated child is different from a child who has developed a preference for one parent.³² Children may also develop hatred and anger for a parent who is neglectful or abusive.³³ In these instances, the children are estranged from the parent, not alienated.³⁴

Many mental health professionals criticize the classification of parental alienation as a syndrome altogether.³⁵ Critics, like the American Psychiatric Association, do not recognize parental alienation as a syndrome because the diagnostic criteria have not been verified and syndromes generally look to the symptoms experienced by the *victim*, not the perpetrator.³⁶ Pro-

³¹ See Janet R. Johnston, *Children of Divorce Who Reject a Parent and Refuse Visitation: Recent Research and Social Policy Implications for the Alienated Child*, 38 FAM. L.Q. 757, 762 (2005). Some researchers avoid using the term “syndrome” and refer to the problem as “children who refuse visitation” or “parent-child alignment.” See ELIZABETH M. ELLIS, *DIVORCE WARS: INTERVENTIONS WITH FAMILIES IN CONFLICT* 212 (2000).

³² See Johnston, *supra* note 31, at 762 (stating that it is important to distinguish between children who are alienated and those who develop a normal preference for one parent). Developmental reasons a child prefers one parent may include separation anxiety during transitions, gender identity, interests, and discipline style. See *id.* at 762–63; see also Kelly & Johnston, *supra* note 14, at 251 (noting that resistance to visitation might be related to normal developmental processes, such as separation anxiety for a young child). Divorce-related reasons a child prefers one parent may include worry about the other parent, hurt or anger at the parent for the divorce, disruptions to school activities, and resentment towards parents’ partners or children’s siblings. See Johnston, *supra* note 31, at 763; see also Kelly & Johnston, *supra* note 14, at 251 (noting that resistance to visitation might be related to a high-conflict divorce, such as a fear or inability to cope with the high-conflict situation).

³³ See Johnston, *supra* note 31, at 763 (explaining that a child can reject a parent for being neglectful, endangering, or abusive); see also Bala et al., *supra* note 30, at 82 (noting that it is considered estrangement when a child rejects a parent due to abuse).

³⁴ See Johnston, *supra* note 31, at 763 (indicating that, although estranged children can look like alienated children, they are different); see also Bala et al., *supra* note 30, at 94 (noting that estrangement is based on an understandable rejection of the parent and corresponds to actual experiences); Elizabeth M. Ellis & Susan Boyan, *Intervention Strategies for Parent Coordinators in Parental Alienation Cases*, 38 AM. J. FAM. THERAPY 218, 222 (2010) (noting that a child can be estranged from a parent because the parent’s behaviors are objectively offensive or dangerous). Alienated children may also reject a parent based on a myriad of other reasons not solely due to the alienating parent, such as high marital conflict, the child’s age, the child’s psychological state, pressure from other family members, high-conflict litigation, and role-reversal between the parent and child. See Johnston, *supra* note 31, at 764–65.

³⁵ See Drozd, *supra* note 15 (explaining that parental alienation syndrome has been met with wide criticism by professionals in law and psychology). One criticism of labeling parental alienation as a syndrome is a lack of empirical data to support its validity. See Amy J.L. Baker, *Knowledge and Attitudes About the Parental Alienation Syndrome: A Survey of Custody Evaluators*, 35 AM. J. FAM. THERAPY 1, 2 (2007).

³⁶ See Crary, *supra* note 15 (explaining that parental alienation was not included in the psychiatric manual of mental disorders because it is not a disorder within one individual); see also Janelle Burrill, *Reluctance to Verify PAS as a Legitimate Syndrome*, in THE INTERNATIONAL HANDBOOK OF PARENTAL ALIENATION 323, 324 (Richard A. Gardner et al. eds., 2006) (noting that the legal and psychiatric communities reject parental alienation as a syndrome); ELLIS, *supra* note 31, at 209 (explaining that parental alienation syndrome is not accepted by the American Psychiatric Association because research has not validated criteria for the diagnosis). Syndrome

ponents for including parental alienation as a disorder argue that recognizing it as a syndrome or mental disorder would increase fairness in family courts and facilitate treatment for children.³⁷

Just as with the mental health profession, courts vary as to whether evidence of parental alienation syndrome is admissible.³⁸ Some courts that adhere to the traditional tests for the admissibility standard of scientific evidence have admitted evidence of parental alienation syndrome.³⁹ Other courts, however, have held that parental alienation syndrome is not admissible because it is not sufficiently accepted in the professional community.⁴⁰ For

refers to a set of symptoms experienced by the victim, not the characteristics of the perpetrator or the relationship between the victim and the perpetrator. See ELLIS, *supra* note 31, at 209.

³⁷ See Crary, *supra* note 15; see also Bala et al., *supra* note 30, at 101 (noting that Canadian judges recognize that mental health experts, not the courts, should determine whether parental alienation is a syndrome). Feminists and other advocates for women who are survivors of domestic violence, however, warn that abusive men could use this syndrome to draw attention away from their own violent behavior. See Crary, *supra* note 15. Some feminists also contest the recognition of parental alienation syndrome because of an unfair bias towards women because mothers are more often accused of parental alienation. See ELLIS, *supra* note 31, at 209.

³⁸ See, e.g., Pearson v. Pearson, 5 P.3d 239, 243 (Alaska 2000) (noting that although parental alienation syndrome is not universally accepted, the court would not overturn the trial court's decision based on the related testimony of two experts); Zafran v. Zafran, 740 N.Y.S.2d 596, 600 (Sup. Ct. 2002) (explaining that acceptance of parental alienation syndrome would be a case of first impression and a hearing would be required for the court to assess admissibility); People v. Fortin, 706 N.Y.S.2d 611, 614 (Nassau County Ct. 2000) (denying the admissibility of parental alienation syndrome at trial), *aff'd*, 735 N.Y.S.2d 819 (App. Div. 2001). Legislatures have also tried to resolve the admissibility of parental alienation syndrome. See, e.g., S. 1433, 45th Leg., 2d Reg. Sess. (Ariz. 2002) (proposing that the court not allow testimony regarding parental alienation syndrome unless it is recognized by the American Medical Association or the American Psychiatric Association); H.R. 5436, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013) (proposing a statutory amendment that requires courts to take evidence of parental alienation into consideration in custody cases); H.R. 1903, 78th Leg. (Tex. 2003) (proposing that parental alienation syndrome testimony be allowed only when the syndrome is recognized by the DSM *and* is admissible under the Texas evidence rule).

³⁹ See, e.g., Grove v. Grove, 386 S.W.3d 603, 606 (Ark. Ct. App. 2011) (rejecting the mother's argument that parental alienation syndrome was not admissible under the *Daubert* standard because the evidence was admitted at trial without objection); *In re Marriage of Bates*, 819 N.E.2d 714, 731 (Ill. 2004) (explaining that the trial court admitted parental alienation syndrome under the *Frye* test because it was generally accepted and no other evidence was presented in opposition); see also Gardner, *supra* note 25, at 7–8 (explaining that some courts in the United States admit evidence of parental alienation syndrome). The *Frye* test for admissibility, still utilized in many states, looks to whether the expert testimony is deduced from a scientific principle that has gained general acceptance in the field. See *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923), *abrogated by* *Daubert v. Merrell Dow Pharm., Inc.* 509 U.S. 579 (1993). The *Daubert* test for admissibility looks to a list of factors that may be considered to determine admissibility, including general acceptance in a relevant scientific community. See *Daubert*, 509 U.S. at 594.

⁴⁰ See *M.A. v. A.I.*, No. FM-20-973-09, 2014 WL 7010813, at *5 (N.J. Super. Ct. App. Div. Dec. 15, 2014) (holding that evidence of parental alienation should not have been admitted in this case because neither scientific reliability nor general acceptance was established); see also PETER G. JAFFE ET AL., CHILD CUSTODY & DOMESTIC VIOLENCE: A CALL FOR SAFETY AND ACCOUNTABILITY 95–96 (2003) (explaining that some appellate courts have deemed parental alienation

example, in 2000, in *People v. Fortin*, despite Dr. Gardner testifying at trial, the Nassau County Court of New York found that the defendant did not establish that the professional community accepted parental alienation syndrome, and therefore the evidence could not be admitted.⁴¹ Nevertheless, evidence of parental alienation syndrome may still come into evidence if there are no objections or motions to exclude the testimony.⁴²

B. Parental Alienation and Its Effect on Parents and Children

Although similar in many ways to parental alienation syndrome, parental alienation is a more respected and less controversial categorization of the behaviors.⁴³ Parental alienation focuses on the alienating parent's behavior, and is defined as any parental behavior that disturbs the child's relationship with the other parent.⁴⁴ Techniques employed by the alienating parent may include the following: restricting the other parent's access to infor-

syndrome as too controversial and not generally accepted). See generally *People v. Loomis*, 658 N.Y.S.2d 787 (Suffolk County Ct. 1997) (explaining that no New York court had recognized parental alienation syndrome and that it was not generally accepted by the medical community).

⁴¹ See 706 N.Y.S.2d at 614 (explaining that there is not general acceptance within the professional community regarding parental alienation syndrome, so it cannot be admitted at trial).

⁴² See *Grove*, 386 S.W.3d at 606 (noting that the court could not address the mother's argument that parental alienation syndrome is not supported by empirical evidence and has not been accepted by the scientific community because no objections were made when the evidence was introduced at trial); see also Allison M. Nichols, Note, *Toward a Child-Centered Approach to Evaluating Claims of Alienation in High-Conflict Custody Disputes*, 112 MICH. L. REV. 663, 679–80 (2014) (describing that courts continue to consider evidence of parental alienation syndrome in custody decisions because the admissibility is not contested and expert witnesses might not use the official "syndrome" terminology).

⁴³ See *Hanson v. Spolnik*, 685 N.E.2d 71, 84 (Ind. Ct. App. 1997) (Chezem, J., dissenting in part and concurring in part) (accepting and recognizing the concept of "parental alienation" but questioning the existence of parental alienation as a "syndrome"); Gardner, *supra* note 25, at 6 (explaining that parental alienation is a general term and that parental alienation syndrome is a subtype of parental alienation); see also Varnado, *supra* note 20, at 116–17, 117 n.12 (distinguishing between parental alienation syndrome as defined by Dr. Gardner and parental alienation but affirming the existence of the phenomenon of a child turning against his or her parent). For example, parental alienation has been defined as a constellation of parent behaviors that evoke a disturbance in the relationship between the child and the other parent. Varnado, *supra* note 20, at 120.

⁴⁴ See Varnado, *supra* note 20, at 116–17, 117 n.12; see also Darnall, *supra* note 20, at 325 (explaining that one of the main differences between parental alienation and parental alienation syndrome is that parental alienation syndrome requires that the child participate in the degradation of the alienated parent). Parental alienation syndrome focuses on the reactions, behaviors, and contributions of the child, and diagnoses it as a disorder. See Barbara Jo Fidler & Nicholas Bala, *Children Resisting Postseparation Contact with a Parent: Concepts, Controversies, and Conundrums*, 48 FAM. CT. REV. 10, 12 (2010) (differentiating parental alienation from parental alienation syndrome); Gardner, *supra* note 25, at 5 (defining parental alienation syndrome, specifically noting that it is the combination that includes the programming of the child with contributions of the child that support the denigration of the alienated parent). Dr. Gardner described parental alienation syndrome as a subset of parental alienation. See Gardner, *supra* note 25, at 6.

mation about the child, refusing telephone contact or visitation with the other parent, criticizing the other parent in front of the child, destroying pictures of the other parent, changing the child's last name to disassociate the child from the other parent, encouraging conflict between the child and the other parent, using the child to deliver messages to the other parent, or blaming the other parent for financial or emotional problems.⁴⁵

Parental alienation can have severe effects on children, including emotional distress and adjustment difficulties.⁴⁶ A child affected by parental alienation might experience guilt, confusion, fear, powerlessness, anger, anxiety, hopelessness, depression, or diminished self-esteem.⁴⁷ Specifically, the alienation can damage the child's self-esteem because the child receives the message that the alienating parent's love is contingent on the child's rejection of the other parent, and may perceive that the alienating parent hates the other parent more than they love the child.⁴⁸ The child's self-esteem and self-efficacy are also affected by conceptualizing one parent as all "good" and one as all "bad."⁴⁹ The child concludes that if his or her parent is all "bad," the child is "bad" too.⁵⁰ Parental alienation may also cause

⁴⁵ See Varnado, *supra* note 20, at 120–22 (explaining the techniques employed by alienating parents).

⁴⁶ See Fidler & Bala, *supra* note 44, at 20 (explaining that the literature reports that alienated children are at a greater risk for emotional distress and adjustment difficulties than children who are not alienated). Alienated children exhibit illogical cognitive operations, distorted interpersonal perceptions, self-hatred, aggression, and poor impulse control. *See id.* at 20–21. For the purpose of this Note, the term "parental alienation" hereinafter will be used to describe generally when the parent engages in behaviors aimed to interfere with the child's relationship with the other parent. *See* Gardner, *supra* note 25, at 6 (explaining that parental alienation is a general term and that parental alienation syndrome is a subtype of parental alienation).

⁴⁷ *See* 127 AM. JUR. 3D, *Proof of Facts* § 3 at 250–51 (2014) [hereinafter *Proof of Facts*] (explaining the devastating effects parental alienation can have on a child's well-being); Amy J. L. Baker & Naomi Ben-Ami, *To Turn a Child Against a Parent Is to Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being*, 52 J. DIVORCE & REMARRIAGE 472, 472–73 (2011). Children may also experience adjustment problems, such as issues at school, sadness, low self-esteem, anxiety, drug abuse in adolescence, hyperactivity, and resistance to authority. *See* Elisabeth Godbout & Claudine Parent, *The Life Paths and Lived Experiences of Adults Who Have Experienced Parental Alienation: A Retrospective Study*, 53 J. DIVORCE & REMARRIAGE 34, 46 (2012).

⁴⁸ *See* Baker & Ben-Ami, *supra* note 47, at 474–75 (observing that this is one way that alienation can affect a child's self-esteem); *see also In re Matthew M.*, No. F-04-CP-11009363A, 2013 WL 4734892, at *4 (Conn. Super. Ct. Aug. 12, 2013) (noting expert testimony that parental alienation affects a child's sense of security, inter-personal relationships, regulation of emotions, and the ability to accept positive experiences).

⁴⁹ *See* Janet R. Johnston et al., *Therapeutic Work with Alienated Children and Their Families*, 39 FAM. CT. REV. 316, 318 (2001) (explaining that a child's self-esteem is undermined by the belief that one parent is all "bad").

⁵⁰ *See id.* This leads a child to conceptualize himself or herself as either all "good" or all "bad," making it hard for the child to cope with any failure. *See id.*

a child to engage in self-destructive behaviors because it affects his or her sense of agency and control and can lead to anxiety and depression.⁵¹

Researchers have likened parental alienation to psychological violence.⁵² The techniques employed by the alienating parent, such as lying, blackmail, and manipulation can be described as psychologically abusive.⁵³ In a qualitative retrospective study, six adults who experienced alienation as children were interviewed to investigate how children become alienated from their parents.⁵⁴ The role of the alienating parent in the child's feelings toward the alienated parent was prominent in all responses.⁵⁵ The alienating parent constantly told the children that the other parent was bad, dangerous, and did not love them.⁵⁶ Sometimes the alienating parent tried to eliminate the other parent from any conversation or memories completely.⁵⁷ Some parents even refused to let the children speak about the other parent.⁵⁸

⁵¹ See *In re Matthew M.*, 2013 WL 4734892, at *4 (explaining through expert testimony that parental alienation puts the child in conflict and requires them to engage in self-destructive behaviors that destroy their agency); see also Baker & Ben-Ami, *supra* note 47, at 485 (discussing the results of a study that looked at the effect of parental alienation on children, and noting specifically that these children demonstrated reduced self-sufficiency, insecure attachments, and depression).

⁵² See GOTTLEB, *supra* note 24, at 209 (discussing how researchers have labeled children effected by parental alienation as “psychologically battered” and that parental alienation is among the most serious kinds of emotional abuse); Baker & Ben-Ami, *supra* note 47, at 473 (explaining that parents who engage in parental alienation are considered to be psychologically maltreating the child because alienation can result in the child feeling worthless, unloved, and endangered); Godbout & Parent, *supra* note 47, at 38 (explaining that denigrating a parent and alienating a child from that parent are forms of psychological abuse). Psychological violence is difficult to define, but it is generally associated with psychological aggression (yelling, threatening), abuse (isolating, terrorizing), and denying emotional responsiveness. See Marie-Helene Gagné et al., *Links Between Parental Psychological Violence, Other Family Disturbances, and Children's Adjustment*, 46 FAM. PROCESS 523, 524 (2007).

⁵³ See Godbout & Parent, *supra* note 47, at 38 (describing lying, blackmailing, and manipulating as brainwashing techniques, which are psychologically abusive).

⁵⁴ See *id.* at 39–40. The participants had each rejected a parent from their life for at least a six-month period and believed that the rejection was a result of the other parent's behavior. See *id.* A retrospective study collects data about past events. See DAVID DE VAUS, THE SAGE DICTIONARY OF SOCIAL RESEARCH METHODS 269 (2006) available at <http://srmo.sagepub.com/view/the-sage-dictionary-of-social-research-methods/n181.xml>, archived at <http://perma.cc/LW8W-8A7V>.

⁵⁵ See Godbout & Parent, *supra* note 47, at 42 (explaining that the behavior of the alienating parent was the focus of the participant's responses and the alienated parent was constantly vilified). The parents applied such pressure to the children that they felt they had no other choice than to align with the alienating parent. See *id.*

⁵⁶ See *id.*

⁵⁷ See *id.* (recounting one respondent's experience of her father's head being cut out of her childhood pictures). Some parents tried to remove the parent by changing the child's last name. See *id.*

⁵⁸ See *id.* (explaining that some parents only referred to the other parent by pseudonyms).

Parental alienation can have lasting effects on adults who were alienated as children.⁵⁹ A child models his or her future relationships based on their relationship with his or her parents.⁶⁰ Adults alienated as children can suffer from low self-esteem, self-hatred, self-blame, guilt, depression, alienation of their own children, marital problems, and identity issues.⁶¹ Additionally, when the child becomes an adult, they may realize that the alienating parent caused the destruction of his or her relationship with the other parent, and this can then cause tension between the child and the alienating parent.⁶²

Alienation is also traumatic for the alienated parent.⁶³ A parent's loss of contact or relationship with his or her child can even perpetuate the al-

⁵⁹ See Fidler & Bala, *supra* note 44, at 21 (explaining that a qualitative retrospective study of adults who were alienated as children found that the adults suffered from low self-esteem and approximately one-third reported having substance abuse problems); see also Michael Winerip, *When Ties to a Parent Are Cut by the Other*, N.Y. TIMES, Sept. 23, 2007, <http://www.nytimes.com/2007/09/23/nyregion/nyregionspecial2/23Rparenting.html>, archived at <http://perma.cc/297N-5F4E> (explaining that an adult who was alienated from his mother as a child could not overcome the effects of alienation as an adult). For example, one subject reported: "It was hard for me to fully love my mom My father implanted a disgust and disdain in me for my mother that wouldn't go away and tainted our relationship." Winerip, *supra*.

⁶⁰ See *Proof of Facts*, *supra* note 47, § 3 at 250–51 (describing that children base their expectations and model relationships on those they had with their parents); see also Wyndol Furman et al., *Adolescents' Working Models and Styles for Relationships with Parents, Friends, and Romantic Partners*, 73 CHILD DEV. 241, 241 (2002) (explaining that a child's understanding of their relationship with their parents shape their relationships with friends and romantic partners).

⁶¹ See Amy J.L. Baker, *The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study*, 33 AM. J. FAM. THERAPY, 289, 301 (2005) (summarizing that the results of this retrospective study showed that the major areas of functioning affected by parental alienation were low self-esteem, lack of trust in themselves and others, depression, drug-alcohol problems, alienation from one's own children, and divorce); see also Fidler & Bala, *supra* note 44, at 21 (noting that respondents in a qualitative retrospective study of adults who were alienated as children reported having issues trusting that anyone would love them, and two-thirds of them were divorced); Godbout & Parent, *supra* note 47, at 38 (noting the qualitative retrospective study that found that the effects of parental alienation can continue into adulthood and manifest as depression, substance abuse, and issues with their own families).

⁶² Jennifer Gerber Moné et al., *Family Members' Narratives of Divorce and Interparental Conflict: Implications for Parental Alienation*, 52 J. DIVORCE & REMARRIAGE 642, 644 (2011) (noting that when the adult child realizes what the alienating parent did, there may be a "backfiring effect" on their relationship with that parent and may cause distance between them).

⁶³ See Ricky Finzi-Dottan et al., *The Experience of Motherhood for Alienated Mothers*, 17 CHILD & FAM. SOC. WORK 316, 316 (2012) (noting that children's rejection of their mother can be traumatic for the mother); Edward Kruk, *The Impact of Parental Alienation on Parents*, PSYCHOL. TODAY (May 2, 2013) <https://www.psychologytoday.com/blog/co-parenting-after-divorce/201305/the-impact-parental-alienation-parents>, archived at <https://perma.cc/8Y7F-Y92E> (explaining that suicide rates are high among parents, particularly fathers, who struggle to sustain a relationship with their child). Although the study of the effects of alienation on alienated fathers is more prevalent, one study looked at the effect of alienation on mothers. See Finzi-Dottan et al., *supra* at 318 (noting that women who lose custody of their children are often stigmatized as bad mothers). The study found that mothers who were alienated from their children were traumatized by the loss of their child and felt a threat to their feminine identity. See *id.* at 322.

ienation.⁶⁴ Alienated parents typically respond to the child's rejection passively and become withdrawn.⁶⁵ Although the parent may be trying to cope with the rejection or give the child space, the child might interpret this withdrawn behavior as disinterestedness.⁶⁶ In other instances, the alienated parent may become overly aggressive, self-centered, and immature in his or her attempt to deal with the child's rejection.⁶⁷

II. FINDING RELIEF: PARENTAL ALIENATION IN THE COURTS

Given the turmoil of parental alienation, many parents seek relief in the courts.⁶⁸ Legal remedies for parental alienation exist in both family law and tort law, each with their own benefits and pitfalls.⁶⁹ Part A discusses the family law remedies to parental alienation and how courts have tended to rely on modifying custody arrangements.⁷⁰ Part B then explores available tort law remedies to parental alienation and how victims of parental alienation can recover monetary damages for their loss.⁷¹

A. Family Law Remedies

Family law provides a number of remedies that courts have relied on to deal with parental alienation.⁷² Subsection 1 discusses the best interest standard for child custody cases.⁷³ Subsection 2 explains how parental alienation can be considered a material change of circumstances that allows a change in custody.⁷⁴ Subsection 3 then explores other family law remedies, including court-ordered therapy.⁷⁵

⁶⁴ See Finzi-Dottan et al., *supra* note 63, at 317 (noting that a study of parental alienation cases asserted that an alienated parent's loss of contact with their child can perpetuate the alienation).

⁶⁵ Fidler & Bala, *supra* note 44, at 20 (explaining that parents might react with passivity or withdrawn behaviors in order to cope).

⁶⁶ See *id.* (articulating that, although the parent may think they are giving the child "space," withdrawn behaviors may reinforce allegations by the alienating parent that they have abandoned the child or are a bad parent); Godbout & Parent, *supra* note 47, at 43 (noting that adults alienated as children later understood their parent's withdrawn behavior as a result of their feelings of helplessness; at the time it reinforced the alienating parent's assertions that the parent was bad or did not love the child).

⁶⁷ See Fidler & Bala, *supra* note 44, at 20 (explaining that alienated parents may act selfishly or immaturely, and might even present as more disturbed than the alienating parent).

⁶⁸ See *infra* notes 72–148 and accompanying text.

⁶⁹ See *infra* notes 72–148 and accompanying text.

⁷⁰ See *infra* notes 72–128 and accompanying text.

⁷¹ See *infra* notes 129–148 and accompanying text.

⁷² See *infra* notes 76–128 and accompanying text.

⁷³ See *infra* notes 76–92 and accompanying text.

⁷⁴ See *infra* notes 93–106 and accompanying text.

⁷⁵ See *infra* notes 107–128 and accompanying text.

1. Custody Decisions Made in the Best Interest of the Child

Decisions involving child custody must be made in accordance with the best interest of the child.⁷⁶ When determining or modifying a child custody order, judges assess what result would benefit the child physically, psychologically, and emotionally.⁷⁷ States differ as to whether the best interest standard is determined by statutory factors, case law, or a combination of the two.⁷⁸ Some states' statutes give general guidelines as to the child's best interest, whereas others specifically list all the relevant factors the court must consider.⁷⁹

For many years, the "tender years" presumption determined custodial arrangements.⁸⁰ The presumption deemed mothers of children under the

⁷⁶ See ANDREW I. SCHEPARD, CHILDREN, COURTS, AND CUSTODY: INTERDISCIPLINARY MODELS FOR DIVORCING FAMILIES 162 (2004) (explaining that when parents cannot agree on their own custodial arrangement, the courts will use the "best interest of the child" standard). Child custody is the care and control of a child awarded by a court to an adult. See BLACK'S LAW DICTIONARY 467 (10th ed. 2014). Child custody includes both legal and physical custody. See *id.* Legal custody is the ability to make significant decisions for the child, such as decisions regarding his or her education and health, whereas physical custody refers to where the child lives. See *id.*; *id.* at 1331 (defining physical custody). The term "custody" in this Note refers to physical custody unless otherwise specified. See *infra* notes 77–236 and accompanying text.

⁷⁷ Erin Bajackson, Note, *Best Interest of the Child—A Legislative Journey Still in Motion*, 25 J. AM. ACAD. MATRIM. LAW. 311, 311 (2013) (noting that the best interest standard can be described as protecting a child's emotional, psychological, and physical needs).

⁷⁸ See LINDA HENRY ELROD ET AL., FAMILY LAW AND PRACTICE § 32.06 (2013) (explaining that statutes and case law influence the factors courts look at regarding the child's best interest); see also, e.g., MASS. GEN. LAWS ch. 208 § 31 (2007 & Supp. 2014) (stating generally that when making decisions regarding child custody, the court shall look to "the happiness and welfare of the children" and consider whether living conditions will adversely affect the child's health physically, mentally, morally, or emotionally); *Houston v. Wolpert*, 332 P.3d 1279, 1283 (Alaska 2014) (explaining that a trial court must give a clear indication of which best interest statutory factors it considered but need not make express findings on all the factors); *Hunter v. Rose*, 975 N.E.2d 857, 862–63 (Mass. 2012) (specifying factors a judge may consider regarding the child's best interest are the stability of the parents' homes, where siblings are residing, and whether one parent seeks to undermine the child's relationship with the other parent).

⁷⁹ See ELROD ET AL., *supra* note 78, § 32.06. Compare CAL. FAM. CODE § 3011 (West 2004 & Supp. 2015) (specifying that the court shall consider certain factors with respect to the best interest of the child in addition to any others it finds relevant), and COLO. REV. STAT. § 14-10-124 (2014) (explaining that the court shall consider all relevant factors to determine the child's best interest and lists factors to be included), with MICH. COMP. LAWS ANN. § 722.23 (West 2011) (instructing the court to consider the sum total of the specific factors listed to determine the child's best interest). There are constitutional limitations as to what the court can factor into determining the child's best interest. See MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 153 (2005). For example, in 1984, in *Palmore v. Sidoti*, the U.S. Supreme Court determined that racial bias is not grounds to remove a child from the custody of its mother. See 466 U.S. 429, 433 (1984); GUGGENHEIM, *supra*, at 159.

⁸⁰ See, e.g., *Butler v. Butler*, 134 So. 129, 129 (Ala. 1931) (holding that despite all the children testifying that they preferred to live with their father, the court properly awarded custody of the four year old to the mother); *Harding v. Harding*, 377 P.2d 378, 379 (Alaska 1962) (clarifying that the general rule is that courts give the mother preference in a custody determination if she is

age of seven to be the better custodial parent to serve the child's interests.⁸¹ In 1979, however, in *Caban v. Mohammed*, the U.S. Supreme Court determined that mothers' and fathers' relationships were of equal importance and therefore questioned the continued use of such presumption.⁸² Hence, the best interest standard has been developed to strive for a gender-neutral determination of custody.⁸³

States typically prioritize the child's best interest over the interests of the parents.⁸⁴ In general, states promote each child having frequent and meaningful contact with both parents as being in the child's best interest.⁸⁵

fit but noting that the rule is contingent on everything else being equal and subject to the court's discretion regarding the child's best interest); *Dinkel v. Dinkel*, 322 So. 2d 22, 24 (Fla. 1975) (explaining that, all other factors being equal, a mother of a child of tender years should receive first consideration regarding custody); *Peavey v. Peavey*, 460 P.2d 110, 111 (Nev. 1969) (noting that a mother is the natural custodian of her young children, and children of tender years belong to their mother absent a finding that she is an unfit parent), *overruled by* *Arnold v. Arnold*, 604 P.2d 109 (Nev. 1979); *see also* ELROD ET AL., *supra* note 78, § 32.06 (explaining that the tender years doctrine was operational for almost a century).

⁸¹ *See* ELROD ET AL., *supra* note 78, § 32.06 (describing the tender years doctrine as the presumption that a child under seven should be placed with their mother).

⁸² *See* 441 U.S. 380, 389 (1979) (holding that the roles of mothers and fathers do not differ in importance); ELROD ET AL., *supra* note 78, at § 32.06; *see also* FLA. STAT. ANN. § 61.13 (West 2006 & Supp. 2012) ("There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.").

⁸³ *See* Bajackson, *supra* note 77, at 314–15 (describing the development of the best interest standard following the "tender years" presumption, but noting that some scholars think the "tender years doctrine" still exists today); *see also* *Johnson v. Johnson*, 564 P.2d 71, 75 (Alaska 1977) (noting that courts in other jurisdictions have held that the tender years doctrine is not consistent with the best interest standard). Dr. Gardner attributed the increase in intensity of child custody litigation to the shift from the "tender-years presumption" to the best interest standard and the emphasis on joint custody. *See* R. James Williams, *Alienated Children in Divorce: Should Judges Close the Gate on PAS and PA?*, 39 FAM. CT. REV. 267, 267 (2001).

⁸⁴ *See, e.g.*, CAL. FAM. CODE § 3020 ("[I]t is the public policy of this state to assure that children have frequent and continuing contact with both parents . . . and to encourage parents to share the rights and responsibility of child rearing . . . except where the contact would not be in the best interest of the child . . ."); MASS. GEN. LAWS ch. 208, § 31 (2007 & Supp. 2014) ("In making an order or judgment relative to the custody of children . . . the happiness and welfare of the children shall determine their custody."); *Langford v. Langford*, 138 So. 3d 101, 104 (La. Ct. App. 2014) ("The paramount consideration in any determination of child custody is the best interest of the child.").

⁸⁵ *See Proof of Facts*, *supra* note 47, § 5 at 252–55 (explaining that most states have adopted a policy that a child should have frequent and continuing contact with both parents); *see also, e.g.*, CAL. FAM. CODE § 3020 (West 2004 & Supp. 2015) (noting that it is the public policy of the state to maintain frequent and continuing contact between the parents and child following separation or divorce); FLA. STAT. ANN. § 61.13 ("It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing."); OKLA. STAT. tit. 43, § 110.1 (2011) ("It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to

Although a parent's interest in the companionship and care of his or her child warrants deference and protection, the best interest standard's focus on the child's well-being ultimately dictates the custodial arrangement.⁸⁶ The best interest of the child is intended to be an objective standard to evaluate facts, but is subject to judicial discretion.⁸⁷

The judge's discretion is minimized, however, when a statute or court precedent has identified factors to determine what is in the child's best interest.⁸⁸ Some statutes specify factors for consideration in making decisions in the best interest of the child.⁸⁹ Although some states require all the fac-

act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children").

⁸⁶ See *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (noting "that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children"); *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981) (specifying that the right to care and custody of one's children warrants deference and protection); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (explaining that the parent-child relationship is constitutionally protected by the Fourteenth Amendment); see also *J.F. v. L.F.*, 694 N.Y.S.2d 592, 598 (Fam. Ct. 1999) (noting that a parent's right to visitation with his or her child is more important than any property right); Julia Halloran McLaughlin, *The Fundamental Truth About Best Interests*, 54 ST. LOUIS U. L.J. 113, 134 (2009) (articulating that the best interest standard protects the right of children to have loving and nurturing parent-child relationships); Bajackson, *supra* note 77, at 317 (noting that giving the child a voice and respecting his or her autonomy is the focus of the best interest standard); cf. *Proof of Facts*, *supra* note 47, § 5 at 252–55 (explaining that most states adopt the public policy that children should have frequent and meaningful contact with both parents); William L. Hill, Note, *Tort Recovery for Intentional Interference with Visitation Rights: A Necessary Alternative*, 32 U. LOUISVILLE J. FAM. L. 657, 658–59 (1994) (noting that parents have federal protections regarding their children).

⁸⁷ See *Hunter*, 975 N.E.2d at 862–63 (articulating that the judge must weigh all the relevant factors in determining the best interest of the child and that the judge has discretion when awarding custody); *Berger v. Berger*, 747 N.W.2d 336, 343 (Mich. Ct. App. 2008) (explaining that the appeals court will defer to the trial court's discretion regarding the weight of the best interest factors); see also Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 373 (2008) (explaining that the best interest standard is subject purely to judicial discretion); Nicole Fontaine, Note, *Don't Stop the Clock: Why Equitable Tolling Should Not Be Read into the Hague Convention on International Child Abduction*, 54 B.C.L. REV. 2091, 2115 (2013) (noting that criticism of the best interest standard includes that it is too imprecise and allows courts to favor parental rights).

⁸⁸ See, e.g., *In re Marriage of Rayman*, 47 P.3d 413, 414 (Kan. 2002) (quoting *In re Marriage of Whipp*, 962 P.2d 1058 (Kan. 1998)) (explaining that the court's primary consideration for custody is the best interest of the child, and that determination is left to the discretion of the trial court); *MacIntyre v. MacIntyre*, 705 N.W.2d 144, 146–47 (Mich. Ct. App. 2005) (declaring that in rendering a custody decision, the trial court must state factual findings and conclusions for each of the twelve statutory best interest factors); *Burgard v. Burgard*, 827 N.W.2d 1, 6 (N.D. 2013) (explaining that the trial court has broad discretion regarding custody, but it must consider all the relevant statutory best interest factors); see also Kohm, *supra* note 87, at 373 (specifying that unless the legislature or case law provides guidance with respect to factors for consideration, the judge's decision is purely subjective).

⁸⁹ See, e.g., DEL. CODE ANN. tit. 13, § 722 (2009 & Supp. 2014) (specifying that the court shall consider all relevant factors including those listed within the statute); N.D. CENT. CODE § 14-09-06.2 (2009 & Supp. 2013) (specifying the factors the court should consider when evaluat-

tors listed in the statute be considered, other states only suggest factors, allowing courts to consider any other relevant factors.⁹⁰ The Uniform Marriage and Divorce Act likewise instructs courts to examine all relevant factors to determine custody in accordance with the child's best interest and lists five specific factors.⁹¹ Examples of best interest of the child factors include: wishes of the parent, moral fitness, amount of contact between the child and the parent, each parent's willingness to facilitate and encourage a relationship between the child and the other parent, the parents' ability to cooperate, and the child's adjustment to their home, school, and community.⁹²

2. When a Material Change in Circumstances Changes Custody

Due to the complications it can create, the presence of parental alienation may qualify as a material change in circumstances and result in a change in custody to the alienated parent.⁹³ To establish a prima facie case

ing considering the best interest of the child); VA. CODE ANN. § 20-124.3 (2008 & Supp. 2014) (mandating that the court consider specific factors when assessing the best interest of the child).

⁹⁰ Compare CAL. FAM. CODE § 3011 (specifying the factors that the court must consider, but still allowing consideration of other factors deemed relevant), and COLO. REV. STAT. § 14-10-124 (2014) (instructing courts to consider all factors that are relevant to the child's best interest and listing some that are to be included), with MICH. COMP. LAWS ANN. § 722.23 (West 2011) (instructing the court to consider specific factors in the aggregate to determine the child's best interest).

⁹¹ See UNIF. MARRIAGE & DIVORCE ACT § 402, 9A U.L.A. 282 (1973). The five best interest factors listed in the Uniform Marriage & Divorce Act are (1) the wishes of the parent(s); (2) the wishes of the child; (3) the relationship between the child and the parents, siblings, and anyone else that may affect the child's best interest; (4) the child's adjustment to his or her environment at home, school, and community; and (5) the physical and mental health of everyone. *Id.* The Act specifies that courts shall not consider a parent's conduct that does not affect the child. *Id.*

⁹² See, e.g., CAL. FAM. CODE § 3011 (West 2004 & Supp. 2015); LA. CIV. CODE ANN. art. 134(10) (2013 & Supp. 2015) ("The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party."); MICH. COMP. LAWS ANN. § 722.23(j) ("The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents."); N.D. CENT. CODE § 14-09-06.2 (listing all the factors courts should include in considering the child's best interest); VA. CODE ANN. § 20-124.3 (listing the best interest factors); *Hunter*, 975 N.E.2d at 862-63 (specifying best interest factors such as the stability of the parents' homes, where siblings are residing, and whether one parent seeks to undermine the child's relationship with the other parent); see also SCHEPARD, *supra* note 76, at 163-64 (listing as an example Minnesota's statutory best interest factors). See generally *Proof of Facts*, *supra* note 47 (explaining the best interest factors generally and those that relate to parental alienation).

⁹³ See *Wade v. Hirschman*, 903 So. 2d 928, 935 (Fla. 2005) (affirming the trial court's consideration of parental alienation as a reason to change the custodial arrangement); *Proof of Facts*, *supra* note 47, § 8 at 257-58 (listing best interest factors that relate to parental alienation when changing custody). In extreme situations, judges might threaten to remove the child from either parent's custody and place the child in foster care. See *Noland-Vance v. Vance*, 321 S.W.3d 398, 404 (Mo. Ct. App. 2010) (noting that the trial court warned the mother that if she did not cooperate to facilitate the father's visitation that the three youngest children would be placed in foster care so that the father could exercise visitation); see also Douglas Darnall, *The Psychosocial*

for a modification of custody, a parent must first show a material change in circumstances and then show that the change in custody is in the child's best interest.⁹⁴ To make the custody determination, a court holds an evidentiary hearing to consider the child's best interest and the allegations of alienating behaviors.⁹⁵ Evidence of the alienation is often presented to the court in the form of a child custody evaluation or a guardian ad litem report.⁹⁶ These experts are tasked with investigating the family and drafting a report for the court to make a recommendation as to a custody arrangement that will be in the child's best interest.⁹⁷

Courts have found parental alienation to constitute a material change of circumstances.⁹⁸ For example, in 2011, in *Grove v. Grove*, the Court of

Treatment of Parental Alienation, 20 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM. 479, 490 (2011) (noting that a judge could change custody to the alienated parent). Dr. Gardner was a proponent of changing custody to the alienated parent to deal with severe cases of alienation. See Bala et al., *supra* note 30, at 84–85.

⁹⁴ See *Proof of Facts*, *supra* note 47, §§ 7, 8 at 256–58 (explaining that a modification of custody in a parental alienation case requires a consideration of the child's best interest); see also *Hibbard v. Hibbard*, 55 A.3d 301, 308 (Conn. App. Ct. 2012) (noting that a court must find there has been a material change in circumstances and that a change in custody is in the child's best interest in order to modify the arrangement). In 2005, in *Wade v. Hirschman*, the Florida Supreme Court directed the lower court to enter an order affirming the father as the primary custodial parent. See 903 So. 2d at 935. The court found that the mother's alienation of the children against their father was a material change in circumstances and that it was in the children's best interest to reside with the father. See *id.*

⁹⁵ See *Proof of Facts*, *supra* note 47, § 8 at 257–58 (noting that the court must hold an evidentiary hearing to change custody that analyzes the best interest factors).

⁹⁶ See S. Margaret Lee & Nancy W. Olesen, *Assessing for Alienation in Child Custody and Access Evaluations*, 39 FAM. CT. REV. 282, 282 (2001) (noting that child custody evaluations that involve questions of alienation require a comprehensive evaluation). Child custody evaluations involve information and opinions regarding the custody of children and are presented to the court by a qualified mental health professional acting as an impartial examiner. See David A. Martindale, *Model Standards of Practice for Child Custody Evaluation*, 45 FAM. CT. REV. 70, 71–72 (2007). Similarly, a guardian ad litem may be appointed by the court to investigate and report in writing on the care, custody, and maintenance of the minor children. See MASS. GEN. LAWS ch. 215 § 56A (2005 & Supp. 2014). Parental alienation may come to the attention of child protection services, but they are often reluctant to intervene because the family court can address the alienation or because alienation does not meet the statutory requirement for abuse or neglect. See Fidler & Bala, *supra* note 44, at 21.

⁹⁷ See *Proof of Facts*, *supra* note 47, § 17 at 276–78 (explaining that the court may appoint an investigator to make a report regarding the child's best interest and recommendations as to custody).

⁹⁸ See *id.* § 8 at 257–58 (noting that parental alienation has been found to be a material change in circumstances); see also *Grove v. Grove*, 386 S.W.3d 603, 608 (Ark. Ct. App. 2011) (concluding that the mother's efforts to alienate her children from their father and the effects of her behavior supported the trial court's finding of a material change in circumstances). Evidence of a significant change of circumstances can include the parent's failure to follow the visitation schedule, interference with the visitation of the other parent, refusal to cooperate in counseling, alienation of the child from a meaningful relationship with the parent, limiting contact between the child and the parent, and making false accusations about the other parent in front of the children. See *Grove*, 386 S.W.3d at 606.

Appeals of Arkansas affirmed transferring custody of the children to the father after a finding of parental alienation.⁹⁹ The court gave deference to the trial court's findings that the mother failed to comply with the custody agreement, failed to cooperate in counseling as ordered, alienated the children from the father, sought to limit or terminate contact between the father and the children, and made false accusations against the father in front of the children.¹⁰⁰ In that case, the court found that mother's efforts to alienate the children from the father constituted a material change in circumstances.¹⁰¹

Changing custody due to parental alienation has also been determined to be in the child's best interest.¹⁰² In particular, the court may look to best interest factors such as the willingness to facilitate and encourage a relationship between the child and the other parent, and the relationship and amount of contact between the child and the parent.¹⁰³ For example, in 2012, in *Hibbard v. Hibbard*, the Appellate Court of Connecticut affirmed a transfer of custody to the father because of the mother's alienating behaviors.¹⁰⁴ The court found that the mother attempted to eliminate the father from the daughter's life and was unwilling to facilitate a relationship between the child and her father, so a transfer of custody was in the child's best interest.¹⁰⁵ Similarly, in 2013, in

⁹⁹ See *Grove*, 386 S.W.3d at 609.

¹⁰⁰ See *id.* at 607. The court noted that the trial court found that the mother was alienating the children from the father, making them think he was an evil person by coaching and pressuring them to lie about their father. See *id.* at 608.

¹⁰¹ See *id.* at 608 (concluding that the mother's efforts to alienate the children constituted a change in material circumstances).

¹⁰² See *Hibbard*, 55 A.3d at 308, 310; see also *Leistner v. Leistner*, 524 N.Y.S.2d 243, 244 (App. Div. 1988) (noting that a parent's interference with the relationship between the child and the other parent is "so inconsistent with the best interests of the child as to *per se* raise a strong probability that the offending party is unfit to act as a custodial parent"); cf. *Fidler & Bala*, *supra* note 44, at 31 (explaining that proponents of changing custody think the alienating parent is emotionally abusive and the risk of not separating the child from them is greater than the risks of placing the child with the alienated parent).

¹⁰³ See *Varnado*, *supra* note 20, at 129–30 (explaining that courts look to a party's willingness to cooperate and facilitate a relationship with the other parent, and the moral fitness of a parent in cases of parental alienation); see also *Proof of Facts*, *supra* note 47, § 7 at 256–57 (listing specific best interest factors that courts look at in cases of parental alienation, including the parents' willingness to facilitate a relationship between the child and the other parent and each party's moral fitness).

¹⁰⁴ See 55 A.3d at 310–11 (reasoning that transferring custody when one parent has alienated a child is supported by the case law).

¹⁰⁵ See *id.* at 310. The trial court feared that, without intervention, the mother's behaviors would continue, causing the child pain or the father to give up on his relationship with his daughter. See *id.* at 311. The mother unilaterally suspended the visits between the father and the daughter without justification. See *id.* at 304. The mother also demonstrated an inability to communicate with the father to resolve issues regarding the daughter; for example, the mother terminated the daughter's relationship with her day care provider because the provider had given information about the child to the father's current wife. See *id.* at 309. The daughter started exhibiting physical pain and had to go to the doctor or emergency room "an unusual number" of times. *Id.* at 310. She

Bennett v. Schultz, the New York Supreme Court, Appellate Division noted that parental alienation offends the child's best interest to the point where the parent may be unfit to have custody.¹⁰⁶

3. Penalties, Therapy, and Coordinators as Other Family Law Remedies

In addition to modifying custody orders, courts have occasionally found a parent in civil contempt of court when the parent withholds or violates a court order.¹⁰⁷ To find the parent in contempt, there must be a custody order currently in place, and the parent must demonstrate a willful intent to violate the order.¹⁰⁸ For example, in 2009, in *Woodward v. Woodward*, the North Dakota Supreme Court affirmed the trial court's finding that a mother was in contempt.¹⁰⁹ The trial court did so because they denied the father visitation and failed to undergo an evaluation for parental alienation after an allegation that the mother constantly berated him in front of their children.¹¹⁰

Parental alienation may also be used as an affirmative defense for not paying child support.¹¹¹ For example, in 2007, in *F.S.-P. v. A.H.R.*, a New York Family Court found that the father could raise parental alienation as an affirmative defense to paying child support.¹¹² Not all courts have held this way, however, since child support is often viewed as a duty owed to the child independent of the parent having visitation.¹¹³

also expressed distress and guilt when she had to visit with her father because it made her mother happy. *See id.*

¹⁰⁶ *See* 973 N.Y.S.2d 244, 245 (App. Div. 2013) ("Parental alienation of a child from the other parent . . . is 'an act so inconsistent with the best interests of the children as to, per se, raise a strong probability that the [offending party] is unfit to act as custodial parent.'" (quoting *Entwistle v. Entwistle*, 402 N.Y.S.2d 213, 216 (App. Div. 1978))).

¹⁰⁷ *See* *Woodward v. Woodward*, 776 N.W.2d 567, 570 (N.D. 2009) (defining civil contempt as a willful intent to violate a court order).

¹⁰⁸ *See id.*; *Proof of Facts*, *supra* note 47, § 20 at 280–82 (explaining that a parent can file contempt if there is a valid child custody order and there is a willful intent to violate it).

¹⁰⁹ *See* 776 N.W.2d at 569–71.

¹¹⁰ *See id.* The father stated that the mother minimized his role as a parent and restricted his access to the children in person and on the phone. *See id.* at 570.

¹¹¹ *See* *F.S.-P. v. A.H.R.*, 844 N.Y.S.2d 644, 646 (Fam. Ct. 2007) (articulating that parental alienation can be an affirmative defense to child support).

¹¹² *See id.* (deciding that parental alienation may be an affirmative defense to child support even when an order is not yet in place); *see also* *Roe v. Doe*, 272 N.E.2d 567, 570 (N.Y. 1971) (explaining that, although the duty to support a child is continuous, the child's right to support and the parent's right to custody are reciprocal). The court reasoned that it could suspend the non-custodial parent's duty to pay child support in some instances when the custodial parent has intentionally alienated or brainwashed the child against the non-custodial parent. *See F.S.-P.*, 844 N.Y.S.2d at 645 (stating that child support payments can be suspended when the parent has frustrated visitation by alienating the child).

¹¹³ *See* *People ex rel. Winger v. Young*, 397 N.E. 2d 253, 254 (Ill. App. Ct. 1979) (explaining that visitation is entirely independent of the duty to make support payments and to find otherwise

To address parental alienation, the court may also order therapy for the child, the parents, or the entire family.¹¹⁴ One type of therapy is called reunification therapy, which focuses on reducing the hostility of the parents, creating a safe space for the child, and repairing the relationship between the child and the alienated parent.¹¹⁵ Just ordering the child into therapy may not be an effective solution in all cases, however, due to the parents' contribution to the child's rejection of the alienated parent.¹¹⁶

Another form of therapy intervention is Multi-Modal Family Intervention ("MMFI").¹¹⁷ This method includes all family members and employs various techniques, including individual and family therapy, case management, and education.¹¹⁸ This type of intervention is more comprehensive than reunification therapy because it aims not only to reunify the alienated parent with the child, but also to ameliorate the stress of the conflict between the parents.¹¹⁹ This model requires active participation by both parents.¹²⁰

Parenting coordinators are also used in some instances of parental alienation.¹²¹ Parenting coordinators were introduced to relieve the court of the burden of contentious custody cases and parents engaged in conflict.¹²²

would punish the child for the conduct of the custodial parent); *see also* Hill, *supra* note 86, at 559–60 (explaining that motions to suspend child support are usually ineffective because courts generally find that the duty to pay child support is independent of visitation rights).

¹¹⁴ *See, e.g.*, CAL. FAM. CODE § 3190 (West 2004 & Supp. 2015) (noting that the court can order the parents, the minor child, or any other party related to the child's custody to participate in counseling if the conflict endangers the best interest of the child and the counseling is in the best interest of the child).

¹¹⁵ *See* Darnell, *supra* note 93, at 483–84 (explaining that reunification therapy is a method for treating high-conflict and litigious families).

¹¹⁶ *See id.* An alternative focus of therapy would be family-focused intervention, which includes the child, any siblings, the parents, and other family members involved. *See* Johnston et al., *supra* note 49, at 316. This type of therapy focuses on adjusting the child's perception of the alienated parent and restoring the parent-child role. *See id.* With this type of therapy, although reunification is not the goal, it may be a result. *See id.*

¹¹⁷ *See* Steven Friedlander & Marjorie Gans Walters, *When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem*, 48 FAM. CT. REV. 98, 98 (2010).

¹¹⁸ *See id.* (explaining that the MMFI model is a comprehensive intervention that emphasizes the need to include all family members, and employs various techniques aimed to modify feelings, beliefs, and behaviors).

¹¹⁹ *See id.* at 98–99 (stating that family-focused intervention is broader than reunification therapy).

¹²⁰ *See id.* (noting that the therapist must foster a relationship with all family members and explaining that the need for their participation is critical for a successful intervention).

¹²¹ Janice S. Rosen et al., *Parent Coordinators: An Effective New Tool in Resolving Parental Conflict in Divorce*, 74 FLA. B. J. 101, 101 (2000) (noting that parenting coordinators are often necessary in cases of parental alienation).

¹²² *See* Linda Fieldstone et al., *Perspectives on Parenting Coordination: Views of Parenting Coordinators, Attorneys, and Judiciary Members*, 50 FAM. CT. REV. 441, 441 (2012) (explaining that parenting coordinators were introduced in response to the burden of high-conflict cases on courts); *Guidelines for Parenting Coordination*, ASS'N OF FAMILY & CONCILIATION COURTS 2

Parenting coordinators are trained mental health or family law professionals that assist parents in the child-centered dispute resolution process.¹²³ The goal is to resolve issues quickly, educate parents, and make decisions within the scope of their appointment by the court.¹²⁴ They deal mainly with the daily complaints of the parents, such as parenting or visitation disputes.¹²⁵ The court can appoint parenting coordinators with or without the consent of the parties.¹²⁶ And, although an order establishing a parenting coordinator specifies the scope of the appointment, the court retains ultimate authority and jurisdiction regarding the case.¹²⁷ At least ten states have legislation regarding the use of parenting coordinators, whereas other states use statutes regarding other professionals, like mediators, to make coordinator appointments.¹²⁸

B. Tort Law Remedies

In several jurisdictions, in addition to family law remedies, parents can pursue civil tort action to compensate for the loss of their relationship with their child.¹²⁹ Whereas family law focuses primarily on the child's best in-

(May 21, 2005), <http://www.afcnet.org/portals/0/afccguidelinesforparentingcoordinationnew.pdf>, archived at <http://perma.cc/G9Y9-5WU4> (introducing the concept of parent coordinators as a role reserved for high-conflict parents that cannot cooperate or comply with agreements); see also Joi T. Montiel, *Why and How Alabama Courts Should Use Parenting Coordination in Divorce Cases*, 72 ALA. LAW. 300, 302 (2011) (arguing that parenting coordinators benefit the courts because high-conflict parents disproportionately monopolize judicial resources).

¹²³ See Fieldstone et al, *supra* note 122, at 442.

¹²⁴ See *id.*; see also Montiel, *supra* note 122, at 302 (distinguishing parenting coordinators from other alternative dispute resolution mechanisms by pointing out that coordinators aim to educate parents and equip them with skills to minimize conflict and resolve it on their own).

¹²⁵ Marlene Eskind Moses & Beth A. Townsend, *Parenting Coordinators: The Good, the Bad and the Ugly*, 48 TENN. B. J. 24, 25 (2012) (explaining that parenting coordinators field daily questions and complaints from the parents).

¹²⁶ See, e.g., *Jordan v. Jordan*, 14 A.3d 1136, 1155 (D.C. 2011) (noting that a court can appoint a parenting coordinator on the court's own motion); LLOYD T. KELSO, 2 N.C. FAMILY LAW PRACTICE § 15:4 (2013) (noting that the court can appoint a parenting coordinator without the parents' consent).

¹²⁷ See KELSO, *supra* note 126 (noting that the court order appointing the parenting coordinator authorizes only specific issues). The use of parenting coordinators has, however, been constitutionally challenged as a violation of a parent's fundamental right to raise his or her child. See *Barnes v. Barnes*, 107 P.3d 560, 563–65 (Okla. 2005). In 2005, in *Barnes v. Barnes*, the Supreme Court of Oklahoma held that the appointment of a parenting coordinator did not violate the equal protection or due process rights of the mother. See *id.*

¹²⁸ Moses & Townsend, *supra* note 125, at 24 (listing the states as Colorado, Florida, Idaho, Louisiana, Massachusetts, New Hampshire, North Carolina, Oklahoma, Oregon, and Texas).

¹²⁹ See C. David Bargamian, Note, *Intentional Infliction of Emotional Distress in the Child Custody Context: Proposed Guidelines*, 36 WAYNE L. REV. 125, 126–27 (1989) (explaining that parents can pursue civil remedies when their custodial rights are infringed upon).

terest, tort law focuses on the injury to the alienated parent.¹³⁰ Tort actions provide monetary relief for the alienated parent's emotional pain and loss of relationship with the child.¹³¹ Some courts, however, have been reluctant to adopt tort remedies for alienation because it might exacerbate the existing conflict without actually deterring the alienating parent's behavior.¹³² Relevant tort actions involving parental alienation include alienation of affections, intentional infliction of emotional distress ("IIED"), interference with custody, and interference with visitation.¹³³

In an alienation of affections claim, the alienated parent can sue the alienating parent to remedy the loss of the child's affection as a result of the damage to his or her relationship with the child.¹³⁴ For example, in 1991 in *Hershey v. Hershey*, the South Dakota Supreme Court held that the father stated a cause of action against the mother for alienation of affection regarding their son.¹³⁵ The court reasoned that there was alienation of affection because the mother kept the child's location a secret from the father for fourteen years.¹³⁶ With the abolishment of alienation of affection for spouses, however, courts have been reluctant to continue recognizing an alienation of affection tort for parent-child relationships.¹³⁷

¹³⁰ See Varnado, *supra* note 20, at 118 (noting that family law remedies do not offer relief for the damages suffered by the alienated parent nor does it adequately deter the alienating behaviors).

¹³¹ See *id.* at 128 (noting that tort law can assuage the pain of the alienated parent through monetary relief).

¹³² See Hill, *supra* note 86, at 657 & n.1 (noting that some courts have refused to adopt tort remedies out of concern for the best interest of the child and the possibility of additional litigation). In 1990, in *Larson v. Dunn*, the Minnesota Supreme Court rejected a tort action for intentional interference with custody rights in a parental kidnapping case on the basis that it would intensify conflict in the family and is contrary to the child's best interest. See 460 N.W.2d 39, 47 (Minn. 1990); see also Louann C. McGlynn, Comment, *Parent and Child—Custody and Control of Child: Parental Alienation: Trash Talking the Non-Custodial Parent Is Not Okay*, 77 N.D. L. REV. 525, 539–40 (2001) (explaining that a parent can sue the alienating parent for alienation of affection, but the a tort for parental alienation itself is unlikely).

¹³³ See Varnado, *supra* note 20, at 139, 142, 145. Some argue for a separate tort action that specifically addresses parental alienation. See *id.* at 119, 150.

¹³⁴ See McGlynn, *supra* note 132, at 539. Traditionally, alienation of affection was used against a third party who stole the affection of a spouse. See Varnado, *supra* note 20, at 142. Because women were regarded as property of their husbands, any attempt to have relations with someone's wife was a property-based tort. See *id.*, at 142 & n.182.

¹³⁵ See 467 N.W.2d 484, 489 (S.D. 1991) (noting that policy considerations regarding recognition of this tort included the best interest of the child, availability of other remedies, and exacerbating custody and visitation battles). Alienation of affection has three elements: (1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) a causal connection between such conduct and the loss. *Jones v. Swanson*, 341 F.3d 723, 732 (8th Cir. 2003).

¹³⁶ See *Hershey*, 467 N.W.2d at 489.

¹³⁷ See *Raftery v. Scott*, 756 F.2d 335, 338–39 (4th Cir. 1985) (explaining that the father's alienation of affection claim could not be a basis for recovery because the tort had been abolished); *Zamstein v. Marvasti*, 692 A.2d 781, 790 (Conn. 1997) (concluding that because the state legislature abolished alienation of affections, the father could not bring a claim of alienation of affections of his children). Today, only seven states recognize any causes of action for alienation

In an IIED action, the alienating parent, by “extreme and outrageous conduct,” causes the alienated parent severe emotional distress.¹³⁸ The tort involves four elements: extreme and outrageous conduct, intent or recklessness, causation, and severe emotional distress.¹³⁹ Courts are reluctant to find IIED due to parental alienation, however, unless the alienating parent has abducted or hidden the child.¹⁴⁰ Nonetheless, in 1985, in *Raftery v. Scott*, the U.S. Court of Appeals for the Fourth Circuit held that the facts supported a father’s claim for IIED.¹⁴¹ The court found that the mother continuously and successfully destroyed the father’s relationship with the child and prevented any rehabilitation.¹⁴² Consequently, the court reasoned that a cause of action should exist for the psychological damage that resulted from the mother’s forced separation of the father from the child.¹⁴³

Jurisdictions have also allowed a tort action for interference with the parental relationship based on the *Restatement (Second) of Torts*.¹⁴⁴ In par-

of affection: Hawaii, Illinois, Mississippi, New Mexico, North Carolina, South Dakota, and Utah. *See, e.g.*, *Hunt v. Chang*, 594 P.2d 118, 123 (Haw. 1979) (noting that alienation of affections has not been abolished in this jurisdiction); *Murphy v. Colson*, 999 N.E.2d 372, 376 (Ill. App. Ct. 2013) (noting the elements required to sustain a cause of action for alienation of affection); *Fitch v. Valentine*, 959 So.2d 1012, 1019 (Miss. 2007) (noting that Mississippi’s recognition of the tort of alienation of affections places it in the minority of states); *see also Helsel v. Noellsch*, 107 S.W.3d 231, 235 (Mo. 2003) (Benton, J., dissenting) (noting the seven states that recognize the tort of alienation of affection as Illinois, Hawaii, Mississippi, New Mexico, North Carolina, South Dakota, and Utah); *Varnado*, *supra* note 20, at 144 & n.197 (noting that only seven states continue to recognize alienation of affections claims).

¹³⁸ *See Varnado*, *supra* note 20, at 145–46, 146 n.202 (explaining that “extreme and outrageous conduct” is considered behavior that is intolerable and atrocious).

¹³⁹ *See Bargamian*, *supra* note 129, at 128 (noting the four elements of IIED); *Varnado*, *supra* note 20, at 145 (defining someone who creates an IIED claim as “one who by extreme and outrageous conduct intentionally or recklessly causes severe and emotional distress”).

¹⁴⁰ *See Varnado*, *supra* note 20, at 146 (noting that the courts are open to IIED claims when the child was abducted or hidden from the alienated parent). Other courts find that the claim is too closely related to alienation of affection, which is generally no longer recognized. *See id.* at 149; *see also Bouchard v. Sundberg*, 834 A.2d 744, 756 (Conn. App. Ct. 2003) (denying the father’s claim of IIED because it was “nothing more than a claim for alienation of affections”).

¹⁴¹ *See Raftery*, 756 F.2d at 339; *see also Bham v. Bham*, 425 N.W.2d 733, 735–36 (Mich. Ct. App. 1988) (finding that the creation of a negative relationship between the child and his or her other parent constitutes outrageous conduct). In *Raftery*, a jury had awarded the father punitive damages in the amount of \$10,000 and compensatory damages in the amount of \$40,000. *Raftery*, 756 F.2d at 336.

¹⁴² *See Raftery*, 756 F.2d at 337. In that case, the mother convinced the son that he should not see his father. *Id.* A clinician could not get the son to accept any positive ideas about the father because of the negative information he received from his mother. *Id.* At one court hearing, the son would not even speak to his father. *Id.*

¹⁴³ *See id.* at 340.

¹⁴⁴ *See* RESTATEMENT (SECOND) OF TORTS § 700 (1977); *Hill*, *supra* note 86, at 658 & n.6 (explaining that this section of the *Restatement (Second) of Torts* addresses when a parent compels a child to leave the custody of the other parent); *see also Wyatt v. McDermott*, 725 S.E.2d 555, 559–60 (Va. 2012) (citing to the *Restatement* as the origin and persuasive authority for a tort for interference with parental rights); *Beth Rosenberg, Note, Khalifa v. Shannon: How Much Interfer-*

ticular, the *Restatement* that provides “[o]ne who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent . . . is subject to liability.”¹⁴⁵ For example, in 2012, in *Wyatt v. McDermott*, the Supreme Court of Virginia formally recognized a tort for interference with parental rights.¹⁴⁶ The court reasoned that when a parent has been separated from his or her child without due process of law, the parent should be able to recover in tort for the loss and anguish.¹⁴⁷ This tort claim, however, is likely to remain scantily used due to its limited application.¹⁴⁸

III. DOING WHAT’S BEST: USING THE BEST INTEREST STANDARD IN FAMILY LAW AND THERAPEUTIC INTERVENTION TO COMBAT PARENTAL ALIENATION

Although there are many ways that courts have addressed parental alienation, some solutions work better than others.¹⁴⁹ This Note argues that family law’s best interest standard could best prevent parental alienation, and that therapeutic intervention is the best remedy when it occurs.¹⁵⁰ Section A shows why family law is the appropriate forum to address parental alienation.¹⁵¹ Section B then argues that some of the current family law

ence Is Too Much When It Comes to a Tort for Interfering with the Parent-Child Relationship?, 68 MD. L. REV. ENDNOTES 124, 129 & n.52 (2009), <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1006&context=endnotes>, archived at <http://perma.cc/VBV9-CAZB> (explaining that the trend among states is to recognize an action for intentional interference with the parent-child relationship).

¹⁴⁵ RESTATEMENT (SECOND) OF TORTS § 700.

¹⁴⁶ 725 S.E.2d at 558 (reasoning that rejecting an action for tortious interference with parental rights would leave a gap in protection of the relationship between a parent and child).

¹⁴⁷ See *id.* at 559 (acknowledging that when a parent is separated from their child by a third party without due process, the parent should be able to recover through tort for the loss of companionship, anguish, and expenses). Elements of this tort include (1) the parent bringing the complaint has a right to establish a relationship with the child; (2) a party intentionally interferes with that parent’s right by removing or detaining the child without consent or prevents the parent from exercising their rights; (3) the interference caused harm to the relationship with the child; and (4) damage resulted. *Id.* at 562 (quoting *Kessel v. Leavitt*, 511 S.E.2d 720, 765–66 (W. Va. 1998)).

¹⁴⁸ See *Cosner v. Ridinger*, 882 P.2d 1243, 1247 (Wyo. 1994) (noting that public policy considerations for creating a tort for interference with parental rights include placing the child in the middle of a vicious lawsuit, the tort would be used as a weapon in disputes, and the law should not provide a means to increase family hostility). This tort also does not apply to deprivation of visitation rights; it is limited to when a one parent is the primary custodial parent and that parent is deprived of their right. See *Kessel*, 511 S.E.2d at 766 (holding that a parent cannot bring an interference with parental relationship claim if both parents have equal rights); *Cosner*, 882 P.2d at 1246–47; PETER NASH SWISHER ET AL., 13 VIRGINIA PRACTICE SERIES: TORT AND PERSONAL INJURY LAW § 9:2 (2013) (explaining that if both parents have an equal right to custody, this tort does not apply).

¹⁴⁹ See *infra* notes 154–236 and accompanying text.

¹⁵⁰ See *infra* notes 154–236 and accompanying text.

¹⁵¹ See *infra* notes 154–167 and accompanying text.

remedies fail to adequately account for parental alienation and that revising the best interest of the child standard would be the best way to prevent it.¹⁵² Finally, Part C proposes the increased use of the therapeutic intervention approach to treat existing instances of parental alienation.¹⁵³

A. Family Law as the Best Remedy

Family law is the appropriate forum for families dealing with parental alienation because it prioritizes the child's well-being.¹⁵⁴ Most states have declared a strong public policy within the context of family law to promote the welfare of the child and to promote contact between the child and both parents.¹⁵⁵ This is in contrast to tort actions, where the focus is on liability and damages for the alienated parent.¹⁵⁶ Because parental alienation is damaging to both the child and the alienated parent, and it infringes on the child's interest in having a loving relationship with both parents, the appropriate judicial forum is one that takes both interests into account, but keeps the focus on the child.¹⁵⁷

Family law's unique ability to manage the case can facilitate remedies that attempt to salvage the parent-child relationship.¹⁵⁸ The family court that first enters a custody order maintains jurisdiction over the case, so that same court can be actively involved with the family for as long as the alienation

¹⁵² See *infra* notes 168–209 accompanying text.

¹⁵³ See *infra* notes 210–236 and accompanying text.

¹⁵⁴ See *In re Marriage of Segel*, 224 Cal. Rptr. 591, 595 (Ct. App. 1986) (noting that a parent who is having issues regarding visitation should seek relief in family court because the problem involves the best interest of the child, not the parent); *Davis v. Hilton*, 780 So. 2d 974, 977 (Fla. Dist. Ct. App. 2001) (Gross, J., concurring) (explaining that the family court is best suited to address issues pertaining to a child); see also Varnado, *supra* note 20, at 127, 128 (noting that some professionals think that family court should have jurisdiction over any claim related to the parent-child relationship and arguing that preserving relationships is central to family law). When there is a violation of a court agreement, family court is the best mechanism to remedy the situation. See *Davis*, 780 So. 2d at 976.

¹⁵⁵ See, e.g., CAL. FAM. CODE § 3020 (West 2004 & Supp. 2015) (indicating that it is the public policy of the state to assure children and parents have frequent and continuing contact except when it would not be in the child's best interest); FLA. STAT. ANN. § 61.13 (West 2006 & Supp. 2012) (declaring that it is the public policy of the state that each child have frequent and continuing contact with both parents and encourage the parents to share in the responsibilities and joys of childrearing).

¹⁵⁶ See Varnado, *supra* note 20, at 128 (noting that preserving relationships is the focus of family law, whereas compensating for injuries and deterring behavior is the focus of tort law).

¹⁵⁷ See *In re Segel*, 224 Cal. Rptr. at 595; *Davis*, 780 So. 2d at 977 (Gross, J., concurring); see also Fidler & Bala, *supra* note 44, at 20–21 (describing the negative and potentially long-lasting effects of parental alienation on children); Varnado, *supra* note 20, at 127–28 (noting that preserving relationships is central to family law).

¹⁵⁸ See Varnado, *supra* note 20, at 128 & nn.91–92 (noting that the purpose of family law is to promote the parent-child relationship and enforce parental rights, whereas tort law serves as more of a deterrent and provides monetary relief).

is present.¹⁵⁹ This continuing and consistent oversight is likely more effective in reducing alienating behavior than a one-time monetary award available in tort law.¹⁶⁰ The family court also has the ability to order family therapy, which could provide professional help to address the underlying conflict and emotional issues causing the alienation.¹⁶¹

Furthermore, family law and tort law remedies do not complement each other.¹⁶² Allowing a parent to simultaneously pursue both options would not be in the child's best interest due to the effect on the child from the increase in litigation.¹⁶³ The child may even have to testify against a parent, which would likely exacerbate the alienation.¹⁶⁴ Similarly, a suit for monetary damages might increase the alienating parent's hostility while only temporarily providing relief to the alienated parent.¹⁶⁵ Additionally, the money required to litigate a tort action or pay the damage award would deplete the funds available

¹⁵⁹ See Claudia G. Catalano, Annotation *Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision—Other Than No Significant Connection/Substantial Evidence*, 60 A.L.R. 6th 193 (2010) (explaining that the court that enters an initial custody determination has continuing jurisdiction); Fidler & Bala, *supra* note 44, at 28 (noting that case management, where there is continuity of the judge, allows for clear expectations and consequences for the parents).

¹⁶⁰ See Fidler & Bala, *supra* note 44, at 28 (explaining that having continuity in judges allows clear expectations to be set for the parents in cases of alienation).

¹⁶¹ See Darnell, *supra* note 93, at 483–84 (explaining a reunification therapy approach to parental alienation).

¹⁶² See Varnado, *supra* note 20, at 128 (explaining that the dual nature of the harm to the child and the emotional distress to the parent demonstrates that neither family law nor tort law can provide complete relief).

¹⁶³ See *Hershey v. Hershey*, 467 N.W.2d 484, 489 (S.D. 1991) (noting that the best interest of the child and an increase in litigation are policy reasons for not recognizing a tort action for interference with the parent-child relationship); Rosenberg, *supra* note 144, at 140 (noting that limiting parents' involvement in litigation is in the best interest of the child). It is not in the best interest of the child or in the interest of the courts to facilitate using tort relief for child custody issues when other remedies exist. See *Hershey*, 467 N.W.2d. at 489. *But see* Varnado, *supra* note 20, at 128 (explaining that limiting parental alienation to only tort law or only family law is a mistake because the parent's injuries are not fully addressed by either option).

¹⁶⁴ See Joy M. Feinberg & Lori S. Loeb, *Custody and Visitation Interference: Alternative Remedies*, 12 J. AM. ACAD. MATRIM. LAW. 271, 279 (1994) (explaining that a primary concern for courts in recognizing a tort for interference with custody is that a child might have to testify against a parent); see also *Larson v. Dunn*, 460 N.W.2d 39, 45 (Minn. 1990) (considering the torment a child must endure when being forced to testify against a parent, such as in this case where the father submitted an affidavit from the child regarding the actions of her mother and grandmother).

¹⁶⁵ See Feinberg & Loeb, *supra* note 164, at 279 (explaining that courts have refused to recognize a tort action because it would not be in the child's best interest and might create hostility between the parents); Kathleen Niggemyer, Comment, *Parental Alienation Is Open Heart Surgery: It Needs More Than a Band-Aid to Fix It*, 34 CAL. W. L. REV. 567, 583–84 (1998) (“[S]imply providing a one-time tort remedy for the alienated parent is akin to slapping a Band-Aid on a major wound While the availability of a tort remedy may serve as a deterrent, the parents and children affected by parental alienation need on-going healing as well.”).

to make child support payments.¹⁶⁶ Ultimately, courts should deal with parental alienation only from a family law perspective.¹⁶⁷

B. Revising the Best Interest Standard to Prevent Parental Alienation

Even though family law is superior to tort law in dealing with parental alienation, family law can and should focus more on prevention.¹⁶⁸ Subsection 1 discusses the concerns with family law remedies.¹⁶⁹ Subsection 2 then argues that parental alienation should be added to the best interest standard.¹⁷⁰

1. Inadequacies of Family Law Remedies

The current status of the best interest standard in family law leaves too much discretion to judges regarding parental alienation.¹⁷¹ Judges have used existing best interest factors, such as support of the other parent's relationship with the child, to relate parental alienation to the child's best interest, but this approach relies too much on the judge's discretion.¹⁷² In states where judges may consider any relevant factors to the child's best interest, it is entirely up to the judge as to whether parental alienation is a factor in the custody determination.¹⁷³

Additionally, given the psychological complexity of parental alienation, the mere presence of parental alienation should not automatically switch custody to the alienated parent.¹⁷⁴ Although the presence of parental

¹⁶⁶ See Feinberg & Loeb, *supra* note 164, at 280 (citation omitted) (noting a case where the court acknowledged that ordering monetary damages actually hurt the child because it concerned money that would otherwise be available for support); see also Wood v. Wood, 338 N.W.2d 123, 127 (Iowa 1983) (Wolle, J., dissenting) (explaining that the recognition of a tort for interference with custody is unlikely to be in the child's best interest).

¹⁶⁷ See *infra* notes 171–236 and accompanying text.

¹⁶⁸ See *infra* notes 171–209 and accompanying text.

¹⁶⁹ See *infra* notes 171–197 and accompanying text.

¹⁷⁰ See *infra* notes 198–209 and accompanying text.

¹⁷¹ See SCHEPARD, *supra* note 76, at 164 (criticizing the standard for creating too much uncertainty). But see SANFORD N. KATZ, FAMILY LAW IN AMERICA 114–15 (2d ed. 2014) (explaining that the movement to codify the best interest standard in statutes has minimized bias because judges have to make findings of fact to support their decisions).

¹⁷² See Bowman v. Engelhart, 977 N.Y.S.2d 457, 459 (App. Div. 2013) (noting that the parents' animosity and inability to communicate made joint custody an impossibility, and the granting of sole custody to father was substantiated based on the mother minimizing his role in the lives of their children). Evidence of the mother's alienating behavior included telling the children they would move to California to find "a new daddy" who could be trusted and was not "broken," encouraging the children to spend time in the mother's separate bedroom to be away from the father when the parties lived together, and degrading the father in front of the children. See *id.*

¹⁷³ See *In re Custody of Zia*, 736 N.E.2d 449, 454 (Mass. App. Ct. 2000) (noting that a judge may consider factors pertinent to a child's present and future best interest).

¹⁷⁴ See Palazzolo v. Mire, 10 So. 3d 748, 775–77 (La. Ct. App. 2009) (reviewing the facts of the case with respect to each of the best interest factors and determining that the alienating parent

alienation may qualify as a change of circumstances, the court still needs to make the determination that a change in custody is in the child's best interest given the current custodial arrangement.¹⁷⁵ Considering parental alienation with respect to the other best interest factors and in the context of modification, it is not always so clear-cut that the alienating parent should automatically lose custody.¹⁷⁶

Immediately changing custody, even on a temporary basis, could be damaging to the alienated child.¹⁷⁷ With a custodial arrangement already in place, other best interest factors, such as the child's preference, the amount of contact between the child and the parent, and the child's adjustment to their home, school, and community become especially important in considering whether custody should change.¹⁷⁸ If the child is attached significantly to the alienating parent and this parent is also her primary caretaker, abruptly removing the child would potentially violate the child's preferences as to

should have custody); *Wiederholt v. Fischer*, 485 N.W.2d 442, 445 (Wis. Ct. App. 1992) (affirming that the potential risk of harm to the children because their adamant opposition to living with their father outweighed any benefits in transferring custody); *Proof of Facts*, *supra* note 47, § 10 at 265–66 (explaining that even when a parent exhibits alienation behaviors, the court may not change custody after considering other best interest factors). In 2009, in *Palazzolo v. Mire*, the Louisiana Court of Appeal reasoned that custody should be awarded to the parent exhibiting alienating behaviors after considering all of the other best interest factors. *See* 10 So. 3d at 775–77. Similarly, in 1992 in *Wiederholt v. Fischer*, the Wisconsin Court of Appeals found that despite alienating behaviors by the mother, switching custody to father was not in the children's best interest because the psychological impact on the children was too risky. *See* 485 N.W.2d at 444–45.

¹⁷⁵ *See* *Hendrickson v. Hendrickson*, 603 N.W.2d 896, 901 (N.D. 2000) (explaining that in deciding whether to change custody, a court must first look at whether there has been a significant change in circumstances, and then whether a change in custody would be in the best interest of the child); *Proof of Facts*, *supra* note 47, § 8 at 257–58 (noting that once the threshold for a change of material circumstances is met, the court will consider the best interest of the child).

¹⁷⁶ *See* *Palazzolo*, 10 So. 3d at 775–77 (weighing all the best interest factors and concluding that they favored the alienating parent); *see also, e.g.*, CAL. FAM. CODE § 3011 (West 2004 & Supp. 2015) (enumerating all of different best interest factors a court can take into account); MINN. STAT. § 518.17 (2012) (same); *Grove v. Grove*, 386 S.W.3d 603, 607 (Ark. Ct. App. 2011) (explaining that the welfare of the child is the primary consideration in custody cases and giving examples of important best interest factors when making changes to custody or visitation); *Proof of Facts*, *supra* note 47, §§ 7, 9 at 256–65 (listing the best interest factors that concern parental alienation when considering a change in custody and best interest factors that relate to determining custody generally).

¹⁷⁷ *See* Matthew J. Sullivan & Joan B. Kelly, *Legal and Psychological Management of Cases with an Alienated Child*, 39 FAM. CT. REV. 299, 313 (2001) (noting that children experience separating from the parent with whom they had a primary relationship as wrenching and abrupt).

¹⁷⁸ *See* *Palazzolo*, 10 So. 3d at 775–77; *see also, e.g.*, CAL. FAM. CODE § 3011 (listing all of the best interest factors the court can consider); MINN. STAT. § 518.17 (2012 & Supp. 2013) (same); *Grove*, 386 S.W.3d at 607; *Proof of Facts*, *supra* note 47, §§ 7, 9 at 256–65 (listing the best interest factors that relate to parental alienation and the best interest factors generally); *see also* *Schick v. Schick*, 900 N.Y.S.2d 337, 337–38 (App. Div. 2010) (indicating that the record supported that the child was alienated from his father but that it was not in the child's best interest to change custody to the father).

their primary caretaker.¹⁷⁹ It would also upend the stability of the child's environment.¹⁸⁰

Researchers also do not support a change in custody because of the trauma it causes a child.¹⁸¹ When custody is changed so dramatically, it can exacerbate the child's sense of helplessness.¹⁸² The change in custody may also have negative effects because the new custodial parent cannot effectively parent the child.¹⁸³ Merely changing custody without addressing the child's underlying fear and anger may even lead to destructive behaviors, such as running away or suicide.¹⁸⁴ Within the framework of the child's best interest, the judge's objective should be to reconnect the child and the alienated parent, but not by awarding custody to the alienated child at the expense of the child's well-being.¹⁸⁵

The family court should also be sensitive to when the relationship cannot be salvaged, in which case, switching custody would be even more detrimental.¹⁸⁶ In very severe cases of parental alienation, particularly with older children, interventions may be unsuccessful.¹⁸⁷ In these instances, continuing to force intervention strategies or contact are no longer in the

¹⁷⁹ See *Grove*, 386 S.W.3d at 607 (noting that changes to custody are always viewed in light of the child's welfare); *Palazzolo*, 10 So. 3d at 775–77; see also, e.g., CAL. FAM. CODE § 3011 (listing the best interest factors); MINN. STAT. § 518.17 (same); *Proof of Facts*, *supra* note 47, §§ 7, 9 at 256–65 (listing the best interest factors that relate to parental alienation and the best interest factors generally).

¹⁸⁰ See *Palazzolo*, 10 So. 3d at 775–77; JOHNSTON ET AL., *supra* note 24, at 371 (noting that changing custody to the alienated parent is a concern among victims' advocates); see also, e.g., CAL. FAM. CODE § 3011 (listing the best interest factors); MINN. STAT. § 518.17 (same); *Grove*, 386 S.W.3d at 607 (same); *Proof of Facts*, *supra* note 47, §§ 7, 9 at 256–65 (listing the best interest factors that relate to parental alienation and the best interests factors generally).

¹⁸¹ See *Sullivan & Kelly*, *supra* note 177, at 313 (explaining that a change in custody can cause a child distress and does not resolve the child's feelings of anger toward the alienated parent).

¹⁸² See *id.*; see also *Johnston*, *supra* note 31, at 767 (noting that a risk of insisting contact between the child and the alienated parent is the child feeling helpless, unheard, and dismissed).

¹⁸³ See *Sullivan & Kelly*, *supra* note 177, at 313 (explaining that a change in custody does not resolve feelings of anger and may cause the child to act out by running away or being self-destructive). The child might even further reject the parent in retaliation for obtaining a change in custody. See *id.*

¹⁸⁴ See *id.*; see also *Fidler & Bala*, *supra* note 44, at 30 (explaining how imposing a "parentectomy," or separation from the primary caretaker, puts the child at a greater risk of ultimately losing contact with the alienated parent). In one instance, a child hanged himself because he did not want to be in the custody of his father. See *ELLIS*, *supra* note 31, at 224.

¹⁸⁵ See *Davis*, 780 So. 2d at 977 (Gross, J., concurring) (explaining that family court is best suited to address issues pertaining to a child); see also *Varnado*, *supra* note 20, at 128 (noting that preserving relationships is central to family law).

¹⁸⁶ See *Bala et al.*, *supra* note 30, at 133 (noting that in some instances continuing to enforce contact with the alienated parent might not be in the child's best interest).

¹⁸⁷ See *Sullivan & Kelly*, *supra* note 177, at 313 (explaining that sometimes it is impossible to restore the relationship between an alienated parent and the child).

child's best interest.¹⁸⁸ Because states have deemed the child's best interest as the primary concern in child custody cases, this should outweigh the alienated parent's desire for, and right to, contact with the child.¹⁸⁹ The family court must balance when the child's best interest does not align with a parent's desire to be involved with his or her child, and the child's best interest should outweigh the parent's interest every time.¹⁹⁰

In some situations, upon consideration of the totality of all the circumstances, modification of custody could still be warranted.¹⁹¹ Using parental alienation as a basis for modification of custody in the first instance, however, prioritizes the parents' interests instead of the child's.¹⁹² Moreover, it is hard to attribute the alienation only to the alienating parent because there are po-

¹⁸⁸ See *id.* (explaining that a therapy session is usually used for the alienated parent to tell the child that they will no longer pursue legal remedies to reunify, but that they love the child and that the parent is available in the future if the child wishes to have contact); see also Johnston, *supra* note 31, at 767 (explaining that risks of insisting that the child have contact with the alienated parent include the child remaining involved in the conflict between the parents, being exposed to hostility and abuse between the parents, being subject to the frustrations of the alienated parent, and the child feeling overwhelmed, helpless, and dismissed).

¹⁸⁹ See, e.g., CAL. FAM. CODE § 3020 (West 2004 & Supp. 2015) (articulating that children should have frequent and continuing contact with both parents except when it is not in the child's best interest); MASS. GEN. LAWS ch. 208, § 31 (2007 & Supp. 2014) (explaining that a custody determination will be based on the happiness and welfare of the children). *But see* Fidler & Bala, *supra* note 44, at 23, 31 (noting that sometimes young adults who experienced parental separation as children report that, despite their resistance, they would have wanted more contact with their alienated parent).

¹⁹⁰ See *Proof of Facts*, *supra* note 47, § 7 at 256–57 (listing the best interest of the child factors to consider when modifying custody in a case of parental alienation); see also Hibbard v. Hibbard, 55 A.3d 301, 308 (Conn. App. Ct. 2012) (noting that a court must find it to be in the child's best interest to modify a custody order).

¹⁹¹ See *Proof of Facts*, *supra* note 47, § 5 at 252–55 (noting that a parent's interference should not be the sole basis for switching custody because all of the best interest factors must be considered); see also JOHNSTON ET AL., *supra* note 25, at 388 (noting a change of custody should only be considered when the alienating parent is found to be psychotic or have serious parenting deficits, or when the alienating parent is emotionally abusive); Johnston, *supra* note 31, at 774 (arguing that changes in custody should not be based solely on the alienating parent's behavior); Sullivan & Kelly, *supra* note 177, at 313 (explaining that in some cases, changing custody has resulted in negative outcomes because the alienated parent has a limited capacity to parent the child).

¹⁹² See CAL. FAM. CODE § 3020 (noting that it is the public policy of the state to promote frequent and continuing contact with both parents except when that contact would not be in the best interest of the child); Everett v. Everett, 433 So. 2d 705, 708 (La. 1983) (“An award of custody is not a tool to regulate human behavior. The only object is the best interest of the child.”); *Proof of Facts*, *supra* note 47, § 5 at 252–55 (explaining that it is the policy of states to promote frequent and continuing contact with both parents subject to the child's best interest); Fidler & Bala, *supra* note 44, at 29 (asking important questions about whether changing custody is the best option, such as whether it is likely to cause more harm to the child); see also Joan S. Meier, *Parental Alienation Syndrome and Parental Alienation: Research Reviews*, NAT'L ONLINE RES. CTR. ON VIOLENCE AGAINST WOMEN 13 (Jan. 2009), http://www.ncdsv.org/images/VAWnet_PAS_Meier_1-2009.pdf, archived at <http://perma.cc/K28A-H2RD> (noting that in cases of parental alienation, the goal should not be to undermine the child's relationship with the alienating parent, but rather to strengthen the relationship with the alienated parent).

tentially a host of causes in addition to the behavior of the alienating parent.¹⁹³ Additionally, switching custody may only address the child's avoidant behavior, and not the underlying feelings or ideas they have about the alienated parent.¹⁹⁴

Both withholding child support and finding the alienating parent in contempt are also problematic because they react to the parent's behavior rather than trying to assist the child in coping with the alienation.¹⁹⁵ These two remedies emphasize sanctions against the alienating parent rather than trying to repair the relationship between the child and the alienated parent.¹⁹⁶ This may only exacerbate the child's animosity toward the alienated parent for taking punitive action against the alienating parent.¹⁹⁷

2. Making Parental Alienation an Explicit Best Interest Factor

Instead of relying on other factors to capture the damaging behaviors involved in parental alienation, states' best interest standards should explicitly reflect the need for parents to refrain from alienation.¹⁹⁸ Preventing parental alienation by discouraging alienating behaviors should be a legislative and judicial policy goal.¹⁹⁹ Naming parental alienation as a best interest

¹⁹³ See Williams, *supra* note 83, at 269–70 (noting that there is a difference between something being *the* cause and *a* cause, and this is primarily why the tort of alienation of affection for spouses was eliminated).

¹⁹⁴ See Friedlander & Walters, *supra* note 117, at 104. Alienation with respect to the child refers to (1) the distorted ideas the child has about the alienated parent; (2) the child's feelings about the alienated parent; and (3) the child's avoidant behavior towards the alienated parent. See *id.* Switching custody may only address the child's avoidant behavior and ignore the other issues. See *id.*

¹⁹⁵ See *F.S.-P. v. A.H.R.*, 844 N.Y.S.2d 644, 645 (Fam. Ct. 2007) (explaining that child support payments can be stopped when a parent interferes with the other parent's visitation through alienation); *Woodward v. Woodward*, 776 N.W.2d 567, 570 (N.D. 2009) (explaining that contempt requires intent to violate a court order); Hill, *supra* note 86, at 559–60 (noting that courts usually find child support is a duty independent of visitation); *id.* at 662 (explaining that contempt as a remedy is inadequate because it does not address the child's emotional harm).

¹⁹⁶ See *Woodward*, 776 N.W.2d at 570 (noting that the father submitted an affidavit explaining that the mother had berated the father in front of the children, calling "him a 'blockhead' and an 'idiot'" and calling his new wife "Cruella de Ville"); Varnado, *supra* note 20, at 136 (explaining that some parents may pursue contempt orders, but that this might only exacerbate the problem because the child may perceive it as the alienated parent causing problems for the alienating parent).

¹⁹⁷ See *Woodward*, 776 N.W.2d at 570, 571 (the court affirmed the lower court's finding that the mother had undermined the relationship with the children and their father); see also Feinberg & Loeb, *supra* note 164, at 276 (articulating that although contempt may help with access to the child, it does not stop the alienation); Varnado, *supra* note 20, at 136.

¹⁹⁸ See Robert E. Emery, *Parental Alienation Syndrome: Proponents Bear the Burden of Proof*, 43 FAM. CT. REV. 8, 11–12 (2005) (criticizing the fact that judges make custody decisions based on legal guidelines—like the best interest standard—that are vague).

¹⁹⁹ See H.R. 5436, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013) (proposing that parental alienation be a required statutory factor that the court considers for custody); A.B. A02557, 236th

factor would make it clear from the initial custody order that these behaviors will not be tolerated.²⁰⁰ The strategy of the family courts to modify custody orders is only reacting to the problem of parental alienation rather than trying to prevent it.²⁰¹ Although the best interest factors that emphasize cooperation and support of the other parent may encourage the court to include parental alienation in its initial analysis, revising the best interest factors to include parental alienation explicitly would send a clear message to parents that such behavior is being closely monitored by the court.²⁰² Early intervention by the court can help identify and keep troublesome behaviors by the parents from developing into parental alienation.²⁰³

Furthermore, including parental alienation in the best interest standard would support states' stated policy goal for children to have healthy and continuing relationships with both parents.²⁰⁴ Children benefit immensely when they have access to and establish positive relationships with both par-

Leg. Sess., Reg. Sess. (N.Y. 2012) (proposing that during any type of divorce, separation, or custody proceeding, the court shall order that the parents not interfere with the other parent's relationship by seeking to alienate the child); S. 74, 89th Leg., Reg. Sess. (S.D. 2014) (incorporating whether a parent has intentionally alienated or interfered with the other parent's relationship with the child as a best interest factor for joint physical custody); *see also* H.R. 2155, 23d Leg., Reg. Sess. (Haw. 2005) (noting that parental alienation syndrome is a disorder that must be taken into consideration when making custody decisions); H.R. 2262, 2001 Sess. (Va. 2000) (proposing that the best interest factor explicitly include parental alienation syndrome).

²⁰⁰ *See* *Yetter v. Jones*, 706 N.Y.S.2d 782, 785 (App. Div. 2000) (reasoning that, due to the hostility between the parents and both parents' interference with the child's relationship with the other parent, it was in the child's best interest not to award joint custody).

²⁰¹ *See* ELLIS, *supra* note 31, at 222 (noting that as the hostility between the parents persists, the child's reactions to the alienation worsen); *see also* KATZ, *supra* note 171, at 118–19 (noting that parental alienation could be alleged to modify custody).

²⁰² *See* A.B. A02557 (noting the justification for proposing that the court always order the parents not to alienate the child from the other parent). "Children of stormy relationships ought to have the right to be free from the indignity of witnessing their parents disparage each other. They ought as well to have the right to be free from being manipulated to the benefit or detriment of either parent." *Id.*

²⁰³ *See* ELLIS, *supra* note 31, at 224 (noting that early intervention through the courts can be a tool in averting the development of parental alienation). Challenged family functioning may cause tension in parent-child relationships even before divorce. *See* Moné et al., *supra* note 62, at 644. In some instances, the parent might not be overtly sabotaging the child's relationship with the other parent, but negative attitudes, antagonism toward the other parent, and excusing the child's bad behavior toward the other parent can create the alienation. *See* *Krukiel v. Krukiel*, No. MMXFA950074621S, 2007 WL 241257, at *5 (Conn. Super. Ct. 2007) (recounting an expert's testimony that the mother did not explicitly sabotage the father's relationship with their sons but that her negative attitude, repetitive questions, antagonism, and excusing of the sons' behavior led to significant alienation).

²⁰⁴ *See, e.g.*, CAL. FAM. CODE § 3020 (West 2004 & Supp. 2015) (noting that it is public policy to facilitate the relationship between parent and child unless it would not be in the child's best interest); MASS. GEN. LAWS ch. 208, § 31 (2007 & Supp. 2014) (explaining that the happiness and welfare of the children shall determine their custody); *see also* KATZ, *supra* note 171, at 118–19 (noting that parental alienation could be alleged to modify custody).

ents.²⁰⁵ Parental alienation directly undermines that goal by using specific mechanisms of manipulation and interference to condition the child to think negatively about his or her other parent.²⁰⁶ Such behavior is not in the child's best interest and should therefore be identified in the factors that a court looks into when making initial custody decisions.²⁰⁷ Other statutory best interest factors may capture some damaging behaviors, but this forces courts to exercise their discretion to connect these factors to parental alienation, rather than mandating that they do so.²⁰⁸ Consequently, alienating be-

²⁰⁵ See Baker & Ben-Ami, *supra* note 47, at 485 (suggesting that the proven negative effects of parental alienation on children should be used to urge divorcing parents not to engage in alienation); Fidler & Bala, *supra* note 44, at 23 (noting that children of divorce do best when they have good relationships with both parents); see also CAL. FAM. CODE § 3020 (explaining that it is the public policy of the state to facilitate the relationship between a child and their parent); MASS. GEN. LAWS ch. 208, § 31 (explaining that the child should be assured frequent and continued contact with each parent when custody is shared).

²⁰⁶ See Varnado, *supra* note 20, at 120–22 (explaining techniques used by the alienating parent, such as denying the alienated parent access to the child's medical records). Alienating techniques may include: destroying pictures of the alienated parent, blaming the alienated parent for financial problems, refusing to communicate with the alienated parent, interfering with the alienated parent's time with the child, refusing to allow the child to keep presents given by the alienated parent, rewarding the child for rejecting the alienated parent, minimizing the alienated parent's role in the child's life, instilling fear in the child of spending time with the alienated parent, and changing the child's last name. See *J.F. v. L.F.*, 694 N.Y.S.2d 592, 597 n.3 (Fam. Ct. 1999) (providing examples of how the mother interfered with the children's relationship with their father); Darnell, *supra* note 20, at 328 (delineating the most common symptoms of parental alienation in the alienating parent); Fidler & Bala, *supra* note 44, at 19 (listing strategies that alienating parents use); Varnado, *supra* note 20, 120–22 (discussing techniques used by alienating parents).

²⁰⁷ See, e.g., CAL. FAM. CODE § 3011 (listing all of the factors for considering the best interest of a child in custody determinations, including the health, safety, and welfare of the child); *id.* § 3020 (explaining that it is the state's public policy to encourage parents to share the responsibility of raising their children and for children to have frequent contact with each parent); MASS. GEN. LAWS ch. 208, § 31 (noting that the child should be assured frequent and continued contact with each parent when parents share custody). Many states already include in their best interest factor analysis the willingness of the parents to cooperate and support the child's relationship with the other parent. See e.g., N.D. CENT. CODE § 14-09-06.2 (2009 & Supp. 2013) (including as a factor each parent's willingness to "facilitate and encourage a close and continuing relationship between the other parent and the child"); VA. CODE ANN. § 20-124.3 (2008 & Supp. 2014) ("The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether the parent has unreasonably denied the other parent access to or visitation with the child."); see also *In re Marriage of Wanstreet*, 847 N.E.2d 716, 720 (Ill. App. Ct. 2006) (noting that the parents lacked the level of cooperation necessary for joint custody and that awarding sole custody to one parent was in the children's best interest).

²⁰⁸ Cf. *Bowman*, 977 N.Y.S.2d at 459 (noting that the parents' animosity and inability to communicate made joint custody an impossibility, and the granting of sole legal custody to father was substantiated based on the mother minimizing his role in the lives of the children). Many states already include in their best interest factor analysis the willingness of the parents to cooperate and support the child's relationship with the other parent. See, e.g., N.D. CENT. CODE § 14-09-06.2 (including as a best interest factor the parents' willingness to encourage the child's relationship with the other parent); VA. CODE ANN. § 20-124.3 (listing a willingness to foster a relationship with the other parent and whether the parent has denied visitation as factors for consideration); *In re Wanstreet*, 847 N.E.2d at 720 (noting that the parents lacked the level of cooperation

haviors on the part of the parents should be a factor in making initial custody decisions to protect the child's relationship with both parents and act as a deterrent.²⁰⁹

C. Implementing a Therapeutic Intervention Approach

When a parent seeks modification because of existing parental alienation, the court should first implement a therapeutic intervention approach to address the practical and psychological effects of the alienation.²¹⁰ Immediately changing custody to the alienated parent is too traumatic for an alienated child and such action prioritizes the parents' needs over the child's best interest.²¹¹ Although the parental alienation should be considered a best interest factor in the court's decision regarding the request for modification, the existence of the current custodial arrangement emphasizes the importance of other best interest factors, such as the preference of the child, the child's primary caretaker, and the amount of contact between the parent and the child.²¹²

Leaving the child in place while trying to address the parental alienation with a therapeutic intervention would also be in the child's best interest.²¹³ A therapeutic intervention approach would work to repair the child's relationship with the alienated parent and minimize the conflict between the

necessary for joint custody and that awarding sole custody to one parent was in the children's best interest).

²⁰⁹ See MASS. GEN. LAWS ch. 208, § 31 (2007 & Supp. 2014) ("In determining whether temporary shared legal custody would not be in the best interest of the child, the court shall consider all relevant facts including . . . whether the parties have a history of being able and willing to cooperate in matters concerning the child."); Niggemyer, *supra* note 165, at 588 (explaining that for parental alienation, deterrence rather than punishment is in the best interest of the child).

²¹⁰ See Johnston et al., *supra* note 49, at 316 (explaining that the goal of a family-focused therapeutic intervention is to transform the child's beliefs into more realistic ones anchored in experiences).

²¹¹ See Fidler & Bala, *supra* note 44, at 30 (noting that changing custody can put the child at a greater risk of losing contact with the alienated parent); see also *supra* notes 181–185 and accompanying text (explaining why a change in custody is not always a good solution to parental alienation).

²¹² See, e.g., CAL. FAM. CODE § 3011 (West 2004 & Supp. 2015) (listing all the best interest factors); MINN. STAT. § 518.17 (2012 & Supp. 2013) (same); *Grove*, 386 S.W.3d at 607 (explaining that the primary consideration of the court is the child's best interest); SCHEPARD, *supra* note 76, at 163–64 (giving examples of typical best interest factors).

²¹³ See *Grove*, 386 S.W.3d at 607 (noting that the child's welfare is the primary consideration when making changes to custody); *Palazzolo*, 10 So. 3d at 775–77 (analyzing all the best interest factors and concluding that the children should remain with the alienating parent); JOHNSTON ET AL., *supra* note 24, at 371 (noting that there are strong objections to changing custody to the alienated parent); see also, e.g., CAL. FAM. CODE § 3011 (listing all the best factors); MINN. STAT. § 518.17 (2012) (same); SCHEPARD, *supra* note 76, at 163–64 (giving examples of typical best interest factors).

parents without completely upending the child's environment.²¹⁴ The parties would need to be closely monitored during this process, however, to manage the ongoing conflict and quickly resolve any issues that may arise.²¹⁵ The therapeutic intervention approach would implement family therapy, case management, and a parenting coordinator.²¹⁶

Court-ordered family therapy would give the child and the alienated parent the opportunity to repair their relationship and work to minimize the animosity between the parents.²¹⁷ Simply ordering the alienated parent and the child into therapy may not be sufficient because it ignores the influence of the alienating parent on the child.²¹⁸

The court would also need to effectively manage a case involving parental alienation to minimize the conflict and facilitate the family therapy.²¹⁹ Assigning the case to one specific judge that can manage the case from the beginning is important for continuity in decision making.²²⁰ At the same time

²¹⁴ See JOHNSTON ET AL., *supra* note 24, at 372 (advocating for a family-focused intervention that works to shift the child's distorted view of the alienated parent and encourages each parent to support the child's relationship with the other); *id.* at 375 (explaining that a therapeutic team of professionals is an ideal approach to dealing with parental alienation); Niggemyer, *supra* note 165, at 587 (arguing that a purely legal solution to parental alienation is not in the best interest of the child because it does not address the alienating parent's behavior, so a parenting coordinator and therapist should be used); see also, e.g., CAL. FAM. CODE § 3011 (listing all the best factors); MINN. STAT. § 518.17 (same); *Grove*, 386 S.W.3d at 607 (explaining that the primary consideration of the court is the child's best interest); SCHEPARD, *supra* note 76, at 163–64 (giving examples of typical best interest factors).

²¹⁵ See Sullivan & Kelly, *supra* note 177, at 299, 301 (noting that conflict between the parents exacerbates the alienation).

²¹⁶ See *infra* notes 217–236 and accompanying text (describing a therapeutic intervention approach); see also Paz Toren et al., *Sixteen-Session Group Treatment for Children and Adolescents with Parental Alienation and Their Parents*, 41 AM. J. FAM. THERAPY 187, 193 (2013) (finding that a therapeutic intervention for children and parents experiencing parental alienation decreased anxiety and depression levels of the children and increased cooperation between the parents); Niggemyer, *supra* note 165, at 588 (advocating for the use of parenting coordinators and therapy).

²¹⁷ See Darnell, *supra* note 93, at 483–84. The therapist can impart strategies to help the child transition from one parent to the other for visitation, monitor the interactions between the parents, and provide suggestions to make visits better for the child and parent. See Sullivan & Kelly, *supra* note 177, at 301.

²¹⁸ See Meier, *supra* note 192, at 13 (noting that because the treatment goal is to support the relationship between the alienated parent and the child, a combination of therapy between the child and alienated parent, therapy for the child, and therapy for the alienating parent may be appropriate). The responsibility for repairing the relationship is on both parents, not just the alienated parent. See Sullivan & Kelly, *supra* note 177, at 300.

²¹⁹ See Sullivan & Kelly, *supra* note 177, at 301 (noting that conflict between the parents strengthens the child's allegiance to the alienating parent).

²²⁰ See JOHNSTON ET AL., *supra* note 192, at 374 (noting that effective intervention takes place within a rule-oriented framework to manage the conflict and implement the treatment); Sullivan & Kelly, *supra* note 177, at 300 (advocating that one judge should be assigned to the case to ensure continuity in decision making about intervention and treatment).

the family undergoes therapy, the court should try to maintain the alienated parent's role in the child's life.²²¹ The court should also protect the alienated parent's authority in the child's life by making it clear that the alienated parent is still to be consulted for legal decisions regarding the child.²²²

To minimize disputes between the parents, the court's orders should be exceptionally clear and leave no discretion to the parents with respect to visitation with the child.²²³ Any ambiguity in the court's orders can lead to further conflict.²²⁴ Parental conflict strengthens the child's rejection because the child can interpret the conflict as abusive toward the alienating parent.²²⁵ Some specific orders to minimize conflict include eliminating parents' face-to-face contact with each other when the child transitions between visitations, specifying how time with the child is designated, and utilizing computer programs that allow the parents to communicate in writing only.²²⁶ It is also important that the alienating parent not have an opportunity to interfere or intrude on the other parent's time with the child.²²⁷

The court must also take an active role in managing the family therapy.²²⁸ Court orders should be clear on the goal of the therapy, the professionals involved, which family members are involved in the therapy sessions, the limits of confidentiality, permissible forms of communication with the therapist, procedures for resolving disputes, and how therapy can

²²¹ See Sullivan & Kelly, *supra* note 177, at 300–01; see also JOHNSTON ET AL., *supra* note 192, at 374 (specifying that early and timely intervention is important because delays solidify the child's position toward the alienated parent); Mary Lund, *A Therapist's View of Parental Alienation Syndrome*, 33 FAM. & CONCILIATION CTS. REV. 308, 314 (1995) (noting that treatment of parental alienation may include parent-child therapy to bring the parent and child together).

²²² See JOHNSTON ET AL., *supra* note 24, at 374 (explaining that the court should facilitate contact between the child and the alienated parent; unsupervised visits are ideal so the alienated parent is not stigmatized); Sullivan & Kelly, *supra* note 177, at 301 (noting that alienated parents not only lose physical contact with the children but also lose the ability to make legal decisions).

²²³ See Sullivan & Kelly, *supra* note 177, at 301 (suggesting that contact between the alienated parent and the child should be specified in clear and detailed court orders); see also JOHNSTON ET AL., *supra* note 24, at 374 (describing "authoritative case management" as being essential to manage the parents' conflict and restore contact between the alienated parent and the child); Robert A. Evans, *Treatment Considerations with Children Diagnosed with PAS*, 80 FLA. B. J. 69, 72 (2006) (explaining that keeping the child from the alienated parent can make the relationship hard to fix and that children can develop phobic symptoms).

²²⁴ See Sullivan & Kelly, *supra* note 177, at 301 (suggesting that there should be no discretion for the child and the parent as to whether visits with the alienated parent should occur, although they should be manageable for the child).

²²⁵ See *id.*

²²⁶ See *id.* at 306–07. Computer programs can provide an online interface for parents to coordinate parenting time, manage expenses for the child, and share information about the child's health or school activities. Cf. *Co-Parenting—Shared Custody Calendars & Visitation Schedules*, OUR FAMILY WIZARD, <http://www.ourfamilywizard.com/ofw/index.cfm/parents/>, archived at <http://perma.cc/8K6P-A6GV> (last visited Mar. 10, 2015).

²²⁷ See Sullivan & Kelly, *supra* note 177, at 306.

²²⁸ See *id.* at 311.

be terminated.²²⁹ For the therapy to be effective, both parents should be included and actively participate.²³⁰ This requires the support of the court to order participation and potential sanctions against the parents if they do not comply.²³¹ Moreover, as the alienating parent often resists contributing resources to assist the repair of the relationship with the alienated parent, the court should make clear who pays for the therapeutic services.²³²

Finally, although the family is undergoing therapy to treat the alienation, a parenting coordinator should be used to settle ongoing visitation or parenting conflicts that arise.²³³ The use of the parenting coordinator can extend the court's oversight to the parents' day-to-day activities without having to hale all parties back to court or wait for a court date.²³⁴ The use of a parenting coordinator will likely decrease the parental conflict that exacerbates the alienation because the parents will have someone with actual authority acting as referee and who reports back to the judge.²³⁵ With the increased use of therapeutic inventions, courts will treat the parental alienation and prevent future problems from arising.²³⁶

²²⁹ See Johnston et al., *supra* note 49, at 330 (explaining that effective interventions occur within a legally defined framework that specify goals, how to deal with conflict, and how to terminate the therapy); see also Drozd, *supra* note 15, at 414 (noting that families are unable to maintain interventions without monitoring by the court or another entity with legal authority). Children tend to remain alienated when courts do not enforce treatment. See Drozd, *supra* note 15, at 414.

²³⁰ See Friedlander & Walters, *supra* note 117, at 99 (explaining that it is important for the alienating parent to be involved in therapy to support the repair of the relationship with the alienated parent).

²³¹ See Sullivan & Kelly, *supra* note 177, at 301; see also Fidler & Bala, *supra* note 44, at 27–28 (noting that some professionals agree that court involvement is important in treating parental alienation).

²³² See Sullivan & Kelly, *supra* note 177, at 303 (providing a sample court order specifying that parents should share the costs of therapy).

²³³ See Fieldstone et al., *supra* note 122, at 441–42 (explaining the role of parent coordinators).

²³⁴ See *id.*; see also Sullivan & Kelly, *supra* note 177, at 300 (noting that delays in obtaining court dates or receiving judicial decisions to facilitate access to the alienated parent contribute to the child's resistance to visitation becoming more entrenched); N.Y. STATE BAR ASS'N, TASK FORCE ON FAMILY COURT: FINAL REPORT 2 (2013), available at <http://www.nysba.org/DownloadAsset.aspx?id=26703>, archived at <http://perma.cc/KY39-QKML> (noting that reasons for creating a task force to recommend changes to the family court included overcrowded dockets and delays).

²³⁵ See Christine A. Coates et al., *Parenting Coordination for High-Conflict Families*, 42 FAM. CT. REV. 246, 247 (noting that a survey found parents who worked with a parenting coordinator were satisfied and thought it reduced conflict); Montiel, *supra* note 122, at 302 (noting that parenting coordinators work to educate parents and give them skills to decrease conflict); see also GOTTLIEB, *supra* note 24, at 206 (attributing successful therapeutic intervention to the collaboration between the therapist and the court).

²³⁶ See *supra* notes 210–235 and accompanying text (discussing how to implement a therapeutic intervention approach to parental alienation).

CONCLUSION

Parental alienation is when one parent interferes and disturbs the child's relationship with the other parent, which has the potential to produce long-lasting and damaging effects on a child. The substantive and procedural laws found in family law provide the best way of handling parental alienation issues because it keeps the best interest of the child as the primary focus of every decision. Accordingly, state legislatures and courts should aim to prevent instances of parental alienation from the initial custody decision by declaring it a factor in family law's best interest of the child analysis. And, if parental alienation develops after an initial custody order, the court should first implement a therapeutic intervention to attempt to repair the child's relationship with the alienated parent and stop the parent's alienating behaviors. Parents: you cannot live with them, but a child should not be forced to live without one of them.

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