

## PARENTAL ALIENATION SYNDROME – Valid Diagnosis or Junk Science

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The term, “Parental Alienation Syndrome” (PAS) was coined in the 1980s by a New York child psychiatrist to describe a child’s unjustified campaign of rejection and vilification of one parent. During child custody and child abuse cases, the “alienated” parent seeks to use evidence of the syndrome to explain the child’s rejection or to defend against allegations of abuse.

Although not uncommon in custody cases for children to express fear or direct anger at a parent, in *Zafran v. Zafran*, 191 Misc.2d 60, 740 N.Y.S.2d 596 (2002) the Court explained that the primary indication of PAS is a child's unjustified campaign of denigration against one parent, allegedly resulting from the combination of a “programming” parent's campaign to indoctrinate the child and the child’s own contributions to the condemnation of the target parent. *Id.*

Proponents of the syndrome’s existence argue that a child with PAS is programmed or “brainwashed” by one parent, through verbal and non-verbal acts, to believe that the other parent is the enemy. Critics describe the syndrome as “junk science,” and argue that expert testimony on PAS should not be admitted in any court proceeding. Skeptics note that PAS is not recognized in the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*, which specifies uniform criteria diagnosing mental disorders.

In 1978, the Maryland Court of Appeals adopted a standard admitting expert testimony on novel scientific evidence known as the “*Frye-Reed Test*.” The Court explained that before a scientific opinion will be received as evidence, the basis of the opinion must be shown to be generally accepted as reliable within the expert's particular scientific field. *Reed v. State*, 283 Md. 374, 391 A.2d 364 (1978).

The adoption of the Maryland Rules of Evidence in 1994, and in particular Rule 5-702 which governs the admissibility of expert testimony, did not alter this standard. In fact, the Committee Notes to Rule 5-702 clarify that the adoption of Rule 5-702 was “not intended to overrule *Reed*... and other cases adopting the principles enunciated in *Frye*.” *Hutton v. State*, 339 Md. 480, 495 n.10, 663 A.2d 1289 (1995).

Although the admissibility of evidence concerning PAS under the *Frye-Reed* standard has yet to be squarely addressed in a reported Maryland opinion, at least one Maryland custody case has discussed the syndrome. In *Barton v. Hirshberg*, 137 Md. App. 1, 767 A.2d 784 (2001) the Court commented that a court-appointed evaluator's diagnosis of PAS did not preclude an award of joint custody because the evaluator found that “‘the Parent Alienation process is considerably dangerous to [the child]’ and may result in him being ‘unnecessarily distanced from his father ...’” 137 Md. App. 1, 767 A.2d 784.

Maryland case law concerning other “syndrome” evidence also may provide guidance on how Maryland’s Appellate Courts would rule. In *Hutton v. State*, *supra*, for example, the Court of Appeals concluded that expert testimony regarding a child’s posttraumatic stress disorder is inadmissible for purposes of establishing that the child was abused.

The *Hutton* Court explained that expert testimony describing both posttraumatic stress disorder and rape trauma syndrome may be admissible if offered for other purposes, such as “to show lack of consent or to explain behavior that might be viewed as inconsistent with happening of event. . .” 339 Md. at 504, 663 A.2d at 1301.

Outside of Maryland, there is no consensus among the few jurisdictions which have addressed the admissibility of expert testimony on PAS. Some courts have questioned the reliability of PAS evidence. *See, e.g., In the Interest of T.M.W., a Child*, 553 So.2d 260, 261, fn 3 (Fla. 1989) (“At the present time experts have not achieved consensus on the existence of a psychological syndrome that can detect child abuse...”); *Zafran, supra* (*Frye* hearing required before evidence of PAS can be admitted).

Other Courts have ruled that that such evidence is inadmissible. *See, e.g., People v. Fortin*, 289 A.D.2d 590, 735 N.Y.S.2d 819 (2001) (“defendant failed in his burden of demonstrating that ‘Parental Alienation Syndrome’ was generally accepted in the relevant scientific communities . . . [because among other factors] the defendant's sole witness at the *Frye* hearing had a significant financial interest in having his theory accepted.”); *People v. Sullivan*, No. HO23715 and HO25386, 2003 WL 1785921 (Cal. App. 6 Dist. Apr. 3, 2003) (“proffered testimony that there are demonstrable reasons why a child might make a false accusation . . . may be unrelated to the truth, would not have added to the juror's common fund of information....” )

At least one court has directly affirmed a trial court’s decision to permit expert testimony on the issue. *See In re Marriage of Norma Perez de Bates*, 212 Ill.2d 489, 819 N.E.2d 714 (2004).

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