

# Parental Alienation Syndrome as a factor when determining care and/or contact of children in divorce

**L Janse van Rensburg**



**[orcid.org/0000-0003-4292-7114](https://orcid.org/0000-0003-4292-7114)**

Dissertation submitted in partial fulfilment of the requirements  
for the degree *Magister Legum* in [International Child Law](#) at the  
Potchefstroom Campus of the North-West University

Supervisor: Prof. M Carnelley

Examination: December 2021

Student number: 24959553

## **ACKNOWLEDGEMENTS**

It is with absolute honour and gratitude that I make the following acknowledgements:

To my parents – for supporting me in the pursuit of my dreams and for carrying me all the way to this point. I would not have been able to do this without your undying support and I am forever grateful for the massive sacrifices you have made in the name of my future. I will never be able to thank you enough for all that you have done for me.

To my God – miracles had to happen for the submission of this dissertation and You did not disappoint. I have been blessed beyond what I will ever deserve. It is with absolute gratitude and privilege that I will protect Your people. I am but a pawn in Your battle and I will never stop fighting.

To my future self – I hope you are proud of us.

## **ABSTRACT**

With an alarmingly high divorce rate, together with the rise in high conflict disputes regarding the care and contact of children, there has never been a greater need to emphasise children's emotional and psychological well-being and safety. There is a general assumption that parents act in the best interests of their children. However, when staring down the barrel of a high conflict, divorce leads many parents to be blinded by their own emotional turmoil. This poses a significant risk to the child caught in the middle of the proceedings with two parents competing in a litigious deathmatch fuelled by their hatred.

A rising phenomenon is one where children completely and irrationally reject a parent after separation or divorce despite a history of a previously established healthy and loving relationship. When this happens, it is often accompanied by allegations of physical, sexual and severe emotional abuse. However, often upon investigation, no evidence of abuse or former abuse can be found.

In cases like this, it is often found that the child is a victim of Parental Alienation Syndrome. This occurs when a child is used as a pawn to gain favour in a divorce matter. One parent brainwashes a child, consciously or unconsciously, to enter a campaign of denigration against the other parent. This aims to harm and effectively destroy the relationship between the child and the rejected parent.

PAS is a malicious form of emotional- and psychological abuse that has yet to be properly addressed due to controversial opinions on the matter. In terms of the best interests of a child standard, South African courts have an international obligation to afford proper consideration to the phenomenon.

**Key words:** parental alienation, parental alienation syndrome, estrangement, emotional abuse, psychological abuse, best interests of the child, international law.

**LIST OF CONTENTS**

**ACKNOWLEDGEMENTS .....ii**

**ABSTRACT .....iii**

**LIST OF ABBREVIATIONS .....v**

**1 Introduction ..... 1**

**2 The conceptualisation and recognition of PAS ..... 8**

***2.1 PAS, PA and estrangement – competing models ..... 8***

*2.1.1 Garder’s model..... 9*

*2.1.2 Kelly and Johnston’s model.....15*

***2.2 Evaluating whether the juxtaposition is justified or simply eristic.... 21***

**3 PAS in the South African Context ..... 23**

***3.1 Legal framework applicable to divorces involving children in South Africa ..... 23***

***3.2 The current position on PAS in South African Courts ..... 31***

**4 Australian legal position: recognition and consideration of PAS ..... 35**

**5 Lessons to be learned..... 39**

**6 Conclusion and recommendations ..... 41**

**BIBLIOGRAPHY..... 45**

## **LIST OF ABBREVIATIONS**

ACRWC	African Charter on the Rights and Welfare of the Child
AER	African Education Review
AJFP	American Journal of Forensic Psychology
AJFT	American Journal of Family Therapy
CARSAJ	Child Abuse Research: South African Journal
CYSR	Children and Youth Services Review
DSM	Diagnostic and Statistical Manual of Mental Disorders
EJLR	European Journal of Law Reform
FCR	Family Court Review
FCCR	Family and Conciliation Courts Review
FLQ	Family Law Quarterly
IJISS	International Journal of Interdisciplinary Social Sciences
JCC	Journal of Child Custody
JCSA	Journal of Child Sexual Abuse
JEA	Journal of Emotional Abuse
JFC	Journal of Forensic Sciences
JSWFL	Journal of Social Welfare and Family Law
PA	Parental Alienation
PAS	Parental Alienation Syndrome
SACLJ	Singapore Academy of Law Journal

SAJP	South African Journal of Psychiatry
SAPR	South African Psychiatry Review
STATS SA	Statistics South Africa
UNCRC	United Nation Convention on the Rights of the Child

## 1 Introduction

In 2019, South Africa saw 129 597 registered civil marriages, 2 789 customary marriages and 1 771 civil unions.<sup>1</sup> Approximately 23 710 divorces were also processed during 2019, and 13 264 (55,9%) of these divorces involved minor children.<sup>2</sup> This extremely high divorce rate has increased disputes regarding the care of, and contact with, children. The entire divorce process is emotionally challenging for parents and, especially, children.<sup>3</sup> It is estimated that between 10-15% of divorces experience high conflict, often continuing for several years after separation of the parents.<sup>4</sup> In high conflict divorces, specifically, a phenomenon arises whereby a child will irrationally and vehemently reject one parent, with no apparent justification, due to the other parent's influence.<sup>5</sup>

To illustrate the above situation, the facts of *AC v ADT* will be examined.<sup>6</sup> In the divorce between the father and the mother, a dispute arose regarding contact with the minor child. This dispute was unduly prolonged for 12 years, and it became clear that this was due to the uncooperative attitude of the mother. During this time, the child remained primarily resident with her mother, and she had no contact with her father, despite his relentless attempts to receive assistance from the courts to gain such

---

1 STATS SA 2021 [www.statssa.gov.za/?p=11176](http://www.statssa.gov.za/?p=11176).

2 STATS SA 2021 [www.statssa.gov.za/?p=11176](http://www.statssa.gov.za/?p=11176); a minor child is regarded as a child who is under the age of 18 years as per s 28(3) of the *Constitution of the Republic of South Africa, 1996*; herein after referred to as the Constitution. The terms "child" and "minor child" may be used interchangeably herein and both should be deemed to refer to a minor child. In terms of the definitions as contained in the Children's Act a child reaches the age of majority at 18 years. Similarly, the *ACRWC* and *UNCRC* sets the age of majority at 18. A very small amount of international instruments classify a minor as being under the age of 21, however due to the overwhelming age being 18, this study will classify a child as being under the age of 18 years. In the event that reference is made to a major child who is still dependent, the term "dependant child" will be utilised.

3 Bekker et al. 2004 *CARSA* 26.

4 Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce* 1.

5 *G v G* 2003 5 SA 396 (ZHC).

6 *AC v ADT* (GJ) (unreported) case number 11120/2002 of 10 June 2014; the parties in this case were *AC* (the applicant), *ADT* (the respondent), and the child named only as "*D*"; the parties will hereafter be identified as "the father" (applicant), "the mother" (respondent) and "the child" (*D*).

contact.<sup>7</sup> The mother contended that the father should not have contact with the child on the allegations that he is violent and would endanger the safety and well-being of the minor child.<sup>8</sup> However, the father underwent assessments by two independent psychologists whom both found him fit to have contact with his child, and he further completed anger management therapy.<sup>9</sup> After investigation, it was found that the father, in all probability, did not abuse the child in any manner, as alleged by the mother, and there was nothing to suggest that this will happen in the future.<sup>10</sup>

Despite all this, it was clear that the child indeed had a genuine fear of having contact with her father and also showed a clear campaign of hatred, stating in a sworn affidavit:

I am now in my sixteenth year and have no wish to see my father... who has played no part in my life. The last straw for me was when my mother was struggling financially in 2013 to provide a roof over our heads to pay my school fees and my father, when requested, refused to contribute anything... I have no desire to see him ever, and have determined to forge my own way through life, without contact from him.<sup>11</sup>

After evaluations by a psychologist, it was found that this fear and hatred the minor child expressed towards her father was fuelled by her mother, together with her maternal grandmother, who had been coaching her and leading her to believe falsities about her father.<sup>12</sup> The child, during evaluations, confessed that she had an immense fear to express her desire to have contact with her father in the past as she would rather "deny contact with her father than upset her mother" - she was primarily resident with her mother.<sup>13</sup> The court found that the child was a victim of *Parental Alienation Syndrome*.<sup>14</sup>

*Gardner*<sup>15</sup> provides the following definition for "Parental Alienation Syndrome", namely:

---

7 *AC v ADT* (GJ) (unreported) case number 11120/2002 of 10 June 2014 para 2.

8 *AC v ADT* 2015 JOL 33077 (GJ) para 3.

9 *AC v ADT* 2015 JOL 33077 (GJ) para 3.

10 *AC v ADT* 2015 JOL 33077 (GJ) para 3.

11 *AC v ADT* 2015 JOL 33077 (GJ) para 9.

12 *AC v ADT* 2015 JOL 33077 (GJ) para 5.

13 *AC v ADT* 2015 JOL 33077 (GJ) para 5.

14 *AC v ADT* 2015 JOL 33077 (GJ) para 11; the outcome of the case will not be discussed here but in the full study, due to the fact that the facts of this case serve as an illustration of *Parental Alienation Syndrome*; herein after referred to as *PAS*.

15 Gardner 1999 *AJFT* 97.

The parental alienation syndrome (*PAS*) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.<sup>16</sup>

*PAS* only becomes a problem where absolutely no abuse and/or neglect is present, and there exists no justification for the child alienating the rejected parent – the only cause of the alienation being the influence of the alienating parent.<sup>17</sup>

This should be distinguished from cases where justification, such as physical abuse, exists for the child alienating the parent – in such a case, one is dealing with Parental Alienation<sup>18</sup> and not *PAS*. *PA* occurs when a child has been subjected to abuse, in any of its forms, from a parent for any period of time, and this abuse leads to the child alienating the parent.<sup>19</sup> In cases of *PA*, there is thus only one parent (usually) who is responsible for the child alienating him or herself, and this alienation cannot be attributed to the influence of the other parent as it occurred due to the abuse. Other authors prefer to refer to this situation as estrangement rather than *PA*.<sup>20</sup>

*PAS* usually arises as an issue in divorce cases, specifically where minor children are involved, especially when contact and care of the minor child and parental responsibilities are in dispute.<sup>21</sup> However, currently, South African courts may be reluctant to give due consideration to *PAS* or consider it a determining factor when placing children in the care of a parent.<sup>22</sup>

This study aims to answer the question: why should South African courts consider *PAS* as a factor in the determination of care and contact of children?

---

16 Gardner 2002 *AJFT* 95.

17 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 50.

18 Gardner 1999 *AJFT* 97; herein after "*PA*".

19 Gardner 2002 *AJFT* 95.

20 Kelly and Johnston 2001 *FCR*.

21 Chürr 2015 *LitNet Akademies* 375.

22 Chürr 2015 *LitNet Akademies* 375; this was the case in *Kleynhans v Kleynhans* (ECP) (unreported) case number 2256/08 of 30 July 2009.

With the recognition of *PAS* and the consideration thereof in a case, one weighs legal principles against each other. Of course, the primary consideration in all cases is the child's best interest.<sup>23</sup> Another consideration is the rights and responsibilities of the parents with regards to their child.<sup>24</sup> It is needless to mention that the child's best interest will outweigh the rights of parents in each case. However, it may be found that it is in the child's best interest to have contact with both parents, especially when *PAS* is identified in a case. The issue that arises then is the child's voice, which must be considered in cases where it will be deemed appropriate.<sup>25</sup> When the child expresses the opinion of not wanting contact with a certain parent, the court is faced with the scenario where it has to force such contact on a child because it is, in the opinion of the court, her best opinion interest.

Another problem that arises, in this case, is the possibility of the presence of actual abuse and/or neglect. Thus, the possibility that *PAS* has been wrongly diagnosed. The court is then not only forcing contact with a parent on the child, which goes against his or her express opinion, but the court is placing the child in the care and contact of an abusive parent.

The current legal framework applicable to care and contact of a child in divorce matters in South Africa is as follows: section 28 of the *Constitution*; chapter 3 and, specifically, section 10, of the *Children's Act* 38 of 2005;<sup>26</sup> section 6 of the *Divorce Act* 70 of 1979; and section 4 of the *Mediation in Certain Divorce Matters Act* 24 of 1987. In terms of section 39(1)(b) of the *Constitution*, international law must be considered in matters within South Africa where a right in the Bill of Rights is to be interpreted. Due to this provision, the effect of the *United Nations Declaration on the Rights of the Child* (1989)<sup>27</sup> and the *African Charter on the Rights and Welfare of the Child* (1990) will also be examined in this regard.<sup>28</sup>

---

23 Article 3(1) of the *UNCRC*.

24 Article 18 of the *UNCRC*.

25 Article 12 of the *UNCRC*.

26 Herein after referred to as the *Children's Act*; the following sections contained in chapter 3 of the *Children's Act* will be considered: sections 18, 19, 20, 22, 23, 27, 28, 30, 31, 33 and 35.

27 Herein after referred to as the *UNCRC*.

28 Herein after referred to as the *ACRWC*.

This study will focus on the legal framework applicable in divorce matters where minor children are involved and, specifically, where these children are victims of *PAS*. The most important provision contained in the *Constitution* regarding children is that of section 28(2), which provides that "a child's best interests are of paramount importance in every matter concerning the child".<sup>29</sup> Section 28(1)(d) of the *Constitution* grants children the right "to be protected from maltreatment, neglect, abuse or degradation" in any and all forms, including on an emotional level, and this study will argue that *PAS* can be considered as a form of emotional abuse.<sup>30</sup> In this regard, chapter 3 of the *Children's Act*, which deals with parental responsibilities and rights, is applicable.<sup>31</sup> Section 10 of the *Children's Act* is also applicable and enables the child to participate in proceedings and gives him or her the right to be heard in such proceedings. Section 23(2) of the *Children's Act* provides a list of factors that a court should take into account when considering the placement of a child, or in other words, the contact with and care of a child. The court has to consider the following factors: the "best interests of the child", which should always be the primary consideration; the relationship the child has with the person applying to have contact with, or to care for, the child, as well as the relationship between the child and other relevant people; to which degree the applicant has shown commitment towards the child; to which extent the applicant has made a contribution "towards expenses in connection with the birth and maintenance of the child"; and "any other factor that should, in the opinion of the court, be taken into account".<sup>32</sup>

A mini-comparison will be drawn between South Africa and Australia to answer the research question. In terms of section 39(1) of the Constitution, foreign law may be considered when interpreting the Bill of Rights or a right contained therein. The most significant bounding factor between South Africa and Australia, in this regard, is the fact that both countries have signed and ratified the *UNCRC*.<sup>33</sup> The grounding principle

---

29 In this regard see also S 7 of the *Children's Act* 38 of 2005; S 6 of the *Divorce Act* 70 of 1979; S 4 of the *Mediation in Certain Divorce Matters Act* 24 of 1987.

30 This right is confirmed by S 10 of the Constitution which guarantees the right to human dignity.

31 See also A 3(2) of the *UNCRC*; A 4 of the *ACRWC*.

32 Section 23(2)(a)-(e) of the *Children's Act*.

33 Australia signed and ratified the *UNCRC* in 1990; South Africa signed the *UNCRC* in 1993 and it was ratified in 1995; United Nations Office of the High Commissioner 2014 <http://indicators.ohchr.org/>.

of the *UNCRC* will be that of the best interest of the child.<sup>34</sup> The reference will be made to Australia, specifically, because the Australian Family Courts do not acknowledge *PAS* as a valid psychiatric syndrome or disorder, and subsequently, very little to no consideration is given to *PAS* and its surrounding circumstances. This lack of acknowledgement may lead to dire consequences, and the comparison aims to serve as a cautionary tale to South Africa to illustrate the impact of denying the existence of *PAS*.

In *Malave & Ratcliffe* [2015] FCCA 201,<sup>35</sup> four main reasons were given to justify the denial of the existence of *PAS*. Firstly, the parties to the case could not reach a consensus for a single definition of *PAS*, which made it difficult for the court to interpret and apply the definition to the case at hand.<sup>36</sup> Another problem that may arise in these circumstances is when the court interprets and misapplies the definition due to a lack of context and information. Secondly, the evidence supporting *PAS*'s existence in the case before the court was mostly based on clinical opinions and expert opinions.<sup>37</sup> Given that *PAS* falls within the field of psychology, it can be inferred that the court does not have the necessary knowledge to deal with a case involving *PAS* on its own, and the assistance and opinions of clinical psychologists and expert witnesses will aid the court in reaching an informed decision. The next logical inference is thus that the evidence on *PAS* in such a case will be based on clinical- and expert opinions, and the reason why this was not sufficient for the court is uncertain. The third reason was that further research is needed to enable the court to distinguish between *PAS* and other types of "strained parent-child relationships".<sup>38</sup> Considering the vast amount of information available on the topic of *PAS*, this distinction could have been made easier with proper research and presentation of such research to the court. Lastly, it was

---

34 Article 3(1) of the *UNCRC*; other relevant provision in this regard which will be considered are: A 8 [family relations]; A 9 [separation from a parent]; A 12 [voice of the child]; A 14(2) [rights and duties of parents] read together with A 18 [rights and duties of parents]; A 19 [protection from abuse]; A 27 [standard of living]; A 36 [protection from exploitation]; and A 39 [reintegration of child victims].

35 *Malave & Ratcliffe* [2015] FCCA 201.

36 *Malave & Ratcliffe* [2015] FCCA 201 para 399.

37 *Malave & Ratcliffe* [2015] FCCA 201 para 399.

38 *Malave & Ratcliffe* [2015] FCCA 201 para 399.

stated that "a standard rating system is needed to assess the strengths and limitations" of the existing empirical research relating to *PAS*.<sup>39</sup>

In various other Australian judgements, the evidence regarding *PAS* had been recognised as "a substantially established area of knowledge",<sup>40</sup> however, the court in *Summers & Nathan* [2005] FamCA 1406 concluded that:

In light of the articles and a large body of recent literature, I am not persuaded that parental alienation syndrome has been established irrevocably within a substantial established area of knowledge allowing for receipt of expert evidence.<sup>41</sup>

The main object of the Australian *Family Law Act* 1975 is to ensure that the best interest of the minor child is met in all matters, according to section 60B.<sup>42</sup> An additional object of this section, and the parts after that, is to give effect to the provisions of the *UNCRC* to which Australia is a member state.<sup>43</sup>

This study will assess the position in Australia in light of its international obligations and determine whether their current approach towards the recognition or rather non-recognition of *PAS* is in the best interest of the child. The Australian position will be compared to the position in South Africa, and the author will illustrate why South Africa should not follow the Australian approach.

This study will be concluded using a literature review of textbooks, journal articles, legislation, international law, publications, case law and applicable electronic resources. The legislation which will be relevant includes national legislation and international law. Classification of the study falls under the research project, Justice in Practice, of the Research Unit. The reason for its relevance under this specific project is that *PAS* is a problem that enjoys very little recognition and attention, if any, and is also starting to evolve into a problem that is faced daily in divorce cases where children are involved. Proper recognition thereof is necessary, and, more importantly, when

---

39 *Malave & Ratcliffe* [2015] FCCA 201 para 399.

40 *Lane & Arthurs* [2006] FamCa 87; see also *Parker & Elliott* [2003] FamCA 990; *Summers & Nathan* [2005] FamCA 1406.

41 *Summers & Nathan* [2005] FamCA 1406. This stance is taken by the majority.

42 Section 60B of the *Family Law Act* 1975; herein after referred to as the *Family Law Act*.

43 *Family Law Legislation Amendment Act* 189 of 2011; herein after referred to as the *Family Law Amendment Act*.

PAS is present in a case, due consideration must be given when contact and care of a child are considered to ensure the child's best interest is upheld.

## **2 The conceptualisation and recognition of PAS**

PAS has enjoyed the attention of significant controversy within the legal field and in the field of psychology due to the semantics around the topic.<sup>44</sup> It shall be prudent to indulge in the various aspects and arguments surrounding PAS and its recognition, given widespread opinions on the matter.

### **2.1 PAS, PA and estrangement – competing models**

There seems to be consensus around the point that PAS exclusively occurs in children. However, adults may have experienced PAS in their youth which is only picked up on later in life.<sup>45</sup> For the most part, authors agree that PAS further exclusively arises within disputes regarding the care and contact of children, whether through a divorce or otherwise.<sup>46</sup> However, some hold the opinion that exceptions exist.<sup>47</sup> On the other hand, a contentious issue arises with the terminology associated with and used when it comes to PAS. The writer will discuss the two leading models: the first introduced by Gardner and the second developed by Kelly and Johnston. These two models have each respectively enjoyed widespread support while also being subjected to various criticisms, some of which will be explored herein. This section aims to gain clarity on the concept of PAS as a whole and establish a possible preferential model to be applied in the South African context.

---

44 Warshak 2001 *AJFP* 29; Pepiton *et al.* 2012 *JCSA* 245.

45 Vestal 1999 *FCCR* 2; De Jager *The Development of a Parental Alienation Syndrome Interview Protocol* 1; Van Der Bijl 2016 *OBITER* 121.

46 Szabo 2002 *SAPR* 1; Vestal 1999 *FCCR* 1; Kruger 2004 *AER* 295; Kelly and Johnston 2001 *FCR* 254.

47 Allan 2005 *SAJP* 52; Warshak 2001 *AJFP* 31. Due to the scope of this study, these exceptions will not be explored.

### 2.1.1 Gardner's model

Gardner introduced the terms PAS and PA, and to date, despite his tragic passing, he remains one of the leading and most influential authors on these topics.<sup>48</sup>

PA, according to Gardner, is the occurrence where a child systematically or suddenly, consciously or subconsciously, alienates one or more of their parents and/or caregivers due to the existence of some or other form of substantive justification for said alienation.<sup>49</sup> The most prominent justification which seems to shine through in cases of PA is that of neglect and/or emotional-, verbal-, physical- and sexual abuse by the rejected parent.<sup>50</sup> The occurrence of alienation can thus be attributed to the conduct of the rejected parent with a direct, and most easily ascertainable, link.

He further described the phenomenon of PAS as follows:

The parental alienation syndrome (*PAS*) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.<sup>51</sup>

In other words, one parent (alienating parent) actively pursues a campaign wherein their main objective is to condition the child into believing that the other parent (target parent) has serious negative attributes when this is, in fact, not true and in contradiction to what the child has previously experienced of the target parent.<sup>52</sup> The

---

48 De Jager *The Development of a Parental Alienation Syndrome Interview Protocol 2*; Warshak 2002 *AJFP* 32. Prior to Gardner's identification of PAS, some of his predecessors in the field of psychology had already observed PAS as it is known today, however the syndrome only gained significance through Gardner and his work to that effect.

49 Gardner 2002 *AJFT* 94; Gardner 2001 *FCR* 613.

50 Collings 2015 *CARSAJ* 15; see also Gardner 2002 <http://richardagardner.com/ar22>. Arguably it is less likely for a child to alienate their parents and/or caregivers due to emotional and/or mental abuse, and more likely with forms of abuse which have historically, and stigmatically, enjoyed the status of significance. Leading authors do, however, emphasise that all forms of abuse and/or neglect may lead to a child alienating a parent or caregiver. For the scope and purpose of this study the aforementioned is worth noting, however, further elaboration shall be superfluous.

51 Gardner 2002 *AJFT* 95.

52 Gardner 2002 <http://richardagardner.com/ar22>; Gardner 2002 *AJFT* 96; Teoh, Chng and Chu 2018 *SAC LJ* 730; Bernet *et al.* 2020 *JFC* 1225.

alienating parent will attempt to do this by portraying the target parent as, *inter alia*, hostile, dangerous, aggressive, unloving, uncaring, selfish, and most often, abusive.<sup>53</sup> The alienating parent thus causes the child to believe that the target parent is undesirable in their life - the child starts to manifest this, usually with absolutely no ambivalence.<sup>54</sup> PAS occurs when a child alienates a parent or caregiver due to that parent's abusive and or neglectful conduct, similar to PA. The major distinction lies in the fact that no abuse and or neglect actually ever occurred, at least not to the extent of justification of the alienation, and the child was, in fact, "programmed" or "brainwashed" by another parent or caregiver into believing that it did.<sup>55</sup>

According to this model, PAS is only present where the child actively contributes to the denigration of the target parent. Gardner explains that the child will start to compliment the alienating parent's campaign by adding similar contributions as the child starts to notice that this pleases the alienating parent, who, in turn, reinforces the child's denigrating behaviour, creating a spiral effect.<sup>56</sup> Eventually, the child bona fide believes and falsely remembers, the abuse and/or neglect occurred – alternatively, minor incidents are exceptionally exaggerated.<sup>57</sup> In reality, as the process of programming sets in, the child will start to seek their own justification for experiencing inner rejection towards the target parent, which leads to the child grasping on to and exaggerating any possible flaws that the target parent might have.<sup>58</sup>

In cases where PAS is present, the child thus remains the instituter of the alienation, similar to cases of PA. However, the alienation cannot be directly attributed to the conduct of the target parent like with PA. Rather, the programming of the alienating parent, coupled with the minor child assuming an "accomplice" role due to said programming, causing the alienation to occur. The following elements can thus be

---

53 Drozd and Oleson 2004 *JCC* 67; Bernet et al. 2010 *AJFT* 79.

54 Bernet *et al.* 2020 *JFC* 1228; Ellis 2007 *JCC* 60; Jaffe, Thakkar and Piron 2017 *Cogent Psychology* 6. It is quite abnormal for a child to view a parent as either all good or all bad. Children usually have a natural ambivalence towards their parents, seeing them as both good and bad in various respects.

55 Van Der Bijl 2016 *OBITER* 1; Szabo 2002 *SAPR* 1.

56 Gardner 2002 <http://richardagardner.com/ar22>; Giancarlo and Rottmann 2015 *IJISS* 28; Bernet *et al.* 2020 *JFC* 1225.

57 Gardner 2002 *AJFT* 95.

58 De Jager *The Development of a Parental Alienation Syndrome Interview Protocol* 12.

identified and have to be present for the successful and accurate identification of PAS: (1) vilification and/or rejection of a parent to a level considered to be campaigning; (2) which is irrational; (3) and is partially resulting from the conduct of the alienating parent together with the child's contributions.<sup>59</sup> In other words, the alienation would have never occurred but for the programming induced upon the child by the alienating parent. The primary cause of the minor child's alienation is the direct or indirect conduct of the alienating parent.<sup>60</sup> It is important to note that Gardner identifies this as the primary factor, but not the only factor.

In his formulation of how PAS develops, Gardner explains that various other factors may play a role in PAS, including the family's history, the child's personality, and the behaviour of the target parent – he considers these factors to be complimentary rather than core.<sup>61</sup> Furthermore, prior to the introduction of PAS, Gardner did extensive research and writing on the causes of contact refusal in children, but he specifically distinguishes PAS from all other forms of alienation.<sup>62</sup> It is very important to note that all three of the above elements have to be present for a classification of PAS, and if not, one is not dealing with PAS but rather PA.<sup>63</sup>

Warshak, who is a supporter of Gardner's model, includes the element of time and states that alienation and/or rejection cannot be occasional but rather continuous and persistent over a period of time.<sup>64</sup> It is thus clear that some provision is made to exclude parents who engage in alienating conduct from time to time. However, no clear indication is given as to the time periods Warshak deems sufficient for PAS's reasonable or accurate identification.

Gardner emphasises that the alienating parent may not always fully be aware of the nature and scope of their alienating conduct, and such a parent may not have the explicit intention to cause harm to the child.<sup>65</sup> Warshak provides this situation as one cannot expect a parent to always act perfectly, especially when staring down the barrel

---

59 Warshak 2003 *FLQ* 280.

60 Gardner 2002 *AJFT* 94.

61 Ellis 2007 *JCC* 56

62 Warshak 2003 *FLQ* 280; Gardner 2001 *FCR* 612.

63 Gardner 2001 *FCR* 613; Warshak 2003 *FLQ* 280.

64 Warshak 2001 *AJFP* 29; Drozd and Oleson 2004 *JCC* 78.

65 Gardner 1999 *AJFT* 103; Drozd and Oleson 2004 *JCC* 87.

of a high conflict divorce. One can, however, reasonably expect of a parent to at all times make a conscious effort to truly act in the best interests of their children, despite the circumstances – if this does not happen, intervention is required.<sup>66</sup> According to his findings, parents who engage in alienating conduct have psychopathic<sup>67</sup> tendencies – if not in general, at least regarding the PAS "programming".<sup>68</sup> Essentially, Ellis came to the same conclusion, stating that alienating parents are "particularly egocentric", feel no guilt, and are completely indifferent to their actions' negative impact.<sup>69</sup>

When dealing with PAS, the most prominent element is that no actual abuse should be present, and the allegations made by the alienating parent, and later the minor child themselves, should be unjustified. If the allegations are justified, one is dealing with PA. Although Gardner distinguishes between PAS and PA in terms of PA having abuse present and PAS not having abuse present, he argues that inciting PAS, or attempting to do so, constitutes psychological abuse and emotional abuse of the minor child.<sup>70</sup>

Gardner places emphasis on the fact that a clear distinction should be made between PA and PAS. This model places PAS in a sub-categorical position to PA, which has led to many criticisms and misunderstandings of the concept as a whole.<sup>71</sup>

In order to differentiate between a victim of PAS versus a victim of abuse and/or neglect, Gardner provides eight basic symptoms which victims of PAS will most likely display, which will not be displayed in victims of abuse and/or neglect: a campaign of vilification against the target parent; together with feeble, irrational or trivial justifications for the deterioration of the parent-child relationship; no natural hesitation

---

66 The best interest of the child principle lies at the very backbone of international instruments for the protection of children and their rights. The most authoritative thereof being the UNCRC. Interestingly, the United States (where PAS originated) signed the UNCRC but have yet to ratify same and remain unbound by the instrument. Humanium <https://www.humanium.org/en/convention/signatory-states/>.

67 A "psychopath" can be defined as a person who lacks empathy for others, they have little regard for the future and displays a lack of remorse for wrongdoings in the past. Cambridge University Press 2021 <https://dictionary.cambridge.org/dictionary/english/psychopath>.

68 Gardner 1999 *AJFT* 103; Giancarlo and Rottmann 2015 *IJISS* 28; Faller 1998 *Child Maltreatment* 101.

69 Ellis 2007 *JCC* 72. Ellis does not specifically label the alienating parent as being a psychopath or having psychopathic tendencies. It is, however, clear from the description that it boils down to the same thing.

70 Gardner 1999 *AJFT* 98.

71 Warshak 2001 *AJFP* 30; Drozd and Oleson 2004 *JCC* 68.

or uncertainty as to their negative feelings toward the target parent; "the independent thinker phenomenon" often arises; instinctively siding with the alienating parent with regards to the conflict between the parents; showing absolutely no guilt toward the target parent's position; "borrowed scenarios" can be identified; and lastly, this hatred often extends towards the family, friends or other connections of the target parent.<sup>72</sup>

Gardner and those supporting his model believe that PAS should be considered a valid syndrome on the contention that it has been established through reliable and valid research to that effect.<sup>73</sup> In a comprehensive proposal, Bernet strongly argues for the inclusion of PAS in the DSM as, to date, it has not been granted the official status as a valid syndrome.<sup>74</sup> He provides a list of 20 reasons why PAS is a valid syndrome and continues to elaborate on each one.<sup>75</sup> This proposal was harshly criticised by Pepiton, stating that it is scientifically unsound and that how qualitative research methods were applied was "disturbing and is an injustice to the scientific community".<sup>76</sup> On the other hand, Giancarlo commends Bernet and argues that PAS has almost gained universal acknowledgement due to its widespread acceptance.<sup>77</sup> Ellis believes that PAS cannot be considered a syndrome as there is a lack of data "establishing incidence rates, familial patterns, course of the problem..., sex differences, or prognosis".<sup>78</sup> Some have even discredited the entire concept of PAS as "junk science".<sup>79</sup> However, Gardner remains firm on his stance that there is sufficient backing for recognising PAS as a diagnostic syndrome.<sup>80</sup> Whether or not PAS is to be considered a syndrome is very controversial and unnecessarily heated. In the writer's humble opinion, it boils down to different opinions and perspectives, and it would seem that some authors over-indulge in the rabbit hole of the semantics around PAS, especially with regards to the consideration thereof as a syndrome. This is not to say that the debate is necessary

---

72 Gardner 1999 *AJFT* 98; Gardner 2004 *FCR* 611; Teoh, Chng and Chu 2018 *SACLJ* 729.

73 Gardner 2002 <http://richardagardner.com/ar22>; Gardner 1999 *AJFT* 97; Bernet *et al.* 2010 *AJFT* 80.

74 Bernet *et al.* 2010 *AJFT*.

75 Bernet *et al.* 2010 *AJFT* 81-82. These reasons will not be discussed herein as the scope of this study does not warrant same.

76 Pepiton *et al.* 2012 *JCSA* 245.

77 Giancarlo and Rottmann 2015 *IJISS* 27.

78 Ellis 2007 *JCC* 56.

79 Bruch 2001 *EJLR*.

80 Gardner 2001 *FCR* 611; Warshak 2003 *FLQ* 282.

and essential in developing our understanding of the phenomenon. However, it does not warrant the level of controversy.

The leading criticism against Gardner's model is that his work has not been subject to peer review, given that he is self-published for the most part, and that in his publications, he relies almost exclusively on his own previous work and findings – his overwhelming sources of reference being himself.<sup>81</sup> It is thus quite natural that those who build their theories around what has already been established by Gardner are automatically scrutinised on this as well. However, Gardner rebuts this assertion because he claims that only his books were not subjected to peer review, although 19 of the articles he wrote on PAS were.<sup>82</sup>

During the emergence stage of the concept of PAS, Gardner noticed that some cases of PAS were accompanied by apparent false accusations of sexual abuse made by the minor child involved against the target parent.<sup>83</sup> On the one hand, he admits that sexual abuse by parents is a common occurrence. Then, on the other hand, he states that he believes that most of the allegations of sexual abuse arising out of high conflict divorces are false.<sup>84</sup> Firstly, he contradicts himself but fails to provide scientifically sound evidence to back his claims in this regard – his only source to this effect is his own personal experience in the field.<sup>85</sup> Gardner contends that focus should be redirected to developing criteria to differentiate between true and false accusations of sexual abuse instead of denying the occurrence thereof.<sup>86</sup> He attempts to do this in an article wherein he provides guidelines for distinguishing between real abuse of a child and a possible case of PAS.<sup>87</sup>

---

81 Faller 1998 *Child Maltreatment* 100; Pepiton *et al.* 2012 *JCSA* 245; Drozd and Oleson 2004 *JCC* 67.

82 Gardner 2001 *FCR* 613.

83 Gardner 2002 <http://richardagardner.com/ar22>. According to Gardner he had extensive experience in working with families at the time, including minor children and adults who have made accusations of sexual abuse against family members. The accusations that were being made by children who were found to be victims of PAS were, however, vastly different in nature in that they seemed highly incredible and so “preposterous” that they could not be considered as even possible.

84 Faller 1998 *Child Maltreatment* 104; Kelly and Johnston 2001 *FCR* 249.

85 Faller 1998 *Child Maltreatment* 104; Kelly and Johnston 2001 *FCR* 250.

86 Gardner 2002 <http://richardagardner.com/ar22>.

87 Gardner 1999 *AJFT*.

There is, indeed, a need to distinguish between true and false accusations, especially in the family setting where a minor child's future relationship with one of their parents is in question. The issue lies in the fact that Gardner seems to underemphasise the extreme seriousness of sexual allegations made by minor children by attributing what some medical professionals would deem as indicators of sexual abuse to normal childhood development phases.<sup>88</sup>

Gardner's model created the foundation upon which many authors will build, and even more, would pick at. The validity of this model has to be tested by comparing it to the model proposed in its place.

### *2.1.2 Kelly and Johnston's model*

The concept of PA as a whole has been re-evaluated and reconstructed entirely by Kelly and Johnston, answering to the "critical need to reformulate a more useful conceptualisation of PAS" by providing a wider-ranging framework to be used in the assessment of a minor child's rejection of a parent.<sup>89</sup> They wholly reject the premise that PAS should be considered a diagnostic syndrome.<sup>90</sup> They shift the spotlight away from the alienating parent and place the primary focus on the alienated child:

An alienated child is defined here as one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) toward a parent that are significantly disproportionate to the child's actual experience with that parent.<sup>91</sup>

Kelly and Johnston argue that the alienating parent cannot possibly be the primary cause of the occurrence of PA and that other factors have to play a significant role.<sup>92</sup> They conceptualise a spectrum along which a minor child's relationship to their

---

88 Faller 1998 *Child Maltreatment* 104. See the aforementioned article for a more detailed discussion on Gardner's views on false accusations of sexual abuse being made in high-conflict divorces as well as critique thereon.

89 Kelly and Johnston 2001 *FCR* 250; Lee and Oleson 2001 *FCR* 282; Johnston, Wallters and Oleson 2005 *JEA* 192; Pepiton *et al.* 2012 *JCSA* 247. Pepiton was extremely critical of the proposal presented by Bernet, see 73 above, however commended Kelly and Johnston on their approach and formulation.

90 Johnston and Kelly 2004 *FCR* 622; Pepiton *et al.* 2012 *JCSA* 249.

91 Kelly and Johnston 2001 *FCR* 251; Johnston, Walters and Friedlander 2001 *FCR* 316; Ellis 2007 *JCC* 57.

92 Warshak 2001 *AJFP* 32; Johnston and Kelly 2004 *FCR* 624; Drozd and Oleson 2004 *JCC* 67; Clarkson and Clarkson 2007 *JSWFL* 269.

parent/s can be classified as positive (left) or negative (right) in one, or a combination of, the following: having an overwhelmingly positive relationship with both parents; having an affinity to one of their parents; being aligned with one parent; being estranged from one of their parents and lastly; being alienated from a parent.<sup>93</sup>

If the minor child has a relatively positive relationship with both parents, it is quite natural that the minor child will express wishes to have substantial, if not equal, contact with both of their parents.<sup>94</sup> While still falling on the positive side of the spectrum, a minor child may also develop an affinity to one parent while still retaining their wishes to have contact with both parents.<sup>95</sup> However, this affinity is not set and sometimes shifts from one parent to the other as the child develops.<sup>96</sup>

However, as one moves further along the spectrum, a minor child may start to show a clearer preference towards a certain parent. When a minor child clearly and consistently exhibits that they prefer one parent over the other while simultaneously wanting a limited amount of contact with the other parent, the minor child may be in alliance with the favoured parent.<sup>97</sup> Kelly and Johnston argue that this may occur due to the inappropriate involvement of the minor child in the marital issues – most often it can be seen where minor children have been urged to take a side, which leads to the minor child having to make a completely uninformed judgement on which of their parents are most deserving of their support.<sup>98</sup> An important factor to take note of is that aligned children will usually still show some ambivalence towards the parent that

---

93 Marques, Narciso and Ferreira 2020 *CYSR* 8; Bernet *et al.* 2020 *JFC* 1226; Kelly and Johnston 2001 *FCR* 251-252; see also figure 1 in the aforementioned source for an illustration of the spectrum/continuum.

94 Warshak 2003 *FLQ* 276; Kelly and Johnston 2001 *FCR* 251; Drozd and Oleson 2004 *JCC* 70.

95 Kelly and Johnston 2001 *FCR* 252; Drozd and Oleson 2004 *JCC* 73.

96 Kelly and Johnston 2001 *FCR* 252. Possible reasons for a minor child forming an affinity with one parent over the other include, inter alia, a preference to one of the parenting styles, shared interests with the parent, gender, age and personality traits of both the parent and the minor child; see also Drozd and Oleson 2004 *JCC* 75.

97 Drozd and Oleson 2004 *JCC* 74; Kelly and Johnston 2001 *FCR* 252; Ellis 2007 *JCC* 57.

98 Ellis 2007 *JCC* 57; Kelly and Johnston 2001 *FCR* 252; Johnston, Wallters and Oleson 2005 *JEA* 194; Warshak 2003 *FLQ* 276.

they are not aligned with, as they do not enter a campaign of hatred against said other parent but rather place themselves in a protective role over the aligned parent.<sup>99</sup>

Whereas Gardner distinguishes the circumstances of PAS (no abuse present) and PA (abuse present), Kelly and Johnston reconceptualise these terms wholly while simultaneously retaining some major similarities. Like Gardner, Kelly and Johnston deem it absolutely critical to distinguish between estranged children versus those who have been alienated.<sup>100</sup>

A minor child is deemed to be legitimately estranged when the rejection of a parent by the child can be directly or indirectly attributed to said parent's abusive, hostile, violent, aggressive, or neglectful conduct.<sup>101</sup> This may occur due to the following reasons: the abusive behaviour of the estranged parent was directed towards the minor child; the minor child fell witness to the estranged parent directing abuse at someone else, or the minor child may even have merely witnessed the aftermath of said abuse on a loved one without witnessing the actual abuse.<sup>102</sup> The anger and fear that estranged children present are thus justified, and it is for this exact reason, the distinction between estranged children and alienated children are so important. Kelly and Johnston recommend that minor children who have been legitimately estranged from a parent require prompt "post-traumatic stress disorder" intervention.<sup>103</sup> After that, only once the minor child's trauma has been effectively identified and addressed, it may be considered whether further interventions are necessary for alienation as well.<sup>104</sup>

---

99 Kelly and Johnston 2001 *FCR* 253. The minor child's alliance is also usually temporary and will normally subside together with the conflict between the parents. When the child no longer feels the need to protect the aligned parent, the degree of alignment will decrease. However, in the event that the circumstances continue, the alignment may further solidify and/or lead to alienation.

100 Clarkson and Clarkson 2007 *JSWFL* 269; Bernet *et al.* 2020 *JFC* 1225; Drozd and Oleson 2004 *JCC* 93.

101 Kelly and Johnston 2001 *FCR* 253; Lee and Oleson 2001 *FCR* 283; Bernet *et al.* 2020 *JFC* 1225.

102 Ellis 2007 *JCC* 57; Kelly and Johnston 2001 *FCR* 253; Drozd and Oleson 2004 *JCC* 71. Minor children can easily be traumatised by an act which a parent might not deem as serious, harmful or even abusive. Other possible causes of estrangement include immaturity or selfishness on the part of the estranged parent, gross substance abuse, abnormally rigid and strict parenting styles or extreme psychological issues manifesting from the estranged parent.

103 Kelly and Johnston 2001 *FCR* 253.

104 Kelly and Johnston 2001 *FCR* 253.

The continuum presented by Kelly and Johnston, as previously mentioned, ranges from positive to negative. On the far left, we see an overwhelmingly positive relationship between the minor child and both of their parents. On the opposite side of this continuum we see an overwhelmingly negative relationship between the minor child and one of their parents to such an extent that the minor child rejects contact with such a parent completely – it is here that we find the alienated child.

The alienated child explicitly and flagrantly expresses their rejection towards one of their parents and will usually completely refuse any and all contact with such a parent in the absence of legitimate reasons for such refusal.<sup>105</sup> It is important to note that the alienated child usually shows absolute certainty and conviction about their position, and very little to no ambivalence will be observable in such a minor child.<sup>106</sup> The minor child's view and experience of the rejected parent and the earlier relationship between the parent and the minor child become completely distorted.<sup>107</sup> Mostly, these rejected parents cannot be found to have emotionally- or physically abused the minor child, despite the minor child's adamantly negative experience and severely inflated reactions towards the rejected parent.<sup>108</sup> Kelly and Johnston explain that alienated children far exceed that which can be seen with aligned or estranged children "in the intensity, breadth, and ferocity of their behaviours toward the parent they are rejecting".<sup>109</sup> In their own words, they identify the same symptoms in estranged children, as Gardner identifies in PAS children.<sup>110</sup>

In Gardner's model, the primary cause in the occurrence of PAS is the alienating parent's conduct – being the brainwashing of the minor child to engage in a campaign of denigration against the target parent. Kelly and Johnston, however, argue that a

---

105 Kelly and Johnston 2001 *FCR* 254; Drozd and Oleson 2004 *JCC* 71.

106 Kelly and Johnston 2001 *FCR* 254; Ellis 2007 *JCC* 60; Bernet *et al.* 2020 *JFC* 1227. The child views the rejected parent as being all bad, and the accepted parent as being all good. Ellis refers to this as "splitting".

107 Kelly and Johnston 2001 *FCR* 254; Bernet *et al.* 2020 *JFC* 1225; Drozd and Oleson 2004 *JCC* 93; Warshak 2003 *FLQ* 292.

108 Bernet *et al.* 2020 *JFC* 1228; Jaffe, Thakkar and Piron 2017 *Cogent Psychology* 7.

109 Ellis 2007 *JCC* 57. Kelly and Johnston 2001 *FCR* 254.

110 Lee and Oleson 2001 *FCR* 283; Bernet *et al.* 2020 *JFC* 1226; Kelly and Johnston 2001 *FCR* 262.

minor child cannot alienate one of their parents to such an extent as envisaged by Gardner's model of PAS based purely on the conduct of the other parent.

Kelly and Johnston believe that effective intervention in matters involving alienated children must be assessed on a framework that considers the various factors that may influence a minor child into alienating their parent.<sup>111</sup> These factors include extreme parental conflict during the marriage; feeling humiliated by the parent's separation; the character and personality of the respective parents; extreme conflict during the divorce process and being unduly involved therein; and the age, maturity and disposition of the minor child.<sup>112</sup> They further explain that, on top of these baseline factors, further intervening factors can play a role in either mitigating the minor child's response or inflating it – these include: the minor child's relationship to their siblings; the minor child's specific vulnerabilities; as well as existing inter-relational dynamics between the parents and the minor child.<sup>113</sup> They argue that all of these factors should be considered and evaluated as a whole and that no one primary factor can be solely responsible for the level of alienation presented with alienated children.

Kelly and Johnston agree with Gardner's stance that the conduct of the alienating parent has a very significant impact on the minor child. However, they classify it as contributing to the causation of alienation rather than primary.<sup>114</sup> They further concur with Gardner's argument that this alienating conduct exhibited in alienating parents is to be regarded as emotional abuse.<sup>115</sup> They are thus of the view that if a minor child is alienated from a parent, it may partially be attributed to the conduct of the alienating parent (as with the PAS model). However, a minor child will only become effectively alienated if other significantly validating factors are present. They contend that the child will not reject the target parent if said target parent does not contribute to the alienation – they thus eliminate the distinction between a target parent and a victim parent.<sup>116</sup>

---

111 Kelly and Johnston 2001 *FCR* 254.

112 Kelly and Johnston 2001 *FCR* 254.

113 Kelly and Johnston 2001 *FCR* 254. A parent's new partner or the fact that they left the communal family home after separation or divorce may also play a role.

114 Kelly and Johnston 2001 *FCR* 257.

115 Kelly and Johnston 2001 *FCR* 257; Marques, Narciso and Ferreira 2020 *CYSR* 7.

116 Kelly and Johnston 2001 *FCR* 258.

They attempt to draw the attention away from the parents being labelled either as good or bad, and in turn, affords every person, and circumstance involved in the matter, their proportional blameworthiness. The conduct exhibited by the rejected parent that may contribute to the alienation includes the following - when the legal conflict starts to rise, the rejected parent may withdraw or become passive due to emotional or financial constraints; the parent may counter-reject the child in automatic retaliation; the parent may display a harsh and overly strict style of parenting; or the parent might display selfish, immature, demanding or overly critical traits.<sup>117</sup> They are persistent in their stance that the actions of one parent cannot be the primary cause of a child alienating a parent. In answer to this, Warshak presents the argument that it is a well-known fact that children are caused to unfairly judge, dislike and even hate certain people (usually based on their race, culture, gender or sexual preference) by their parents' sole influence thereto – there is no reason why this cannot be directed at one of their parents.<sup>118</sup>

Kelly and Johnston emphasise the fact that a parent engaging in alienating behaviour might not always be aware of the possible impact on the child, and some may even be under the impression that they are protecting the minor child - this is usually the result of unresolved trauma or psychological issues in the alienating parent.<sup>119</sup> Whether or not the alienating parent is malicious in their conduct remains extremely damaging for the child and constitutes emotional abuse. It is abnormal for the "average" parent to resort to measures of alienation, and research shows that even when a child's safety is concerned, parents will usually act more rationally:<sup>120</sup>

Both empirical research and clinical observation indicate that there is often significant pathology and anger in the parent encouraging the alienation of the child, including problems with boundaries and differentiation from the child, severe separation anxieties, impaired reality testing and projective identifications with the child.<sup>121</sup>

At face value, it seems that there are many and significant differences between the two models. However, the writer has not been the first or only person to notice that

---

117 Kelly and Johnston 2001 *FCR* 258-260; Drozd and Oleson 2004 *JCC* 80.

118 Warshak 2003 *FLQ* 278. Warshak further argues that parents can also project their irrational fears (hights, spiders) onto their children which may manifest as an irrational phobia or anxiety.

119 Kelly and Johnston 2001 *FCR* 257; Drozd and Oleson 2004 *JCC* 87.

120 Kelly and Johnston 2001 *FCR* 258.

121 Kelly and Johnston 2001 *FCR* 258; Drozd and Oleson 2004 *JCC* 87.

the two models are also very similar in many respects. The models can be merged into one encompassing umbrella model in an ideal setting. However, that premise seems like a very distant blur considering the intense semantics at play. Nevertheless, the following section will endeavour to discover the depth of differences between the two models and whether it's worth the dive for South African courts to get caught up in the debate.

## ***2.2 Evaluating whether the juxtaposition is justified or simply eristic***

During the same year, and in the same journal that Kelly and Johnston's reformulations were published, Gardner wrote a commentary piece thereon wherein he attempted to bring the two models closer together on the contention that they are not as far apart as is being portrayed.<sup>122</sup> A few years later, Kelly and Johnston published a reply wherein they vehemently denied this premise.<sup>123</sup> The writer will explore whether these two models are, in fact, as similar or as different as is being claimed by the respective authors.

The first major distinction that can be drawn between the two models is the terminology used. Gardner makes use of the term PA where a child rejects a parent due to the existence of a history of legitimate abuse and/or neglect. Kelly and Johnston conceptualise the same scenario and label it estrangement.

The second major contention lies in Gardner's use of the term PAS to indicate a situation where a child shows an unjustified and seemingly irrational campaign against a target parent initiated and fuelled by the alienating parent, combined with the child's own contributions. He admits that various other factors play a role in the child effectively alienating the target parent, but such alienation would not occur but for the alienating parent's conduct, and it remains the primary cause. Kelly and Johnston, however, completely reject the notion that PAS deserves recognition as a diagnostic syndrome. However, they observe the same phenomena, electing to use the term parental alienation, but they attribute the establishment thereof to a combination of various inter-related factors. They expressly deny that the conduct of the alienating

---

122 Gardner 2001 *FCR*; Warshak 2003 *FLQ* 291.

123 Johnston and Kelly 2004 *FCR* 622.

parent is sufficient to effectively alienate the child, but rather that such conduct, together with the conduct of the rejected parent (as well as other factors), lead to a child alienating a parent. In other words – both models identify the same phenomenon, admittedly caused by the same factors, but the respective models vary in the degree of causality attributed in the definition to the alienating parent's conduct specifically.

If one applies the definition of PAS as formulated by Gardner correctly, it is clear that a very specific type of alienation is identified – alienation caused by the primary influence of the alienating parent. Other factors also play a significant role, as explained, but if you take away the alienating parent's influence, you take away the PAS. Kelly and Johnston identify their alienated child on the exact same grounds as Gardner identifies PAS. They also concur that the alienating parent has a significant influence and that their conduct is emotionally abusive. Thus, logically, the alienated child would not have become alienated but for the alienating parent's influence. None of their studies supports the argument that alienation to the extent exhibited with PAS is possible without the alienating parent's influence.

Gardner identified 8 distinct symptoms which may be identified in a child who has fallen victim to PAS. Kelly and Johnston state, in their reformulation, that they identify the same symptoms in alienated children as Gardner identifies in PAS children.

Gardner argues that the alienating parent has psychopathic tendencies, at least in the context of the alienation setting, if not in general. Kelly and Johnston contend that their empirical research indicates significant pathologies present in the alienating parent.

A rose by any other name is still a rose. The writer's opinion is that Kelly and Johnston's model resembles Gardner's model much more than they are willing to admit. Admittedly, obvious differences can be deemed extremely significant in certain aspects. However, for legal purposes, a phenomenon arises in high conflict divorces, where the alienating conduct of a parent constitutes emotional and psychological abuse of the child. The phenomenon can be effectively identified with either model. There is enough evidence as to its existence to warrant recognition of the phenomenon in the South African judicial system. Courts should, however, be cautious as to not be

drawn into unnecessary and dragged-out disputes regarding which model is to be applied. The writer's humble submission is that courts should rather follow a generalised approach that does not exclude the applicability of either model – at least until a decision has been reached as to its official inclusion or exclusion as a diagnostic syndrome. As shown in this section, this is possible.

### **3 PAS in the South African Context**

It has been established that the phenomenon of PAS is worthy of recognition by South African courts in the sense that it is an established and real problem experienced in family law, especially in high conflict divorces. This section will explore whether there is a legal basis for such recognition and, if so, whether it is sufficient to expect a court to give due and proper consideration. The court's current position regarding PAS, or allegations thereof, will be examined to establish whether the stance taken is justified in light of South Africa's national- and international obligations.

#### ***3.1 Legal framework applicable to divorces involving children in South Africa***

In order to effectively illustrate why South African courts should consider PAS as a factor in disputes with regards to the contact and care of a child, a legal basis should be created upon which to lay this claim. This section will delve into the existing legal framework applicable in divorce matters, specifically regarding contact and care of children, to establish whether there is any room for such consideration. The South African legal system affords a great amount of protection to children and their rights. Although parental rights are recognised and strongly enforced, the child's interests will always take precedence. This section will aim to establish that the current legal framework applicable to the protection of children and children's rights makes provision for the consideration of PAS in matters concerning contact and care of a child.

Every biological mother and father, respectively, have full parental rights and responsibilities in terms of their child.<sup>124</sup> This entails that as a parent, they have to care

---

<sup>124</sup> Sections 19 and 20 of the *Children's Act*. The mother of the child always automatically has full rights and responsibilities, however, the father of a child who is not married to the

for the child, exercise contact with them, act as their legal guardian and make a contribution to the maintenance of the child.<sup>125</sup> The scope and extent of a parent's responsibilities and rights will depend on what is subjectively considered to be the best interests of that specific child. Similarly, a parental right will not be enforced if it is contrary to the child's best interests.<sup>126</sup> According to the definitions contained in the *Children's Act*, to care for a child includes the protection of the child from abuse and/or neglect as well as the active promotion of the protection and fulfilment of their rights as contained in the Bill of Rights.<sup>127</sup>

Based on this alone, there already seems to be a *prima facie* basis for recognising PAS should it be established in a case. Where a parent engages in alienating conduct, it may be regarded as acting contrary to the provisions of the *Children's Act* and, subsequently, their obligations under the *Constitution*.

The child's best interest is the leading principle and consideration in any matter that involves a minor child.<sup>128</sup> The *Constitution* enshrines this right in the Bill of Rights<sup>129</sup>, and it is further given effect by the provisions of the *Children's Act*. When interpreting the Bill of Rights, one is expressly required to consider relevant international law.<sup>130</sup> Of cardinal importance to this study are the provisions of the *UNCRC* and the *ACRWC*. Both of these international instruments, to which South Africa is a member state,<sup>131</sup>

---

mother (during the time from conception to birth of the child) does not automatically acquire full rights and responsibilities. In this regard see section 21. This study focuses on the situation pertaining to divorce specifically, naturally inferring that the parents were first married, and thus the position of the unmarried father need not be explored. A parent's parental responsibilities can only be terminated by the death of the child, the death of the specific parent, or by a court order on application.

125 Section 18(2) of the *Children's Act*. The term "care" has replaced "custody" and "contact" has replaced "access". Section 1(2) states that any reference in an act to the terms "custody" or "access" are to be regarded as also meaning "care" and "contact",

126 *B v S* 1995 4 All SA 392 (AD).

127 *Children's Act* under the definition "care". Specific reference is made to subsections (b)-(d).

128 Section 28(2) of the *Constitution*; Section 9 of the *Children's Act*. In terms of S2(b)iv of the *Children's Act*, it is one of the core objectives of this act to give effect to the principle of the best interests of the child.

129 The Bill of Rights can be found in Chapter 2 of the *Constitution*. In terms of section 8(1) of the *Constitution*, it is binding on all three spheres of government – legislative, executive and judiciary – which includes all organs of state.

130 Section 39(1)(b) of the *Constitution*.

131 Humanium <https://www.humanium.org/en/convention/signatory-states/>.

declare the best interests of the child standard to be the primary consideration in all matters concerning a child.<sup>132</sup>

Section 7 of the *Children's Act* provides a comprehensive list of factors that are to be considered whenever the child's best interests are to be applied in a matter.<sup>133</sup> The following is a summary of the factors that a court is required to consider when determining the care and contact of a child in a divorce matter:

- The essence of the child and the parent's personal relationship with each other;
- The general stance taken by the parent with regards to the child, and accordingly, their parental rights and responsibilities;
- The parent's capability to cater to the need of the child, especially their intellectual and emotional needs;
- The possible effects that a change in circumstances or separation from a parent or sibling might have on the child;
- The child's need to stay in the care of their family, especially a specific parent, and to stay connected to family and heritage;
- The child's history, gender, age and cognitive stage – provision is also made for the consideration of other relevant attributes of the child;
- The level of physical and emotional stability expressed in the child together with the stage of development reached in cognitive, emotional, cultural and social aspects;
- Disabilities or chronic illnesses of the child;
- A child's inherent need to remain in a secure and solid family structure, or at least the closest possible resemblance thereto;
- The need to shield the child from psychological or physical harm which may be brought on by maltreating, abusing, neglecting, exploiting, degrading or exposing the child (or another person);
- The history of violence in the family, whether involving the child or not; and

---

132 Article 3 of the *UNCRC*; Article 4(1) of the *ACRWC*. One of the main objects of the *Children's Act* is to ratify and give effect to the provision of these international instruments.

133 *FS v JJ* 2011 3 SA 126 (SCA) para 32.

- The need to keep legal- and administrative matters pertaining to children to a minimum and to avoid undue delays.

The above list of factors is also to be considered by a court and other relevant persons involved in the process when determining how care and contact of a child are going to be set out. The court has to establish which one of the parents is better positioned to support and uphold the child's emotional, physical and moral welfare.<sup>134</sup> In doing so, a court must consider each and every factor listed above.

It will never be in a child's best interests to be denied contact with one of their parents unless justification exists to the contrary.<sup>135</sup> Where PAS is suspected, every factor listed might be relevant. One can assume that when PAS arises as an allegation in a matter, there will most likely be a counter-allegation of abuse/neglect. Exploring the allegation of PAS will entail placing the alienating parent in the spotlight and highlighting how and why it is not in the best interest of the child to be in the primary care of, or have extensive contact with, the alienating parent – the focus being on that parent's emotionally- and psychologically abusive conduct. Equally, when assessing the allegation of abuse by following the same method, it will be found that it is not in the child's best interests to be in the primary care or have extensive contact with the physically- or sexually abusive parent. In order to avoid this stale-mate position, proper investigations and evaluations have to be done to first establish the true state of affairs of the matter before granting an order which may not be in the child's short term or long-term best interests.

A court, in fact, may not grant a decree of divorce unless it is satisfied that the best provision, in the circumstances, has been made pertaining to the welfare of both minor and dependent children.<sup>136</sup> In a divorce matter, a court is granted complete discretion to make any appropriate order pertaining to the care and/or contact of a minor child – this includes the discretion to grant one parent sole care, should it be in the best

---

134 *McCall v McCall* 1994 3 SA 201 CPD.

135 Kriel Guidelines for social workers: Detection of parental alienation during separation or divorce 31.

136 Section 6(1)(a) of the *Divorce Act*. Important to note is that the court at all times have to uphold the principle of the best interests of the child, however, this is subjective and thus relating to the specific child in their specific circumstances.

interests of the child.<sup>137</sup> In matters pertaining to children, a court is also specifically mandated to order that the matter is to be referred and investigated by a family advocate or a qualified social worker to acquire a report and recommendations as to the child's best interests.<sup>138</sup> In terms of section 6(1)(b) of the Divorce Act, a court in the situation above may not grant an order of divorce until after such a report and/or recommendation has been received and properly considered.

In order to avoid the stale-mate position as described above, a court should refer a matter for investigation as soon as competing allegations arise, especially allegations of something as complex as PAS. Early intervention usually significantly decreases the degree of the negative impact of PAS on a child and the entire family, for that matter.<sup>139</sup>

In matters concerning children, it is quite important to elect procedures that will minimise undue delays while still promoting effective dispute resolution – it is advisable to avoid confrontational approaches unless absolutely necessary in the circumstances.<sup>140</sup> In the event that co-holders of parental rights and responsibilities face challenges in exercising the same,<sup>141</sup> parties are required to pursue the compilation of a parenting plan<sup>142</sup> prior to approaching a court for a possible remedy.<sup>143</sup> Parenting plans determine anything and everything surrounding the exercising of parental rights and responsibilities and can be as comprehensive as required by the parties.<sup>144</sup> Before a court may accept a parenting plan, it must first satisfy itself that it is wholly compliant with the standard of the best interest of the child as determined

---

137 Section 6(3) of the *Divorce Act*; *WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011 para 33. A parent's right to contact will only be denied in cases where there is an extreme risk of physical, emotional or psychological harm.

138 Section 29(5) of the *Children's Act*.

139 Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce* 4.

140 Section 6(4) of the *Children's Act*; *WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011 para 33.

141 Whether this is due to the influence of the other parent, the child, or any other reason.

142 Also known as a parental responsibilities and rights agreement. The *Children's Act* refers to both terms interchangeably.

143 Section 33(2) of the *Children's Act*. There is no direct penalty involved should the court be approached prematurely, however, the approaching party may be subjected to the critique of the court for doing so if no justification exists.

144 Section 33(3) of the *Children's Act*. Also see section 34 for the formalities of a valid parenting plan.

by Section 7 of the *Children's Act*.<sup>145</sup> One of the reasons the parenting plan procedure is so effective is that it involves an independent and qualified third party. The involvement of a family advocate, social worker, psychologist or mediator is required.<sup>146</sup> Such an agreement shall only be enforceable once it has been registered with the family advocate and/or made an order of the court, whichever is applicable.<sup>147</sup>

If a parenting plan has been properly executed and has taken effect, or after a court order pertaining to contact and care is obtained, the parties to it are bound by it until a subsequent court order formally amends it.<sup>148</sup> It shall be regarded as an offence if one of the holders of parental rights and responsibilities acts contrary to such an order or agreement by restricting or preventing the other parent's rights from being exercised – once convicted, such a person may be liable to pay a fine or be imprisoned for a maximum period of one year.<sup>149</sup>

The *Children's Act* provides the above remedy to an aggrieved parent who is being alienated from their child. Two issues arise when this approach is followed with matters concerning PAS. Firstly, if PAS is not yet properly established in the matter, it cannot be said with conviction that the alienating parent is acting wrongly, given that the accusations of abuse may very well be true. Secondly, imposing a fine or imprisonment of the parent that the child is aligned with will most likely have the dire consequence of indirectly affirming to the child that the rejected parent is in the wrong – the alienation then intensifies. In very limited circumstances related to PAS, will it be in the child's best interest to have one of their parents imprisoned, but this does not mean that it may not be a highly effective mechanism in cases of extreme and blatant PAS.

Section 10 of the *Children's Act* gives the child an opportunity to weigh in on matters affecting them and affirms that their voice should be given due consideration in

---

145 Section 33(3) of the *Children's Act*.  
146 Section 33(3) of the *Children's Act*.  
147 Section 22(4) of the *Children's Act*.  
148 Section 28(1) of the *Children's Act*.  
149 Section 35(1) of the *Children's Act*.

proportion to the child's age, maturity and level of overall development.<sup>150</sup> This is reaffirmed in section 31, which specifically requires a parent to properly hear and consider the child's input before making a decision that has a significant impact on the child, specifically where such a decision might have an adverse effect on the child's contact or relationship with the co-holder of parental rights and responsibilities.<sup>151</sup> In matters where it is evident that the parents cannot prioritise the child's best interests, the child may have a court-appointed legal practitioner assigned to them to "provide the child with a voice" in the proceedings.<sup>152</sup> This right is conferred upon children, not only in terms of section 28(1)(h) of the *Constitution* but also in the international instruments, the former giving effect to the latter.<sup>153</sup>

The office of the family advocate came to life through the *Mediation in Certain Divorce Matters Act*, with its primary objective being to assist the courts in carrying the heavy burden placed on the judiciary to uphold the best interests of the child.<sup>154</sup> The role of the family advocate is to institute an inquiry, on request or necessity, on the welfare of a child concerned to furnish the court with a report and recommendations as to the best interests of the child.<sup>155</sup> The family advocate shall remain objective and neutral, acting as an advisor to the court by assisting the court in obtaining the facts of the matter.<sup>156</sup> In an unreported judgement, judge Legodi referred a matter to the office of the family advocate, despite the reluctance of the Respondent in the matter, stating with conviction that the family advocate has been, and continues to be, of great assistance to the court in matters where care and contact are in dispute.<sup>157</sup>

Admittedly, the family advocate, social worker, or other professional appointed to investigate a matter is in a better position to assess the presence of PAS in a matter.

---

150 Article 12(1) of the *UNCRC*; Article 7 of the *ACRWC*. A child's participation in proceedings pertaining to them are thus not dependent on their age alone. The weight attached to the views expressed by the child will be assessed proportionately to the factors mentioned. It is also important to note that the best interests of the child remain paramount, and a minor child may not always have their own best interests at heart given their tender age.

151 *Soller v G* 2003 5 SA 430 para 27.

152 *Soller v G* 2003 5 SA 430 para 13.

153 Article 7 of the *ACRWC*; Article 12 of the *UNCRC*.

154 Section 2(1) of the *Mediation in Certain Divorce Matters Act* 24 of 1987.

155 Section 4 of the *Mediation in Certain Divorce Matters Act* 24 of 1987.

156 *Whitehead v Whitehead* 1993 3 SA 72 (SE); *Soller v G* 2003 5 SA 430.

157 *Van Niekerk v Van Niekerk* (T) (unreported) case number 20880/02 of 1 December 2004; *Soller v G* 2003 5 SA 430 para 26.

Respectfully, a legal practitioner, including a judge or magistrate, does not possess adequate qualifications to make such an assessment. It will also be a slap in the face of justice to make a significant decision about a child's future based solely on the arguments and evidence presented by legal representatives of the parents.

Where competing allegations arise (PAS vs abuse), courts should err on the side of caution before making any order as to the care and contact of the child. The writer is mindful of the fact that some instances warrant interim orders as to care and contact, sometimes on an urgent basis. It is submitted that in such a case, the interim order should include a referral to the appropriate professional for an investigation and recommendations, and the same should not be made final unless the court is convinced that it is in the best interest of the child.

Whether the author in question calls it PAS, PA, estrangement, or an entirely different term altogether, one particular fact is not in dispute – PAS is considered child abuse. As explained by both Gardner and Kelly, and Johnston, the alienating parent may not always be aware of the negative impact of their conduct, and they also need not have the express intent to cause harm to the child. This, however, does not diminish or remedy the emotional and psychological harm done, and it remains abuse – at the very least, it constitutes neglect of the child.

There is clearly a solid legal foundation that justifies, and quite frankly requires, a court to take the phenomenon of PAS very seriously. The South African judiciary is bound by the obligation in the *Constitution* to uphold the best interests of the child in every matter concerning them. If PAS is alleged in a matter and a court fails to properly recognise or consider the same, it will constitute a miscarriage of justice.

The following section will examine the current stance taken by South African courts on the phenomenon of PAS. Accordingly, it will be assessed whether South Africa is affording adequate recognition and consideration of PAS in light of its constitutional and international obligations.

### **3.2 The current position on PAS in South African Courts**

Firstly, it is prudent to mention that the literature and research on the phenomenon of PAS in South Africa are greatly lacking.<sup>158</sup> Secondly, there are no guidelines in South Africa to assist the family advocate, social workers, or other professionals in detecting PAS.<sup>159</sup> If professionals such as the family advocate, social workers and other professionals are not properly educated and trained on how to detect and deal with matters with PAS, it may lead to a misdiagnosis and, subsequently, that the wrong method of intervention is employed. The South African legal system does not accept or reject a certain PAS model or definition but rather acknowledges the phenomenon.<sup>160</sup>

Courts are reluctant to make an order for contact and care, which will be difficult or impossible to effectively enforce.<sup>161</sup> This was clearly expressed in *Soller v Greenberg* where the court found that the child's behaviour resulted from PAS caused by his alienating father. The constraints around the hands of the court tightened with each hearing as the child had relentlessly disregarded the numerous court orders made and contact schedules set in the past, and the court had to acknowledge that he will, in all probability, continue to do so.<sup>162</sup> Instead of forcing the child to reside with his mother - resulting in further strain in the relationship due to the conflict – the court allowed the child to live with his father, having regular, supervised and monitored contact with his mother. His mother did retain primary residency, and the child was merely allowed to reside with his father because the child simply refused anything to the contrary.

---

158 Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce* 3.

159 Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce* 33. It is due to this need that Kriel provides us with her proposed guidelines based on her research of the phenomenon.

160 Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce* 23.

161 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 59, 68; see also *Van Niekerk v Van Niekerk* (T) (unreported) case number 20880/02 of 1 December 2004 Para 18.

162 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 57.

Two different legal representatives were appointed for the child as he sought the variation of the order personally.<sup>163</sup> Prior to that, the matter was initially postponed and referred to the family advocate for a report and recommendations. This was a case where the father committed extreme alienating conduct to such an extent that the court marked him as being "obsessive to the point of fanaticism".<sup>164</sup> The father had a blatant disregard for his contempt of numerous court orders and did not consider himself bound by such court orders. Overall, he was considered an exceptionally bad role model for his son, and the court expressed great concern for the future impact of his behaviour on his son. Nevertheless, the court was reluctantly compelled to work around the child's complete disregard for authority, and he did "seem to function adequately in the care of his father".<sup>165</sup>

In making a finding that PAS is present in the minor child, the court based its decision on the conclusions of three independent experts who all pointed to PAS.<sup>166</sup> The court further stated that it considered the behaviour and relationships of the parties prior to the institution of divorce and during. It was also confirmed that most, if not all, of the predictions as to how the father and child's behaviour will evolve materialised by the time the final order was granted. The court relied heavily on the input of various experts - including the family advocate, legal representatives and mental health professionals - before making a finding as to the care and contact of the child. It is important to note that this case was heard before the *Children's Act* came into force. Thus, the child's best interests were not considered to be the primary consideration, although the court did place it at the very forefront. Unfortunately, the child's voice became the loudest factor in this matter. This case serves to show how important early intervention and treatment is. It further serves to show exactly how damaging the conduct of an alienating parent can become.

In the unreported case of *WO v GB*, a mother made serious allegations against a father of sexually abusing their son.<sup>167</sup> The mother was found to be engaging in alienating

---

163 The first legal representative was found to be unfit and subsequently alternative representation was appointed.

164 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 41.

165 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 67.

166 *Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003 para 52.

167 *WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011 para 11.

conduct. However, the allegations came to life only after an incident had occurred at the father's house and after the child had apparently disclosed to his therapist that his father engaged in sexually inappropriate conduct in front of him. Contact between the father and the son was suspended pending the outcome of the criminal investigation. After a clinical psychologist did tests, it was found that the mother was extremely frail, anxious, tense, anxious and prone to overreactions.<sup>168</sup> The father was not prosecuted due to insufficient evidence to do so, and after an extensive and detailed report was filed by the clinical psychologist, it was further found that the child's sexual trauma could not be linked to his father, but most likely happened at school.

Although it was stated that the mother acted beyond what was necessary to protect the child, the court did take her psychological state into account. The court rightfully made a re-integration order providing for supervised contact between the father and child and another reasonable contact, together with the appointment of a psychologist to monitor and oversee the re-integration process and report her findings in that regard.

In *Prins v Claasen* the court was approached to revise a divorce order by a father on an urgent basis wherein he sought primary care of his children (which was granted to the mother).<sup>169</sup> Same was dismissed with costs to be paid on a party and party scale by the father. The court obtained the opinions of the family advocate and two independent counsellors who all believed that the father was engaged in extreme alienating conduct. It was found that the father's demonisation of the mother had already led to significant emotional and psychological damage of the minor children, and they showed strong signs of PAS.<sup>170</sup> The court did not order any form of therapy, treatment or monitoring of the situation, which is unfortunate in light of the clear presence of PAS. One would hope that the parties in the matter sought their own therapy or counselling to address and remedy the harm that had already been done.

---

168 *WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011 para 16.

169 *Prins v Claasen* (SE) (unreported) case number 707/07 of 12 January 2008 para 1.

170 *Prins v Claasen* (SE) (unreported) case number 707/07 of 12 January 2008 para 7.

Another case that is very indicative of exactly how cases of PAS can spiral out of control is the unreported case of *N v D*.<sup>171</sup> A divorce order was granted, incorporating a settlement agreement that regulated the care and contact of the minor child. The mother was granted primary care subject to the father's contact rights. What followed was a 6-year long battle, wherein the father obtained 6 court orders against the mother wherein she was ordered to allow the father contact with the child. During this time, the father only had contact with the child on three occasions, two with the mother present on her insistence. The Family Advocate, as well as the Family Counsellor, provided the court with reports. Both of these professionals were only able to interview the father, and they had to interview the child at his school, as the mother refused to cooperate. It was recommended that the father be awarded primary care subject to the mother's contact rights. The mother submitted another report by a psychologist. However, the court doubted its objectivity given that the psychologist only had two interviews with the child and could not gain much insight into the true history of the matter.<sup>172</sup>

The court found that the mother acted maliciously and out of hatred for the father. The primary care was reversed to be vested in the father, with the mother having contact rights. The order further granted authority to the Sheriff of the court, and members of the South African Police Force, to assist the father with the collection and dropping off pertaining to the child. It was highly stressed that the care and contact would not have been reversed if the mother had complied with merely one of the court orders granted against her.<sup>173</sup> This reaffirms the position that a court will not amend, limit or restrict a parent's rights or responsibilities unless strong evidence exists that failure to do so will lead to significant physical, emotional or psychological harm.<sup>174</sup>

Although the court in this judgement did not make specific reference to PAS or PA, the court was in effect dealing with the phenomenon. Unfortunately, a parent had to go to such an extent, exhausting their resources, to simply have contact with their child – and this for no apparent reason. From the facts of the case, it is unclear whether the

---

171 *N v D* (GNP) (unreported) case number 23010/2001 of 28 March 2011.

172 *N v D* (GNP) (unreported) case number 23010/2001 of 28 March 2011 para 64.

173 *N v D* (GNP) (unreported) case number 23010/2001 of 28 March 2011 para 124.

174 *WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011 para 33.

identification or diagnosis of PAS would have had any significant bearing on the case's outcome. When scrutinising this specific case, it is unclear why the court did not consider the imposition of a fine or imprisonment, especially considering the mother's blatant disregard for the numerous court orders.

In the writer's opinion, the two cases which indicate the most severe forms of PAS are *Soller v Greenberg* and *N v D*. What specifically stands out in these two cases is the alienating parent's blatant disregard for the numerous court orders granted against them. This in itself is concerning given that it has the potential to break families' trust in the judicial system, leaving them to take the law into their own hands.

It is admittedly quite impressive how South African courts have dealt with matters concerning PAS, especially given the lack of literature or guidelines within the South African context. Although there is much room for improvement, it is submitted that the general approach adopted by the courts is advantageous given the immense controversy over the two different models. The fact that courts completely refrain from concerning themselves with the diagnosis and rather focus on the actual causes and effects of parents' conduct on the inter-parental relationships of the child is commendable. Whether this is due to an innate understanding of the phenomenon is doubted. However, the fact that courts are willing to open the floor to experts is a major step in the right direction.

#### **4 Australian legal position: recognition and consideration of PAS**

The following section will do a mini-comparison of the stance taken in the family courts of South Africa versus those in Australia.

When interpreting the South African Bill of Rights, one is required to take into account the applicable international law and may also consider foreign law.<sup>175</sup> Just like South Africa, Australia is a rainbow child born from the black and white backstory of its

---

175 Section 39(1)(c) of the *Constitution*.

history.<sup>176</sup> Both Australia and South Africa still carry the aftermath of this and similarly can be compared to a certain extent.<sup>177</sup>

Australia ratified the *UNCRC* on 17 December 1990,<sup>178</sup> entrenching the best interest of the child principle as the primary consideration in all matters that involve children. This is further confirmed in national legislation, the *Family Law Act*, stating that a court must consider the child's best interests as paramount when considering whether to make an order to parent said child.<sup>179</sup> A child may also have a legal representative appointed to represent them independently if required.<sup>180</sup> Up to this point, the international and national obligations identified with regard to children are identical between South Africa and Australia.

Section 60CC of the *Family Law Act* provides a comprehensive list of factors to be taken into consideration in the determination of the child's best interests, which can be summarised as follows:

- Primary considerations:
  - The advantages of maintaining a healthy relationship with both parents;
  - The necessity of shielding the child from psychological and physical harm, violence, abuse or neglect;<sup>181</sup>
- Additional factors to be considered:
  - The views expressed by the child, afforded weight proportionate to the maturity and level of development of the child);
  - The relationships between the child, their parents as well as other relatives or family;

---

176 PHD Essay 2020 <https://phdessay.com/racism-in-south-africa/>; Bullimore 2000 <https://www.greenleft.org.au/content/racism-australia-1788-today>.

177 PAS originated, and has been fairly well established, in the United States. It is, however, almost impossible to draw a reasonable comparison between the United States and South Africa due to the fact that the United States have not ratified the *UNCRC*. The best interest of the child principle is thus not established as the primary and most important consideration in matters concerning a child.

178 Australian Human Rights Commission 1991 <https://humanrights.gov.au/our-work/childrens-rights/publications/un-childrens-convention-and-australia-1991>.

179 Section 60CA of the *Family Law Act* 53 of 1975.

180 Section 60CB(1) of the *Family Law Act* 53 of 1975.

181 In terms of section 60CC (2A) this consideration is to be awarded more weight.

- The level of involvement of each parent, considering participation in decision making, quality time spent and communication with the child;
- The level of fulfilment of parental obligations;
- The possible effect on the child should they be separated from a parent or sibling;
- The practicality involved around a child's contact with a specific parent;
- The capacity of parents and family members to cater for the emotional as well as physical needs of the child;
- History, age, level of maturity and lifestyle of the child and their parents;
- The level of impact on the right of an Aboriginal child to enjoy their culture;
- The parent's attitude presented towards the child and I the exercising of their rights and responsibilities;
- History of family violence, considering any inferences that can be drawn from any existing family violence orders;
- The preference to limit future judicial proceedings;
- Any other factor deemed necessary.<sup>182</sup>

When this list is compared to the list provided in section 7 of the *Children's Act* (South Africa), the factors are almost identical for the most part. However, a very distinct difference is the differentiation between primary considerations and further considerations. In South Africa, all of these factors are usually considered as a whole, and weight is apportioned to each factor as the court deems fit in the particular circumstances. Specific provision is also made in Australia for the unique position of Aboriginal children, which of course, is not applicable in South Africa.

In line with its international obligations to that effect, the *Family Law Act* also requires a court to give due consideration to the wishes expressed by a child in and pertaining to any matter concerning said child. It further stipulates how courts are to hear the child's voice.<sup>183</sup> This may be done by either having a voice of the child assessment done, the results of which are compiled in a report and presented to the court; an

---

182 Section 60CC of the *Family Law Act* 53 of 1975.

183 Section 60CD (1)-(2) of the *Family Law Act* 53 of 1975.

independent legal practitioner may be appointed to express the child's voice to the court, or by any other means the court deems fit in the circumstances.

All of the above legal principles were applied in the court case, which is discussed below. It will be evaluated whether the approach followed by the Australian courts is conducive to the aims of its international obligations and whether the same approach might be considered in South Africa.

In *Malave v Ratcliffe*,<sup>184</sup> a high conflict divorce, the mother claimed that the father had severely alienated the children from her, and in turn, the father alleged that the mother was abusive and neglected the children. The court in this matter called upon the assistance of various mental health professionals, child experts and legal representatives for the children to aid the court in making a finding as to the parents' rights and responsibilities. The immense amount of resources that were pooled into this case was impressive.

Numerous reports, compilations, articles, opinions and research was submitted to the court. Most of the reports could identify serious PAS, but not severe. In this painstakingly comprehensive judgement, most of these findings are cited and explained to the point of exhaustion. After 173 pages of ping pong arguments - regarding, *inter alia*, the definition of alienation, the elements applicable, whether it is a syndrome or not, how much fault is to be attributed to who and whether there exists sufficient empirical research to consider alienation as a diagnosis - the court found that the documents presented to the court on alienation provided background information at best and do not assist the court in determining the children's best interests.<sup>185</sup> The court further found that PAS has not been established to a point where a court of law can allow expert evidence to be accepted thereon.<sup>186</sup>

In the judgment of *Irish v Michelle*, we again see that various professionals are involved who submit their opinion and/or report on the matter to assist the court in determining the child's best interests. The mother clearly exhibited severe alienating

---

184 *Malave v Ratcliffe* 2015 FCCA 201.

185 *Malave v Ratcliffe* 2015 FCCA 201 para 514.

186 *Malave v Ratcliffe* 2015 FCCA 201 para 511.

conduct, but the court regarded it as having a more damaging effect on her own relationship with the children. In this case, the court makes specific reference to the fact that Kelly and Johnston's model enjoys preference in Australia.<sup>187</sup> This is confirmed by the outright rejection of the term PAS in the case of *C v C*.<sup>188</sup>

The above situation is what this study seeks to avoid within the South African context. As previously argued, the semantics around PAS serve their legitimate purpose and are very important to consider in the research and development of PAS. However, the writer believes it is not best suited for a court to make findings and create precedents around a phenomenon like PAS. The court should identify neglect, maltreatment and abuse of children and attempt to protect them from such. This is not to say that a court should not hear evidence on these aspects, but entering into the academic debate and making a finding thereon can cause a massive roadblock in the future, especially given the precedents set by the court.

## **5 Lessons to be learned**

The previous sections discussed the two competing positions taken by courts on PAS, one expressed in the jurisdiction of South Africa and the other to be seen in Australia. These two approaches will be briefly discussed at the hand of the approaches followed by courts and the outcomes of the matters.

It is clear that the courts in South Africa have taken a much more general approach to recognising PAS. Based on the case law highlighted and discussed above, it can be seen that the phenomenon of PAS is recognised as a whole as a phenomenon rather than a syndrome or family issue. The court was led by expert evidence and reports and recommendations by professionals in making its finding.

It can be seen that the South African courts show no reluctance to require the assistance of the family advocate in these matters, and they seem to truly prefer the involvement. In matters where it was deemed necessary, the court-appointed independent legal representatives for the children to have their wishes and opinions

---

187 *Irish v Michelle* 2009 FamCa 66 para 78.

188 *C v C* 2004 FamCa 708 para 84.

heard and considered. The court then considers all the documentation submitted and, if it is satisfied that a satisfactory determination as to the child's best interests can be made, an order is made to the effect thereof. Emphasis is placed on ensuring that the decisions made in court are of such a nature as to limit future disputes and litigious processes regarding the child.

This general approach allows the South African courts to make a finding based on the evidence presented to the court – the conduct of the parents, the actual and real effects thereof on the specific child, psychological factors relating to the parties concerned and the independent opinions of professionals. Overall this has proven successful as the orders made generally included reconstructive measures to restore the relationship between the parents and the child, together with the appropriate therapeutic measures.

In Australia, however, the courts have become preoccupied with being politically correct in the ominously controversial debate of whether PAS is legitimate or not. It is sad to see how countless resources are spent on matters, including the state resources to compile these elaborate judgements, when it still does not seem to truly aid the court as much as one would hope. In most cases, the court found that the documentation compiled and presented regarding PAS was inconclusive as to the child's best interests despite numerous professionals picking up on serious pointers to PAS. None of the judgements discussed above gave actual weight to PAS and its surrounding circumstances in degerming the care and contact of the children. Arguably the cases were not as "clear-cut" as those presented in South Africa, but one cannot help but wonder whether the judgement underemphasised the severity of the matters.

The circular arguments shown on the court records in Australia all seem to end up taking the stance that there is not enough empirical research on PAS to actually recognise it as legitimate in the court, and similarly, they are reluctant to accept or hear any expert evidence thereon. Interestingly, all three judgements make this finding only after numerous experts have submitted reports, opinions, evidence, and testified on the matter. The courts do not elaborate on whether such evidence produced to court actually formed part of the considerations when making an order. Because they

do not wish to entertain expert evidence on a phenomenon that has not been concretely established, it is unsure why the judgments included and cited these documents to the point of exhaustion.

The approach followed in the Australian courts, respectfully, does not fully consider the child's best interests. Very little to no provision is made for these families to attend therapy of any sort despite the very obvious emotional- and psychological disturbances shown and identified in the parties. The child's long-term best interests specifically become very blurred in light of possible emotional and psychological abuse not being addressed and remedied. The wasted resources in itself is a privilege that South African courts simply do not have.

Overall, the Australian court's outright rejection of PAS and alienation is a very bleak dead end. It seems that, unless PAS gains diagnostic status, these courts do not want to recognise it as even being a legitimate occurrence. Firstly, the precedents set to create a massive roadblock for future adjudication of matter of PAS. The courts become bound by previous judgements, even if it is merely the peer pressure of political correctness. This causes a major hurdle in the research and development of the phenomenon as a whole. The Australian court has let itself become swept up in an academic debate as to what exactly to label this certain type of abuse that it has completely lost sight of the fact that children actually need protection from it. The fact that the court does not deem it as established invalidates the experiences and abuses of these children.

## **6 Conclusion and recommendations**

This study set out to explore the phenomenon of PAS and sought the answer to the question of why South African courts should consider PAS as a determining factor when considering the care and contact of a child.

The two competing models were discussed in detail at the hand of the support and critique against one. The first model being introduced by Gardner differentiates between PAS and PA. In this model, PA constitutes a child's legitimate and justified alienation from their parent due to abuse. On the other hand, PAS is described as a

phenomenon where the child alienates a parent for unjustified reasons due to the other parent's undue influence thereto. He specifically describes PAS as a diagnostic syndrome and supports this model advocate for its inclusion in the DSM accordingly. The alienating parent is the primary cause of PAS in this model.

Kelly and Johnston reformulate the phenomenon and differentiate between estrangement and parental alienation. Estrangement is the legitimate alienation of a parent due to abuse, and parental alienation is the unjustified and irrational alienation of a parent. They argue that PAS cannot be considered as a syndrome and that the alienating parent is not the primary cause of the phenomenon.

On scrutinising the two models, it became quite apparent just how similar they are, in essence. The writer emphasises that the differences identified are crucially important in certain aspects, especially academically and in the field of psychology. No medical professional ought to make an actual diagnosis of PAS, specifically, because the exact term PAS has yet to be afforded the status of the diagnostic syndrome. However, PAS has become much more of a family law problem than one of psychology, and it is prudent that the judicial stance around PAS is developed and refined. It is the writer's opinion that these two models, in essence, identify the exact same phenomena but simply structure them differently.

What is also an interesting point to remember in this sense is that Gardner developed his model from a medical point of view, whereas Kelly and Johnston did so from a social point of view. Gardner's use of language can be described as unvarnished. He describes the alienating parent as maliciously abusive, the primary cause of the psychological abuse and having psychopathic tendencies. Kelly and Johnston explain the exact same phenomenon to us, but they choose to use words that are not as cold and affirmative. They elect to soften the perspective on the situation, and it is understandable why their view seems to enjoy preference. The writer cannot dispute the attractiveness of their model and does not wish to detract therefrom in any manner. However, the point remains that these two models are, in essence, so similar that a court cannot objectively deny the existence of PA and PAS. Both models identify two distinct phenomena that arise in high conflict divorce, both exhibiting the same

symptoms and having the same detrimental effect on the child experiencing it. Both sides of this controversial debate have concluded that inducing this phenomenon is, in fact, serious psychological and emotional abuse. The phenomenon is real, and the rejection of its existence will be a great injustice to its victims.

The study further sought to explore whether the current legal framework in South Africa provides room for the consideration of PAS when determining contact and care of a child. In light of the *UNCRC*, *ACRWC*, *Constitution* and the *Children's Act*, the child's best interests reign supreme among the considerations in a matter involving a child. These statuses create a statutory obligation on courts to uphold this standard. Further provision is made for the court to consider the child's views when appropriate and may appoint an independent legal practitioner for the child to execute this right. The Divorce Act, amended by the Mediation in Certain Divorce Matters Act, prohibits a court from granting a divorce order until it is satisfied that the children's best interests are met. The last-mentioned act also established the office of the family advocate who assists the court in determining children's best interests. The provisions made in South African legislation for the protection of children against physical, emotional, sexual, psychological and other abuse is very inclusive and allow for the consideration of abuses not listed.

The study further discussed how the South African courts currently approach the phenomenon of PAS, and it was found that the phenomenon is, in fact, recognised. However, the courts do not delve into the extreme details surrounding PAS and do not concern themselves with the semantics. Experts are called in to assist the court by conducting investigations, compiling reports, doing evaluations and making assessments. The court considers the submissions made and makes an informed finding as to the child's best interest. In most cases, the order incorporated some form of therapy or therapeutic monitoring for the family to facilitate re-integration.

A mini comparison was made between South Africa and Australia because the two have similar, almost identical, international and national obligations towards upholding the child's best interests. The Australian courts, however, unfortunately, have become involved in the debate on whether or not PAS is legitimate, and it has escalated to a

point where courts have overwhelmingly and expressly rejected PAS. Like South African courts, the Australian court calls upon professionals to assist the court in determining the child's best interests. Unfortunately, it seems that a lot of these resources go to waste as it is usually of little to no value to the actual judgement, despite their weight.

If alleged, PAS should be considered a factor in the determination of care and contact of children in divorce cases, as it is in the child's best interests to do so. In light of how established the phenomenon in its entirety has become, and in light of the national and international obligations imposed in South Africa, a court objectively cannot deny its entire existence. It has been established as emotionally- and psychologically abusive and damaging. Denial of the phenomenon will be an utter injustice to those who have suffered at the hand of PAS and for those to come. South African courts, and the professionals involved, have a duty to research and develop this concept within the South African context.

## **BIBLIOGRAPHY**

### ***Literature***

Allan 2005 *SAJP*

Allan A "Psychiatric diagnosis in legal settings" 2005 *SAJP* 52-55

American Psychiatric Association *DSM-5*

American Psychiatric Association *DSM-5* 5<sup>th</sup> ed (2013)

Bekker *et al.* 2004 *CARSA*

Bekker JC *et al.* (eds) "Legal remedies available to an aggrieved parent: Observations on the Parental Alienation Syndrome in custody and access litigation" 2004 *CARSA* 26-33

Bernet *et al.* 2010 *AJFT*

Bernet W *et al.* (eds) "Parental Alienation, DSM-V, and ICD-11" 2010 *AJFT* 76-187

Bernet *et al.* 2020 *JFC*

Bernet W *et al.* (eds) "Measuring the Difference Between Parental Alienation and Parental Estrangement: the PARQ-Gap" 2020 *JFC* 1225-1234

Bruch 2001 *EJLR*

Bruch CS "Parental Alienation Syndrome: Junk Science in Child Custody Determinations" 2001 *EJLR* 383-304

Chürr 2015 *LitNet Akademies*

Chürr C "Aantekeninge oor Regsaspekte van Ouervervreemdingsindroom in Suid Afrika" 2015 *LitNet Akademies* 373-386

Collings 2015 *CARSAJ*

Collings SJ "The Focus of Prevention in Child Abuse Research: The Journal of Child Abuse Research in Review" 2015 *CARSAJ* 15 - 22

Clarkson and Clarkson 2007 *JSWFL*

Clarkson H and Clarkson D "Confusion and Controversy in Parental Alienation"  
2007 *JSWFL* 265-275

De Jager *The Development of a Parental Alienation Syndrome Interview Protocol*

De Jager M *The Development of a Parental Alienation Syndrome Interview Protocol* (M.A. - Clinical Psychology dissertation Rhodes University 2008)

Drozdz and Oleson 2004 *JCC*

Drozdz LM and Oleson NW "Is it Abuse, Alienation and/or Estrangement?" 2004  
*JCC* 65 - 106

Ellis 2007 *JCC*

Ellis E "A Stepwise Approach to Evaluating Children for Parental Alienation Syndrome" 2007 *JCC* 55-78

Faller 1998 *Child Maltreatment*

Faller KC "The Parental Alienation Syndrome: What is it and what data support it?" 1998 *Child Maltreatment* 100-115

Gardner 1999 *AJFT*

Gardner RA "Differentiating Between Parental Alienation Syndrome and Bona Fide Abuse-Neglect" 1999 *AJFT* 97-107

Gardner 2001 *FCR*

Gardner RA "Commentary on Kelly and Johnston's 'The Alienated Child: a Reformulation of Parental Alienation Syndrome'" 2001 *FCR* 611-621

Gardner 2002 *AJFT*

Gardner RA "Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes?" 2002 *AJFT* 93-115

Giancarlo and Rottmann 2015 *IJISS*

Giancarlo C and Rottmann K "Kids come last: the effect of family law involvement in Parental Alienation" 2015 *IJISS* 27-42

Jaffe, Thakkar and Piron 2017 *Cogent Psychology*

Jaffe AM, Thakkar MJ and Piron P "Denial of ambivalence as a hallmark of parental alienation" 2017 *Cogent Psychology* 1-15

Johnston and Kelly 2004 *FCR*

Johnston JR and Kelly JB "Rejoinder to Gardner's 'Commentary on Kelly and Johnston's The Alienated Child: A Reformulation of Parental Alienation Syndrome'" 2004 *FCR* 622-628

Johnston, Walters and Friedlander 2001 *FCR*

Johnston JR, Walters MG and Friedlander SF "Therapeutic work with Alienated Children and their Families" 2001 *FCR* 316-333

Johnston, Wallters and Oleson 2005 *JEA*

Johnston JR, Wallters MG and Oleson NW "Is it Alienating Parenting, Role Reversal or Child Abuse? A Study of Children's Rejection of a Parent In Child Custody Disputes" 2005 *JEA* 191-218

Kelly and Johnston 2001 *FCR*

Kelly JB and Johnston JR "The Alienated Child: A Reformulation of Parental Alienation Syndrome" 2001 *FCR* 249-266

Kriel *Guidelines for social workers: Detection of parental alienation during separation or divorce*

Kriel T *Guidelines for social workers: Detection of parental alienation during separation or divorce* (Master of Social Work dissertation Northwest University 2020)

Kruger 2004 *AER*

Kruger D "Guidelines for investigations and forensic report-writing by independent educational psychologists in custody disputes" 2004 *AER* 295 – 318

Lee and Oleson 2001 *FCR*

Lee SM and Oleson NW "Assessing for Alienation in Child Custody and Access Evaluations" 2001 *FCR* 282-298

Marques, Narciso and Ferreira 2020 *CYSR*

Marques TM, Narciso I and Ferreira LC "Empirical research on parental alienation: a descriptive literature overview" 2020 *CYSR* 1-12

Pepiton *et al.* 2012 *JCSA*

Pepiton MB *et al.* (eds) "Is Parental Alienation Disorder a Valid Concept? Not According to Scientific Evidence. A Review of Parental Alienation, DSM-5 and ICD-11 by William Bernet" 2012 *JCSA* 244-253

Szabo 2002 *SAPR*

Szabo CP "Parental Alienation Syndrome" 2002 *SAPR* 1

Teoh, Chng and Chu 2018 *SACJ*

Teoh J, Chng GS and Chu CM "Parental Alienation Syndrome: Is it Valid" 2018 *SACJ* 727-755

Van Der Bijl 2016 *OBITER*

Van Der Bijl C "Investigating Parental Alienation as a Form of Domestic Violence, Child Abuse and Harassment: a Legal Hypothesis" 2016 *OBITER* 121 - 131

Vestal 1999 *FCCR*

Vestal A "Mediation and Parental Alienation Syndrome: Considerations for an Intervention Model" 1999 *FCCR* 487 - 503

Warshak 2001 *AJFP*

Warshak RA "Current Controversies Regarding Parental Alienation Syndrome" 2001 *AJFP* 29 – 59

Warshak 2003 *FLQ*

Warshak RA "Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence" 2003 *FLQ* 273-301

### **Case Law**

*AC v ADT* 2015 JOL 33077 (GJ)

*B v S* 1995 4 All SA 392 (AD).

*FS v JJ* 2011 3 SA 126 (SCA)

*G v G* 2003 5 SA 396 (ZHC)

*Kleynhans v Kleynhans* (ECP) (unreported) case number 2256/08 of 30 July 2009

*McCall v McCall* 1994 3 SA 201 CPD

*N v D* (GNP) (unreported) case number 23010/2001 of 28 March 2011

*Prins v Claasen* (SE) (unreported) case number 707/07 of 12 January 2008

*Soller v Greenberg* (W) (unreported) case number 23342/02 of 21 February 2003

*Soller v G* 2003 5 SA 430 (W)

*Van Niekerk v Van Niekerk* (T) (unreported) case number 20880/02 of 1 December 2004

*WO v GB* (ECG) (unreported) case number 410/2009 of 6 December 2011

### **Foreign Case Law (Australia)**

*Lane & Arthurs* [2006] FamCa 87

*Malave & Ratcliffe* [2015] FCCA 201

*Parker & Elliott* [2003] FamCA 990

*Summers & Nathan* [2005] FamCA 1406

## **Legislation**

*Children's Act* 38 of 2005.

*Constitution of the Republic of South Africa*, 1996

*Divorce Act* 70 of 1979

*Mediation in Certain Divorce Matters Act* 24 of 1987

## **Foreign Legislation (Australia)**

*Family Law Act* 53 of 1975

*Family Law Legislation Amendment Act* 189 of 2011

## **International Instruments**

*African Charter on the Rights and Welfare of the Child* (1990)

*United Nations Convention on the Rights of the Child* (1989)

## **Internet Sources**

Bullimore 2000 <https://www.greenleft.org.au/content/racism-australia-1788-today>

Bullimore K *Racism in Australia: 1788 to today*

<https://www.greenleft.org.au/content/racism-australia-1788-today> accessed

03 December 2021

Cambridge University Press 2021

<https://dictionary.cambridge.org/dictionary/english/psychopath>

Cambridge University Press *Cambridge Dictionary* 2021

<https://dictionary.cambridge.org/dictionary/english/psychopath> accessed 04

December 2021

Gardner 2002 <http://richardagardner.com/ar22>

Gardner RA *The Parental Alienation Syndrome: Past, Present and Future* 2002

<http://richardagardner.com/ar22> accessed 03 December 2021

Hill 2015 <https://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests-v2/6533660#transcript>

Hill J 2015 *In the Child's Best Interest*  
<https://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests-v2/6533660#transcript> accessed 21 January 2019

Humanium <https://www.humanium.org/en/convention/signatory-states/>

Humanium Signatory States and Parties to the Convention on the Rights of the Child <https://www.humanium.org/en/convention/signatory-states/> accessed 01 December 2021

PHD Essay 2020 <https://phdessay.com/racism-in-south-africa/>

PHD Essay *Racism in South Africa* 2020 <https://phdessay.com/racism-in-south-africa/> accessed 02 December 2021

STATS SA 2021 [www.statssa.gov.za/?p=11176](http://www.statssa.gov.za/?p=11176)

STATS SA 2018 *Marriages and Divorces 2016 Report*  
[www.statssa.gov.za/?p=11176](http://www.statssa.gov.za/?p=11176) accessed 12 August 2021

United Nations Office of the High Commissioner 2014 <http://indicators.ohchr.org/>

United Nations Office of the High Commissioner 2014  
<http://indicators.ohchr.org/> accessed 24 February 2019