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## Court hits hard on parental alienation

By Cristin Schmitz

An “otherwise good parent” who had sole custody of her five-year-old boys from birth has lost custody because she undermined their relationship with their father.

Serving notice that courts confronted by “parental alienation” will not balk at switching custody, if it is deemed desirable in the children’s best interests, the Ontario Court of Appeal dismissed teacher Anita Tessaro’s appeal from a decision last year which gradually shifted the primary residence of the twins to Kenneth Rogerson, a mechanical engineer.

“We recognize, as did the trial judge, that the remedy of granting custody to the father is a dramatic one. However that remedy was supported by the expert evidence, and by the mother’s persistent, ingrained and deep-rooted inability to support the children’s relationship with the father,” Justices Marc Rosenberg, Michael Moldaver and Susan Lang explained in their May 9 endorsement.

The panel held that the trial judge’s decision was “amply supported by the evidence,” which included such “troublesome conduct” by Tessaro as unilaterally restricting Rogerson to daytime contact, and not telling him about the children’s medications or giving him their prescription drugs with the result that they were sicker after they visited with him.

The appeal court was also unimpressed by Tessaro’s decision, on the eve of the custody trial, to uproot the children from their school and community and move them to another town, further away from Rogerson, thus making an alternate-week shared parenting arrangement impracticable.

“Moreover, the mother said that if the father moved to her new town, she would move again,” observed the judges. “This conduct, in addition to many other instances of alienating conduct, was properly viewed by the trial judge as evidence of the mother’s inability to support the father’s relationship with the children and to consider the best interests of the children.”

However, apart from her persistent negative and obstructive behaviour with respect to the children’s relationship with their father, the appeal court called her “otherwise a good parent”.

Rogerson’s counsel Mari-Anne Saunders of James & Saunders in Stoney Creek, Ont. told *The Lawyers Weekly* the decision demonstrates that “you don’t get to alienate your children and be able to maintain custody.”

Saunders praised the courts for recognizing the destructive impact of even relatively subtle alienating conduct, but noted her disappointment that the appeal court deemed the mother an “otherwise” good parent.

“I feel that it is flawed logic,” explained Saunders, who argues that a parent who impedes or destroys their child’s relationship with the other parent should not be judged a “good” parent, notwithstanding the alienating parent’s virtues.



**Andreus Snelius of Snelius Redfearn in Burlington, Ont., photo by Paul Lawrence**  
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Courts have shown more willingness in recent years to impose jail and fines on those who obstruct access, but switching primary residence from a parent with sole custody, particularly of children of fairly tender years, remains unusual, suggested Tessaro's counsel, family law practitioner Andreus Snelius of Snelius Redfearn in Burlington, Ont.

"Clearly the judges that I have been in front of have recognized that where there is parental alienation, the question was always how to deal with it," he said. "And the way to deal with it, typically, has been to say: 'OK here is the order. Here is the access that is going to have to take place. And if you do not make sure that access takes place, then what will happen is that you will be subject to contempt proceedings.' But contempt proceedings don't always dissuade a person."

Snelius agreed that parents prone to alienation – the persistent denigration and devaluing by one parent of the other parent – removing custody may be perceived as the ultimate sanction. "This decision may be an indication that courts are starting to take the situation of parental alienation much more seriously and are more willing to change custody," he said. "You definitely have to encourage your clients to foster a good relationship between the children and the other parent. It's crucial for the children, and I think that the courts are starting to enforce that."

At press time Tessaro had not yet decided whether to ask for leave to appeal to the Supreme Court of Canada.

The appeal court noted that the mother continued her alienating conduct, notwithstanding court orders and expert assessments which stressed the importance of the relationship between the father and the children. "The mother is not persuaded by judgments of the court," said the Court of Appeal.

Perhaps the catalyst for Tessaro's bitter campaign was Rogerson's questioning his paternity of the twins before they were born in 1999 when the couple's 10-month marriage disintegrated. Rogerson had to launch court proceedings to get access after DNA testing proved he was the father.

Rogerson was described by Superior Court Justice Cheryl LaFreniere, who conducted the 2005 trial, as "a man who has been conditioned to present himself as someone who is deserving of relationship with his children, as if the onus is on him to prove why he should be entitled to see his children. He has taken many parenting courses and has done more than many parents do. A less committed person may have given up and not been able to withstand the obstacles in his path. He has never said negative things about the mother except in relation to her [interference] with his contact with the children."

In affirming the trial judge's order, the appeal court also pointed out that "the father bonded closely with the children, took advantage of parenting courses, established himself as a capable and affectionate parent, participated fully in the children's schooling and extracurricular activities and, finally, appreciated the importance of facilitating a relationship between the mother and the children."

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