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Fighting Over the Kids – Battered Spouses Take Aim at a Controversial Custody Strategy

Losing Battle: A Judge Denied Shockome Custody of Her Kids

By Sarah Childress

It took six years for Genia Shockome to gather the courage to leave her husband, Tim. He pushed her, kicked her and insulted her almost from the moment they married in 1994, she says. She tried to start over with their children when the family moved from Texas to Poughkeepsie, N.Y. It didn't last long. Tim called her constantly at work and, after they split up, pounded on her door and screamed obscenities, she alleged in a complaint filed in 2001. Tim was charged with harassment. As part of a plea deal, Tim agreed to a stay-away order — but denies ever abusing her or the children. In custody hearings over the past six years, Tim has insisted that he's been a good father, and argued that Genia's allegations poisoned their children against him. The judge sided with Tim. This summer he was granted full custody of the kids, now 11 and 9. Genia was barred from contacting them.

Genia is one of many parents nationwide who have lost custody due to a controversial concept known as parental alienation. Under the theory, children fear or reject one parent because they have been corrupted or coached to lie by the other. Parental alienation is now the leading defense for parents accused of abuse in custody cases, according to domestic-violence advocates. And it's working. The few current studies done on the subject consider only small samples. But according to one 2004 survey in Massachusetts by Harvard's Jay Silverman, 54 percent of custody cases involving documented spousal abuse were decided in favor of the alleged batterers. Parental alienation was used as an argument in nearly every case.

This year the National Council of Juvenile and Family Court Judges denounced the theory as “junk science,” and at least four states have passed legislation to curtail its use in custody cases involving allegations of domestic violence. “It's really been a cancer in the family courts,” says Richard Ducote, an attorney in Pittsburgh who has represented abuse victims in custody cases for 22 years. “It's made it really difficult for parents to protect their kids. If you ask for protection, you're deemed a vindictive, alienating parent.”

It may seem hard to fathom how a judge could award custody to a parent accused of abuse. But battered spouses often don't file criminal charges — so no judicial finding is made against their mates — and family-court judges typically aren't trained to referee the complexities of abusive relationships. (Although men are sometimes battered by their wives, women are the victims in the majority of abuse cases.) Judges often throw out documented evidence of spousal abuse, arguing that it is irrelevant in a custody case. And experts say that family-court judges

often look favorably on the alleged abuser because he seems more willing to share custody than the accuser — who is hellbent on keeping the father away from the child. According to a survey by Geraldine Stahly, a psychology professor at California State University at San Bernardino, attorneys will caution battered spouses against reporting abuse in court so they don't lose their children. (Stahly and other academics say the parental-alienation argument has more legitimacy in custody disputes that don't involve charges of abuse.)

Parental-alienation syndrome was first introduced by child psychiatrist Richard Gardner in the 1980s. Fathers-rights groups picked up on the idea and began trying it out in court. These groups condemn abusers. But Dan Hogan, executive director of Fathers & Families, a nonprofit group that advocates for joint custody, argues that all too often the accusers lie in order to win custody of their kids.

There's a small but growing movement to ban parental alienation in custody cases, sparked by embattled parents bonding online. They've linked with lawyers and advocates for battered spouses across the country. At least four states, including California, have laws protecting parents who make good-faith abuse allegations. Others may soon follow their lead. Greg Jacob, an attorney who takes cases for abused parents pro bono, is drafting legislation to shop to Virginia and Maryland next month. Meanwhile, parents like Genia keep fighting.

"It's so hard, having my children lost," she says, her voice breaking. "This was my life — my children."

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