THE LAWYER'S DAILY

The Lawyer's Daily | 111 Gordon Baker Road, Suite 900 | Toronto, ON M2H 3R1 | www.thelawyersdaily.ca
Phone: (800) 668-6481 | Fax: (905) 479-3758 | John.Carson@lexisnexis.ca

Parenting Intervention

The tragedy of A.M. v. C.H.: Time for an interventionist approach

By **David Frenkel**

David Frenkel

(November 13, 2019, 11:42 AM EST) -- The Ontario Court of Appeal released its decision on the case of *A.M. v. C.H.* 2019 ONCA 764 in September. It's a custody dispute case involving the parental alienation of a 14-year-old boy who refused to live with his 70-year-old father despite a custody reversal order following an 11-day trial. What made the circumstances even more tragic was that between the date of the trial decision and the Appeal Court's ruling, the son assaulted his father, resulting in a criminal no-contact order between them. Since the son was not allowed to return to the mother, he was placed in a foster home. In the foster home, he was also assaulted and required surgery with plates implanted in his face.

All in all, the father was left with essentially nothing, despite spending years in litigation and likely hundreds of thousands of dollars in legal fees. The troubled son will likely continue his rebellious ways and be left without a family and without a real home to come back to.

Even for family law lawyers, this case is appalling and simply a tragedy, where the legal system failed to provide a child a chance of forming a positive relationship with at least one of his parents.

To do nothing cannot be the best option. Rather, perhaps a novel approach should be tried by learning from the lessons found among the carnage.

To find these lessons, a starting point is to look at similarities between this extreme case and other cases where there is a likelihood of parental alienation.

These similarities include parents denigrating each other in front of children, not encouraging a child to see the other parent and not stepping in when hearing their child talk negatively about the other parent. And, if the children are old enough, their minds start forming negative opinions about the non-alienating parent, directly or indirectly influenced by the alienating parent's words and actions.

Instead of being guided during their formative years, the child's development becomes stagnant, crippled by having to think about issues relating to divorce and separation that are beyond what they are capable of due to their limited maturity levels.

The alienating parent also become blinded by his or her hatred of their ex-spouse and loses sight of the importance of maintaining a united front for their children despite their family law differences.

Moreover, during the course of litigation, the lawyer's and the judge's hands are usually tied until sufficient evidence is produced to show that one parent's actions are damaging to the child. The amount of evidence required is typically revealed at trial or a long motion after one or two years in the courts. By that time, the child has usually lived primarily with the alienating parent and the child's opinions have hardened, making it almost impossible to change even with the most forceful of orders and the most expensive reintegration therapies.

Perhaps the lesson from this and similar cases may be to consider a new approach. This approach would involve a judge being able to meet and observe both parents and the children in chambers at

the outset of a matrimonial case. The purpose of the meeting would be for the judge to witness firsthand the interactions between the parents themselves and the children.

The meeting could be done on a without-prejudice basis and with the assistance of a court-appointed child psychologist for guidance and feedback.

Traditionally, judges have shied away from an interventionist approach; they have left that job to the experts by relying on their reports. However, perhaps in some special cases, a different approach may be warranted.

In those special cases, it may be necessary for a judge to see firsthand how the parents talk to each other in front of the child, how the child interacts and reacts with both parents and what other subtle cues may be observable that can allude to underlying contributors to parental alienation.

A meeting in front a judge with poignant questions asked and responses observed may allow the judge to better understand how one parent’s actions contribute to a child’s opinions and behaviours. In such a setting, it would likely be harder for certain litigants to hide behind their lawyers, with polished affidavits and convincing factums.

Perhaps such a face-to-face meeting can reveal an alienating parent’s natural inclinations more readily and a judge can use this information to make more appropriate orders early on in the case.

Examples of such orders may be to require the potential alienating parent attend parental counselling, require the counsellor to provide preliminary opinions about the parent and to sanction certain damaging behaviours with cost consequences. If the parent knows their actions are now being observed and have consequences, perhaps they will think twice about doing them.

Just as important, perhaps being educated early on in the process about the damaging consequences of their actions may reduce a parent’s harmful behaviour and minimize the chances of a case going off the rails.

The above interventionist approach may not work for all cases and will likely require a trial-and-error approach. However, currently there does not appear to be a better plan to avoid the results that occurred in *A.M. v. C.H.* Therefore, if early judicial intervention can facilitate a child having at least the hope of a better future than what happened to this 14-year-old boy, then it may be worth a try.

David Frenkel is a lawyer at Gelman & Associates *who has practised exclusively in family law for the last 10 years. He can be reached at* dfrenkel@gelmanlaw.ca*.*

Photo credit / Deagreez ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer’s Daily*, contact Analysis Editor Yvette Trancoso-Barrett at* Yvette.Trancoso-barrett@lexisnexis.ca *or call 905-415-5811.*

© 2019, The Lawyer's Daily. All rights reserved.