SEVEN
publicações acadêmicas

DIAGNOSTIC REDUCTIONISM AND THE SCIENTIFIC QUALIFICATION OF EXPERT TESTIMONY IN FAMILY LAW

REDUCIONISMO DIAGNÓSTICO E QUALIFICAÇÃO PERICIAL EM LITÍGIOS DE GUARDA

REDUCCIONISMO DIAGNÓSTICO Y LA CALIFICACIÓN CIENTÍFICA DEL TESTIMONIO PERICIAL EN EL DERECHO DE FAMILIA

https://doi.org/10.56238/sevened2025.029-089

Beatrice Merten Rocha[1]

ABSTRACT

The objective of this article is to discuss the relevance of expert qualification in custody disputes, particularly in cases of alleged parental alienation, in a study with an analytical and critical approach, of a qualitative nature, using extensive bibliographic and documentary research. It examines tragic U.S. cases such as Kayden Mancuso and Aramazd "Piqui" Estevez, where forensic failures and judicial decisions disregarded abuse risks, prompting legal reforms that require specialized training, scientific methodologies, and greater accountability. The paper warns against diagnostic reductionism in assessing child rejection, a multifactorial phenomenon often oversimplified as parental manipulation, leading to false positives. Brazilian law and recent Canadian reforms demand objective proof of conduct, preventing the misuse of parental alienation claims as procedural violence. The study highlights the recurrence of rushed or inconclusive reports, frequently accepted uncritically by courts. It argues that an expert's "proven competence" must include practical experience and continuous training. The conclusion advocates for forensic expertise that is scientifically robust, methodologically transparent, and ethically sound to safeguard the child's best interests.

Keywords: Parental Alienation. Professional Competence. Diagnostic Errors. Child's Best Interests.

RESUMO

O artigo tem como objetivo: discutir a relevância da qualificação técnica de peritos em litígios de guarda, sobretudo em alegações de alienação parental, num estudo de abordagem analítica e crítica, de cunho qualitativo, utilizando extensiva pesquisa bibliográfica e documental. Analisa casos trágicos nos EUA, como Kayden Mancuso e Aramazd "Piqui" Estevez, em que falhas periciais e decisões judiciais desconsideraram riscos de abuso, motivando reformas legais que exigem treinamento especializado, metodologias científicas e maior responsabilização. Alerta-se para o reducionismo diagnóstico na análise da rejeição infantil, fenômeno multifatorial frequentemente simplificado como manipulação parental, o que gera falsos positivos. A legislação brasileira e reformas no Canadá exigem comprovação objetiva de condutas, prevenindo o uso abusivo da alegação de alienação como violência processual. Destaca-se a recorrência de laudos apressados ou inconclusivos, aceitos sem

[1] Master's student in Law. União de Ensino Superior da Amazônia Ocidental (UNESA).
E-mail: beatrice.rocha@defensoria.rj.def.br Orcid: https://orcid.org/0009-0009-3914-1920
Lattes: http://lattes.cnpq.br/2403479007823344

crítica pelo Judiciário. Defende-se que a “aptidão comprovada” do perito inclua experiência prática e formação contínua, concluindo que a perícia deve ser robusta, transparente e ética para proteger o interesse da criança.

Palavras-chave: Alienação Parental. Competência Profissional. Erros de Diagnóstico. Interesse Superior da Criança.

RESUMEN

El artículo tiene como objetivo: discutir la relevancia de la calificación pericial en litigios de custodia, especialmente en casos de supuesta alienación parental, en un estudio con un enfoque analítico y crítico, de carácter cualitativo, utilizando una extensa investigación bibliográfica y documental. Analiza tragedias en Estados Unidos, como las de Kayden Mancuso y Aramazd “Piqui” Estevez, donde fallas periciales y decisiones judiciales ignoraron riesgos de abuso, impulsando reformas legales que exigen capacitación especializada, metodologías científicas y mayor responsabilidad. Se advierte contra el reduccionismo diagnóstico en el rechazo infantil, fenómeno multifactorial a menudo simplificado como manipulación parental, lo que genera falsos positivos. La legislación brasileña y las reformas recientes en Canadá requieren prueba objetiva de conductas, evitando el uso abusivo de la alegación de alienación parental como violencia procesal. El texto señala la frecuencia de dictámenes apresurados o inconclusos, aceptados sin análisis crítico por los tribunales. Se sostiene que la “aptitud comprobada” del perito debe incluir experiencia práctica y formación continua, concluyendo que la pericia debe ser sólida, transparente y ética para proteger el interés superior del niño.

Palabras clave: Alienación Parental. Competencia Profesional. Errores de Diagnóstico. Interés Superior del Niño.

1 INTRODUCTION

The intersection between family law and forensic psychology is a complex field, where judicial decisions indelibly impact the future of children and their families. In custody and cohabitation processes, the correct assessment of family dynamics is crucial, especially when there are allegations of parental abuse or alienation. However, the analysis of a child's rejection of living with one of the parents is a multifactorial task that the justice system sometimes fails to adequately detail. The need for in-depth technical training for the professionals involved in these cases is a fundamental protection issue, a lesson tragically learned in the United States through the cases of Kayden Mancuso and "Piqui" Estevez.

The cases of Kayden Mancuso and Aramazd "Piqui" Andressian Jr. have had a significant impact on the formulation of public policy and legislative reforms in the United States, particularly in the field of child custody and coexistence. Both show the direct relationship between technical failures in the performance of professionals in the justice system, especially forensic psychologists, and the occurrence of fatal outcomes, demonstrating that the absence of specific qualification to deal with situations of abuse and domestic violence compromises the full protection of the child.

Kayden Mancuso, just seven years old, was murdered by her father during a period of unsupervised custody, granted despite repeated warnings and the presentation of evidence by her mother about her father's history of violence, depression and suicidal behavior. Although a psychological evaluation had already indicated risk, the court chose not to consider such conclusions and expanded paternal visits.

Piqui's case, which occurred in California, has structural similarities with Kayden's. In 2017, the boy was murdered by his father during a custody dispute, despite successive warnings from his mother, Ana Estevez, about the abusive and unstable behavior of her ex-husband. A custody evaluation report even recorded the existence of "bad parenting" on the part of the father, but concluded that there was not enough evidence to change custody, a decision ratified by the magistrate in charge, who went so far as to publicly disqualify the mother's credibility. Ana Estevez directly blames the custody evaluator who prepared a report granting her father more time with Piqui (Luciano, 2018).

The repercussion of this case gave rise to *Piqui's Law*, a state law that requires judges, custody evaluators and other professionals to receive specific training on domestic violence and child abuse, with a focus on evidence-based practices and submitted to peer review[2].

These cases were not isolated fatalities, but rather symptoms of systemic failures. The legislation resulting from these tragedies points out that allegations of abuse are often dismissed in the courts and that when an allegedly abusive parent claims "parental alienation", the credibility of the protective party is disproportionately questioned. In addition, it was identified that "experts" who testify against allegations of abuse often lack the necessary expertise, relying on unproven theories to invalidate legitimate allegations[3].

The first case resulted in the passage of *Kayden's Law*, signed into law in 2022 by President Joe Biden as part of the *Violence Against Women Act* (VAWA), federal legislation that encourages states to reform their child custody rules, establishing the safety and well-being of the child as an absolute priority, especially when there are allegations of domestic violence or abuse (*National Safe Parents Organization*, n.d.).

It should be noted that, in the North American legal context, each state has legislative autonomy in matters of family law, so the adoption of *Kayden's Law* depends on specific local legislation. The incentive for this adoption was not limited to child protection: the law provides financial transfers to states that implement its guidelines, revealing a characteristic feature of the American legislative model, in which economic considerations often become catalysts for reforms, even if they involve fundamental rights of children.

---

[2] The peer review criterion is one of the pillars established by the U.S. Supreme Court in the famous case *Daubert v. Merrell Dow Pharmaceuticals* (1993), which revolutionized the control of scientific evidence in the U.S. justice system. In that judgment, the Court determined that for expert testimony to be considered scientifically valid and admissible, the underlying theory or method must have been submitted to the evaluation and scrutiny of other experts in the same field. This extrajudicial evaluation by the scientific community works as a seal of quality and reliability, allowing the judge, acting as a gatekeeper, to prevent unsubstantiated theories or "pseudosciences" from influencing the decision, since the method has been previously validated by those who actually have the technical knowledge to do so (ALMEIDA, 2011).

[3] It is important to emphasize that the "experts" mentioned in the context of US legislation operate differently from the judicial expert traditionally known in Brazil. In the American system, the central figure is that of the expert *witness*. As a rule, these professionals are not impartial assistants appointed by the judge, but specialists hired and paid directly by the parties to defend a technical-scientific thesis in the process. U.S. law even provides for the appointment of experts by the judge, but this practice is rare. The predominant model is the adversarial one, in which technical knowledge is introduced into the trial through the oral testimony of these qualified witnesses. During the hearing, his testimony is submitted to the scrutiny of the adversary, being questioned and examined by the lawyers of both parties. Because they are hired by one side, they are seen as biased and their performance is expected not only as data providers, but as effective advocates for the perspective that interests those who hired them. This dynamic creates an environment where there is a high risk that unvalidated theories or "pseudosciences" will be put forward to influence the jury, justifying the creation of rigorous filters like those in the *Daubert case*.

States such as Colorado, California (with the "Piqui Law"), Tennessee and Maryland, began to require greater technical rigor from professionals in the justice system. Colorado, for example, has not only adopted the legislation, but has deepened it by legally defining "coercive control"[4] and requiring courts to rigorously consider allegations of abuse and the child's stated preference.

The core of these reforms lies in the mandatory and ongoing specialized training for judges and forensic psychologists on topics such as domestic violence, child abuse, and trauma-based care. It is also required that the testimony of experts be restricted to individuals with appropriate qualifications and that their methodologies be based on evidence-based practices (COLORADO. Title 14: Dissolution of Marriage - Parental Responsibilities. Section 14-10-127.5). The goal is that the new laws will increase the need for documentation and accountability.

The new legal paradigm, by raising the standard of control over expert evidence, requires a consequent increase in the technical responsibility of the forensic psychologist. It is the duty of the evaluator to exhaustively record the entire evaluation process, documenting not only the procedures carried out, such as interviews and tests, but mainly the chain of reasoning and the justification that connect the data collected to the conclusions presented in the report. This requirement of reasoning enables effective control by the parties and by the court, preparing the professional for the questioning at the hearing, where he must defend the soundness of his methodology and the coherence of his conclusions. Therefore, greater *accountability* aims to ensure the transparency of the expert report, transforming the "black box" of the expert opinion into an auditable procedure and compelling the professional to a practice in line with the most rigorous *standards* of science and ethics (Pelc, 2024).

The new laws also create challenges in handling allegations of parental alienation. Laws examine the use of concepts such as parental alienation in child custody cases, particularly when such allegations may overshadow legitimate allegations of abuse. In this area, forensic psychologists should differentiate between alienation and protective behavior (*animus corrigendi/protegendis* and *animus nocendi),* assessing whether the child's

[4] Colorado law (Colorado Revised Statutes, Title 14, § 14-10-127.5) defines "coercive control" not as an isolated act, but as a pattern of behavior that aims to humiliate, intimidate, and punish an individual by undermining their freedom and sense of self. The legislation details several tactics that characterize this abuse, including isolating the victim from their support network (friends and family); the monitoring and control of your finances, communications and movements; constant verbal degradation; and the use of threats, which may be directed at the victim, their children, pets, or involve the disclosure of intimate information and the use of *immigration status* as a form of coercion.

reluctance to engage with parents stems from manipulation or genuine fear due to past abuse (Rocha, 2025). In addition, the evaluator should avoid recommending negative interventions and refrain from recommending controversial treatments, such as certain reunification programs, which lack empirical support and may harm the child.

This American legislative movement, born of pain and loss, illuminates the central argument of this article: to discuss the relevance of the technical qualification of experts in custody litigation, especially in allegations of parental alienation, in a study with an analytical and critical approach, of a qualitative nature, using extensive bibliographic and documentary research.

2 METHODOLOGY

This article presents an analysis of a critical and propositional nature, whose methodology consists of an analytical and argumentative approach, built from an examination of secondary and normative sources. The research is classified as bibliographic (Gil, 2002; Lakatos & Marconi, 2017), documentary (Gil, 2002; Lakatos & Marconi, 2017; Ximenes, n.d.) and of a qualitative and analytical nature (Bachelard, 2006; Creswell & Clark, 2013; Cunha & Silva, 2013; Gil, 2002; Lakatos & Marconi, 2017; Mendes & Miskulin, 2017; Veronese & Fragale Filho, n.d.; Ximenes, n.d.)element. The bibliographic strand is manifested in the systematic analysis of the specialized literature to support the observations and proposals presented here, while the documentary strand focuses on primary sources such as the Brazilian Code of Civil Procedure, the Brazilian Law of Parental Alienation (12.318/2010) and resolutions of the Federal Council of Psychology, materials that, although existing, are reexamined from a new critical perspective.

The approach to the work is eminently qualitative. Although it does not involve the collection of field data, the analysis delves into the meanings, patterns and recurrent failures of forensic practice, seeking to understand the complexity of the phenomenon. The investigation is guided by a clear delimitation of the problem (the quality of psychological evidence in family litigation) and by an explicit objective of proposing improvements, with a solid theoretical and normative basis for each argument.

A criterion of rigor analogous to that proposed for the expert opinion itself is also adopted: the critical analysis of the dependence on the "self-report" and the generalization of the "anecdotal", insisting on the need for "factual demonstrations and well-founded arguments" to overcome biases. Finally, the methodology takes on an interdisciplinary

character, integrating knowledge from Law and Psychology to offer a more complete view of the object of study. In summary, the methodology used is based on an analytical and critical approach, of a qualitative nature, using extensive bibliographic and documentary research to evaluate and propose improvements in the procedures of psychological expertise in the legal sphere.

3 THE COMPLEXITY IN THE EVALUATION OF REJECTION OF COEXISTENCE: THE RISK OF DIAGNOSTIC REDUCTIONISM

The analysis of a child's refusal to live with one of the parents is one of the most complex and responsible tasks in the practice of forensic psychology. Contemporary scientific literature is unanimous in warning that childhood rejection is a multidetermined phenomenon, the understanding of which requires a systemic and multifactorial approach (Pelisoli *in* Guimarães, 2024). This perspective is not only a theoretical preference, but a methodological necessity to avoid biases and ensure the validity of the evaluation. An in-depth investigation, which considers the child's vulnerabilities, the characteristics of both parents and the socio-family context, is indispensable. Such an approach requires time, resources and, fundamentally, a high technical qualification of the professional, who must use multiple sources of information to build a robust analysis.

However, the depth that this analysis requires is often overlooked in forensic practice. In view of the pressure for speed and the complexity inherent to these cases, there is a tendency towards diagnostic simplification. In this scenario, the concept of "parental alienation" is sometimes used in a reductionist way, becoming a generic and superficial explanation for any and all forms of child rejection. This generalization occurs because it is methodologically simpler to attribute the child's refusal to a single cause, that is, the supposed manipulation by one of the parents, than to undertake the complex investigation of all the variables that may be contributing to the suffering of that family nucleus.

This simplification carries a serious risk: the formulation of "false positives" of parental alienation. By adopting a hasty diagnosis, other crucial hypotheses are disregarded, such as the existence of dysfunctional parenting, negligence or even psychological or physical violence, which would justify the behavior of distancing the child as a mechanism of self-protection. The most perverse result of this reductionism is the discrediting of children's discourse. The child's refusal, which could be a sign of violence, is interpreted as a symptom of manipulation, invalidating his experience and perception of reality.

Once the child's speech is discredited and labeled as a product of alienation, the risk of making a court decision that places him in a situation of violation becomes imminent. Ignoring complexity in favor of a simplistic diagnosis not only constitutes a technical failure, but also an ethical failure that can perpetuate the cycle of abuse.

One of the seminal studies that underlies the need for a multifactorial analysis is the theoretical reformulation proposed by Joan B. Kelly and Janet R. Johnston. In their work, the authors criticize the overly simplistic focus on the alienating parent and propose a "*relational continuum*" to differentiate the multiple causes that can lead a child to resist contact with a parent. The main conclusion that emerges from this new paradigm is that parental alienation, as an isolated phenomenon caused solely by the action of a parent, is a rare hypothesis. What is observed in the clinical and forensic reality is, in fact, an accumulation of systemic factors that contribute to rejection, including the intensity of marital conflict, the child's vulnerabilities, deficiencies in parenting by *both* parents, and even poor management of the case by professionals. As the authors state, "no single factor produces the alienated child", which makes the thorough investigation of all these variables an indispensable condition for a safe and responsible differential diagnosis (Kelly, 2001).

Steven Friedlander and Marjorie Gans Walters claim that "pure" cases of alienation are hard to find. In his sample of cases, "pure or uncomplicated alienation cases, in which neither *estrangement* nor *enmeshment* were identified as having a significant role, were relatively infrequent." They argue that the "vast majority of cases referred, whether by the court or by the community, were hybrid cases", which involve a combination of alienation, estrangement and/or entanglement (Friedlander, 2010).

The so-called conflict of loyalty clearly illustrates how the rejection of cohabitation can have multiple and independent causes of acts of parental alienation. It is a phenomenon that emerges when the child perceives himself torn between affection and loyalty to both parents, being pressured, directly or indirectly, to take sides, which can generate intense emotional suffering and distancing behaviors. This conflict has a multifactorial origin and can result, for example, from experiences of abuse, patterns of deficient parenting, repeated exposure to hostile interactions between parents or systemic failures in the protection of the child. It is important to underline that the psychological distance created between the child and the supposedly "alienated" parent can become conflictual even in the absence of intentional acts of parental alienation.

High levels of interparental conflict, even without direct alienating behavior on the part of one parent, are capable of producing effects similar to alienation, leading some children to refuse contact as a result of emotional distress and accumulated relational tension. In these situations, rejection is largely a mechanism of psychic self-preservation, not a reflex of deliberate external manipulation (Friedlander *et al* 2010; Johnston *et al* 2009). When the expert ignores this complexity and interprets the distancing solely from the perspective of parental alienation, he runs the risk of producing a mistaken diagnosis that, in addition to discrediting the child's narrative, can lead him or her back to a harmful or unsafe environment. Thus, recognizing the conflict of loyalty as a multifactorial phenomenon, and not as simple evidence of alienation, is indispensable for the expert analysis to remain scientifically grounded and legally protective.

The lack of knowledge or neglect of this multifactorial complexity has deleterious consequences in two spheres. In the professional sphere, the expert who adopts a reductionist analysis runs the serious risk of endorsing a judicial decision that puts the child on a collision course with a dysfunctional environment, without proper protection, and may insert him or her in a "context of violation". This technical flaw, however, overflows the case file and feeds the popular imagination, creating the polarization that is currently observed in the public debate. This polarization manifests itself in a narrative battle in which fathers and mothers impute maladaptive or alienating behaviors to each other as the sole and definitive cause for the child's rejection. In the midst of this clash of accusations, which mirrors an inflexible thought of "all or nothing", the child shrinks, often trapped in a painful conflict of loyalty, having his real suffering overshadowed by the dispute of adults.

The correctness of this conclusion is corroborated by empirical data from judicial practice. In research on custody disputes in British Columbia, Canada, researcher John-Paul Boyd showed that, although mothers were accused of practicing parental alienation much more frequently than fathers (67% of cases against 22%), the rate of proof of these allegations was drastically lower for them. Less than 15% of the accusations against the mothers were actually proven, while approximately one-third of the allegations against the fathers were upheld by the court (Boyd, 2015). This statistical disparity suggests that the polarization of the public debate does indeed reverberate in the justice system, generating a disproportionate volume of unfounded accusations that seem to reflect more of a gender

stereotype than the reality of the facts (Petrocilo; Menon, 2024).[5] It is evident, therefore, how the absence of a judicious multifactorial analysis can not only harm the child, but also perpetuate biases and simplistic narratives that divert the focus from the true family dynamics.

To counter this trend of polarization and the risk of reductionist diagnoses, it is imperative that legal operators adopt a posture of methodological skepticism. Psychologists Margaret Lee and Nancy Olesen, in this sense, offer a guide to essential precautions for professional performance. First, they caution against simplifying the problem, which should not be reduced to the alienation claim alone, and recommend that the truth of the claim should not be presumed on the basis of its popularity or strategic advantage. Crucially, the analysis must extend to the conduct of the rejected parent, as the latter cannot be considered *a priori* exempt from responsibility in distancing from the child. The professional must also abandon the simplistic notion that the child is a mere victim of "brainwashing", recognizing that alienating behaviors of a parent do not always result in an effectively alienated child. Finally, the authors warn that the adversarial justice system itself, with its litigious nature, can potentiate the conflict and actively contribute to the rupture of the relationship between parents and children (Lee; Olesen, 2001).

In contrast to models that focus on child symptoms, the Brazilian legislation on parental alienation (Law No. 12,318/2010) adopts a perspective deliberately focused on adult behavior. It is precisely because it recognizes the complexity of the matter that the law focuses on the prevention of behaviors that may cause psychological suffering to children, avoiding the biases of a simplistic diagnosis. As psychologist Douglas Darnall warns, parental alienation, as a process, "focuses more on the behavior of the parents than on the role of the child in the degradation of the victimized parent", and can occur "well before the parents' hatred permeates the child's beliefs about the victimized parent" (Darnall, 1998). Brazilian law aligns with this preventive view, because, by focusing on the acts, it seeks to make "parents recognize the risk of unconsciously falling into a pattern of alienation", since "when

[5] The data consolidated by the National Council of Justice (CNJ) are the main source to measure the evolution of parental alienation processes at the national level. The time series shows an exponential growth trajectory. In 2014, 401 lawsuits with this theme were registered throughout the country. This number jumped to 5,152 lawsuits by October 2023, which represents an increase of more than 1,180% in less than a decade. The most recent period was marked by significant volatility, directly associated with the impacts of the pandemic. The year 2020 registered a historic and alarming peak of 10,950 lawsuits, which meant a growth of 171% compared to 2019. Sources: ANICETO, Aline. Growth in cases of parental alienation is a global concern. *Blog Unit Pernambuco*, 27 Apr. 2022. Available at: https://pe.unit.br/blog/noticias/crescimento-nos-casos-de-alienacao-parental-e-preocupacao-mundial/. Accessed on: 7 Aug. 2025.

children come to agree with the alienating parent, it is usually too late to avoid significant damage".[6]

For this reason, the legislator avoided the use of terms such as "alienated child", which, in addition to carrying a pejorative connotation, would refer to a diagnostic criterion that is not the scope of the law. The focus is on "acts of parental alienation" which, as Darnall explains, can even include insisting on "real and verifiable failings" of a parent. This approach recognizes that "alienation is a process, not a person," and that the roles of alienator and target can alternate, with "often both parents feeling victimized." By typifying specific conducts, the law seeks to regulate the dysfunctional dynamics of conflict, instead of setting permanent labels, offering a pragmatic path for the protection of children in the face of the complexity of custody disputes (Rocha, 2025b). In the Brazilian legal system, the alienating act to be restrained can come even from the parent who is the target of the accusation, as the letter of the law does not restrict the practice only to the guardian. Thus, the false imputation of parental alienation configures, itself, an act of alienation, subject to the same legal repression[7].

Analogous to Brazilian legislation, the Canadian justice system has evolved towards an approach that requires the proof of objective conduct for the characterization of parental alienation, moving away from diagnoses based only on the child's condition. Recent reforms to the Canadian *Divorce Act* are emblematic of this change, requiring the demonstration of a "continuous pattern of observable negative attitudes and behaviors" that disqualify a parent. The mere allegation that the child rejects coexistence, therefore, has become insufficient, and it is necessary to prove the acts that constitute the manipulation.

This requirement of materiality of acts fulfills a crucial protective function: to differentiate manipulative behaviors from genuine protective reactions and to prevent the very allegation of alienation from being used as a form of violence. Canadian jurisprudence already recognizes that a "course of alienating behavior" can constitute "coercive control" and "family violence." In a remarkable reversal, the courts also identified situations in which one parent's own aggressive communications, accusing the other of alienation, constituted,

[6] In this sense: "(...) *The practice of reciprocal parental alienation between parents is abusive and requires that both be warned to prioritize the well-being of the children, leaving their personal disagreements and vanities in the past, so that together they can seek family psychological support*. (...)". CIVIL APPEAL 0760600-62.2019.8.07.0016. 7th Civil Panel. TJDF. Reporting Judge LEILA ARLANCH. DJ 15/12/2022.

[7] In this sense: "(...) *The practice of parental alienation remains configured, if the psychological report clearly indicates the parent's behavior of blaming the ex-wife for the separation and disqualifying her figure, interfering in the daughter's view of her mother*. (...)". CIVIL APPEAL Nº 1.0000.21.046931-8/005 - COMARCA DE LAVRAS - APPELLANT(S): A.C.N. - APPELLANT(S): A.M.G.N. TJMG. Publication Date: 14/06/2024

in themselves, a "pattern of threatening, coercive and controlling behavior." This focus on concrete acts therefore allows the justice system to identify when the allegation of alienation is instrumentalized as a tactic of procedural abuse and coercive control, protecting the child and the victimized parent from a new layer of violence (Jaffe, 2023).

Despite the clarity of the Brazilian legislative text in focusing on acts and prevention, there is considerable dissonance in professional practice. Unfortunately, a significant portion of experts do not seem to have introjected the literalness and spirit of the law, operating under the mistaken premise that Brazil would have incorporated the controversial concept of "alienated child". This failure of interpretation results in poorly conducted forensic investigations, which are based on large-scale theoretical conceptions that have already been rejected and disregard the diversity of factors that contribute to the establishment of parental alliances. By neglecting a complete and multifactorial assessment of the family nucleus, these professionals end up naturalizing relational conflicts as mere indications of parental alienation. Consequently, they bring biased and ill-founded reports to the record, which reduce the complex dynamics of child suffering to a *checklist* of symptoms, perpetuating polarization and, ultimately, putting children on a collision course with a dysfunctional environment without any protection[8].

In other cases, the deficiency does not translate into hasty diagnoses, but into pure and simple omission. There are experts who present inconclusive reports because they did not investigate in depth the reasons for the child's rejection, failing to fulfill the technical and legal purpose of the expert opinion. This posture, far from helping to solve the judicial impasse, is equivalent to a veiled refusal to provide jurisdiction, since the professional refrains from indicating the preponderant cause of rejection, either for fear of exposing his "not knowing", or for lack of diligence in the collection of relevant information. Jurisprudence has recognized that reports of this nature, which shed little light on the core of the controversy, compromise the adversarial and ample defense, as decided by the TJMG when it stated that it is essential to complement the evidence when the expert opinion barely or nothing addresses the central point of the allegation (Interlocutory Appeal No. 3957446-

[8] An example of this interpretative dissonance in Brazilian academia itself can be found in the work of Sousa and Brito (2011). The authors argue that Law No. 12,318/10, especially in its explanatory memorandum, ended up incorporating the logic of Richard Gardner's American theory. According to the authors' analysis, the law adopts a perspective that pathologizes family conflict by treating the rejection of the child as an "infantile disorder", instead of focusing exclusively on the inadequacy of parental conduct. This interpretation shows how the legal approach, focused on acts, can be easily subsumed by a clinical reading that seeks a diagnosis in the child, illustrating the conceptual confusion that permeates forensic practice in the country (SOUSA, BRITO, 2011).

08.2024.8.13.0000), and the TJSP when annulling a sentence in the face of an inaccurate technical study and without a conclusive answer on the occurrence or not of parental alienation (Civil Appeal No. 1010797-91.2021.8.26.0451).

4 THE TECHNICAL QUALIFICATION OF THE EXPERT AS A PREREQUISITE FOR PROTECTIVE ACTION

Expert evidence in Brazilian law is the procedural instrument by which technical or scientific knowledge, unrelated to the legal training of the magistrate, is introduced into the records to assist in the formation of his conviction about the facts of the case. In family litigation, permeated by the complexity of emotions and the subjectivity of relationships, psychological or psychiatric expertise assumes a central role, as it aims to replace "guesswork" with a scientific analysis, offering the court safe subsidies for a decision that truly meets the best interest of the child or adolescent. The purpose of the report is not merely descriptive, but rather elucidative, transforming complex relational data into technically and scientifically grounded information that allows the judge to understand the family dynamics beyond the polarized narratives of the parties.

The validity and usefulness of this test, however, depend directly on the qualification of the professional who conducts it. Procedural legislation and special laws are expressed in requiring the expert to demonstrate specialization and aptitude. The Parental Alienation Law, in its article 5, § 2, determines that the expert examination must be carried out by a professional with "aptitude proven by professional or academic history to diagnose acts of parental alienation", while the Code of Civil Procedure, in its article 465, establishes that the judge will appoint "an expert specialized in the object of the expertise".

This double requirement goes beyond mere generalist training; a professional who proposes to work with complex issues such as relational violence, sexual abuse and parental alienation needs continuous and specific training (Rosa, Barros, Brazil, 2025). Forensic work demands not only the mastery of scientifically recognized methods and techniques, but also the ability to handle ethically delicate and emotionally exhausting issues, which presupposes technical preparation and, ideally, personal analysis. The absence of this in-depth qualification compromises the scientificity of the report, opening the door to biases and superficial conclusions previously criticized. It is precisely to enable this prior control that the Code of Civil Procedure, in its article 465, § 2, II, determines that the expert, aware of his

appointment, must present in court his curriculum with the proper proof of specialization, allowing the parties and the magistrate to assess his technical competence for the task.

The Parental Alienation Law (Law No. 12,318/2010) itself endorses the need for a multifactorial investigation by determining that the expert makes use of a wide field of information collection, establishing the minimum content of his evaluation in its article 5, paragraph 1. The legal provision provides that the expert report must cover, among other elements, the personal interview with the parties, the examination of documents in the records, the history of the couple's relationship and separation, the chronology of incidents and the evaluation of the personality of those involved. This methodological breadth, however, is the target of unfounded criticism, such as that "the legal text, by determining that the expert report is based on the 'examination of documents in the records', seems to confuse the practice of psychologists with that of lawyers or investigators (...)", which would supposedly diverge from the guidelines of the Federal Council of Psychology.

The problem of lack of technical qualification is aggravated by verifying the quality of the expert reports produced and, even more, the way they are received by the Judiciary. Studies that analyzed forensic practice in Brazil identified a "worrying deficiency in psychological assessment", with "biased attitudes, inadequacy of standards and the structure of reports, poorly planned psychological assessments and weak theoretical basis". The scenario becomes even more sensitive because, despite these deep "conceptual and technical flaws", the research reveals that the "majority of court sentences corroborated the conclusions of the psychological documents", reaching a rate of 93% of acceptance of the reports by the magistrates in one of the surveys. This combination of poorly prepared reports and a judicial reception with a low critical sense creates a dangerous cycle, in which "theoretical and practical mistakes in psychological evaluation (...) can result in the exposure of children and adolescents to situations of violence", reinforcing the urgency in the in-depth qualification of professionals as a protection measure (Oliveira *et al*, 2021).

Such criticism, however, ignores that it is precisely in the case file that essential documentary information for a multifactorial analysis can be found, such as the history of other cases involving domestic violence, proven or not, as well as records of child abuse or other forms of emotional abuse. In an assessment that seeks to understand the complexity of a phenomenon, it is difficult to justify why the expert should deprive himself of such a wide spectrum of data collection, which is fundamental for a safe differential diagnosis and to avoid simplistic conclusions that put the child at risk.

In fact, an expert truly familiar with the dynamics of judicial litigation in the Family Courts recognizes that this range of forms of information collection is not only a faculty, but a requirement for ethical and technically responsible action. The high complexity of these cases imposes on the professional the duty to consider the "complex web of relationships" and the underlying dynamics, which is only possible through the use of "various sources of information and various contexts of evaluation". The analysis of documents, therefore, does not represent a usurpation of the legal function, but rather an indispensable expert technique, complementary to interviews and tests. An evaluation restricted to a single source would be considered "partial and questionable", which is why access to the full file is an essential condition for the preparation of a robust and reliable report.

This requirement of specific qualification of the expert is not a particularity of Brazilian legislation, but an internationally recognized need for the proper conduct of complex family litigation. Psychologist Douglas Darnall, for example, already in 1999 argued that the courts themselves should compile lists of therapists who are proven to be qualified, with specific experience to work with parents in "intense conflict" and with deep "knowledge about parental alienation" (Darnall, 1999). This recommendation emphasizes that the necessary expertise transcends generic training, and there is a consensus in the international literature that acting in cases of this nature requires in-depth practical and theoretical specialization, without which the risk of procedural iatrogenesis and mistaken diagnoses increases exponentially.

The author recommends that the expert keep clear records and refrain from making considerations about individuals who did not participate directly in the evaluation. It also emphasizes the importance of involving all significant parties in the process and, fundamentally, of ensuring informed consent. This implies communicating to all participants, including children in accessible language, the purpose, scope and limits of confidentiality before the start of the work, making it clear that the information collected may be included in the final report. Such procedural safeguards are essential to ensure the validity, transparency, and ethical integrity of the forensic evaluation.

Although these recommendations were published by Darnall in 1999, their essence was somewhat incorporated more than two decades later into the wording of the Kayden and Piqui laws, raising the bar for accountability and requiring clear, auditable reasoning for expert findings.

This elevation in the standard of accountability is echoed by other researchers, such as Brockhausen, who warns of the responsibility of professionals for the subjective damage

caused to families by "inconsistent, unprepared, or mistaken action." The author criticizes the tendency, common in forensic practice, to adopt standardized measures in response to short time, a practice that, according to her, can "cover up the professional's lack of knowledge and possible anguish" and lead to "important mistakes". To mitigate these risks, Brockhausen argues that the complexity of these demands requires "continuing education, supervision of the care of mental health professionals, and specialized training." Thus, the "imperative need for in-depth, continuous and specialized technical training for experts and other professionals who work in cases of parental alienation and sexual abuse is reiterated, in order to avoid harmful errors and ensure adequate protection of children" (Brockhausen, 2011).

From the perspective of Artur Capes, the profile of the good scientist, when acting as an expert in civil procedure, transcends the figure of a mere technician to become a true "hunter of the truth", whose performance is guided by the search for the "truth as close as possible to the reality of the facts", even though he is aware that this "is not absolute" and that science is constantly evolving. To approach this ideal in multifactorial cases, such as those of rejection of coexistence, the good expert operates under what the author calls the "principle of maximum inclusion", which consists of the duty to "include, among the possible causes, all those that are plausible for the event to occur". Instead of fixating on a single hypothesis, the qualified professional must, therefore, "seek evidence that confirms or dismisses each of the hypotheses", ensuring an analysis that encompasses all the complexity of the phenomenon. The application of this principle requires, finally, a methodological rigor based on the "logical coherence of its argumentation" and the transparent demonstration of "how it reached the conclusions presented", consolidating a practice that combines technical knowledge with intellectual humility and ethical commitment to the justice of the concrete case (Capes, 2025).

The criticism of the absence of clear and specific qualification requirements for professionals who work in cases of parental alienation is supported by the Brazilian academic literature. In a study on the performance of psychologists in Family Courts, Veiga, Viégas and Cardoso (2019) point out a flagrant contradiction between the legal requirement and the practice of professional accreditation. The authors demonstrate that, while Law No. 12,318/2010, in its article 5, paragraph 2, determines that the expert examination must be carried out by a professional with "aptitude proven by professional or academic history to diagnose acts of parental alienation", the accreditation notices of the courts often do not reflect this rigor. The Accreditation Notice No. 001/2015 of the Court of Justice of Minas

Gerais, for example, is cited as a case in which there are no reservations about the specific aptitude of the psychologist to work in these cases, restricting the requirements to the diploma, registration with the class council and, "if applicable", a generic certificate of specialization in the area of expertise. The authors also highlight a broader flaw in the system: that there is, in fact, no formal requirement of specialization for the psychologist to act in the interface with the Law, either as an expert or technical assistant, which opens the door to unprepared actions in cases of high complexity.

In view of this manifest regulatory omission and incipient inspection, the responsibility for ensuring the quality of expert evidence falls overwhelmingly on the legal operator. It is up to the lawyer, in defending the interests of his client and, ultimately, of the child, to act as a strict inspector of the technical qualification of the appointed expert. This action materializes, first, in the challenge of a deficient curriculum, which does not demonstrate the specialization required by both article 465, § 2, II, of the Code of Civil Procedure and article 5, § 2, of the Parental Alienation Law. In addition, it is imperative that the professional knows the appropriate methodology for conducting the expert opinion, verifying that the evaluation observes the investigative breadth and the minimum content provided for in article 5, paragraph 1, of Law No. 12,318/2010, and that the final report meets the formal requirements of clarity and reasoning of article 473 of the CPC. Full awareness of the multifactoriness of the phenomenon is what will allow the lawyer to identify reductionist biases and reports based on insufficient sources of information. This vigilant posture is not only a procedural strategy, but an ethical duty to protect the family from mistaken conclusions and the irreparable damage that a poorly conducted expert examination can cause.

On the other hand, the absence of objective regulation on what is meant by "aptitude proven by professional or academic history to diagnose acts of parental alienation" transfers to the dialectic of the parties and the careful analysis of the court the responsibility for assessing this qualification. It is not enough, for example, to present a doctorate degree in Psychology if the professional has never worked in the forensic context or in concrete cases of parental alienation. On the other hand, an expert with years of experience in demands of this nature, combined with specific training and extension certificates, may be substantially more qualified for the function. This assessment is not limited to the analysis of formal diplomas or curricula, but must include the structure and methodological consistency of the reports presented, the detailed description of the diligences carried out and the proof of continuous specialization, indispensable in view of the dynamic and interdisciplinary nature

of Family Law. In addition, the professional himself may request from the judicial service a certificate that proves his performance in cases involving allegations of parental alienation, strengthening the demonstration of his practical experience and offering the court an objective parameter to assess his technical qualification.

5 CONCLUSION

The analysis undertaken throughout this study shows that the technical qualification of the expert is not a mere formal requirement, but a structuring element for the effectiveness of expert evidence and, consequently, for the protection of the child's best interests. The international legislative and jurisprudential experience, materialized in the Kayden and Piqui laws, demonstrates that the lack of specific and continuous preparation of professionals involved in family litigation can produce serious errors, perpetuate abusive dynamics and, in extreme cases, result in irreversible outcomes. In the Brazilian context, although Law No. 12,318/2010 and the Code of Civil Procedure establish clear parameters for the technical aptitude of the expert, the practice reveals a gap between the normative requirement and the reality of accreditations and appointments, allowing the performance of professionals without the proper specialization.

The multifactorial complexity that permeates phenomena such as rejection of cohabitation, parental alienation, and conflict of loyalty requires a broad investigative approach, which makes use of multiple sources of information, validated methodological protocols, and ethical rigor in the interpretation of data. The reduction of this complexity to simplistic diagnoses, guided by cognitive shortcuts or by the mechanical application of theoretical models, distorts the protective function of forensics and increases the risk of judicial decisions that discredit the child's voice and expose him to contexts of violation.

The lawyer's performance, as an inspector of qualification and expert methodology, emerges in this scenario as an indispensable counterweight to the fragility of institutional control mechanisms, and must be exercised with technical awareness and methodological skepticism. Likewise, the requirement of continuing education, clinical supervision and specialized training for forensic psychologists and other professionals who work in the justice system cannot be seen as an optional differential, but as an ethical and scientific assumption for decision-making that irreversibly shapes the lives of children and adolescents.

Thus, the consolidation of an expert culture committed to the maximum inclusion of hypotheses, the clear and auditable reasoning of the conclusions and the strict observance

of legal requirements constitutes not only a technical goal, but a legal and moral duty. It is in this commitment that lies the possibility of transforming psychological expertise into an instrument of true protection, capable of illuminating, with precision and responsibility, the most complex and sensitive areas of family litigation.

REFERENCES

Almeida, D. A. R. de. (2011). A prova pericial no processo civil: O controle da ciência e a escolha do perito. Renovar.

Bachelard, G. (2006). A epistemologia. Edições 70.

Boyd, J.-P. (2015). Alienated children in family law disputes in British Columbia. Canadian Research Institute for Law and the Family.

Brockhausen, T. (2011). SAP e psicanálise no campo psicojurídico: De um amor exaltado ao dom do amor [Master's dissertation, Universidade de São Paulo]. Repositório de Teses e Dissertações da USP.

Capes, A. (2025). O que provar? A admissibilidade e eficiência da justiça civil (2nd ed.). Revista dos Tribunais.

Creswell, J. W., & Clark, V. L. P. (2013). Pesquisa de métodos mistos. Penso.

Cunha, A. dos S., & Silva, P. E. A. da (Eds.). (2013). Pesquisa empírica em direito: Anais do I Encontro de Pesquisa Empírica em Direito, Ribeirão Preto, 29 e 30 de setembro de 2011. Ipea.

Darnall, D. (1998). Divorce casualties: Protecting your children from parental alienation. Taylor Publishing.

Darnall, D. (1999). Parental alienation: Not in the best interest of the children. North Dakota Law Review, 75(2), 323–364.

Dissolution of Marriage - Parental Responsibilities, Colo. Rev. Stat. § 14-10-127.5 (2022). https://law.justia.com/codes/colorado/title-14/dissolution-of-marriage-parental-responsibilities/article-10/section-14-10-127-5/

Friedlander, S., & Walters, M. G. (2010). When a child rejects a parent: Tailoring the intervention to fit the problem. Family Court Review, 48(1), 98–111. https://doi.org/10.1111/j.1744-1617.2009.01291.x

Gil, A. C. (2002). Como elaborar projetos de pesquisa (4th ed.). Atlas.

Guimarães, L. D. A. (Ed.). (2024). Manual de perícia psicológica forense: Aplicações nos contextos cível e criminal (Vol. 2). Vetor Editora.

Jaffe, P. G., Crooks, C. V., & Bala, N. (2023). Making appropriate parenting arrangements in family violence cases: Applying the literature to identify promising practices. Department of Justice Canada.

Johnston, J. R., Roseby, V., & Kuehnle, K. (2009). In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce (2nd ed.). Springer.

Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of Parental Alienation Syndrome. Family Court Review, 39(3), 249–266. https://doi.org/10.1111/j.174-1617.2001.tb00609.x

Lakatos, E. M., & Marconi, M. de A. (2017). Fundamentos de metodologia científica (8th ed.). Atlas.

Lee, S. M., & Olesen, N. W. (2001). Assessing for alienation in child custody and access evaluations. Family Court Review, 39(3), 282–298. https://doi.org/10.1111/j.174-1617.2001.tb00611.x

Luciano, L. (2018, August 24). A bittersweet victory in the fight for family court reform. ABC10. https://www.abc10.com/article/news/local/a-bittersweet-victory-in-the-fight-for-family-court-reform/103-587411779

Mendes, R. M., & Miskulin, R. G. S. (2017). A análise de conteúdo como uma metodologia. Cadernos de Pesquisa, 47(165), 1044–1066.

National Safe Parents Organization. (n.d.). Kayden's Law. Retrieved August 9, 2025, from https://www.nationalsafeparents.org/kaydens-law.html

Oliveira, R. P., & Williams, L. C. de A. (2021). Estudos documentais sobre alienação parental: Uma revisão sistemática. Psicologia: Ciência e Profissão, 41, e237202. https://doi.org/10.1590/1982-3703003237202

Pelc, R. E. (2024). Significant changes in child custody laws for forensic psychologists. American Board of Professional Psychology. Retrieved August 9, 2025, from https://abpp.org/newsletter-post/significant-changes-in-child-custody-laws-for-forensic-psychologists/

Pelisoli, C. da L., & Mattos, E. de. (2024). Perícia psicológica em situações de resistência da criança ao convívio com um dos genitores. In L. D. A. Guimarães (Ed.), Manual de perícia psicológica forense: Aplicações nos contextos cível e criminal (Vol. 2, pp. 141–167). Vetor Editora.

Petrocilo, C., & Menon, I. (2024, March 16). Processos de alienação parental disparam na pandemia, e lei é alterada. OAB SP. https://www.oabsp.org.br/noticia/24-03-16-0859-processos-de-alienacao-parental-disparam-na-pandemia-e-lei-e-alterada

Rocha, B. M. (2025a). Alienação parental e dolo específico: A função finalística do art. 2º da Lei nº 12.318/2010 como critério de tipicidade. Revista Ibero-Americana De

Humanidades, Ciências E Educação, 11(8), 544–564. https://doi.org/10.51891/rease.v11i8.20577

Rocha, B. M. (2025b). A constitucionalidade da Lei nº 12.318/2010 à luz do controle de fatos e prognoses legislativos: Entre a deferência judicial e a vedação do retrocesso social. Revista Ibero-Americana De Humanidades, Ciências E Educação, 11(8), 2501–2530. https://doi.org/10.51891/rease.v11i8.20741

Rosa, C. P. da, Barros, A. J. S., & Brazil, G. B. de M. (2025). Perícias psicológicas e psiquiátricas nos processos de família (5th ed.). JusPODIVM.

Sousa, A. M. de, & Brito, L. M. T. de. (2011). Síndrome de alienação parental: Da teoria norte-americana à nova lei brasileira. Psicologia: Ciência e Profissão, 31(2), 268–283. https://doi.org/10.1590/S1414-98932011000200005

Tribunal de Justiça de Minas Gerais. (2024). Agravo de Instrumento nº 3957446-08.2024.8.13.0000 (Relator: Juiz de 2º Grau Francisco Ricardo Sales Costa).

Tribunal de Justiça do Estado de São Paulo. (2024). Apelação Cível nº 1010797-91.2021.8.26.0451 (Relator: Desembargador Vito Guglielmi).

Veiga, C., Viégas, L. de S., & Cardoso, F. S. (2019). Alienação parental nas varas de família: Avaliação psicológica em debate. Arquivos Brasileiros de Psicologia, 71(1), 68–84. http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1809-52672019000100006

Veronese, A., & Fragale Filho, R. (n.d.). Pesquisa em direito: As duas vertentes vs. a não pesquisa. In L. T. Silva & J. M. Ximenes (Eds.), [Title of book not provided].

Ximenes, J. M. (n.d.). Levantamento de dados na pesquisa em direito: A técnica da análise de conteúdo. In Anais do XX Congresso Nacional do CONPEDI: Tema A Ordem Jurídica.